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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

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| --- | --- |
| Name of the company / organisation | Bolsas y Mercados Españoles (BME) |
| Activity | Regulated markets/Exchanges/Trading Systems |
| Are you representing an association? |  |
| Country/Region | Spain |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_CP\_MAR\_1>

**Preliminary introductory remarks**

BME is the operator of all stock markets and financial systems in Spain. BME has been a listed company since 2006. We aim at being the reference of the financial markets and systems in Spain, looking for the excellence in the quality of our services and the constant innovation in our markets and services.

We also work towards creating value for our shareholders, stakeholder and society, committed to contribute to a transparent, safe and efficient functioning of the markets to support the growth of companies and the economy as a whole.

BME welcomes and supports the initiative of ESMA of launch a consultation on the application of MAR. A fair and well-adapted regulatory framework is a crucial element to provide companies and investors with a resilient ecosystem that holds opportunities for expansion.

**Impact of MAR on SME markets**

We are in line with the Commission’s workstream for building a Capital Markets Union and believe in the need for mobilising capital and channelling it to companies, including SMEs, through a solid market infrastructure that allows for building resilience within the Union.

Although the efforts made by ESMA have helped ease the regulatory burden on SMEs, we find that the SME regime is not yet well balanced. In an ecosystem that is aimed at fostering the growth of SMEs in order to bring resilience and soundness to markets this is particularly important, as SMEs have proven to be a cornerstone for the growth of our economy.

Thus, although some modifications have been introduced to ease the regulatory burden on SME Growth Markets, we still consider that the benefits and reduction of costs is not sufficient to foster these companies. The approach of most EU legislative frameworks does not allow for sufficient proportionality to provide SME Growth Markets with the optimum conditions for growth and development, in order to consolidate their funding before growing in scale. This is visible in areas such as the sanctions envisaged in MAR, as they are much higher in some cases than the actual capitalization of the company.

Specifically, in what relates to the MAR regime and SMEs, we believe simplification of some of the requirements would facilitate the compliance of SMEs, along with providing the highest investor protection, especially for retail investors, as they are essential in the SME ecosystem.

**Levelling the playing field.**

We are aware of the difference in the nature of the different instruments that are traded across and outside the EU. As these instruments serve different purposes, their degree of exposure to market abuse is also different. Equity is, by definition, much more prone to market manipulation as its price is more volatile than those of bonds.

In line with this rationale, we consider that the MAR requirements for bonds could be eased, as investors have no capacity to influence the price of the bonds, and therefore, the chance for manipulation of the corresponding market is much lower than those for equities. More specifically, we believe there is no ground for the difference in application of requirements to MTFs and regulated markets when they trade the same type of instruments, i.e; bonds, as the risk lays within the nature of the instrument and not the venue where it is traded.

This situation creates a competitive disadvantage for smaller firms trying to succeed in Growth Markets. We are very conscious about the need to attract investors and issuers to EU markets and therefore, we advocate for a proportional application of MAR provisions that truly addresses the nature of the instruments traded.

**Harmonization.**

As MAR leaves room for NCAs to interpret some of the provisions, it also creates situations where additional regulatory requirements are imposed, which result in burdensome situations for firms. Some NCAs apply as mandatory certain provisions envisaged in MAR to their regulated firms, but not to other trading facilities. Further clarifications on this aspect would lead to a more uniform and harmonized application of the regulation within Member States, and across the EU, creating consistency and alignment that would attract new investors and retain the current ones.

The abovementioned harmonization is desirable for supervisory powers as well.

From a general point of view, MAR attributes to the single public competent authority the obligation to ensure that the provisions of the MAR are applied and assigns market operators with the supervision of orders and transactions establish and maintain arrangements, systems and procedures aimed at preventing and detecting insider dealing, market manipulation, both effective and attempted.

These attributions can lead to a discordance with the considerations laid out in Article 51 MiFID II and whereas 7 of Commission Delegated Regulation 2017/568, which requires that regulated markets establish and maintain effective arrangements to verify that issuers comply with their obligations in respect of initial, ongoing or ad hoc disclosure obligations. Regulated markets must also be able to review regularly the compliance with the admission requirements of the financial instruments which they admit to trading.

Such verification of compliance of issuers may apparently contradict the harmonization imposed by Regulation (EU) 596/2014 on market abuse because none of these EU text designate the regulated markets as recipients of regulated information nor to any control procedure that must be considered.

<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>

Tools as the FX Global Code are proof that the industry is gravitating towards an approach of transparency for spot FX contracts. However, there is a lack of binding measures to be adopted by all States, and therefore, room for manipulation that could affect especially retail investors. Investors can trade assets, marketed by EU investment firms, denominated in currencies other than Euro; as the corresponding spot FX transactions are not subject to regulation (such as MiFID II) they are much more prone to manipulation which could subsequently affect Best Execution policies, as far as they have a significant impact on the Total Cost Consideration.

Furthermore, a specific regulation for market abuse applied to spot FX contracts would foster the shift of these type of transactions from OTC to lit venues, where transparency and investor protection are a staple.

However, due to the nature of the spot FX contracts, any incorporation of these instruments into the MAR should be carefully assessed, as it would involve costs for firms, added to those already imposed by MiFID II and other regulations and could discourage their participation.

<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>

We agree on the difficulties and associated costs for expanding the scope of MAR to the spot FX exposed by ESMA in the document. Although we do not consider necessary to introduce additional regulatory changes, we advocate for careful assessment of the characteristics and specificities of spot FX contracts when designing its integration into MAR.

<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>

We agree with the analysis performed by ESMA. From our point of view, the definition of benchmark as stated in BMR as well as in MAR are sufficiently convergent and thus, we do not see any risk of market abuse if those definitions are applied. We believe no changes should be made to the definition.

<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>

In our view, the benchmark concept and mechanisms are so different from the market mechanisms that MAR is built upon, that we suggest to remove benchmarks from the scope of MAR and have a separate manipulation regime in the BMR.

Furthermore, BMR already provides enough clarity on the sanctions envisaged in case of serious infringement in articles 35 and 42, and therefore there is no need to have additional regulatory burdens.

<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>

. In our view, the benchmark concept and mechanisms are so different from the market mechanisms that MAR is built upon, that we suggest to remove benchmarks from the scope of MAR and have a separate manipulation regime in the BMR.

Furthermore, BMR already provides enough clarity on the sanctions envisaged in case of serious infringement in articles 35 and 42, and therefore there is no need to have additional regulatory burdens.

<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>

We agree that there is a need to change the reporting mechanism under Article 5(3).

It causes excessive burden on issuers to identify all relevant authorities and creates uncertainty in relation to how to ensure compliance with the rule. It is burdensome for the issuers to keep informed of where their shares are not only admitted to trading, but also where they are traded anyway.

<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>

We support Option 2 suggested by ESMA but would suggest that this option should be modified so that issuers should only be required to report to the NCA that is defined in Article 17 of MAR and the supplemental delegated regulation, which is the NCA the issuer must provide information to regarding delayed disclosure.

The rationale behind this is that that reporting obligation would match the extension of the disclosure obligation under Article 17 of MAR, meaning that issuers are well aware of the distinction in obligations in relation to trading venues where they have requested for admittance to trading and other trading venues where their instruments are traded (with or without their knowledge).

If the approach in Option 3 is taken regarding “the most relevant market in terms of liquidity” under Article 26(1) of MiFIR, unfortunately that NCA could be different from the home state as defined under the Transparency Directive, the country of incorporation of the issuer (which affects Article 19 of MAR) and the relevant NCA under i.e. Article 17(3) of MAR. Additionally the NCA of the most relevant market in terms of liquidity can be a market place in where the issuer has not requested for admission to trading. Finally the ”most relevant market in terms of liquidity” concept is less established among issuers than other ways to determine the competent authority and the possibility of it changing once a year makes it less predictable and less transparent.

Therefore, in our view a modified version of Option 2 that requires all relevant information to be reported to the one NCA already known to the issuer, who can then forward on to others, would be the preferable option in order to avoid the issues described above.

<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>

If the competent authorities can access the same information, or at least the information necessary for them to conduct their supervision, we do not see any reason to report the same information twice.

<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>

We believe Level 1 definition of inside information is sufficient and provides enough ground for identifying inside information and preventing abusive practices. Nevertheless, in the spirit of increasing consistency across the EU and avoiding any possible differences in interpretation that could arise from different NCAs, we suggest ESMA provides additional guidance that helps address specific cases.

This would avoid situations where advisable additional procedures are imposed by some NCAs and not by others, or with different criteria based on the type of trading venue and not on other factors within the same Member State.

A common approach from NCAs when addressing similar cases would contribute to a more unified application of regulation across all Member States.

<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>

Yes, the current definition of inside information as provided in MAR is sufficient. However, further clarification from ESMA would be helpful in order to unify criteria among NCAs.

<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>

TYPE YOUR TEXT HERE

<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>

From an overall point of view, we find the scheme well-functioning.

<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>

TYPE YOUR TEXT HERE

<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>

The suggested obligation to establish and maintain effective arrangements, systems and procedures for the management of inside information will increase the above described administrative burden and costs that have already led to a considerable amount of delistings. Imposing another unclear obligation on the issuer community will cause the loss of another considerable number of listings. Such monitoring systems would, even on a small scale, require important investments by issuers that would render the capital markets even less attractive.

Furthermore, the systems described in MAR Art. 16, as well as their application to inside information, as suggested by ESMA, should be further detailed. A very generic and “high-level” description as suggested in paragraph 123 of ESMA Consultation Paper, without further guidance, causes uncertainty in the market and triggers a higher risk assessment which in turn leads the issuers to leaving or avoiding EU capital markets. The same already applies to MAR Art. 32 which only provides the requirement to have a whistleblowing policy in place without providing any further detail on what such policy should cover. If new requirements are introduced, they should be clear and not cause unnecessary administrative burden for issuers.

<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>

TYPE YOUR TEXT HERE.

<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>

We believe the notification to NCAs of the delay of disclosure of inside information in those cases where the information has ceased to be inside information should not be implemented. In line with the clarification provided by ESMA in its Q&As on Market Abuse, “where the issuer has delayed the disclosure of inside information in accordance with Article 17(4) of MAR and the information subsequently loses the element of price sensitivity, that information ceases to be inside information and thus is considered outside the scope of Article 17(1) of MAR”.

Additionally, the notification of such information would impose an additional burden on issuers and could potentially harm their future projects by creating a competitive disadvantage, as well as discourage investment of current and potential investors.

<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>

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<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE.

<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 agree with ESMA’s approach on the insider list and consider there is no need to make changes at this stage.

<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>

We consider the use of a permanent insider list as a useful tool for the company as is and consider no changes should be made.

<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>

As a general remark, we consider the current regulation to broad enough. Expanding the scope of Article 18(1) of MAR would increase significantly the regulatory burden of entities. Furthermore, it could lead to a situation where any institution that has a relation towards an issuer had to be included in the insider list, even if their inside knowledge of the firm is nil, thus worsening the quality and the usefulness of the insider list.

<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>

The permanent insider section is a useful tool in the way it is envisaged. Adding information about which permanent insider has accessed information relating to the event-based lists would increase the regulatory burden and provide not additional value, as the purpose of permanent insider section is to know which persons access sensible information because of their key position in the company.

Rather than expanding the content of the section, we suggest ESMA provides additional guidance on the criteria for including persons in the permanent insider list.

<ESMA\_QUESTION\_CP\_MAR\_43>

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

<ESMA\_QUESTION\_CP\_MAR\_44>

We agree with the remarks from the issuers’ associations highlighted in paragraph 187 of the consultation paper and with ESMA’s preliminary view. There should be one contact in the third-party entity that is included in the issuer insider list and then that person is responsible for maintaining its own insider list covering individuals in the third party entity.

<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>

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<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 definition of a Person Discharging Material Responsibility (PDMR) is significantly broader than in other international jurisdictions, including ‘closely associated persons’ and the effort required to track and report ‘manager transactions’ under MAR is significantly greater than in other jurisdictions. For instance, MAR requires reporting of all PDMR transactions for equity and debt of the issuer, as well as derivatives and other linked financial instruments. This is a much wider scope than the US, which only requires reporting on equity transactions.

In addition, many market participants perceive ‘closely associated persons’ to be ambiguous and this creates a risk of non-compliance for foreign issuers unfamiliar with this definition. Guidance should be provided on how closely associated persons within the same family shall be notified of their obligations and how the proof of such notification should be constituted.

Moreover, the threshold of EUR 5,000 should be increased and be provided by ESMA, avoiding differences of interpretation among Member States.

<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>

We consider the current threshold of EUR 5,000 should be raised at a European Level and not be left to Member State’s discretion. Harmonization of the threshold would encourage cross-border transactions as barriers would be diminished.

Additionally, as stated in ESMA Q&A document on MAR, remuneration programmes are not included as compulsory notifications under Article 19 of MAR, although their execution is indeed contemplated as a required notification. We suggest the express incorporation of this precision in Level 1 or Level 2 regulation in order to provide clarity for supervisors and market participants.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

Since these exemptions are made upon a case-by-case assessment under exceptional circumstances and insider trading is always forbidden, we see no reason as to why other instruments could not be included.

<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>

TYPE YOUR TEXT HERE

<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>

We agree with the spirit of enhancing the ability of regulators to monitor and promptly detect market abuse in order to foster integrity and the orderly functioning of markets. However, the harmonization of the reporting formats of order book data needs to be carefully assessed, as it would impose severe costs on markets that already comply with the requirements after having developed the corresponding systems and mechanisms.

Additionally, if a common reporting format were imposed, we strongly believe it should be applicable to all trading venues, irrespective of their category.

Estimation of the cost for imposing such mechanism would require further details about structure and differences it could possibly have with respect to those already in place.

We advocate for perfecting the tools and mechanisms that are already in place rather than substituting them, with the additional costs they would imply

Moreover, there are already requirements in place for regulated market to set and maintain records available at request by the NCA that allows for investigation in case of suspicion of market abusive conducts.

<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>

In order to provide a detailed opinion on the costs associated to the proposed mechanism further details about its specificities are needed. However, we advocate for maintaining the current framework as is, including the ad hoc reporting mechanism currently in place, which allows for proportionality as it caters the requests of NCAs in a way that does not imply additional costs, nor for the trading venue or for the NCA.

<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>

We support ESMA’s view that there is no need for making any changes to MAR in this respect for the time being. Splitting the capacities to impose sanctions would lead to the rise of additional market barriers that could potentially discourage investors.

Moreover, we sense a lack of proportionality in terms of sanctions for SMEs that could contribute to a competitive disadvantage among countries and could dissuade the consolidation of these companies.

<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>