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| 3 October 2019 |

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| Reply form for the Consultation Paper on MAR review report |
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| 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 | ASSOGESTIONI |
| Activity | Investment Services |
| Are you representing an association? |[x]
| Country/Region | Italy |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_CP\_MAR\_1>

Assogestioni[[1]](#footnote-2), the Italian Investment Management Association, welcomes the opportunity to respond to ESMA’s Consultation Paper on MAR review report (hereinafter CP).

First of all, we would like to express our appreciation for the work carried out by ESMA and, in particular, we appreciate the analysis of the specific issues related with the process of the MAR review.

Whilst the consultation paper covers several topics, our reply will be only focused on those issues that are of the utmost importance to our Members, therefore hereinafter we will consider only some sections of the CP and we will answer only to some questions included in these sections. To be more precise, we will particularly focus our attention on section 7 about Market Soundings and on section 10 about MAR and collective investment undertakings (hereinafter CIUs).

<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>

From a general standpoint, Assogestioni agrees with the analysis carried out by ESMA regarding the costs and benefits deriving from the extension of the scope of MAR to spot FX contracts. In particular, we understand from the CP that the number of arguments discouraging the extension of the scope of MAR to spot FX contracts overcomes the number of arguments that could be raised in favor of the abovementioned extension. Moreover, we deem that the arguments discouraging the extension of MAR to spot FX contracts are more significant. Among the arguments referred by the CP, in particular we agree that an extension to spot FX contracts would imply practical difficulties and it would also entail relevant costs for both the NCAs and market participants. These difficulties and costs, in our view, are not backed by sufficient advantages. Indeed, being the spot FX contracts based on currencies, we consider unlikely that someone may have access to inside information which might be used pursue a market abuse, and it is also debatable that someone may be able to manipulate the asset underlying these contracts. For all these reasons we believe that the scope of MAR should not be extended to spot FX contracts.

<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>

Given that, in our opinion, MAR should not be applied to spot FX contracts (please see the answer to Q1), Assogestioni does not think that any additional regulatory change should be introduced in MAR under this respect.

<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>

In principle Assogestioni agrees with the analysis carried out by ESMA but, in particular, we consider that it is appropriate to maintain both the definitions of benchmark contained in the MAR and in the BMR. The reason of this view is that, as explained by the Authority in the CP, the definitions are intended to regulate different cases. While MAR takes into account the benchmark for the purpose to address the conduct of manipulation (or attempted manipulation) of an index, the BMR covers every aspect relating to the calculation of the benchmark and its use by the supervised entity. Since these regulations cover two different cases, the respective definitions of benchmark should coexist, and we do not see risks stemming from this coexistence.

<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>

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<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>

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<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>

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<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>

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<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>

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<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>

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<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>

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<ESMA\_QUESTION\_CP\_MAR\_10>

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

<ESMA\_QUESTION\_CP\_MAR\_11>

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<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>

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<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>

With specific reference to real estate funds, some of our members have referred that they have had difficulties with identifying what information is inside information. This difficulty stems from the fact that the investments made by real estate funds may concern (and be influenced by) operations that may take place at different stages of a process (e.g. real estate sales may be subject to several negotiations). This issue seems to concern the cases described in paragraph 3 of Article 7 of MAR. According to this provision: “*An intermediate step in a protracted process shall be deemed to be inside information if, by itself, it satisfies the criteria of inside information as referred to in this Article*”. This provision is drafted in a quite generic way and our members would welcome more precise indications about the case considered in Article 7, paragraph 3 of MAR.

<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>

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<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>

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<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>

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<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>

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<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>

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<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>

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<ESMA\_QUESTION\_CP\_MAR\_19>

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

<ESMA\_QUESTION\_CP\_MAR\_20>

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<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>

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<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>

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<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>

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<ESMA\_QUESTION\_CP\_MAR\_23>

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

<ESMA\_QUESTION\_CP\_MAR\_24>

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<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>

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<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>

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<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>

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<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>

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<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>

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<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>

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<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>

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<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>

Assogestioni agrees with the proposed amendments, in the form and following the spirit of paragraph 148 of the CP, as far as they would bring more clarity on possibly questionable behaviors.

<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>

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<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>

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<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>

To foster clarity for potential investors regarding the estimated date at which the information disclosed will cease to be inside information (e.g. because the transaction has become public), DMPs should include in the standard set of information, where possible, an estimation of the timing by which the information will cease to be inside information.

<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>

Assogestioni considers that, according to what is declared by ESMA in the CP (although referred to DMP), “*(…) one of the purposes of the rules and procedure set out for carrying out a market sounding is to encourage such activity (…)*”. The CP also refers that “*an increased number of persons that expressed their wish not to receive the market soundings (…) may be an indicator of an excessive burden of the regime for those persons receiving the market soundings*”. Assogestioni has been informed by its Members that some of them decided to not receive market soundings precisely because of the excessive burden of the applicable regime. Thus, Assogestioni believes that, in order to reach the abovementioned object (i.e. to encourage the activity of market sounding), it is needed a deep simplification of the market sounding procedures and requirements. For some proposals of simplification, please see the answer to Q38.

<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>

First of all, Assogestioni specifies that its response is given from the perspective of the person receiving the market sounding (MSR), since the asset managers typically take that position. From this perspective, it is useful to recall that Article 11, paragraph 11 of MAR provides that ESMA shall adopt guidelines addressed to MSR. ESMA adopted the MAR guidelines on persons receiving market soundings on 10 November 2016 (hereinafter ESMA Guidelines).

From the abovementioned perspective, proposals of simplification may imply a revision of the level 1provisions (i.e. MAR) as well as of the implementing measures prescribed by level 3 provisions (i.e. ESMA Guidelines).

Looking to the level 1 provisions, MAR requires each MSR to “*(…) assess for itself whether it is in possession of inside information or when it ceases to be in possession of inside information*” (Article 11, paragraph 7, of MAR). This provision can be commented from the following perspective.

In particular (i.e. within the specific context of market soundings), the obligation prescribed by Article 11, paragraph 7, of MAR, by itself and as it is implemented in the ESMA Guidelines, puts an excessive responsibility on the MSR compared to the benefits of receiving a market sounding. Thus, in our opinion, it should be made clear that, within the context of a formal market sounding regulated under MAR, the assessment is a responsibility of the DMP. In other words, Article 11, paragraph 7, of MAR could be revised to prescribe that MSR can rely on the assessments made by the DMP, without being charged with the duty to make an independent assessment.

In the light of the proposal made above, Article 11, paragraph 11 of MAR (currently providing that ESMA shall adopt guidelines addressed to MSR) should also be consequently revised. In doing so, some safeguards could be provided for MSRs, in order to incentivize the activity of market sounding. In particular, in our view, it should be given more importance to the identification of the contact person to receive market soundings (currently prescribed in guideline 1, letter a, of the ESMA Guidelines) and to the list of persons having access to the information communicated in the course of the market soundings (currently prescribed in guideline 6, letter e, of the ESMA Guidelines). The contact person and the list, indeed, could be used to conceive a presumption of non-knowledge of the market soundings by all those employees who are not present in the abovementioned list and who have not consulted the contact person. In other words, we propose that, on the basis of such a presumption, it will be provided for an exemption of responsibility for all the employees who are not on the list of those ones who have access to the market soundings and who do not consult the contact person. The proposal described here can be achieved by changing the level 3 provisions, but it can be also considered to achieve it by changing the level 1 provisions.

Looking to the level 3 provisions, proposals for simplification concern the parts about the assessments by the MSR, that should be eliminated in the light of what proposed above about the revision of Article 11, paragraph 7, of MAR. However, in any event and without prejudice to what proposed above about the revision of Article 11, paragraph 7, of MAR, the ESMA Guidelines contain some duplications that should be removed. An example of duplication is in guideline 3 of the ESMA Guidelines, where it is prescribed that even when the DMP notifies that an information is no longer an inside information, an MSR must still carry out an independent assessment. Finally, the assessment of related financial instruments referred to in guideline 4 of the ESMA Guidelines (although relaxed respect to the original version) still appears to fall more within the remit of the DMP, rather than the MSR.

Furthermore, within the level 3 provisions, the record keeping prescriptions in the ESMA Guidelines should be simplified by eliminating the requirement to keep the notification of not wishing to receive market soundings anymore (since the DMP should keep these notifications). In addition, as a consequence of what proposed above, Assogestioni also proposes the elimination, in the record keeping provisions, of the requirement to keep the documentation about the assessment of when an MSR is in possession of inside information or when it ceases to be in possession of inside information and the reasons therefor, as well as the assessment of related financial instruments.

<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>

Assogestioni agrees that insider list is a key tool for investigating possible market abuse infringements, but please see also the answer to Q40.

<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>

Assogestioni agrees with the position taken by ESMA in the CP, intended to restrict the insider list only to persons who effectively accessed to inside information. However, more generally, the optimal solution may vary a lot, depending on several factors, ranging from the size to the internal procedures and the organization of a specific company. From an eminently practical point of view, please consider that physical barriers make the difference in this case: please consider, for instance, a company where the people work in open spaces and a company where the people work in separated offices. For the companies where the people work in open spaces, it could be difficult and not effective to restrict the number of persons to be included in the insider list.

<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>

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<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>

Please see the answer to Q40.

<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>

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<ESMA\_QUESTION\_CP\_MAR\_43>

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

<ESMA\_QUESTION\_CP\_MAR\_44>

Please see the answer to Q40.

<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>

Please see the answer to Q40.

<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>

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<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>

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<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>

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<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>

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<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>

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<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>

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<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>

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<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>

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<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>

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<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>

TYPE YOUR TEXT HERE

<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>

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<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>

In the Assogestioni's opinion, it is first necessary to assess whether, with reference to funds whose units or shares are traded on a regulated market or on an MTF, it can be configured the concept of inside information as non-public information which, if disclosed, would be likely to have a significant effect on the market price of the fund, allowing to acquire undue advantages.

For those funds whose market price coincides, or it is strictly tied with NAV, this configurability seems more difficult to hypothesize.

As it has been incidentally noticed by ESMA itself in the CP, although with reference to PDMR obligations, “(*…) it has to be taken into consideration that the secondary market price of the CIU’s units or shares is closely tied to its Net Asset Value. This seems particularly clear for UCITS ETF. Therefore, one could argue that managerial decisions in relation to the CIU have less significant impact on the share price/unit price than in non CIU companies as the value of each single asset is not influenced by the CIUs or its management company*”.

For what concerns UCITS ETF, it should be considered, in particular, that the indexed open-ended CIUs are, by definition, related to indices or baskets of securities which are characterized by the transparency of the calculation methods and by the continuous updating of the value attributed to them in the main markets where they are listed. This peculiarity eliminates in fact the possibility that these funds may be significantly influenced by inside information.

These considerations, that are functional to consider a possible exclusion of CIUs from the scope of application of MAR or a special treatment of them, are even more valid for listed open-ended funds for which, for instance, according to the provisions of the regulation about a new national Italian secondary market (i.e. the so-called “ATFund” of Borsa Italiana), the trading takes place on the basis of the unitary price of the financial instrument (NAV).

Moreover, for instance, within the Italian national secondary market, also the professional segment of the market for the listing of funds and corporate vehicles that invest in real economy instruments (i.e. the so-called “MIV” of Borsa Italiana) provides for an "indicative price" which represents the unitary value of the last NAV communicated to the market by the issuer. More precisely, it is possible to trade financial instruments within a pre-established range (“price corridor”), anchored to the NAV. Therefore, the contracts could be executed automatically only within percentages of variation that are deemed normal with reference to the NAV.

In conclusion, the circumstance that the price of both open-ended and closed-ended CIUs for which the admission to trading or the trading of its financial instruments has been requested or approved is equal or closely tied to the NAV, as explained above, excludes or strongly limits the possibility that particular (i.e. inside) information may significantly influence those prices.

Finally, as an additional argument, please consider that even if ESMA, in its Q&A on the Market Abuse Regulation and, in particular, as part of the answer to Q&A 5.7 (last updated in March 2019) has tried to identify a non-exhaustive list of hypothetical situations (“*potential cases*”) in relation to which inside information may arise with respect to CIUs admitted to trading or traded on a trading venue, and even if those situations are not strictly referred to the NAV, however, the abovementioned situations are evidently rare cases, so much so that the Authority itself makes two significant statements.

First, it warns that: “*Ultimately, the final assessment has to be made on a case-by-case basis*”.

Second, it explicitly provides that:“*Some of the situations listed below may not constitute inside information in all cases*”.

The two sentences referred above make clear that, beyond the argument of NAV outlined in the previous paragraphs, the application of MAR to CIUs admitted to trading or traded on a trading venue is not easy and straight.

<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>

Without prejudice to what explained in the answer to Q58, in general Assogestioni agrees that there are grounds to consider that MAR could explicitly cover PDMR obligations to CIUs and their management companies.

<ESMA\_QUESTION\_CP\_MAR\_59>

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

<ESMA\_QUESTION\_CP\_MAR\_60>

Without prejudice to what explained in the answer to Q58, in general Assogestioni agrees that a possible solution for defining the PDMRs of CIUs admitted to trading or traded on a trading venue could mirror the definition of ‘relevant persons’ in Article 3(3) of Commission Directive 2010/43/EU.

<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>

Without prejudice to what explained in the answer to Q58, Assogestioni believes that the definition of “relevant persons” is adequate for CIUs other than UCITs and AIFs.

<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>

Without prejudice to what explained in the answer to Q58, Assogestioni believes that Article 19(1)(a) of MAR should expressly refer to ‘units’ of CIUs. Moreover, it should be also clarified to which case MAR would refer in Article 19, paragraph 7, comma 3 in providing that “*(…) where the manager of the collective investment undertaking operates with full discretion (…)*”. Indeed, at least at the national level, the discretion (i.e. the fact that the capital is “*(…) managed upstream in the investors' interests and independently by the same (…)*”) is in the definition of CIU provided by the Italian Consolidated Law on Finance.

<ESMA\_QUESTION\_CP\_MAR\_63>

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

<ESMA\_QUESTION\_CP\_MAR\_64>

Without prejudice to what explained in the answer to Q58, Assogestioni agrees with the ESMA preliminary view that, in principle, the management company should be responsible for the publication of inside information, with the other entities involved responsible for reporting to it any information that might be of relevance immediately.

<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>

Please see the answer to Q58. However, without prejudice to what explained in answering to Q58, Assogestioni generally agrees with ESMA’s preliminary views, but please see also the answer to Q40.

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_71>

1. Assogestioni represents the interest of the Italian fund and asset management industry. Its members manage funds and discretionary mandates around EUR 2.284 billion (as of September 2019). [↑](#footnote-ref-2)