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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 | De Brauw Blackstone Westbroek N.V. |
| Activity | Audit/Legal/Individual |
| Are you representing an association? |  |
| Country/Region | Netherlands |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_CP\_MAR\_1>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_1>

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

<ESMA\_QUESTION\_CP\_MAR\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_2>

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

<ESMA\_QUESTION\_CP\_MAR\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_3>

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

<ESMA\_QUESTION\_CP\_MAR\_4>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_4>

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

<ESMA\_QUESTION\_CP\_MAR\_5>

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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>

We agree with ESMA that the reporting mechanism under Article 5(3) MAR is problematic for issuers. Having to report to multiple regulators is highly burdensome. We therefore suggest – in line with option three – that there should be only one NCA where all BPP notifications should be reported.

However, in practice it may be challenging for an issuer to assess which market is "most relevant in terms of liquidity". In addition, which market is the most liquid may change from year to year, meaning an issuer may need to regularly monitor and change to which NCA it must report. Accordingly, we suggest instead that issuers should report to the NCA of the country where the relevant regulated market has its seat. In case of multiple regulated markets or when the seat is not in the EU, then the same mechanism as used in the Transparency Directive (Transparency Obligations Directive or Directive 2004/109/EC) to determine the Home Member State should be applied (i.e. the member state where an issuer also files its inside information press releases).

More generally than the reporting mechanism, we also believe the purposes for which BPPs are allowed are formulated too narrowly under Article 5(2) MAR. The permitted purposes for BPPs should be expanded to cover all purposes allowed under corporate law to buy back shares. If ESMA finds that expansion too far reaching, permitted purposes should in any case include counteracting dilution resulting from issuance of stock dividend, the funding of stock dividends and obtaining currency for M&A-transactions. In addition, issuers should be allowed to buy back shares on a regulated market and be protected by the safe harbour provided by the BBP regime.

<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>

Please see our response to question no. 7.

<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>

We agree to remove the obligation for issuers to report under Article 5(3) MAR information specified in Article 25(1) and (2) of MiFIR as it is unnecessarily complex.

<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>

We believe that it is inappropriate that issuers are required to provide the required information. Our first suggestion is therefore that the entire reference to MiFIR should be removed. Should the reference not be removed, then our secondary suggestion is that financial intermediaries should be obliged to provide this information (as opposed to the issuers). Should this second option not be followed, our tertiary suggestion is that the number of fields is reduced as much as possible, but in any case the following fields should be taken out of the list of fields that have to be reported: (i) field 3: trading venue transaction identification code, (ii) field 4: executing entity LEI; and (iii) field 12: buyer decision maker code LEI. In addition, we suggest to remove the time element from ''*field 28: trading date time''* so that it includes only the trading date.

<ESMA\_QUESTION\_CP\_MAR\_10>

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

<ESMA\_QUESTION\_CP\_MAR\_11>

We partially agree with ESMA's preliminary view. We believe that the market would indeed be better served with aggregated data rather than disaggregated data. However, ESMA suggests that aggregated data is to be disclosed per day ("*in each trading session*"). We suggest to change this to the entire reporting period, so that the issuer should disclose the aggregated data for the entire reporting period (in practice one week) instead of per trading session.

<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>

Yes. In our experience, issuers regularly find it difficult to determine if certain information constitutes inside information as well as to determine the exact moment at which information becomes inside information.

Situations and events for which issuers most regularly experience difficulties in assessing whether information qualifies as inside information include, amongst others:

* Board member appointments and resignations (non-executive and executive);
* M&A processes, and the acquisition of new projects or orders;
* Claims and legal proceedings; and
* Financial results, in particular when such results are broadly in line with market expectations / historical results.

For all of the examples above, identifying the moment at which information becomes inside information is correspondingly problematic. Issuers would be well served with more clarity on these topics, either by amendments to the MAR itself or otherwise by additional guidance from ESMA.

Additionally, we believe that certain changes in the definition of inside information in Article 7 MAR would add clarity for market participants. In particular, we believe the following two changes should be made to the definition.

1. The reference made in Article 7(1) MAR to a likely "*significant* *effect on price*" is unhelpful. The position taken by NCAs and by ESMA is that the "*effect on* *price*" is not relevant per se, but becomes relevant only if an investor takes the information into account in their investment decision. This is now explained in Article 7(4) MAR. Rather than giving another meaning to the terminology used in Article 7(1) MAR, we suggest to remove the reference to a likely "*significant* *effect on price*" from Article 7(1) MAR and replace it with the formulation from Article 7(4) MAR: "*information a reasonable investor would be likely to use as part of the basis of his or her investment decisions*''.

2. We believe that the wording contained in Article 7(2) MAR explaining when certain information is information "*of a precise nature*" should be clarified. It should be made clear that for future events "*may reasonably be expected*" is to mean "*is more likely than not to occur*" and that this criterion for preciseness only applies to future events, not to past events. In this way, the assessment of preciseness will align with the assessment made for provisions in an issuers annual accounts.

<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>

Generally speaking, very few prosecutions take place in practice in the Netherlands. There may be a lack of effective enforcement, as we think it is improbable that there are almost no instances of insider dealing. We believe that NCAs can do more in order to tackle market abuse and that, as a matter of policy, combating insider dealing can be prioritised more going forward.

As an aside, we believe that more consistency with regard to labelling press release as containing inside information is desirable. All press releases with such labelling should be filed with the NCA, while all press releases filed with the NCA as inside information should contain such a label. Currently, there are many press releases in the inside information register of the NCAs that are not labelled as containing inside information. In addition, press releases relating to BBPs should not state that they contain inside information (but rather regulated information), as such press releases should be distinguished from 'regular' inside information press releases. More consistency in this regard could potentially help with the process of combatting market abuse.

<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>

Please our see response to question no. 13. In addition, pre-hedging is a serious problem for issuers. Many issuers are under the impression that, when they approach brokers for certain transactions, there often is an effect on their share price. Tackling this would be a valuable change.

<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>

Overall, we believe that these three conditions work well in practice and we would not propose to change them at the level of the MAR itself.

<ESMA\_QUESTION\_CP\_MAR\_25>

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

<ESMA\_QUESTION\_CP\_MAR\_26>

Please see our response to question no. 13. In addition, a regular challenge for issuers is to determine whether confidentiality is maintained in case of rumours. Finally, with regard to the condition of not misleading the public, we believe ESMA's guidance that this condition relates only to situations where a certain impression of the public is attributable to actions or statements made by the issuer itself is appropriate and should remain valid.

<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>

We believe introducing such a formal requirement would not add anything of substance for issuers and would not work well in practice. Issuers are already responsible for dealing diligently with inside information and adopt procedures that fit their business. As ESMA already indicates, such procedures will differ greatly from issuer to issuer, meaning the prescription of specific procedures is not viable. The general requirement as now formulated will be highly burdensome for issuers without adding any tangible benefits. We advise against its introduction.

<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>

Please see our response to question no. 13.

<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 that introducing such notification obligation would not serve a meaningful purpose for the market and market participants, while imposing a considerable burden on issuers. We advise against its introduction.

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_31>

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

<ESMA\_QUESTION\_CP\_MAR\_32>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_32>

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

<ESMA\_QUESTION\_CP\_MAR\_33>

We strongly disagree with amendment (a) - i.e. making the market sounding procedure mandatory. The market sounding regime and the relevant requirements are and should be a safe harbour. They should be optional, allowing DMPs to benefit from protection from allegations of unlawful disclosure of inside information. The current market sounding procedures are highly burdensome, both for DMPs and recipients. Making such procedures mandatory would further increase the difficulty of market participants to employ market soundings, while this is a practice with clear benefits for the functioning of the capital markets.

We are in favour of amendment (b) – i.e. the confirmation that DMPs carrying out market soundings in accordance with the relevant requirements should be granted full protection against the allegation of unlawful disclosure of inside information. We are also in favour of amendment (c) – i.e. to foster harmonisation and a level playing field across the EU, ensuring that administrative sanctions for not complying with the market sounding regime are established by MAR, without prejudice to any further sanction whenever the conduct constitutes market abuse. However, we believe it is important to clarify that any sanctions relating to the market sounding regime should not be applicable to situations where information is shared that is not inside information. It should never be the case that, even though there was no risk of violating the tipping prohibition, a market participant should be sanctioned for not following the market sounding procedures.

<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>

We believe that as long as the market sounding regime is a safe harbour and hence optional for DMPs (as we strongly believe it should be), no limitation should be introduced. However, should ESMA take the view that DMPs are under the obligation to follow the requirements set out in Article 11 MAR we believe a much more limited definition should be formulated.

<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>

We believe such addition is helpful. The element “*prior to the announcement of a transaction*” should be interpreted to mean that when a transaction is not communicated or announced for whatever reason, the communication of inside information that has taken place was lawful and is protected by the safe harbour of Article 11 MAR. Please note that our response is predicated on the assumption that the market sounding regime is a safe harbour (and not a mandatory regime) and that it only applies to the sharing of inside information (and not the sharing of non-inside information in the context of a market sounding).

We also believe that if new information is shared after a transaction is originally announced – for example in case of changes in the offer terms – then the market sounding safe harbour should be available again for the sharing of such 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>

Yes, given the highly legislated nature of market soundings under the MAR it is often difficult to apply. A prominent example where the application of the market sounding regime has proven to be difficult is in M&A related discussions. We generally observe that investors have become more reluctant to engage in might useful discussions with an issuer because of the excessive burden of the regime for receiving the market soundings.

<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>

We agree that the market sounding procedure and requirements should be simplified as the current regime is incredibly burdensome, not just for the DMPs but also for the persons receiving the market soundings. The current regime is impossible to apply properly in practice. We believe recording should be optional when performing a market sounding, as minute taking should be sufficient. Also, we suggest that the exchange of minutes and/or recordings should not be required but should be made optional.

<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>

Even if NCAs might find insider lists helpful for the purposes of the investigations they conduct, we believe that the overall usefulness of insider lists, in particular with respect to certain types of information required to be included, is questionable. Please also see our response to question no. 45.

<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>

Yes. The system is currently very burdensome. We are in favour of any change that would make the insider list shorter and less burdensome. In particular, the amount of information per person included on the list should be reduced and the amount of people that need to be included on the lists should be reduced. The amount of information required is not proportional to for either purpose of the insider list: not for the issuer to regulate the flow of inside information nor for the NCAs to conduct their investigation into market abuse.

<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>

We do not see a need for any changes in the systems and controls that issuers need to put in place in order to be able to provide the required information to the NCAs. The issuer has already the responsibility to do this and there is no indication this does not function properly.

<ESMA\_QUESTION\_CP\_MAR\_41>

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

<ESMA\_QUESTION\_CP\_MAR\_42>

We believe that such expansion is unnecessary, not appropriate and difficult to implement for issuers. The issuer will not have control over the persons it would need to include on the insider list, while being required to include highly personal data, making it very difficult for issuers to comply with such an expansion.

<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>

Currently, many issuers put a sizeable number of persons on the permanent insider section, as ESMA also notes. This is done to reduce the administrative burden of placing the same persons on many event-based insider lists, in particular persons that have access to the financials. In order to on the one hand combat dilution of the permanent insider section and on the other hand reduce the administrative burden, we suggest to introduce a 'permanent' financial insider list.

<ESMA\_QUESTION\_CP\_MAR\_43>

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

<ESMA\_QUESTION\_CP\_MAR\_44>

We strongly agree with ESMA's preliminary view to revise Article 18 MAR to specify that the issuer should only include one natural contact person for each legal person acting on behalf of or for the account of the issuer having access to inside information and each one of those legal persons should maintain their own insiders list. From practice we know there is a strong preference from issuers for this suggestion by ESMA.

<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>

We would suggest to limit the amount of data in insider lists and only include the following information of every insider: (i) names, (ii) date and time the inside information was obtained; and (iii) date and time when the insider ceased to have access to inside information.

<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>

Yes, we would suggest to increase the minimum reporting threshold to EUR 25,000. This would strike the right balance between the administrative burden imposed and the transparency served by making the notifications.

<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 believe it would be best to have one fixed threshold throughout the EU (of EUR 25,000, see our response to question no. 46.), in order to ensure clarity and further harmonisation.

<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>

We believe that transactions that do not provide a signalling function to the market from a PDMRs view on the issuer, and the notification of which does not help prevent or track market abuse should be exempted from the duty to notify. We believe that passive transactions and transactions that result from a transfer by operation of law (e.g. in cases of marriage, divorce, inheritance) should be exempted or not be qualified as transactions in the first place.

In addition, we believe that transactions where a PDMR transfers securities from him/herself to a controlled entity or vice-versa, as well as transactions between two entities controlled by a PDMR, should not trigger a notification requirement. In such cases, the economic ownership and control of voting rights remains with the PDMR, but under the current rules it would trigger two notifications that do not serve a transparency purpose but instead are hard to understand and potentially confusing for the market. In particular when a PDMR transfers directly held shares to a controlled entity, it may appear from the notification that he/she has sold the shares, creating the impression of a lack of trust in the issuer. Such confusion should be prevented.

<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>

No, we have not identified alternative criteria on which the subsequent notifications could be based and we suggest to keep the criteria as they currently are.

<ESMA\_QUESTION\_CP\_MAR\_50>

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

<ESMA\_QUESTION\_CP\_MAR\_51>

Yes, we consider the 20% threshold of Article 19(1a)(a) and (b) MAR appropriate.

<ESMA\_QUESTION\_CP\_MAR\_51>

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

<ESMA\_QUESTION\_CP\_MAR\_52>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_52>

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

<ESMA\_QUESTION\_CP\_MAR\_53>

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>

We believe that the current framework to identify the closed period is working well.

<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>

We suggest to keep the rules as they are. We believe that issuers are sophisticated enough to determine if trading is allowed or not in a closed period. A closed period for issuers would only create additional burdens. With respect to persons closely associated with PDMRs, we believe a closed period would not serve a legitimate goal, as such persons will generally not have access to the financial information the PDMR is presumed to have.

<ESMA\_QUESTION\_CP\_MAR\_55>

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

<ESMA\_QUESTION\_CP\_MAR\_56>

We agree that relating the exemption to trade during a closed provided by Article 19(12)(a) MAR to shares only is too narrow. We believe this exemption should be expanded to all securities that fall within the scope of the MAR, as the underlying reason – severe financial difficulties – also may be remedied by the sale of securities other than shares.

<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>

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>

We are in favour of amending Article 30(1) second paragraph MAR so that all NCAs in the EU have the capacity of imposing administrative sanctions in order to further harmonise enforcement in the EU

<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>