|  |
| --- |
| 3 October 2019 |

|  |
| --- |
| Reply form for the Consultation Paper on MAR review report |
|  |

|  |
| --- |
| Date: 3 October 2019 |

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the Consultation Paper on the MAR review report published on the ESMA website.

*Instructions*

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

* use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
* do not remove the tags of type <ESMA\_QUESTION\_CP\_MAR\_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
* if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

* if they respond to the question stated;
* indicate the specific question to which the comment relates;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

**Naming protocol**

In order to facilitate the handling of stakeholders’ responses please save your document using the following format:

ESMA\_CP\_MAR\_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

e.g. if the respondent were ESMA, the name of the reply form would be:

ESMA\_CP\_MAR\_ESMA\_REPLYFORM or

ESMA\_CP\_MAR\_ANNEX1

***Deadline***

Responses must reach us by **29 November 2019.**

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

***Publication of responses***

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

***Data protection***

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the headings ‘Legal notice’ and ‘Data protection’.

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | Deutsches Aktieninstitut e.V. |
| Activity | Non-financial counterparty |
| Are you representing an association? |  |
| Country/Region | Germany |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_CP\_MAR\_1>

Deutsches Aktieninstitut appreciates the opportunity to respond to ESMA’s consultation on review of MAR.

From the issuers’ perspective, MAR has led to a situation in which issuers face constant legal uncertainties. They furthermore make the experience that their interests are not adequately protected and that they have to cope with too much bureaucracy.

The review of MAR thus offers the unique opportunity to address these problems and to better balance the issuers’ interests in keeping sensitive information confidential and being able to comply with the MAR in practice against the investors’ interest in fair market practices and transparency.

ESMA addresses some of the bureaucratic and burdensome duties of the issuers and is requesting legal certainty for issuers. Deutsches Aktieninstitut appreciates this.

However, the consultation paper also takes the opposite direction for the core duties of listed companies. More specifically, we are concerned that additional compliance duties for the option of delaying the publication of inside information and more documentation duties for information that ceased to be inside information will be created (see response to Q 26 und Q 29).

Instead of an evaluation of potential additional obligations we would like to encourage ESMA to pick up a number of points that need to be addressed from the listed companies’ perspective in order to make listing in stock markets more attractive and in order to ease the day-to-day compliance.

In particular, issuers face the following key problems:

1. **Uncertainty on the term “inside information”**

Issuers face significant uncertainties on the term “inside information”. The vagueness of the term makes it often close to impossible to determine with reasonable certainty if and at which point of time a piece of information will constitute an inside information. In addition, neither the ECJ’s rulings nor the supervisory practices resulted in sufficient clarity and/or appropriate guidance for market participants. Rather the opposite is true leading to inadequately broad interpretations. As a consequence, issuers are not only under the constant risk of being forced to premature disclosures. The broad interpretation also blocks the issuers’ possibility to raise capital; it causes difficulties with employee participation schemes and generally requires a level of internal organisation to ensure compliance that appears inappropriate.

1. **Early stages of protracted processes should not be treated as inside information**

Legal uncertainty and the risk of wide interpretation are in particularly relevant for protracted processes, i.e. in processes that occur in stages. Though MAR tried to clarify the definition in this respect, issuers’ experiences are negative. Early stages of protracted processes are now under the constant risk of falling under the definition of inside information from a purely legal perspective though from a market view this is not appropriate.

1. **Protection of reasonable interests of issuers by option to delay disclosure is undermined**

The option to delay the disclosure of inside information has been introduced in order to protect reasonable interests of issuers and to mitigate negative effects of the disclosure obligation. It also protects the market from being misled by premature information. Unfortunately, the requirement of “legitimate interests” is interpreted narrowly by regulators. Moreover, the newly introduced obligation to respond to market rumours undermines this option for issuers and puts at risk issuers’ reasonable interests. The review should thus make delaying the publication safe(r) for issuers both in legal terms and in application in practice. This needs to be done irrespective of the need for more certainty on the definition of inside information.

These concerns are explained in more detail in the position paper “Review of EU Market Abuse Regulation – Main Issues from the Perspective of Listed Companies” which is attached to this response. The paper also develops concrete proposals

* how to limit the overly broad interpretation of inside information,
* how to treat protracted processes in a more appropriate manner (i.e. early stages of protracted processes are taken out of scope of the definition inside information),
* how to integrate further examples of legitimate interests for the delay of the disclosure of inside information and
* how to better protect delayed disclosures against abusive rumour spreading.

Besides the core issue of better balancing the definition of inside information and better protecting issuers’ interests in the delay mechanism, there is a number further topics that should be picked up in the MAR review. From our perspective, tackling these issues would reduce bureaucratic burden for listed companies or increase flexibility for them without running counter core political objectives of the MAR. Namely:

* Regarding insider lists: the volume of required data should be reduced.
* Regarding Managers‘ Transactions: transactions with no signal value (e.g. gifts, inheritances, but also elements of remuneration with not discretion) should be out of scope and notification requirements should be streamlined to avoid the risk of confusing the market.
* The list of closely associated persons (Art. 19(5) MAR) should be abandoned or at least made less burdensome.
* The safe harbour for share buy backs should be widened in scope to all justifications for share buy backs that are provided by the respective corporate law as well as to buy backs of debt instruments.
* The regime on market soundings should continue to be a safe harbour and should be reviewed regarding bureaucracy limiting its application in practice.
* Non-financial companies should be out of scope of the STOR regime of Art. 16(2).

Overall, Deutsches Aktieninstitut believes that the MAR review is an opportunity to amend and clarify existing provisions of MAR so that issuers’ compliance will be simplified, the attractiveness of capital markets will be improved and competitive disadvantages of listed companies will be avoided. We are convinced that our proposals will not put at risk the objectives of investor protection and transparency but instead will ensure that European capital markets will better develop and will be more attractive for both companies and investors. Thus, our proposals also are in line with the debate on the Capital Market Union.

<ESMA\_COMMENT\_CP\_MAR\_1>

1. Do you consider necessary to extend the scope of MAR to spot FX contracts? Please explain the reasons why the scope should or should not be extended, and whether the same goals could be achieved by changing any other piece of the EU regulatory framework.

<ESMA\_QUESTION\_CP\_MAR\_1>

Deutsches Aktieninstitut does not believe that it is helpful to extend the scope of MAR to spot FX contracts. It is not a coincidence that FX spot contracts are not a derivative under MiFID as FX spot contracts are generally used as a standard operative payment instrument. We do not see a compelling reason to subdue such a basic mean of operative business to market abuse controls, as it probably would only complicate daily settlements for companies selling products or services abroad.

In general, the inclusion of physical products into financial regulation has also the risk of duplicative regulatory obligations and/or restrictions (e.g. overlap between MAR and BMR, or MAR and REMIT), market infrastructure and dynamics may differ significantly and therefore any inclusion of physical products into the scope of MAR should be considered very carefully.

Overall, we agree with ESMA’s arguments against extending the scope of MAR to spot FX contracts (page 15-16) – among them the existence of the global FX code and the necessity of additional documentation and compliance requirements.

<ESMA\_QUESTION\_CP\_MAR\_1>

1. Do you agree with ESMA’s preliminary view about the structural changes that would be necessary to apply MAR to spot FX contracts? Please elaborate and indicate if you would consider necessary introducing additional regulatory changes.

<ESMA\_QUESTION\_CP\_MAR\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_2>

1. Do you agree with this analysis? Do you think that the difference between the MAR and BMR definitions raises any market abuse risks and if so what changes might be necessary?

<ESMA\_QUESTION\_CP\_MAR\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_3>

1. Do you agree that the Article 30 of MAR “Administrative sanctions and other administrative measures” should also make reference to administrators of benchmarks and supervised contributors?

<ESMA\_QUESTION\_CP\_MAR\_4>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_4>

1. Do you agree that the Article 23 of MAR “Powers of competent authorities” point (g) should also make reference to administrators of benchmarks and supervised contributors? Do you think that is there any other provision in Article 23 that should be amended to tackle (attempted) manipulation of benchmarks?

<ESMA\_QUESTION\_CP\_MAR\_5>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_5>

1. Do you agree that Article 30 of MAR points (e), (f) and (g) should also make reference to submitters within supervised contributors and assessors within administrators of commodity benchmarks?

<ESMA\_QUESTION\_CP\_MAR\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_6>

1. Do you agree that there is a need to modify the reporting mechanism under Article 5(3) of MAR? Please justify your position.

<ESMA\_QUESTION\_CP\_MAR\_7>

Yes, we think that the current reporting mechanism is burdensome. As ESMA points out, issuers cannot be informed about every trading venue on which their shares are traded.

<ESMA\_QUESTION\_CP\_MAR\_7>

1. If you agree that the reporting mechanism should be modified, do you agree that Option 3 as described is the best way forward? Please justify your position and if you disagree please suggest alternative.

<ESMA\_QUESTION\_CP\_MAR\_8>

At first glance, it appears to be a practical option to report to the most liquid market according to Art. 26 MiFIR only. However, this would still require issuers to monitor all markets on which its shares are listed and to continuously review the liquidity of those markets. Therefore, Option 3 does not appropriately address the challenges resulting for issuers from a duty to continuously monitor all trading venues where its shares are traded. Also, as the Art. 26 MiFIR reporting requirement (to which Option 3 references) only applies to financial institutions, there does not seem to be a direct synergy of the reporting requirements for non-financial institutions. Therefore, Option 2 (reporting to the NCA of the jurisdiction where the issuer requested or approved admission to trading) is clearly preferable. Option 2 could, like the proposed Option 3, be supplemented by the possibility for other authorities to request the transaction data from the NCA of the jurisdiction where the issuer requested admission to trading (or approved trading).

***Additional general remark:***

The safe harbour provisions for buyback programs should not be limited in scope as it is currently the case in Art. 5(2) MAR. Rather, the safe harbour should apply to:

* all buybacks of shares permitted under corporate law (see Art. 21 et seq. Directive 2012/30/EU);
* buybacks of debt instruments.

The current distinction between the different purposes of share buy-back programmes is not justified. The market impact of a buy-back is generally unrelated to the underlying (economic) purpose. In practice, it appears that a number of regulators do not consider the execution of buyback programmes for a purpose permitted under the relevant corporate laws as market abuse if the requirements of the safe harbour provisions are being complied with (as if the buyback was in scope). However, a clarification of that effect would be useful and promote regulatory convergence.

Furthermore, buying back outstanding debt securities that trade significantly below nominal value has proven to be a useful tool to reduce an issuer’s debt burden and to adapt an issuer’s debt exposure to more favourable market conditions when interest levels decline. Therefore, there is an economic need to execute these bond repurchases and it does not seem to be justified from a market integrity perspective not to have a safe harbour for debt buybacks as well. Therefore, we propose to extend the scope of the safe harbour rules for buy-back programmes also to the buy-back of debt instruments.

<ESMA\_QUESTION\_CP\_MAR\_8>

1. Do you agree to remove the obligation for issuers to report under Article 5(3) of MAR information specified in Article 25(1) and (2) of MiFIR? If not, please explain.

<ESMA\_QUESTION\_CP\_MAR\_9>

Yes, we agree.

<ESMA\_QUESTION\_CP\_MAR\_9>

1. Do you agree with the list of fields to be reported by the issuers to the NCA? If not, please elaborate.

<ESMA\_QUESTION\_CP\_MAR\_10>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_10>

1. Do you agree with ESMA’s preliminary view?

<ESMA\_QUESTION\_CP\_MAR\_11>

Yes, we agree with ESMA's preliminary view that market participants will find more useful data in aggregated form and not find much value in all the details of the transactions previously reported to the NCAs.

<ESMA\_QUESTION\_CP\_MAR\_11>

1. Would you find more useful other aggregated data related to the BBP and if so what aggregated data? Please elaborate.

<ESMA\_QUESTION\_CP\_MAR\_12>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_12>

1. Have market participants experienced any difficulties with identifying what information is inside information and the moment in which information becomes inside information under the current MAR definition?

<ESMA\_QUESTION\_CP\_MAR\_13>

Yes, **issuers face significant uncertainties** regarding the term “inside information”. The vagueness of the term makes it often close to impossible to determine with reasonable certainty if and at which point of time a piece of information will constitute an inside information. In addition, neither the ECJ’s rulings nor the supervisory practices have led to adequate clarity and/or appropriate guidance for market participants. Rather the opposite is true. Issuers have made the experience that the current definition is prone to an extremely wide interpretation so that reasonable judgement becomes more or less impossible or is even biased in a direction that is inappropriate.

According to Art. 7 MAR, for a non-public information to qualify as inside information, it needs to be specific enough that a reasonable investor would be likely to use it as part of the basis of his or her investment decisions. However, as explained in the attached position paper practice has shown that this definition cannot reliably serve its purposes (1) to narrow the definition to an extent that is practicable for issuers and (2) to enhance legal certainty (for this purpose see recital (18) MAR) for the ex ante judgement of the issuer. Concretely, the term “inside information” needs clarification in three respects:

1. **Reasonable investors** should be understood as rational investors that assess information generally with a view on the (long-term) fundamental value of a financial instrument.
2. It has to be clarified that the reference to a significant effect on the prices of **“related derivative financial instruments”** will only become relevant in connection with transactions in that particular derivative. The price impact on a derivative instrument depends on its structure, particularly the leverage. While it is possible to use inside information relating to the underlying share or bond for transactions in a related derivative instrument, this does not work the other way around. Furthermore, as there is no general transparency of any possible derivative instrument, it is factually impossible for market participants to make that assessment. For issuers, it should be clarified that they do not have to consider inside information with regard to derivatives issued by a third party – since otherwise a monitoring obligation would be imposed on them that would be impossible to be complied with (see below our comment on Art. 17 MAR).
3. **Early stages of protracted processes should not be treated as inside information.** In many cases inside information develops over a period of time, i.e. it occurs in stages of a protracted process. Typical examples of such a protracted process are M&A activities or the issuance of a financial instrument. Having in mind a ruling of the ECJ (Geltl./.Daimler), MAR tried to clarify that not each and every stage of a protracted process can and should be considered as inside information. However, the definition and recitals in MAR relating to protracted processes leave it still unclear in which circumstances an intermediate step can by itself be deemed to constitute inside information. Even worse, issuers feel increased pressure to assume inside information in too early stages of protracted processes. The paper attached therefore makes a concrete proposal how to clarify the definition in order to improve legal certainty and in order to take issuers’ day-to-day compliance problems properly into account.

**Specific problems with the definition of inside information relating to emission allowances**

For gas and power market participants it is still unclear what could constitute “inside information” in relation to emission allowances under the definition of Article 7(1)(c) MAR, which is not already captured by the definition of inside information under Article 2(1) REMIT. It is the experience of our members that in practice each potential insider information concerning emission allowances markets as well as concerning gas and power markets is already sufficiently covered and published under REMIT. Also, the REMIT publication is sufficient for the purpose of the MAR disclosure of inside information as Article 2(2) of Implementing Regulation (EU) 2016/1055 recognises it also for the purpose of compliance with the disclosure obligation under Article 17(2) MAR. Nevertheless, wholesale energy market participants (as defined in REMIT) have to comply with the MAR definition at the same time although it does not cover additional price relevant inside information in practice. Therefore, we believe that the current definition of “inside information” in relation to emission allowances of MAR creates an unnecessary additional layer of complexity and legal insecurity for wholesale energy market participants and this without any obvious benefits.

Therefore, we propose to introduce a reference to the definition of inside information of REMIT into the definition of Art. 7(1)(c) MAR to avoid these adverse effects for wholesale energy market participants. This would mean that wholesale energy market participants would have to comply exclusively with the lex specialis REMIT definition of insider information with regard to emission allowances markets. This approach substantially reduces complexity for the real economy.

Furthermore, the thresholds under Article 7(4) and 17(2) MAR for EAMP are set at a rather low level and should be therefore set at plant level but not at group level. Individual companies with emissions far below the threshold often exceed the threshold only at group level. As long as the overall threshold and the single plant threshold are not exceeded cumulatively, companies should be out of scope of the EAMP definition.

<ESMA\_QUESTION\_CP\_MAR\_13>

1. Do market participants consider that the definition of inside information is sufficient for combatting market abuse?

<ESMA\_QUESTION\_CP\_MAR\_14>

We believe that the definition of inside information is in any case sufficient for combatting market abuse, in particular for preventing insider trading.

Moreover, as pointed out above (see Q 13), the key problem of the definition is rather that it leads to legal uncertainties and results in interpretations that are often too broad. Thus, the question should not be to widen the definition further, but to narrow it to a level that is practicable for issuers. Otherwise, there might also be the risk of an information overflow (increased number of disclosure of inside information) that would reduce the relevance of disclosures for market participants.

Due to the broad definition of inside information, difficulties also arise in relation to an issuer’s disclosure obligations (Art. 17 MAR). First of all, an obligation to disclose information at an unduly early stage of a protracted process may result. There is the risk to damage the issuer’s ability to pursue his objectives (e.g. regarding M&A activities, the issuance of capital and changes in top management positions) in a structured process by being urged to publish sensitive information at an early stage.

Second, the option to delay disclosure of inside information under Art. 17 (4) MAR in these cases is only a suboptimal safeguard for issuers and – as a consequence - exposes the issuer to the uncertainty that he does not have control over the time period during which a delay can be upheld (see Q 25).

<ESMA\_QUESTION\_CP\_MAR\_14>

1. In particular, have market participants identified information that they would consider as inside information, but which is not covered by the current definition of inside information?

<ESMA\_QUESTION\_CP\_MAR\_15>

No, we have not identified such missing price-relevant information. The current definition is however too vague and must be clarified in a manner that avoids assuming inside information too early (see above).

<ESMA\_QUESTION\_CP\_MAR\_15>

1. Have market participants identified inside information on commodity derivatives which is not included in the current definition of Article 7(1)(b) of MAR?

<ESMA\_QUESTION\_CP\_MAR\_16>

As mentioned above in our response to Q13, market participants have made the experience that all relevant insider information concerning emission allowances markets as well as concerning gas and power markets is already sufficiently covered and published under REMIT. MAR should rather make reference to REMIT in order to avoid unnecessary complexity.

<ESMA\_QUESTION\_CP\_MAR\_16>

1. What is an appropriate balance between the scope of inside information relating to commodity derivatives and allowing commodity producers to undertake hedging transactions on the basis of that information, to enable them to carry out their commercial activities and to support the effective functioning of the market?

<ESMA\_QUESTION\_CP\_MAR\_17>

We believe that commodity derivatives must be treated separately. There have been good specific reasons to include the forth element of “disclosability” to the definition of inside information in commodity markets, namely that the relevant information must be disclosable. This element has to be retained.

Commodity market participants must be able to hedge their production against commodity price risks. It is therefore crucial that there is no general disclosure requirement with regard to commodity markets. The publication of sensitive information relating to expected or anticipated production or the use of certain commodities should be avoided as this would restrict the possibilities of hedging for commodity market participants. Hedging is essential for the risk management of those participants and not only protects their existence, but also minimizes the risks to the entire economy.

<ESMA\_QUESTION\_CP\_MAR\_17>

1. As of today, does the current definition of Article 7(1)(b) of MAR allow commodity producers to hedge their commercial activities? In this respect, please provide information on hedging difficulties encountered.

<ESMA\_QUESTION\_CP\_MAR\_18>

We are not aware of material hedging difficulties and therefore we don’t see a need to change the current definition of Article 7(1)(b) of MAR.

<ESMA\_QUESTION\_CP\_MAR\_18>

1. Please provide your views on whether the general definition of inside information of Article 7(1)(a) of MAR could be used for commodity derivatives. In such case, would safeguards enabling commodity producers to undertake hedging transactions based on proprietary inside information related to their commercial activities be needed? Which types of safeguards would you envisage?

<ESMA\_QUESTION\_CP\_MAR\_19>

We don’t agree that the general definition of inside information of Article 7(1)(a) of MAR should be used for commodity derivatives for the same reasons as explained in our response to Q17.

<ESMA\_QUESTION\_CP\_MAR\_19>

1. What changes could be made to include other cases of front running?

<ESMA\_QUESTION\_CP\_MAR\_20>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_20>

1. Do you consider that specific conditions should be added in MAR to cover front-running on financial instruments which have an illiquid market?

<ESMA\_QUESTION\_CP\_MAR\_21>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_21>

1. What market abuse and/or conduct risks could arise from pre-hedging behaviours and what systems and controls do firms have in place to address those risks? What measures could be used in MAR or other legislation to address those risks?

<ESMA\_QUESTION\_CP\_MAR\_22>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_22>

1. What benefits do pre-hedging behaviours provide to firms, clients and to the functioning of the market?

<ESMA\_QUESTION\_CP\_MAR\_23>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_23>

1. What financial instruments are subject to pre-hedging behaviours and why?

<ESMA\_QUESTION\_CP\_MAR\_24>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_24>

1. Please provide your views on the functioning of the conditions to delay disclosure of inside information and on whether they enable issuers to delay disclosure of inside information where necessary.

<ESMA\_QUESTION\_CP\_MAR\_25>

As the EU legislator has opted for a rather broad definition of inside information (covering both market abuse prohibitions and the duty of disclosure), the delay should be regarded as the natural (and necessary) counterweight to protect the legitimate interests of the issuer against being impaired by premature disclosure.

In other words: The option to delay the disclosure of inside information has been introduced in order to **protect legitimate interests of issuers** and to avoid negative effects of the disclosure obligation. However, the requirements for a delayed disclosure of inside information question the usability of the “delay option”. The review should thus make delaying the publication safe(r) for issuers both in legal terms and in application in practice. This needs to be done irrespective of the need for more certainty on the definition of inside information (see Q 13).

As laid down in more detail in the position paper attached Art. 17 should be amended in several respects for that reason.

First of all, **it has to be clarified for certain typical situations that there is a legitimate interest of the issuer and that this legitimate interest prevails over the interest of market transparency**. More specifically, it is necessary to enable issuers an orderly and structured capital markets communication. There is a conflict between the periodic financial reporting under the Transparency Directive and the issuer’s “ad hoc” disclosure obligation under Art. 17 MAR. Issuers might be forced to prematurely publish fractions of financial information stemming from a upcoming periodic financial report (giving the full picture of the issuer’s financial situation and performance) even where the scheduled time of publication of such periodic financial report is close. Also, it should be clarified that an issuer with a two tier board structure must be able to delay disclosure of inside information where the supervisory board still has to endorse a management board decision. That includes the need for a supervisory board to have sufficient time to assess and discuss the subject of its proposed resolution, including taking appropriate advice where required. MAR should be neutral regarding the corporate governance structures of member states. That includes allowing a supervisory board taking the time it reasonably needs to adopt a resolution after due and diligent consideration of the matter.

Second, in practice no issuer can guarantee that he is able to **ensure the confidentiality** of the information. He can only implement appropriate compliance structures to educate insiders on their duties and to keep confidentiality in his own area of responsibility.

Third, the key problem is that the issuer has to **react to the emergence of rumours** according to Art 17(7) MAR. He must immediately disclose the inside information under delay, if that rumour indicates that confidentiality is no longer ensured. Unfortunately, MAR sets out only low conditions for this kind of forced disclosure: Firstly, the rumour does not have to come from the issuer’s sphere, i.e. it does not have to fall in his area of responsibility. Secondly, and even worse, it is unclear when a rumour has to be regarded as sufficiently precise to indicate a breach of confidentiality. As a result, issuers always run the risk of being forced to make public inside information the disclosure of which was legitimately delayed when a rumour arises. The provision thus invites to unfair spreading of rumours, especially in sensitive situations.

In addition, the early disclosure of an existentially important transaction for an issuer may have the consequence of undermining the transaction inappropriately. In this case, the issuer’s interest to ensure its financial viability or to prepare significant strategic changes should have priority over transparency at any cost (similarly to recital 50 of MAR). The issuer’s investors should have a corresponding interest in the delay. Otherwise, they may suffer significant economic losses or – in the case of a necessary re-financing of the issuer failing - may even jeopardize their Investment.

<ESMA\_QUESTION\_CP\_MAR\_25>

1. Please provide relevant examples of difficulties encountered in the assessment of the conditions for the delay or in the application of the procedure under Article 17(4) of MAR.

<ESMA\_QUESTION\_CP\_MAR\_26>

Please refer to Q 25.

<ESMA\_QUESTION\_CP\_MAR\_26>

1. Please provide your view on the inclusion of a requirement in MAR for issuers to have systems and controls for identifying, handling, and disclosing inside information. What would the impact be of introducing a systems and controls requirement for issuers?

<ESMA\_QUESTION\_CP\_MAR\_27>

Issuers are well capable of handling compliance processes to decide on the delay of an inside information. We therefore oppose additional obligations for issuers to establish and maintain effective arrangements, systems and procedures for the identification, handling and disclosure of inside information. The decision how to comply with MAR obligations should thus be left to the issuer.

In addition, the reference to Article 16 MAR is misleading. Art. 16 was set up for a different purpose i.e. detecting and reporting suspicious transactions, through professionals (i.e. market operators, investment firms and persons professionally arranging or executing transactions) involved in the trading of financial instruments within the framework of their “professional activity”. This is a role in trading activities that is entirely different from that of an issuer that is not itself involved in the trading of his securities on a trading venue. Therefore, we oppose the idea that the scope of Art. 16 (2) MAR could be extended to issuers in general outside the financial sector and for the purpose of compliance with Art. 17 MAR.

**Additional remark on Art. 16 (2)**

Notwithstanding the discussion above, we would like to point to an issue regarding Art. 16 (2) MAR itself.

Due to a broad interpretation in a Q&A of ESMA (Q6.1) and differently from the previous regime, the abovementioned rules are applicable also for non-financial counterparties (NFC) professionally arranging or executing transactions in financial instruments. The ESMA Q&A brings into scope non-financial firms whose main activities however do not consist in arranging or executing financial transactions on a professional basis. NFC’s engage in financial transactions on an ancillary basis only, with the main objective to hedge risks related to their commercial or treasury financing activities. Hence, decisions to use financial instruments are taken based on operative requirements, within the framework of internal guidelines, and not with the aim to chase opportunities in financial markets. Moreover, NFC’s mostly act as clients of the financial sector in the respective transactions, not as providers or market makers. Therefore, NFCs should not have to comply with the obligation of Art. 16 MAR. From our perspective the review of the MAR should clarify the scope of Art. 16 MAR by excluding non-financial firms. It has never been the political intention to bring the “real economy” into the scope of that regime. Rather, it appears to be a mixture of an ambiguous wording (such as the reference to a trading desk for which there is no definition) and a far-reaching interpretation of ESMA that resulted in the current situation.

<ESMA\_QUESTION\_CP\_MAR\_27>

1. Please provide examples of cases in which the identification of when an information became “inside information” was problematic.

<ESMA\_QUESTION\_CP\_MAR\_28>

As mentioned in Q 13, the interplay between intermediate steps in a protracted process and treatment of future circumstances as inside information (Article 7(2) and (3) MAR) seems to lead to uncertainty as to when the current stage of a protracted process amounts to inside information.

Article 7(2) MAR provides that a future event could constitute inside information if it may reasonably be expected to occur. According to the ECJ ruling in the Geltl ./. Daimler case this requires a realistic prospect that the future event will come into existence (item 49).

Article 7(3) MAR deems an intermediate step in a protracted process to be inside information if, by itself, it satisfies the criteria of inside information.

Most future events are developing in a protracted process with multiple intermediate steps. However, there seems to be a trend to treat intermediate steps as inside information even where their potential price impact derives from the significance or magnitude of the future event they are to bring about and irrespective of the fact that the future event has not yet reached a “realistic prospect” to actually occur. If that approach is taken the explicit determination in MAR that future events only constitute inside information where they have a “realistic prospect” to occur would be ignored. As a result, issuers are urged to either disclosure the protracted process that is still in early stages. This increases the risk of that process (e.g. negotiations of a strategic transactions or a financial restructuring) being jeopardized or at least negatively affected. Alternatively, issuers would have to delay disclosure – at the expense of implementing cumbersome documentation and monitoring requirements and, even worse, running the risk of being urged to premature disclosure if “rumours” occur, even if those rumours may just be speculation without any factual background.

From our perspective this kind of interpretation needs to be avoided by clarifying MAR. In the position paper attached we have thus made concrete proposals how the definition of inside information regarding protracted processes could be amended and clarified. Please refer to the paper attached.

<ESMA\_QUESTION\_CP\_MAR\_28>

1. Please provide your views on the notification to NCAs of the delay of disclosure of inside information, in those cases in which the relevant information loses its inside nature following the decision to delay the disclosure.

<ESMA\_QUESTION\_CP\_MAR\_29>

In the light of preventing market abuse, there is no need to inform NCAs about information which has lost its inside nature. This would impose more reporting duties on issuers without added value and also the NCAs would receive too much information.

The non-disclosed information has never reached the public. The underlying event does not take place and will not have an effect on the share price so there is no potential risk of market abuse.

<ESMA\_QUESTION\_CP\_MAR\_29>

1. Please provide your views on whether Article 17(5) of MAR has to be made more explicit to include the case of a listed issuer, which is not a credit or financial institution, but which is controlling, directly or indirectly, a listed or non-listed credit or financial institution.

<ESMA\_QUESTION\_CP\_MAR\_30>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_30>

1. Please provide relevant examples of difficulties encountered in the assessment of the conditions for the delay or in the application of Article 17(5) of MAR.

<ESMA\_QUESTION\_CP\_MAR\_31>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_31>

1. Please indicate whether you have found difficulties in the assessment of the obligation to disclose a piece of inside information under Article 17 MAR when analysed together with other obligations arising from CRD, CRR or BRRD. Please provide specific examples.

<ESMA\_QUESTION\_CP\_MAR\_32>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_32>

1. Do you agree with the proposed amendments to Article 11 of MAR?

<ESMA\_QUESTION\_CP\_MAR\_33>

We have general remarks on Art. 11:

The market sounding procedures set out in Art. 11 as well as the RTS and ITS adopted thereunder should (continue to) be a safe harbour provision and not a strict obligation. The legal nature as a safe harbour (conceptually comparable to Art. 5 MAR relating to buyback programs and stabilisation) clearly follows from recital 35 and Article 11 (4) as well as the general notion that market sounding is a “highly valuable tool” and “important for the proper functioning of financial markets” (Recital 32 MAR). Therefore, it has been the intention of the legislator to facilitate market sounding and not to complicate it.

The formalities of market sounding should be streamlined, specifically:

* Doing market sounding on a recorded line should continue to not be a strict requirement.
* The requirement to agree on minutes of a market sounding should be abolished; it appears sufficient to minute that the market sounding recipient has been advised that inside information may be disclosed and what legal and regulatory duties and sanctions apply in that regard.
* Cleansing “by lapse of time” should be allowed.

<ESMA\_QUESTION\_CP\_MAR\_33>

1. Do you think that some limitation to the definition of market sounding should be introduced (e.g. excluding certain categories of transactions) or that additional clarification on the scope of the definition of market sounding should be provided?

<ESMA\_QUESTION\_CP\_MAR\_34>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_34>

1. What are in your view the stages of the interaction between DMPs and potential investors, from the initial contact to the execution of the transaction, that should be covered by the definition of market soundings?

<ESMA\_QUESTION\_CP\_MAR\_35>

Based on the existing definition the market has a good understanding of the stages of interaction, which fall within the definition of a market sounding. Therefore, further clarification does not seem to be required. In particular, market sounding should continue to capture where a seller seeks to gauge interest about the terms of a potential transaction. In particular, communication unrelated to a specific transaction should not be captured. This has also – rightly – been indicated in Recital 19 of MAR stating that MAR is not intended to prohibit discussions of a general nature regarding the business and market developments between shareholders and management concerning an issuer. The same should apply to communication of a similar nature with investors generally. Also communication of information after the announcement of a transaction may, if it includes the disclosure of inside information, be sufficiently covered by the general regime under Article 10 MAR.

<ESMA\_QUESTION\_CP\_MAR\_35>

1. Do you think that the reference to “prior to the announcement of a transaction” in the definition of market sounding is appropriate or whether it should be amended to cover also those communications of information not followed by any specific announcement?

<ESMA\_QUESTION\_CP\_MAR\_36>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_36>

1. Can you provide information on situations where the market soundings regime has proven to be of difficult application by DMPs or persons receiving the market sounding? Could you please elaborate?

<ESMA\_QUESTION\_CP\_MAR\_37>

A significant part of the institutional investor community perceives the Art. 11 MAR regime as overly cumbersome and rejects to participate in market sounding due to the overly formalistic procedural requirements. For that reason, market sounding is becoming increasingly difficult. It appears sufficient to limit these to a general advice that the information to be disclosed may constitute inside information and the legal obligations and sanctions resulting therefrom as under Article 18(2) MAR (see above).

<ESMA\_QUESTION\_CP\_MAR\_37>

1. Can you provide your views on how to simplify or improve the market sounding procedure and requirements while ensuring an adequate level of audit trail of the conveyed information (in relation to both the DMPs and the persons receiving the market sounding)?

<ESMA\_QUESTION\_CP\_MAR\_38>

See above.

<ESMA\_QUESTION\_CP\_MAR\_38>

1. Do you agree with ESMA’s preliminary view on the usefulness of insider list? If not, please elaborate.

<ESMA\_QUESTION\_CP\_MAR\_39>

We do not see the right balance between the effort to manage insider lists by the issuers and their usefulness for NCAs. Especially to gather the amount of the specific data to be included into insider lists according to Commission Implementing Regulation (EU) 2016/347 is not only very burdensome for issuers. It also appears disproportionate and an unjustified intrusion into the privacy of the individuals entered into the insider list to require by default the entry of personal data home addresses, private phone numbers and private email addresses. This information is simply not necessary to identify the relevant individuals. In the case of an actual suspicion, NCAs may easily ask the person obliged to draw up an insider list for more specific data.

Therefore, we ask for a reduction of this data request. Insider lists are still useful, even if they do not include home addresses, private phone numbers, private email addresses, and possibly even business phone numbers.

<ESMA\_QUESTION\_CP\_MAR\_39>

1. Do you consider that the insider list regime should be amended to make it more effective? Please elaborate.

<ESMA\_QUESTION\_CP\_MAR\_40>

It should be amended in the above mentioned way (see Q 39) that volume of **data requested should be reduced**.

Furthermore, setting up **preliminary lists** (so called shadow lists) seems to be common and useful compliance practice. Therefore, it would be helpful for issuers if the existence of these preliminary lists were endorsed by ESMA. By acknowledging the instrument of such a preliminary list, ESMA would support issuers. Issuers then would have the possibility to refer to ESMA when they gather data of their employees for the preliminary list.

**Specific issue regarding insider lists with respect to Emission allowances market participants**

In addition, currently the **MAR EAMP** thresholds defined as per Art. 17(2) para. 2 are set at a rather low level and the compliance burden with keeping an updated insider list for EAMPs is unduly high. Please also see our response to question 13.

<ESMA\_QUESTION\_CP\_MAR\_40>

1. What changes and what systems and controls would issuers need to put in place in order to be able to provide NCAs, at their request, the insider list with the individuals who had actually accessed the inside information within a short time period?

<ESMA\_QUESTION\_CP\_MAR\_41>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_41>

1. What are your views about expanding the scope of Article 18(1) of MAR (i.e. drawing up and maintain the insider list) to include any person performing tasks through which they have access to inside information, irrespective of the fact that they act on behalf or on account of the issuer? Please identify any other cases that you consider appropriate.

<ESMA\_QUESTION\_CP\_MAR\_42>

We don’t see a need to expand the scope of Art. 18(1). ESMA points out auditors and notaries in the CP. Auditors and notaries are usually mandated by an issuer where they have access to inside information. Therefore, they should be in scope of Art. 18 MAR already.

<ESMA\_QUESTION\_CP\_MAR\_42>

1. Do you consider useful maintaining the permanent insider section? If yes, please elaborate on your reasons for using the permanent insider section and who should be included in that section in your opinion.

<ESMA\_QUESTION\_CP\_MAR\_43>

As ESMA rightly points out there is hardly anyone who has access “at all times to all inside information within the issuer” and therefore would qualify as a permanent insider. Accordingly the permanent section as currently defined appears somewhat redundant. However, even if the definition is narrow it can be used for some persons. We would therefore not advocate to drop the permanent section. Furthermore, it is worth to note that issuers have learnt to comply with the new environment that only allows for project-related lists which also have a number of positive aspects regarding compliance duties (in particular, it is clearly documented when a certain person has access to a specific inside information). Project-related lists thus should be kept and we do not advocate to return to the former regime under the MAD.

This is however not to say, that we would oppose allowing a certain flexibility for issuers how to cope with the fact that there might be persons that do not have access to all inside information but due to the nature of their function or position, might have regular access to inside information.

<ESMA\_QUESTION\_CP\_MAR\_43>

1. Do you agree with ESMA’s preliminary view?

<ESMA\_QUESTION\_CP\_MAR\_44>

Yes, we agree with ESMA’s preliminary view. BaFin has already adopted such a practice that has proven to be very sensible and useful, see BaFin’s FAQ on Article 18 MAR, response to question II.3.

<ESMA\_QUESTION\_CP\_MAR\_44>

1. Do you have any other suggestion on the insider lists that would support more efficiently their objectives while reducing the administrative work they entail? If yes, please elaborate how those changes could contribute to that purpose.

<ESMA\_QUESTION\_CP\_MAR\_45>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_45>

1. Does the minimum reporting threshold have to be increased from Euro 5,000? If so, what threshold would ensure an appropriate balance between transparency to the market, preventing market abuse and the reporting burden on issuers, PDMRs, and closely associated persons?

<ESMA\_QUESTION\_CP\_MAR\_46>

The de minimis threshold should generally be raised to EUR 20,000. The number of transactions notified to the NCAs has significantly increased under MAR compared to the previous regime. Raising the threshold would therefore prevent an overflow of information. As ESMA mentions, a number of NCAs has already used the option to raise the threshold. Raising the threshold generally would alleviate administrative burdens for both issuers and NCAs.

In addition, MAR should provide for the option of NCAs to further increase the threshold, e.g. to EUR 50,000.

**General Remark on Managers‘ Transactions:**

Notwithstanding the threshold issue, that review should also be used to concentrate the managers’ transaction regime on transactions that really have signalling value for the market.

More specifically, the EU Commission should abolish the duty to inform about **donations and inheritances**, as they do not have any significance for the estimation of the manager on how the share price will develop. Similarly, automatic allocations under management incentive programs and transactions by a portfolio manager acting independently from the PDMR should be out of scope because in all these cases it is not the PDMR that takes an investment decision so that these transactions necessarily cannot have any “signalling” effect. Disclosing them as “managers’ transactions” may even mislead the market.

Second, issuers’ have made the experience that **notifications** required under MAR **are overloaded** with details so that unnecessary bureaucracy is created and investors tend to be confused by the practice of notifications. There are at least two aspects that need to be tackled where ordinary trading practices leads to overwhelming notification requirements that have no added value for the market: (1) The execution of a sale or purchase of shares is typically done “at best price” by a bank for the PDMR and, for this reason, is split across various trading venues (depending on the best execution policy of banks holding the accounts for the PDMR). This kind of splitting makes necessary a number of separate notifications, although being just one order by the PDMR to the bank (one for each venue). (2) Also, if a transaction is executed at one single day on one single trading venue, but is split into a number of sub-transactions (which is also standard practice of banks to ensure market-sensitive trading), the PDMR has to notify a long list of single trades which also makes the notification burdensome and confuses the market. From our point of view, the MAR review should also take into consideration these two problems. A way forward could be, e.g., to allow the PDMR to aggregate transactions within a certain time span or executed under one joint order, so that the market gets to know in one notification the aggregate volume of transactions and e.g. the average price.

Third, we would also like to remind on the fact that it is of high importance to fix the issue of identical deadlines for both the notification of the PDMR to the issuers and the issuer’s notification to the market. For issuers this regulation is highly unfavourable and, thus, not acceptable since it puts them into an illegal position without any own fault if the PDMR notifies only at the very end of the 3 days deadline. We, therefore, urge the legislator to implement fast the agreement reached in the so-called SME listing package which would give the issuer 2 days time to comply with its own notification requirement after the issuers has received the notification from the PDMR.

Furthermore, it is a constant compliance issue that issuers have to draw up a **list of all persons discharging managerial responsibilities and persons closely associated** to them (Art. 19 (5) MAR). Especially the list of closely associated persons is quite burdensome as e.g. the supervisory board of a DAX company can consist of 20 persons, partly being domiciled abroad. It is not only very difficult to fulfil this duty. Compiling the list also runs counter the political objective to protect the privacy of individuals. From our perspective this objective should prevail, which is even more true as we do not have the impression that the NCAs are interested in the lists compiled. Hence, this general duty should be abolished. It should be enough that the issuers has to draw up such a list when the NCA asks for it in a case of suspicion.

<ESMA\_QUESTION\_CP\_MAR\_46>

1. Should NCAs still have the option to keep a higher threshold? In that case, should the optional threshold be higher than Euro 20,000? If so, please describe the criteria to be used to set the higher optional threshold (by way of example, the liquidity of the financial instrument, or the average compensation received by the managers).

<ESMA\_QUESTION\_CP\_MAR\_47>

Please refer to Q46.

<ESMA\_QUESTION\_CP\_MAR\_47>

1. Did you identify alternative criteria on which the reporting threshold could be based? Please explain why.

<ESMA\_QUESTION\_CP\_MAR\_48>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_48>

1. On the application of this provision for EAMPs: have issues or difficulties been experienced?

<ESMA\_QUESTION\_CP\_MAR\_49>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_49>

1. Did you identify alternative criteria on which the subsequent notifications could be based? Please explain why.

<ESMA\_QUESTION\_CP\_MAR\_50>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_50>

1. Do you consider that the 20% threshold included in Article 19(1a)(a) and (b) is appropriate? If not, please explain the reason why and provide examples in which the 20% threshold is not effective.

<ESMA\_QUESTION\_CP\_MAR\_51>

Yes, we consider that the 20% threshold included in Article 19(1a)(a) and (b) is appropriate.

<ESMA\_QUESTION\_CP\_MAR\_51>

1. Have you identified any possible alternative system to set the threshold in relation to managers' transactions where the issuer's shares or debt instruments form part of a collective investment undertaking or provide exposure to a portfolio of assets?

<ESMA\_QUESTION\_CP\_MAR\_52>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_52>

1. Did you identify elements of Article 19(11) of MAR which in your view could be amended? If yes, why? Have you identified alternatives to the closed period?

<ESMA\_QUESTION\_CP\_MAR\_53>

Transactions where the PDMR does not take any investment decision or exercises any discretion on the decision and execution of any transaction, such as those executed by a portfolio manager independently, should be excluded from the scope of Art. 19(11) MAR since they necessarily cannot bear the risk of insider dealing. The same should apply for transactions under employee participation schemes.

<ESMA\_QUESTION\_CP\_MAR\_53>

1. Market participants are requested to indicate if the current framework to identify the closed period is working well or if clarifications are sought.

<ESMA\_QUESTION\_CP\_MAR\_54>

We think that all the clarifications provided in the ESMA’s Q&A are sufficient.

<ESMA\_QUESTION\_CP\_MAR\_54>

1. Please provide your views on extending the requirement of Article 19(11) to (i) issuers, and to (ii) persons closely associated with PDMRs. Please indicate which would be the impact on issuers and persona closely associated with PDMRs, including any benefits and downsides.

<ESMA\_QUESTION\_CP\_MAR\_55>

Closed periods should not be extended to the issuer and/or to closely associated persons; the protection provided by Art. 7, 8 and 9 MAR is sufficient.

ESMA rightly points out the downsides of such an extension. The PDMR would have the duty to keep an eye on his/her closely associated persons to keep them informed about the closed period. For the issuers such a closed period would raise problems by e.g. ongoing processes on refinancing etc.

In addition, closely associated persons would themselves be overloaded with compliance duties that are not necessary against the objective of the closed periods and having in mind the general obligations of the MAR.

<ESMA\_QUESTION\_CP\_MAR\_55>

1. Please provide your views on the extension of the immediate sale provided by Article 19(12)(a) to financial instruments other than shares. Please explain which financial instruments should be included and why.

<ESMA\_QUESTION\_CP\_MAR\_56>

We would welcome an extension in Art. 19(12)(a) to other financial instruments than shares. A differentiation between types of financial instruments does not seem justified.

<ESMA\_QUESTION\_CP\_MAR\_56>

1. Please provide your views on whether, in addition to the criteria in Article 19(12) (a) and (b), other criteria resulting in further cases of exemption from the closed period obligation could be considered.

<ESMA\_QUESTION\_CP\_MAR\_57>

An exemption should be created mirroring the legitimate behaviours defined in in MAR Article 9(3).

<ESMA\_QUESTION\_CP\_MAR\_57>

1. Do you consider that CIUs admitted to trading or trading on a trading venue should be differentiated with respect to other issuers? Please elaborate your response specifically with respect to PDMR obligations, disclosure of inside information and insider lists. In this regard, please consider whether you could identify any articulation or consistency issues between MAR and the EU or national regulations for the different types of CIUs, with regards for example to transparency requirements under MAR vis-à-vis market timing or front running issues.

<ESMA\_QUESTION\_CP\_MAR\_58>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_58>

1. Do you agree with ESMA’s preliminary view? Please indicate which transactions should be captured by PDMR obligations in the case of management companies of CIUs.

<ESMA\_QUESTION\_CP\_MAR\_59>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_59>

1. Do you agree with ESMA’s preliminary view? If not, please elaborate.

<ESMA\_QUESTION\_CP\_MAR\_60>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_60>

1. What persons should PDMR obligations apply to depending on the different structures of CIUs and why? In particular, please indicate whether the definition of “relevant persons” would be adequate for CIUs other than UCITs and AIFs.

<ESMA\_QUESTION\_CP\_MAR\_61>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_61>

1. ESMA would like to gather views from stakeholders on whether other entities than the asset management company (e.g. depository) and other entities on which the CIUs has delegated the execution of certain tasks should be captured by the PDMR regime.

<ESMA\_QUESTION\_CP\_MAR\_62>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_62>

1. Do you agree with ESMA’s conclusion? If not, please elaborate.

<ESMA\_QUESTION\_CP\_MAR\_63>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_63>

1. Do you agree with ESMA preliminary view? Please elaborate.

<ESMA\_QUESTION\_CP\_MAR\_64>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_64>

1. Do you agree with ESMA’s preliminary views? Do you consider that specific obligations are needed for elaborating insider lists related to CIUs admitted to traded or traded on a trading venue?

<ESMA\_QUESTION\_CP\_MAR\_65>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_65>

1. Please provide your views on the abovementioned harmonisation of reporting formats of order book data. In addition, please provide your views on the impact and cost linked to the implementation of new common standards to transmit order book data to NCAs upon request. Please provide your views on the consequences of using XML templates or other types of templates.

<ESMA\_QUESTION\_CP\_MAR\_66>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_66>

1. Please provide your views on the impact and cost linked to the establishment of a regular reporting mechanism of order book data.

<ESMA\_QUESTION\_CP\_MAR\_67>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_67>

1. In particular, please: a) elaborate on the cost differences between a daily reporting system and a daily record keeping and ad-hoc transmission mechanism; b) explain if and how the impact would change by limiting the scope of a regular reporting mechanism of order book data to a subset of financial instruments. In that context, please provide detailed description of the criteria that you would use to define the appropriate scope of financial instruments for the order book reporting.

<ESMA\_QUESTION\_CP\_MAR\_68>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_68>

1. What are your views regarding those proposed amendments to MAR?

<ESMA\_QUESTION\_CP\_MAR\_69>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_69>

1. Are you in favour of amending Article 30(1) second paragraph of MAR so that all NCAs in the EU have the capacity of imposing administrative sanctions? If yes, please elaborate.

<ESMA\_QUESTION\_CP\_MAR\_70>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_70>

1. Please share your views on the elements described above.

<ESMA\_QUESTION\_CP\_MAR\_71>

**General remark on sanctions:**

We still believe that sanctions laid out in Art. 30 of MAR are too high and are out of balance – especially when it comes to formal “mistakes” such as infringement of the duty to disclose managers’ transactions of mistakes regarding drawing up the insider lists. We believe this is out of proportion regarding the factual offence and we urgently the EU Commission to review this system of sanctions.

<ESMA\_QUESTION\_CP\_MAR\_71>