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

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

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

Responding to this paper

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

*Instructions*

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

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

Responses are most helpful:

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

**Naming protocol**

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

ESMA\_CP\_MAR\_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

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

ESMA\_CP\_MAR\_ESMA\_REPLYFORM or

ESMA\_CP\_MAR\_ANNEX1

***Deadline***

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

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

***Publication of responses***

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

***Data protection***

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

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | Dutch Fund and Asset Management Association |
| Activity | Investment Services |
| Are you representing an association? |[x]
| Country/Region | Netherlands |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_CP\_MAR\_1>

The Dutch Fund and Asset Management Association (Dufas) welcomes the opportunity to respond to several specific questions listed in the Consultation Paper on the MAR review report. Dufas promotes the collective interests of asset managers, investment firms and custodians, operating on and from the Dutch market place – both Dutch and foreign parties. Dufas has a commercial focus, aimed at creating both institutional and retail business opportunities for its members. Central to this is the promotion of an optimal business climate for asset management in the Netherlands. A level playing field for free supply of investment products and asset management services within the European Union and a broadening of the market for investment products are key. Dufas represents over 95% of the Dutch asset management market, both retail and institutional business. Next to independent asset management firms, self-managed (real estate) funds and custodians, Dufas membership is comprised of asset management firms that are linked to banking, insurance and pension funds. For more information, see: www.dufas.nl .

<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>

No, we do not think this is necessary. At this stage, we do not consider it appropriate to extend the scope of MAR to FX contracts. As ESMA rightly notes, the FX Global Code of Conduct (‘the Code’), developed by central banks and market participants from sixteen jurisdictions around the globe has already achieved progress in promoting higher standards in the wholesale FX market. An increasing number of buy side firms has signed up to the Code.

This Code is currently under revision with a focus on implications for the buy-side and with the intention to make it more robust. The ECB plays a central role in the reform. Our understanding is that the reformed Code will increasingly address potential specific issues in the spot FX market around e.g. conflicts of interest, handling of confidential information and transparency as regards how market participants executed and managed FX transactions.

One sensible approach for ESMA and the Commission would in our opinion be to allow the market to use the reformed Code for a couple of years and subsequently evaluate whether it is necessary to supplement the Code with public policies, derived from MAR or other areas of Financial regulation.

<ESMA\_QUESTION\_CP\_MAR\_1>

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

<ESMA\_QUESTION\_CP\_MAR\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_2>

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

<ESMA\_QUESTION\_CP\_MAR\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_3>

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

<ESMA\_QUESTION\_CP\_MAR\_4>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_4>

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

<ESMA\_QUESTION\_CP\_MAR\_5>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_5>

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

<ESMA\_QUESTION\_CP\_MAR\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_6>

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

<ESMA\_QUESTION\_CP\_MAR\_7>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_9>

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

<ESMA\_QUESTION\_CP\_MAR\_10>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_10>

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

<ESMA\_QUESTION\_CP\_MAR\_11>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_11>

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

<ESMA\_QUESTION\_CP\_MAR\_12>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_12>

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

<ESMA\_QUESTION\_CP\_MAR\_13>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_19>

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

<ESMA\_QUESTION\_CP\_MAR\_20>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_20>

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

<ESMA\_QUESTION\_CP\_MAR\_21>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_21>

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

<ESMA\_QUESTION\_CP\_MAR\_22>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_22>

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

<ESMA\_QUESTION\_CP\_MAR\_23>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_23>

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

<ESMA\_QUESTION\_CP\_MAR\_24>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_24>

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

<ESMA\_QUESTION\_CP\_MAR\_25>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

In order to foster clarity for potential investors as to 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 when the information will cease to be inside information.

At the same time, we realize that an estimation does not provide any certainty. In practice it is not uncommon that a public announcement by the issuers is still lacking long after the estimated period has expired, causing considerable uncertainty in the market and among buy side firms. We would urge ESMA to address this, for instance by requiring DMPs to determine a fixed deadline.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_40>

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

<ESMA\_QUESTION\_CP\_MAR\_41>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_41>

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

<ESMA\_QUESTION\_CP\_MAR\_42>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_43>

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

<ESMA\_QUESTION\_CP\_MAR\_44>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_44>

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

<ESMA\_QUESTION\_CP\_MAR\_45>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_45>

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

<ESMA\_QUESTION\_CP\_MAR\_46>

Yes, Dufas is strongly in favor of increasing the minimum reporting threshold, in particular for PDMRs of CUIs. Article 19(8) of MAR provides that PMDRs have to notify the issuer and the NCA when in a calendar year they reach the threshold of € 5,000, to be calculated by adding the value of the transactions conducted, without netting them. In Article 19(9) of MAR provides that NCAs may decide to increase the threshold to € 20,000.

As the CP points out, so far four NCAs have decided to use increased threshold (DEN, FRA, ITA and SPA). A fifth NCA is likely to follow suit (GER). On the other hand, some other NCAs (like NL) have proven to be rigid and have ignored, despite sensible market requests, to make use of this option to increase the threshold. Hence, while MAR’s key objective is to harmonize across the EU, it has created an unleveled playing field in relation the PDMRs notification threshold.

In particular for PDMRs of CUIs the existing low threshold of € 5,000 is troublesome. The thresholds discourages paying PDMR in shares/units of the CUI, while – on the other hand - the remuneration provisions under UCITS/AIFMD promote the payment of a significant part of Identified Staff’s (e.g. PDMR) variable remuneration in shares/units of the CUI (or comparable instruments).

To be more precise, for the identified staff regarding both AIF and UCITS the minimum portion of 50% of variable remuneration that should be paid in instruments (Annex II, paragraph 1(m) of the AIFMD and 14b(1)(m) of the UCITS Directive).

In the UCITS Directive instruments are defined as: ‘ units or shares of the UCITS managed by the management company, equivalent ownership interests (including – for UCITS issuing only units – unit-linked instruments), subject to the legal structure of the UCITS concerned and its fund rules or instruments of incorporation, or share-linked instruments or equivalent non-cash instruments with equally effective incentives as any of the instruments referred to in this definition.’.

<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>

TYPE YOUR TEXT HERE

<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>

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>

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>

Dufas is of the opinion that a clear distinction should be made between ETFs and traditional open-end UCIs admitted to trading on a trading venue.

We believe that CUIs which are ETFs should be treated in the same way as other issuers as these are traded in a very comparable way as corporate shares admitted to trading on a trading platform. Unlike traditional open-end funds, ETF shares can be bought and sold on the exchange intraday. Because the size of the fund is intraday fixed in terms of both assets and shares outstanding, secondary market liquidity - supported by market makers - determines the price at which shares are bought or sold. This is why ETFs may trade intraday at premiums or discounts to the value of the underlying securities held by the ETF. Practice has shown that ETF prices may indeed significantly decouple from those of their constituent securities in particular in times market stress, (see: ESRB Advisory Scientific Committee, ’Can ETFs contribute to systemic risk?’, June 2019. )

 ETF trades are also made end-of-day primary market, facilitated by an approved group of group of institutional firms (Authorized Participants (APs))s

Unlike ETFs, open-end funds which are –for marketing reasons or to serve a Tax Treaty purpose –listed on a trading venue lack secondary market liquidity. This is the case for open-end funds which are listed on *Euronext Fund Service* (EFS) which is a primary market/NAV platform for open end funds located in Paris and Amsterdam.( <https://www.euronext.com/en/for-investors/funds>) EFS enables clients to buy and sell funds by sending subscription/redemption orders through a Euronext member broker which act as distributor. The pricing of the shares issued or repurchased by the open-end fund from orders received through EFS is determined by the end-of-day calculation of their net asset value (NAV), with a predetermined adjustment reflecting the transaction costs of the fund as specified in the prospectus.

The function of EFS is to facilitate the transmission of orders to a fund and facilitate a fund in giving effect to its obligation to execute these orders. Brokers do not conduct any transactions with other brokers; market making and secondary price-formation is absence in the case of EFS. Pricing is determined by the fund's NAV and bears no relation to the supply and demand for shares in the fund (whether or not channeled through EFS). The same goes for the open-end UCIs listed in on the Bourse de Luxembourg.

Consequently, we believe it appropriate to exempt open-end UCI listed on a trading venue, without any secondary market price formation and market making, from the PDMR obligation (19 MAR), closed periods (art 17 MAR) and insider lists (art 18 MAR).

<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>

No, we do not agree with ESMA’s view. Given that open-end CIU’s share price mirrors the Net Asset Value, PDMR’ decisions on the fund does not have significant impact on price-formation. It is hard to see how these decisions can qualify as ‘inside information’ in terms of the MAR. Hence, PDMRs related to management companies of open-end UCIs should be exempted from the art 19 MAR obligations.

<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>

We believe that an open-end UCI listed on a trading venue like EFS as explained in our answer to question 58 should be excluded from the insider list obligations.

<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>