|  |
| --- |
| 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 | European Association of Co-operative Banks |
| Activity | Banking sector |
| Are you representing an association? |[x]
| Country/Region | Europe |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_CP\_MAR\_1>

The EACB welcomes the opportunity to participate in ESMA’s consultation on the revision of the Market Abuse Regulation (MAR) because it provides the possibility to address in particular issues of scope.

We also take this as an opportunity to *inter alia* address:

* the viability of application of the MAR regime to certain transactions such as spot FX, to which we do not support an extension of the regime;
* the need to specify the closed period of 30 days before publications of the (semi) annual figures; and
* simplification of insider lists information without reducing the objective of transparency and market abuse surveillance.

Furthermore, EACB members provide their answers to some of the selected questions as per the below.

<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>

The EACB shares the same concerns raised by ESMA in paragraphs 20, 22 and 23 of Section 3 ‘Scope of MAR’ of its consultation report, and is thus not in favour of extending the scope of MAR to spot FX contrasts. Furthermore, the EACB agrees with ESMA’s arguments that the international principles in the FX Global Code currently bridge the gap with MiFID II, which would have to be revised from a wholesale market perspective. The FX Global code is meant to cover the wholesale market and trading, meaning that all necessary parties from the buy and sell sides, as well as, trading platforms vendors should commit to the principles. Compliance with these high standards provides good enough coverage to be able to monitor all different kinds of market abuse (market impact, suspicious trading, market toxicity etc.). Therefore, including spot FX transactions under the scope of obligations to maintain records under Article 25 of MAR and to report transactions under Article 26 of MiFIR, would lead to development and maintenance costs.

<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>

The EACB agrees that the FX Global Code covers spot FX and also FX derivatives, including the internal and external processes and behaviours for both the market and customer side. Considering this and the fact that the spot FX market is an OTC market, this indicates that the current framework of MAR is not very suitable in covering spot FX contracts.

<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>

No, the EACB is of the opinion that no changes are necessary.

<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>

The EACB agrees that there is a need to modify the reporting mechanism under Article 5(3) of MAR. The reporting obligations should be limited to reporting to the NCA in those jurisdictions where the issuer requested admission to trading. However in other alternative scenarios the issuer or the reporting party may have difficulties in identifying all the markets and trading venues where equities are traded. This leads to inappropriate and disproportionate compliance efforts, and raises the question whether reporting to many NCAs is beneficial at all from a market abuse perspective.

Further to the above, we wish to propose that the scope of the safe harbour provisions for buy-back programmes under Article 5(2) MAR should not be limited as per the current case. In the future, the safe harbour should apply to:

* all buy-backs of shares permitted under corporate law (see Article 21 of Directive 2012/30/EU); and
* buy-backs of debt instruments.

There does not appear to be any market abuse rationale behind why issuers should only have the protection offered by the safe harbour for certain limited purposes otherwise permissible under law and why the safe harbour should be limited to buy-backs of equity securities.

<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 confirm agreement with the proposed modification and that Option 3 is clearly the best proposed option by ESMA. That said, we would like to emphasise that the definition of “most relevant market” should be established in this regard.

<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>

Yes the EACB agrees with this removal following ESMA’s reasonable justifications.

<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 agree with the list of fields proposed

<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>

In essence, the suggested requirement could help to ensure that issuers comply with their obligation under Article 17 but we wish to highlight that there is no system or control that could automatically identify and control inside information. Since situations vary, interpretations would need to be made on a case-by-case basis. If introduced, these would have to be high-level requirements instead of detailed obligations.

We also wish to advise that at the moment the off-the-shelf systems currently available to detect inside information do not take into account the particular characteristics of the business model of co-operative banks (network structure) and thus some proprietary changes would be required. Due to the added cost of such proprietary systems in order to put in place internal arrangements and procedures, it would not be ideal to have fixed requirements in MAR. Flexibility is required on this aspect.

<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 that a notification to the NCAs should still not be necessary when the information has lost its inside nature. Q&A 5.2 of ESMA clearly states how to act. An issuer should deal with a situation where it has delayed a disclosure of inside information in accordance with Article 17(4) of MAR and, due to subsequent circumstances, that information loses the element of price sensitivity and therefore its inside nature. 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. Therefore, the issuer is neither obliged to publicly disclose that information nor to inform the competent authority in accordance with the last paragraph of Article 17(4) that disclosure of such information was delayed. This will also avoid extra administrative burden from both the side of NCAs and market participants.

<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>

We take this opportunity to explain a difficulty being experienced by some members on the scope of this Article 17 regime on disclosure of inside information, as well as, compliance with other requirements of the MAR regime.

Some members believe that the revision provides a good opportunity to re-think the applicability of MAR to the issuers which trade exclusively their own bonds on a multilateral trading facility (MTF). In fact it must be understood that many co-operative banks, in order to guarantee liquidity to their own bonds, have chosen to list them on a MTF because of the lighter obligations related to this type of market. The 2014 Regulation extended to the issuers which trade their financial instruments on MTF the obligations related to the disclosing of inside information. In addition, such issuers have also been obliged to take on duties related to the keeping of insider lists and the management of managers’ transactions.

Such “new” duties, creating quite evidently added costs for banks, have not generated significant benefits and have caused the paradox of depriving investors of the liquidity of the instruments held.

Furthermore, the EACB is of the opinion that the provisions of MAR, especially those related to disclosing of inside information, are relevant to the equity market, more volatile, with prices of financial instruments are more exposed to the influence of information about the issuer. As for the bonds market, instead, it must be considered that the price of a security, less subject to volatility, is a function of the financial variables existing per se within the instrument itself, rather than referred to the information about the issuer.

In view of the above, we strongly advise that the Regulator consider it reasonable to exclude issuers that exclusively trade their bonds on MTF from the scope of application of MAR.

As an alternative to the total exemption, there are valid reasons to grant to such issuers a reduction of the obligations provided by MAR. In this respect, diversification of the application of the relevant provisions according to the type of the issuer and/or the type of the financial instrument could be defined.

For instance, an issuer which trades exclusively their own bonds on MTF could be requested:

1. to disseminate only certain types of inside information;
2. to implement only the permanent insider section of the insider’s list; and

not to communicate the so called managers’ transactions.

<ESMA\_QUESTION\_CP\_MAR\_32>

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

<ESMA\_QUESTION\_CP\_MAR\_33>

In principle, the EACB does not object the proposed amendment to Article 11 of MAR but we do not feel that the principle set out in Recital 35 should be overturned, i.e. non-compliance with the sounding requirements of Article 11 would not automatically presume unlawful disclosure of inside information.

<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>

Some EACB members believe that clarification is required (perhaps at Level 2 regulation) with respect to the SME listing package. Where a municipality (or similar type of an issuer, with listed bonds) is considering an issue of a bond and the contemplated issue is not considered inside information, it should be clear that market sounding requirements need not be followed.

Furthermore the EACB believes that the market sounding procedures as set out in Article 11, as well as the RTS and ITS adopted thereunder, should (contribute to) be a safe harbour provision and not a strict obligation. The legal nature as a safe harbour (conceptually comparable to Article 5 MAR relating to buy-back programmes and stabilisation) clearly follows from Recital 35 and Article 11(4), as well as the general notion that market sounding is a “highly valuable tool” and “important for the proper functioning of financial markets” (Recital 32 MAR). Therefore, we understand that it has been one of the intentions of the legislator to facilitate market sounding and not to complicate it.

<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 believe that insider lists primarily serve issuers who are not also investment firms or credit institutions offering MiFID II investment services and activities (hereinafter called together “investment firms”) because such lists enable issuers to monitor insider information and keep insider information confidential (see recital 57 MAR cited in paragraph 164 of the Consultation Paper). Investment firms already have internal systems to detect and register employees with access to insider information. This is because they are inter alia subject to organisational requirements and obligations to monitor employee’s transactions (see Article 29 Delegated Regulation (EU) 2017/565). Due to the level of detail required of insider lists maintaining such lists is a considerable - and additional – effort (for example the obligation to record (and keep up-to-date!), for example, the private telephone numbers of employees, type in the date and time in the unusual UTC format as provided for in the format templates (Annex I and Annex II Implementing Regulation (EU) 2016/347)) without adding any additional protection to the market. Against this background, we believe that simplified requirements for insider lists are needed for investment firms. Instead of insider lists, investment firms must be able to use their internal systems, i.e., simplified name list of employees with access to insider information. However, the internal monitoring systems of the investment firms have to be sufficient and meet the purposes of the insider lists (identification of those persons who have access to insider information and determination of the point in time at which they gained access - also recital 57 MAR quoted in paragraph 164 of the Consultation Paper). In this respect, it is key that the internal systems are suitable to ensure the availability of the relevant data in the event of a request by a NCA. The internal systems of investment firms fulfil this requirement. We also like to point out, that in practice, such requests occur only in very rare cases.

Furthermore, we wish to reiterate our answer to Q32 on the proposal to exempt or permit ‘opt-out’ from certain requirements he issuers which trade exclusively their own bonds on MTF, from the requirements in Article 18 regime on maintaining insider lists.

<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>

Despite ESMA’s requirement to restrict insider lists to a specific group of people sounding good in theory, it will be hard in practice to determine the circle of people who will effectively access a piece of inside information. Therefore, we believe that the current insider list regime should be maintained.

<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>

As explained in our answer to Q40 above, we do not support an amendment to the insider list regime, but would advocate for simplified requirements for investment firms.

<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 do not see reason to expand the scope of Article 18(1). However, our members acknowledge that there may be clarification required as to whether external auditors should be included in insider lists and whether a distinction should be made between those, which the company itself commissions, and those that act on behalf of a supervisory authority. If they are to be included, it should also be sufficient here to include only one person on behalf exclusively with their business contact data. Please also refer to our answer to Q44

<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>

We would like to refer to our answer to Q39, in which we advocate for simplified requirements for insider lists for investment firms.

<ESMA\_QUESTION\_CP\_MAR\_43>

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

<ESMA\_QUESTION\_CP\_MAR\_44>

The EACB agrees with ESMA’s preliminary view. But it should further be clarified, that only the business contacts of the (natural) contact person for the respective legal person should be included.

<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>

Our members have supported an increase in the de-minimis from €5,000 to at least €20,000. This should apply similarly in all EU member countries without country specific considerations by NCAs.

And although this is not part of the consultation paper we also would like to make the following general remarks in respect of Article 19 MAR:

* In our view the report should take into account a distinction between conscious transactions effected by PDMRs to those transactions which are not made as an investment decision. According to Article 10(2)(k) Delegated Regulation (EU) 2016/522 gifts and donations made or received and inheritance received are falling within the scope of the reporting obligation of Article 19(1). Such “transactions” are neither compelled by the PDMR nor made as a conscious investment decision. The same applies for decisions by a portfolio manager taken independently from the “manager”. In those cases, the PDMR cannot influence the “transaction” and thus cannot commit market abuse or insider dealing within the meaning of the Regulation. Therefore, such cases should be exempted from the scope of Article 19 MAR and neither the disclosure obligation nor the closed period should apply to:
* Inheritance;
* automatic allocations of management incentive programs; and
* transactions by a portfolio manager independent from the PDMR;
* We are also in favour of an exemption from the directors’ dealings requirements for investment firms in relation to financial instruments issued by these investment firms where the underlying is a financial instrument of a third party (e.g. certificates, options). For these types of financial instruments, a transaction by an PDMR has no signal effect on the price; and
* We also note that Article 19(3) the problems of congruence of time limits between notification by the manager and publication of these transactions by the issuer has already been the subject of discussions in the MAR legislative procedure. In particular, if the manager takes the entire notification period of three days, publication by the issuer within these three days is not feasible. This means, as is generally known, that the issuer cannot ensure that the transactions entered into are also published within the 3-day time limit. This contradiction could be resolved through a corresponding Commission proposal to adapt the time limits. One suggestion could be that the manager would have three days’ time limit, and then the issuer company would have e.g. two days’ time to process and pass that information forward after it has received it from the manager.

Furthermore, we wish to reiterate our answer to Q32 on the proposal to exempt issuers which trade exclusively their own bonds on MTF from the managers’ transactions regime under Article 19.

<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 propose the same €20,000 limit to all the EU Member States, as mentioned in our answer to Q46.

<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>

We believe that the framework for determining the period of non-trading should be specified. Here we are referring to Article 19 (11) MAR which states that there should be a trading ban 'during a closed period of 30 calendar days before the announcement of an interim financial report or a year-end report'. If specified, then we advise that at least the time (hours) until the publication of a relevant report should be included in the trading ban period. This is because in our opinion this phrase can also be understood as the publication itself not being included, which however in view of the protective purpose of Article 19 MAR, cannot be effective. Moreover, it takes a certain amount of time to determine which capital market participants usually need to assess the information. This is usually possible during the day of publication. Therefore, it would be desirable to clarify whether the trading ban period also extends to the day of publication and, if so, whether only the hours before publication or the whole day are counted in the period.

<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>

1. We do not support the proposal for the closed periods under Article 19(11) to be extended to the issuer since the protection afforded by Articles 7, 8 and 9 of MAR is sufficient in our opinion. Trading prohibitions for issuers will seriously impact on-going (re)financing through funding programmes for issuers that should with due regard to their activities be able to issue securities on a continuing basis, and or limit the liquidity of secondary market transactions in these securities; and
2. We also believe that it is unnecessary to limit the transactions of persons closely associated with the PDMR. ESMA had already expressed this view in its Final Report (ESMA’s technical advice on possible delegated acts concerning the Market Abuse Regulation, 3. February 2015 – ESMA/2015/224, paragraph 140). Accordingly, the closed period should only apply to PDMRs and not to persons closely related to them. According to recital 58 MAR, there should be an appropriate balance between the level of transparency and the number of reports notified to competent authorities and the public. Transactions by persons closely related to PDMRs have no signaling effect to the market and therefore, it is not necessary to extend the closed period provision to such closely related persons from point of view of market transparency.

<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>

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>

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>