CONSULATION PAPER MAR REVIEW REPORT: ADVISORY COMMITTEEE OF THE CNMV

The Advisory Committee of the CNMV has been set by the Spanish Securities Market Law as the consultative body of the CNMV. This Committee is composed by market participants (members of secondary markets, issuers, retail investors, intermediaries, the collective investment industry, etc) and its opinions are independent from those of the CNMV.

Introduction
Please make your introductory comments below, if any:

On March 20, 2019, Mr. Olivier Guersent, General Director of FISMA, sent to Mr. Steven Maijoor, Chairman of ESMA, a formal request for technical advice on the report to be submitted by the Commission under Article 38 of Regulation (EU) No. 596/2014 on Market Abuse (hereinafter, MAR).

The request was divided in 4 sections. The first one was related to the advice on the mandatory elements of the report, the second one was about non-mandatory elements of the report, the third one made reference to the principles to be taken into account by ESMA for the carrying out of its analysis, and the last section stressed the length of the procedure for the adoption of the report and kindly asked ESMA to provide its advice by no later than December 31, 2019.

From the above, our first general comment is about the timing, taking into account the deadline stipulated in Art. 38 of MAR for the submission of the report to the European Parliament and Council, that is, July 3, 2019, and the deadline set by the Commission for the delivery of the requested advice, it is clear that it is not possible to comply with the deadline established under MAR for the submission of the report.

Our second general comment is related to the contents of the requested advice and the time elapsed since the full implementation of MAR. Many of the issues raised by the EC in its mandate, and included by ESMA in the consultation paper, require the gathering of much more experiences in order to be able to give an answer supported by relevant market information.

It is possible that the delay in the delivery of the requested advice is due to the fact that the term elapsed between the entrance into force of a regulation with such a complexity as the MAR and the consultation is extremely short. The experience makes us question whether the EU current general rule on the EU regulations revision in such a short period of time is fit for purpose or not.

3 Scope of MAR

3.1 Spot FX contracts

1. Do you consider it 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.

No, at least under the current revision, there are many possible unintended consequences that require a detailed impact assessment. As stated in the Consultation Paper (CP), spot FX contracts are non-financial instruments under Art. 10(1)(a) of Commission Delegated Regulation (EU) 2017/565 and, therefore, are outside the scope not only of MAR, but also of MiFID II/MiFIR.

Secondly, if the scope of MAR is extended to spot FX contracts in similar terms as for spot commodity contracts, extending the prohibition to cases where a spot FX contract has or is likely to have an effect on the price or value of a financial instrument/spot FX contract, it is arguable that the delineation between the contracts that impact and the ones that do not impact on the financial markets will be far more difficult for spot FX than for spot commodities, leading to a situation where those effects will be detected in a wide range of transactions undertaken without a manipulative purpose.

Additionally, in order to perform the monitoring and market surveillance for insider dealing and market abuse purposes, CAs would need to receive information on transactions and should have the capacity to obtain information on orders regarding spot FX contracts, which entails the need to update several regulations and technical standards relating to data reporting and record keeping that currently do not cover spot FX contracts.

2. 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.

Yes, we agree with ESMA's preliminary structural changes which would be necessary to apply MAR to spot FX contracts

3.2 Scope of application of the benchmark provisions

3. 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?

We agree with ESMA's analysis, and although, as a general rule, we prefer the definition of benchmark to be the same for the different pieces of legislation, we think both regulations are complementary.

In this regard, Art. 2(2(c) includes in the scope of MAR "(c) behaviour in relation to benchmarks". and Art. 14 of BMR on infringements reporting contains a cross-reference to MAR. Therefore, there is no overlap between the two regulations.

Taking into account that the benchmark definition under the BMR makes reference not only to financial instruments, but also to financial contracts and investment funds, it is broader than the one under MAR. Therefore, in principle, we do not foresee any market abuse risk.

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

Yes. We agree that the benchmark administrators and supervised contributors should be specifically included in the aforementioned provisions. With regard to manipulation of benchmarks, the reference to investment firms does not include administrators of benchmarks and contributors unless they are investment firms. However, investment firms are often users of benchmarks but not providers or administrators. Therefore, we agree that an express reference must be incorporated.

5. Do you agree that 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 there is any other provision in Article 23 that should be amended to address (attempted) manipulation of benchmarks?

Yes. As we stated in Q4, we agree that the benchmark administrators and supervised contributors should be specifically included in the above-mentioned provision.

6. 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?

No. To the extent the aforementioned provision continues to have the catch-all clause "or any other natural person who is held responsible for the infringement", we understand that there is no need to include said reference.

4 Article 5 of MAR - Buy-back programs (BBPs)

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

Yes. As stated in the PC, some MTFs or regulated market operators allows the trading of financial instruments in their trading venues on the initiative of market participants without the request, approval or acquiescence of the issuer. Therefore, the full compliance of the reporting requirements in Article 5 of MAR might be too burdensome for the issuers.

8. 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 an alternative.

Of the 3 options proposed in the PC we agree with ESMA that Option 3 (Option 3: Reporting to the CA of the most relevant market in terms of liquidity under Article 26(1)

of MiFIR) is the best one to take into account both the interest of the investors and the issuers.

9. Do you agree with removing 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.

Taking into account that the information under Article 25(1) and (2) of MiFIR is information that investment firms must keep a record of for five years and must make available to ESMA and the NCAs, we agree with removing the obligation for issuers to report under Article 5(3) of MAR the information specified in Article 25(1) and (2) of MiFIR.

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

Following the analysis under paragraph 59, we fully agree that the EC has requested ESMA to reflect on the scope of the reporting obligation under Article 5(3) of MAR and not on the content of the information to be reported or on the content of the information to be disclosed to the public. However, and especially in order to avoid inefficiencies and duplications, we support ESMA's proposal to review the content to be disclosed. In this regard, we agree that the report to be provided by the investment firm to the issuer, and the issuer to the relevant NCA, should be the proposed subset of the fields referred to in table 2 of Annex 1 of Commission Delegated Regulation (EU) 2017/590.

11. Do you agree with ESMA's preliminary view?

Yes, we agree with ESMA preliminary view that disclosure to the public of the trades previously reported to the CAs under Art. 5(1)(b) in a disaggregated form is not useful for market participants.

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

Yes, we agree with ESMA that market participants might find data in an aggregated form more useful, in particular the aggregated volume traded, and the weighted average price paid for the shares in each trading session.

5 Article 7 of MAR – Definition of "inside information"

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

Market participants experienced difficulties in the coordination between the **Transparency Directive**, whose objective is to inform investors at a predictable time, and MAR, whose objective is to disclose the inside information as soon as possible. The question about periodic financial information (annual and half-yearly financial statements) is especially relevant and, consequently, the problem arises of identifying

the moment, in the protracted process, when the information becomes "inside" and then shall be disclosed. Apart from the cases of profit warnings for which an immediate disclosure obligation is justified and necessary to inform investors, MAR should not interfere with the normal process of financial disclosure and push in the direction of premature disclosure close to the regular publication date.

Uncertainties also arise in relation to the **management of the insider list**, as it is not clear when this list must be activated. If issuers must publish the inside information as soon as possible, in accordance with Article 17(1), the insider list should be opened only in the case of a delay. However, in some Member States the competent authorities take a different approach and ask for the insider list to be opened before, in the space of time necessary for the issuer to disclose the price-sensitive information.

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

The definition of inside information is **extremely broad and comprehensive, and it is effective** for combatting market abuse. Difficulties arise in relation to the **disclosure obligations,** as the “inside information” shall be published as soon as possible; however, sometimes, this information is not sufficiently “mature” (or is “too sensitive”) to be immediately disclosed to the public. A **premature disclosure** is not in the interests of the issuers (as it could harm their ability to conduct business and protect sensitive information) nor of the investors (as torrents of unreliable information could be disclosed).

15. 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?

No. Currently, Art. 7 of MAR contains the definition of inside information distinguishing four sub-sets of inside information: (Article 7(1)(a)) relates to financial instruments, (Article 7(1)(b)) relates to commodity derivatives, (Article 7(1)(c)) emission allowances or auctioned products based on them, and Article 7(1)(d)) clarifies the scope of inside information for persons charged with the execution of orders concerning financial instruments. In all cases, it has to be, i) of a precise nature, ii) non-public, and iii) likely, if it were made public, to have a significant effect on the relevant prices.

However, if the scope of the regulation is amended in order to include FX spot contracts, the definition of inside information will have to be amended in order to cover this new item.

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

No. MAR included in the definition of inside information in relation to commodity derivatives also price-sensitive information related to spot commodity contracts. Therefore, the final definition refers to information relating directly or indirectly to one or more commodity derivatives or the related spot commodity contract.

Additionally, MAR provides that the inside information has to be reasonably expected to be disclosed or required to be disclosed in accordance with legal or regulatory provisions. This “extra” requirement, if compared to the definition of inside information concerning financial instruments, was intended to limit the information which could be considered to be inside information, in order to enable commodity producers to hedge their commercial activities.

Moreover, MAR introduces an additional complexity for the participants in the energy and gas markets, because it is not clear which information related to the emission allowances is not already covered by the inside information disclosure obligation under REMIT. For this reason, we may analyse the possibility of introducing a cross-reference to the inside information definition in the REMIT, so the participants in the energy wholesale market would only have to apply the REMIT definition.

Also, we would like to draw your attention to the thresholds defined under Articles 7(4) and 17(2) of MAR in order to determine which participants in the emission allowances market (EAMP) are within the scope of the MAR obligations, in the sense that, taking into account the standards of this market, those thresholds are currently set at an extremely low level. In this regard, it is very easy to exceed the threshold of installed thermic power even with a very low emissions level. Then it may be a good opportunity to amend this provision in order to consider that only the agents above both thresholds are an EAMP subject to the reporting obligations under MAR.

17. 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?

The hedging activity, in general terms, should be promoted as a prudential tool to manage the risks derived from the commercial activities of the companies. Bearing in mind this general approach, the first thing we should ask is whether the right place to regulate this matter is in MAR, or Regulation (EU) 2012/648 (EMIR), particularly taking into account that one of the key elements to be assessed is the qualification of the relevant transaction either as speculative or hedging in terms of Art. 10(3) of EMIR. In this regard, we may suggest that the transactions executed by/or on behalf of a commodity producer and qualified as hedging in accordance with EMIR should be outside the scope of MAR.

18. 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.

Yes. However, as stated in Q17, under certain interpretations, the current definition of Art. 7(1)(b) may expose the commodity producers to the risk that its hedging of the commercial activities be qualified as insider trading.

19. Please provide your views on whether the general definition of inside information laid down in 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?

No. There are some differences between the commodities and the financial instruments derivatives that lead us to the conclusion that the general definition set forth in Article 7(1)(a) is not appropriate for the former.

The main difference is that the commodities markets participants have to be able to cover their production and price risks and needs. To that end, it is very important that a general publication obligation does not exist, and to consider whether or not the information in question is part of the that which would normally be assessed to be reasonably expected to be published, because some of this information is critical for the establishment of the hedging and risk management strategies.

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

As suggested in paragraph 96 and 97 of the PC, it could be useful to add an express reference to information on pending orders in Art. 7(1)(a) of MAR and a general catch-all paragraph under Art. 7(1)(d) in order to include any persons that may be aware of the future relevant order.

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

No.

22. 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?

Pre-hedging is firstly a licit activity and a diligent manner to cover risks for a broker/counterparty when a client approaches it on an RFQ basis.

On some occasions where the client approaches several brokers/counterparties (competitive request for quote) pre-hedging operations may show to the market an image of over-demand. But it should be taken into account that this may occur, (i) as a consequence of the application of the best execution principle by the client and (ii) that each broker/counterparty will be in this case assuming the risk that they are not given the trade in the end. No market abuse implications can be identified there.

Having said that, pre-hedging behaviours may create risks of potential insider dealing, if a broker were to use the information received from the client to trade on its own account, including potentially trading against the client, or when pre-hedging potential operations for liquid assets where pre-hedging might not make sense in light of those risks firms should have in place clear policies on the management of “conflicts of interest” and on “best execution of orders”.

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

As well as a way to hedge risks for the broker/counterparty, we agree with ESMA that pre-hedging behaviours may benefit the client, by passing on the benefit of pre-hedging activities, to provide a better price to the client, or that pre-hedging may reduce the impact and disruption of large orders on the market.

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

In general terms, financial instruments traded on regulated markets, MTFs or OTFs.

6 Article 17 of MAR - Delayed disclosure of inside information

25. 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.

Under Article 17(1) of MAR an issuer has to inform the public as soon as possible of inside information which directly concerns it, in a manner which enables fast access and complete, correct and timely assessment of the information by the public. However, the fulfilment of this obligation may entail a prejudice to the legitimate interest of the issuer and/or even the relevant investor, which is the rationale behind the delay regime laid down in Article 17 (4 & 5).

This regime is not an exemption, but the logical counterweight of an extremely broad definition of the concept of inside information under Article 7 of MAR, and should be the solution to avoid premature publication of inside information.

However, in order to be applicable, there are 3 conditions that have to be met: the disclosure of the inside information has to prejudice the legitimate interest of the issuer, the delay should not mislead the public, and the issuer must be able to ensure confidentiality.

From a practical point of view, the assessment of the fulfilment of the said conditions is one of the critical issues under the current regulation, and although ESMA has clarified, by the way of examples, in the relevant Guidelines, many situations under which the aforementioned conditions are met, we would be more than grateful if ESMA continues its fine-tuning work in order to improve those Guidelines by incorporating new examples of situations under which it is considered that the issuer has a legitimate interest for applying the delay regime, or new examples of situations under which the regulator considers the delay will not mislead the investors.

The application of the delay regime has generated some interpretation problems, not only at the level of the issuers but also for NCAs. In this regard, under paragraph 114 of the PC, the mandate from the Commission to ESMA requests (i) gathering of information on the usage of the delay mechanism designed by Article 17(4) of MAR across Member States and identification of points of divergence in its application; (ii) assessing whether the conditions for the delay of disclosure are well defined and sufficiently clear for the issuers to effectively rely on that mechanism, and (iii) gathering of information on which Member States have made use of the option to require issuers to provide a record of a written explanation of the decision to delay only upon the request of the NCA, together with the indication of how many requests have been submitted by the relevant NCAs.

With regard to the first point, the fact that in some member states there is extensive use of the delay regime, while in others reliance on it is almost inexistent - because of the lack of certainty - is the best proof of the divergence in its application.

In relation to the second point, that is, whether the conditions for the delay of disclosure are well defined and sufficiently clear, as we indicate below, we understand that we are going in the right direction but the guidelines still need to be fine-tuned in order to address some significant situations not covered by the current examples.

Some of the application problems we have detected are the following:

i) the first one is linked to the "**nature" of the delay in the MAR**. **ESMA considers the delay as an exception.** However, this is neither clear from the level 1 text nor is it reasonable from a broader perspective. As the legislator in the MAR, like in the MAD, has opted for a **rather broad definition of inside information** (covering both the market abuse prohibitions and the duty of disclosure), **the delay should be regarded as the natural counterweight to protect the legitimate interests of the issuer and investors**. **This should be clarified in level 1.** M&A transactions may serve as a perfect example: they cannot take place without the option of delaying the disclosure of inside information; and this is, by the way, also in the interest of investors;

ii) the second application problem that we have encountered is the one related to the fulfilment of the **condition that the delay should not be "likely to mislead the public".** In this regard, although we recognize the efforts made by ESMA to clarify this point by the many examples delivered to the market through the relevant Guidelines, the degree of complexity of this issue leads us to request ESMA to continue to work in this area in order to increase the number of situations that can benefit from the "safe harbour" of the relevant ESMA Guidelines.

26. 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.

Please see the answer to Q25 above.

27. 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?

As a general principle, in the same line as ESMA's proposal, we consider that the incorporation of communication and conduct rules in the internal codes of conduct of the issuers, for the purposes of avoiding market abuse or insider trading, is an improvement in comparison with the current market situation and regime.

However, we should not forget that MAR has already resulted in a very **complex regulation with some additional bureaucratic and burdensome** procedures. Then the introduction of new systems and control requirements for identifying, handling and disclosing inside information should be clearly linked to the problems that the introduction of these news requirements intends to solve.

In our view, it is up to the **issuers to decide how to organise themselves to be compliant with the legislation and** to find solutions adapted to the scale, size and nature of their business.

Finally, we also find **misleading the reference to Article 16 of MAR** in this section of the PC, among others, because we understand that said article was established for a different purpose, i.e. detecting and reporting suspicious transactions, through "professional" people in the framework of their "professional activity".

We would like to take the opportunity to mention **another issue which has generated some interpretation problems, particularly for the NFCs; we are referring to the scope of application of Art. 16 of MAR**. A broad interpretation in a Q&A of ESMA (Q6.1) has included in the scope of MAR some non-financial firms whose main activities do not consist of arranging or executing financial transactions on a professional basis. NFCs engage in financial transactions on an ancillary basis only, with the main objective being to hedge risks resulting directly from or related to their commercial or treasury financing activities and, consequently, they should not be provided for in Art. 16 of MAR. Therefore, we would like to request a proportional approach in the interpretation of **Art. 16** of **MAR.**

28. Please provide examples of cases in which the identification of when information became "inside information" was problematic.

29. 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.

In paragraph 125 of the PC ESMA clarified, citing its Q&A of September 29, 2017, that when the issuer has delayed the disclosure of inside information and this information has subsequently lost the element of price sensitivity, that information ceases to be inside information and thus is considered outside the scope of Art. 17.1 of MAR. Therefore, the issuer is neither obliged to publicly disclose the information, nor to inform the NCA, in accordance with Art. 17.4, that the disclosure of such information was delayed.

In this PC ESMA proposes that the issuer should notify the NCA of the delay of disclosure of inside information, even if that information has lost its inside nature; the purpose is to enable the NCA to better identify possible cases of insider dealing.

The fact that a piece of information loses its "inside information" qualification does not prohibit the NCA from requesting the accreditation that during the period of time during which it had that condition it was treated as such and the relevant requirements were fulfilled.

However, the communication to the NCA should only exist for the cases where relevant NCAs request the aforementioned accreditation, otherwise it would pose problems and confusion regarding the notion of inside information.

30. 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 institution

or financial institution, but which is controlling, directly or indirectly, a listed or non-listed credit institution or financial institution.

Although ESMA recognizes that this part of the PC is outside the scope of the mandate received from the Commission, it raises the question of whether Article 17(5) of MAR should be amended in order to include the case of a listed issuer which is not a credit institution or financial institution, but which is controlling, directly or indirectly, a listed or non-listed credit institution or financial institution.

Article 17(5) of MAR regulates what is known as the “financial stability delay”, that is, a case which is limited to issuers that are credit institutions or financial institutions and aims to preserve the stability of the financial system. In order to benefit from this regime, the relevant entity has to be authorized by the NCA on the basis of the fulfilment of the requirements of letters a) to c) of Article 17.5 of MAR.

Taking into account the links and interactions between the entities that, directly or indirectly, control a listed or non-listed credit institution or financial institution, we agree with ESMA on further investigating the possibility of extending the delay regime of Article 17(5) of MAR to those entities.

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

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

7 Article 11 MAR - Market sounding

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

In our view, the clarifications that ESMA would like to make on the proposed amendments to Article 11 are necessary, among others, to clarify its scope and harmonize its regime.

34. 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?

As a matter of principle, the role of the definition of market sounding is that of a safe harbour as paragraph 157 of the ESMA document rightly states. Consequently, no general limitation to the definition is proposed since the current definition is considered correct.

35. What, in your view, are 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?

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

If the definition of market sounding is extended in the sense proposed by ESMA, it should be made clear that this will only be applicable where the relevant information is related to potential secondary market transactions and not where it is related to primary market ones.

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

38. 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)?

We do not agree on making the use of recording facilities compulsory for all soundings. More flexibility should be afforded to listed issuers which, unlike intermediaries, do not use recorded telephones lines.

8 Article 18 of MAR - Insider list

39. Do you agree with ESMA's preliminary view on the usefulness of the insider list? If not, please explain why.

Yes, we agree. However, the management of the insider list is very burdensome, also due to all the information that must be gathered by the issuer and inserted in the list. Therefore, we suggest some simplifications along the lines provided in the answer to Q 44.

40. Do you consider that the insider list regime should be amended to make it more effective? Please explain why.

No. We consider that it is currently fit for purpose. Therefore, any changes have to be very carefully assessed in order to avoid any unintended consequences.

41. 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, with the insider list of the individuals who had actually accessed the inside information within a short time period?

42. What are your views about broadening the scope of Article 18(1) of MAR (i.e., drawing up and maintaining the insider list) to include any person performing tasks through which they have access to inside information,

irrespective of the fact that they act for or on behalf of the issuer? Please identify any other cases that you consider appropriate.

We agree with ESMA on broadening the scope of Article 18(1) of MAR to include any person performing tasks through which they have access to inside information, irrespective of the fact that they act for or on behalf of the issuer, such as auditors. In some Member States according to the interpretation of some CAs, auditors are already included among the subjects to which Art. 18.1 of MAR was applicable.

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

We consider that the permanent insider section should be maintained. Moreover, we also agree with ESMA’s proposal regarding its contents.

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

ESMA would like to clarify in Level 1 that the issuer should not have to keep the entire list of natural persons having access to inside information but just one contact person for each external provider having access to inside information; those external service providers should include in their own insider lists the natural or legal persons accessing the piece of inside information working for them under an employment contract or under any other type of arrangement. This is already a common practice in some member States.

We fully support ESMA. Clarifications in Level 1 avoid diverging interpretations and prevent problems for issuers related to the different supervisory practices related to the cross-border provision of services.

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

The current system providing for an insider list for each piece of inside information and updated in real time has proved too cumbersome. In this regard, there are some experiences on the drawing up of two separate lists of permanent insiders and temporary insiders. Temporary insiders are persons who have access to inside information for specific events and specific periods of time (for example, a tender offer). Also included in this category are the law firms preparing the offer document, investment banks and credit rating agencies.

9 Article 19 of MAR - Managers' transactions

46. Does the minimum reporting threshold have to be increased from 5,000 euros? 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?

Yes. In order to avoid an overload of useless information, we propose raising the minimum reporting threshold for management transactions to 20.000 euros.

The types and the number of transactions to be notified have been increased in accordance with MAR and compared to the previous regime (let us think, for example, of gifts, inheritances and donations that were not included among the transactions to be notified under MAD and are completely passive from the PDMR's point of view). It would, therefore, be interesting to gather data from the NCAs on the number of transactions notified under MAR in comparison with the ones notified under the previous regime in order to ascertain whether the market has been flooded with communications of marginal value, as we suppose.

We support the aggregation of transactions as a means of making the disclosure exercise as simple as possible.

47. Should NCAs still have the option to keep a higher threshold? In that case, should the optional threshold be higher than 20,000 euros? 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).

Yes. We agree that the option to keep a higher threshold should be maintained, and we suggest 50000 euros as the optional threshold that can be adopted by the Member States. Finally, with regard to the criteria for the set-up we just take into account, either alternatively, or accumulatively, the liquidity of the financial instrument, average daily traded volume.

48. Have you identified alternative criteria on which the reporting threshold could be based? Please explain why.

We suggest **modification of the method used to calculate the threshold**. In order to avoid the notification of irrelevant amounts and reduce administrative burdens, we suggest that the notification should be made for tranches of threshold. In practice, once the threshold has been reached, the calculation of the threshold should restart from zero until a new threshold has been reached again (meaning that all the following amounts must be summed up until they again reach the threshold).

Regarding the guidance on the transaction to be disclosed, it should be clarified that no notification duty is required for shares granted for free; the moment when shares are granted for free to PDMRs (meaning the moment when shares are credited to the account of the PDMR) should not be notified (there is no discretion by the PDMR and there is no signaling value for the market), while when the shares are sold there should be a notification. A different interpretation would imply duplication of notifications, more work to be done by the issuer's staff and an increase in indirect costs.

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

50. Have you identified alternative criteria on which the subsequent notifications could be based? Please explain why.

See answer to Q.48

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

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

52. Have you identified a 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 scheme or provide exposure to a portfolio of assets?

No.

53. Have you identified 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?

No.

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

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

55. 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.

As already well explained in the PC, the possible extension of closed periods to issuers would have several downsides considering also that issuers would be always subject to sanctions in case of infringements of Art. 14 and 15 of MAR. For the above mentioned reasons we would not extend closed periods to issuers.

With regards to extension to closely associated persons we agree with ESMA stating that indirect transactions conducted through or for a closely associated person are already subject to provisions of closed period.

However, in relation to the transactions carried out by a closely associated person, we do not consider that they can simply be submitted to the same regime. To the extent that Art. 19(11) is a preventive measure, then we should be able, for the purposes of the extension, to demonstrate or prove that the actual trade was based on the information that triggered the closed period.

56. 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.

We support ESMA's proposal to extend the provision of Art. 19.12 a) to financial instruments other than shares (such as listed bonds) because they could be used to address the financial difficulties by the PDMR.

57. 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.

In general terms we agree with the criteria of ESMA in paragraph 216 of the PC.

Additionally, we consider that the exemption could also be granted in relation to financial instruments other than the ordinary share. In this regard, we suggest exploring the extension of the said regime to preferential subscription rights, and/or options, and script dividends.

10 MAR and collective investment schemes (CISs).

58. Do you consider that CISs admitted to trading or trading on a trading venue should be differentiated with respect to other issuers? Please elaborate on 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 CISs, with regard, for example, to transparency requirements under MAR vis-à-vis market timing or front-running issues.

Following the criteria set out by ESMA in section 10 of the PC, we agree that the different types of CISs, regardless of the types of CISs concerned and whether or not they have legal personality, traded on, either a regulated market, MTF or OTF, should comply with MAR obligations in a similar way as the other issuers: "except for those CISs which are mandatorily traded at their net asset value".

59. Do you agree with ESMA's preliminary view? Please indicate which transactions should be covered by PDMR obligations in the case of management companies of CISs.

60. Do you agree with ESMA's preliminary view? If not, please explain why.

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

62. ESMA would like to gather views from stakeholders on whether entities other than the asset management company (e.g. depositary) and other entities to which the CISs has delegated the execution of certain tasks should be included in the PDMR regime.

We do not consider, particularly taking into account its functions and duties, that the depositaries should be included in the PDME regime.

63. Do you agree with ESMA's conclusion? If not, please explain why.

64. Do you agree with ESMA preliminary view? Please explain why.

11 Competent Authorities, market surveillance and cooperation

65. Do you agree with ESMA's preliminary views? Do you consider that specific obligations are needed to draw up insider lists related to CISs admitted to trading or traded on a trading venue?

66. Please provide your views on the above-mentioned 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.

In relation to the harmonisation of reporting formats of order book data, we agree with ESMA's proposal. However, due care has to be taken with the potential increases of costs for the trading venues, and other players in the market.

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

68. 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 for order book data to a subset of financial instruments. In that context, please provide a detailed description of the criteria that you would use to define the appropriate scope of financial instruments for the order book reporting.

69. What are your views regarding the proposed amendments to MAR?

In general terms, we understand and fully agree with ESMA's position on paragraph 317 a) PC. However, we do not share its view about the amendments to MAR in order to allow information sharing with other tax authorities.

12 Sanctions and measures

70. Are you in favour of amending Article 30(1)(2) of MAR so that all NCAs in the EU have the capacity to impose administrative sanctions? If yes, please explain why.

We agree with ESMA's preliminary view that there is no need to amend MAR in this respect.

71. **Please share your views on the matters described above.**