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| 3 October 2019 |

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| Reply form for the Consultation Paper on MAR review report |
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| Date: 3 October 2019 |

Responding to this paper

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

*Instructions*

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

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

Responses are most helpful:

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

**Naming protocol**

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

ESMA\_CP\_MAR\_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

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

ESMA\_CP\_MAR\_ESMA\_REPLYFORM or

ESMA\_CP\_MAR\_ANNEX1

***Deadline***

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

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

***Publication of responses***

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

***Data protection***

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

# General information about respondent

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| --- | --- |
| Name of the company / organisation | Finnish Bar Association |
| Activity | Audit/Legal/Individual |
| Are you representing an association? |[x]
| Country/Region | Finland |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_CP\_MAR\_1>

The Finnish Bar Association is a public corporation that approves new attorneys-at-law and supervises their professional activities. Only members (approx.. 2,100) of the bar are entitled to use the title of attorney-at-law. The Activities of the Finnish Bar Association are based on the Finnish Advocates Act, and the Finnish Bar Association also plays a major role in the shaping of Finnish legal policy. The association is not a trade union or business association. An attorney-at-law is a lawyer specialising in defending the rights of his or her client and advising the client on legal matters. In this context, the members of the bar come across MAR related questions frequently and have gained insight in the Finnish practices applying the MAR.

<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>

We do not consider it necessary to extend the scope of MAR to spot FX contracts. We agree with ESMA’s assessment in sections 18 – 22 of the Consultation Paper that extension of MAR to FX contracts would be highly problematic. With the current market structures and processes of the FX market, the MAR framework and the fundamental concepts of the MAR would not easily fit the OTC based FX spot market. In this respect, the FX spot market differs materially also from the markets for financial instruments and emission allowances. A material building block for the market abuse regulation in the financial and emission allowance markets is the disclosure requirement that deals with the problem of asymmetric information. Such a disclosure obligation would be very difficult to introduce on the FX spot market. Application of MAR in the FX spot market would therefore likely introduce uncertainty of the regulatory requirements and introduce risks for the market participants. The misconduct cases referred to in section 12 of the Consultation Paper do not, as such, justify an extension that would cause further legal uncertainty.

<ESMA\_QUESTION\_CP\_MAR\_1>

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

<ESMA\_QUESTION\_CP\_MAR\_2>

We agree with ESMA’s preliminary view.

<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>

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<ESMA\_QUESTION\_CP\_MAR\_3>

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

<ESMA\_QUESTION\_CP\_MAR\_4>

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<ESMA\_QUESTION\_CP\_MAR\_4>

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

<ESMA\_QUESTION\_CP\_MAR\_5>

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<ESMA\_QUESTION\_CP\_MAR\_5>

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

<ESMA\_QUESTION\_CP\_MAR\_6>

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<ESMA\_QUESTION\_CP\_MAR\_6>

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

<ESMA\_QUESTION\_CP\_MAR\_7>

We agree that there is a need to modify the reporting mechanism under Article 5(3) of MAR. In respect of buy-back programmes, we have experienced that issuers and banks advising them encounter tremendous uncertainties in reporting buy-back trades in particular where the shares are traded in several trading venues in addition to the primary listing venue. Since reporting is required to all trading venues that the shares are admitted to trading or traded, the issuer and its advisor may not be aware of all of the venues that should receive the reports. This causes multiplication of the reports as the issuers and their advisors want to be on the safe side and to avoid risk of administrative sanctions. Article 5(3) of MAR causes uncertainty and is overly burdensome.

<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 agree that it should be sufficient for the issuer to report the trades to one competent authority (NCA) and the NCA’s should then share this information. As much as possible, reporting should be facilitated by automated and flexible solutions and this should be supported by regulation.

<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, we agree that the obligation for issuers to report information specified in MiFIR Article 25(1) and (2) should be removed as redundant. As part of the overall approach, we support removing reporting obligations in respect of which the information is otherwise available to the NCAs and to carefully consider the impacts before introducing any new reporting obligations.

<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>

Yes generally, but we question to what extent there is a need to provide information about both the buyer identification code (field 7) and the buyer decision maker code LEI (field 12).

<ESMA\_QUESTION\_CP\_MAR\_10>

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

<ESMA\_QUESTION\_CP\_MAR\_11>

Yes, we agree that information reposted in more aggregated form would be more useful than information about single trades.

<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>

The definition of inside information in MAR has its basis in the previous directive and is subject to a longer term interpretation tradition. Whilst the definition and its qualifications in MAR Article 7(1)-(4) are not too helpful in practice due to high level of abstraction, the ECJ and the domestic court practice have created a framework for interpretation of matters that could constitute inside information. However, when advising clients, the Finnish counsels have encountered that the moment at which an issuer or a third party should consider a matter to constitute inside information is more problematic. This relates to both projects under preparation by the issuer such as preparation of material mergers and acquisitions and to significant processes driven by external parties such as authorities carrying out investigations. The Finnish Financial Supervisory Authority (FIN-FSA) noted in its Market newsletter 1/2017 that the issuers have in some cases established insider lists too late (see [FIN-FSA Market Newsletter 1-2017)](https://helda.helsinki.fi/bof/bitstream/handle/123456789/14770/Market_newsletter_1_2017.pdf?sequence=1&isAllowed=y). Given the material restrictions and obligations relating to the emergence of inside information, the moment of emergence is highly relevant. Establishment of an insider list as a precautionary measure should not be promoted. In particular, the problems relate to analysis of the moment of sufficient preciseness that could be helped with further guidance.

Furthermore, there seems to be a need to differentiate between financial instruments. Information that may be inside information for shares is not necessarily price sensitive in respect of bonds where the relevance of information relates mainly to the issuer’s likelihood to be able to pay the bond back in time. Therefore, it would seem warranted to give more sophisticated guidance in respect of factors that constitute inside information for major categories of instruments.

<ESMA\_QUESTION\_CP\_MAR\_13>

1. Do market participants consider that the definition of inside information is sufficient for combatting market abuse?

<ESMA\_QUESTION\_CP\_MAR\_14>

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<ESMA\_QUESTION\_CP\_MAR\_14>

1. In particular, have market participants identified information that they would consider as inside information, but which is not covered by the current definition of inside information?

<ESMA\_QUESTION\_CP\_MAR\_15>

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<ESMA\_QUESTION\_CP\_MAR\_15>

1. Have market participants identified inside information on commodity derivatives which is not included in the current definition of Article 7(1)(b) of MAR?

<ESMA\_QUESTION\_CP\_MAR\_16>

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<ESMA\_QUESTION\_CP\_MAR\_16>

1. What is an appropriate balance between the scope of inside information relating to commodity derivatives and allowing commodity producers to undertake hedging transactions on the basis of that information, to enable them to carry out their commercial activities and to support the effective functioning of the market?

<ESMA\_QUESTION\_CP\_MAR\_17>

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<ESMA\_QUESTION\_CP\_MAR\_17>

1. As of today, does the current definition of Article 7(1)(b) of MAR allow commodity producers to hedge their commercial activities? In this respect, please provide information on hedging difficulties encountered.

<ESMA\_QUESTION\_CP\_MAR\_18>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_18>

1. Please provide your views on whether the general definition of inside information of Article 7(1)(a) of MAR could be used for commodity derivatives. In such case, would safeguards enabling commodity producers to undertake hedging transactions based on proprietary inside information related to their commercial activities be needed? Which types of safeguards would you envisage?

<ESMA\_QUESTION\_CP\_MAR\_19>

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<ESMA\_QUESTION\_CP\_MAR\_19>

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

<ESMA\_QUESTION\_CP\_MAR\_20>

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<ESMA\_QUESTION\_CP\_MAR\_20>

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

<ESMA\_QUESTION\_CP\_MAR\_21>

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<ESMA\_QUESTION\_CP\_MAR\_21>

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

<ESMA\_QUESTION\_CP\_MAR\_22>

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<ESMA\_QUESTION\_CP\_MAR\_22>

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

<ESMA\_QUESTION\_CP\_MAR\_23>

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<ESMA\_QUESTION\_CP\_MAR\_23>

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

<ESMA\_QUESTION\_CP\_MAR\_24>

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<ESMA\_QUESTION\_CP\_MAR\_24>

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

<ESMA\_QUESTION\_CP\_MAR\_25>

The conditions for delays of disclosure under MAR Article 17 are fairly straight forward, but the interpretations of the conditions provided in ESMA’s MAR Guidelines on Delay in the disclosure of inside information (ESMA/2016/1478) are not very helpful in practice. Normally, only the references to ongoing negotiations or plans to buy or sell a major holding in the Guidelines are relevant in day-to-day operations. Whilst ESMA’s Guidelines are fortunately not exhaustive, it would be warranted to revisit the cases where the delay of disclosure is justified to cover a broader set of circumstances for example in respect of administrative or other legal procedures. As the list is not exhaustive, it has in practice provided a possibility to delay the disclosure where this has been justified. without express support by the MAR framework, such a decision leaves the issuers uneasy.

<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>

See above Q25

<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 Finland, the issuers are typically covered by the Guidelines for Insiders of Nasdaq Helsinki Ltd (the Helsinki Stock Exchange) in addition to the MAR regulatory framework. Additionally, the issuers approve internal guidelines for the management of inside information within the company. Such guidelines are normally approved at the level of the Board of Directors and they include the organization and reporting requirements in respect of MAR issues. For its part, the Finnish Bar Association has issued a recommendation for management of insider information within member firms. Therefore, any further EU regulation on introduction of systems and controls requirements would be superficial and redundant in Finland.

<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>

See our response to Q13

<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 would strongly oppose the extension of the obligation for an issuer to notify the NCA of the delay of disclosure also to cases in which the information loses its inside nature. This would mean that all insider projects relating to contemplated transactions would have to be notified to the NCA even where the issuer abandons the project or the project expires otherwise. We believe that such an extended obligation would make it even more difficult for issuers to define the moment from which a piece of information constitutes inside information and we fear that such a rule would delay definition even further. Furthermore, the issuers may not feel comfortable of notifying the regulator of strategic or otherwise significant projects that have been abandoned. To our understanding, the NCA’s have access to such information upon request and this should be sufficient to for the purpose.

<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>

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<ESMA\_QUESTION\_CP\_MAR\_32>

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

<ESMA\_QUESTION\_CP\_MAR\_33>

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<ESMA\_QUESTION\_CP\_MAR\_33>

1. Do you think that some limitation to the definition of market sounding should be introduced (e.g. excluding certain categories of transactions) or that additional clarification on the scope of the definition of market sounding should be provided?

<ESMA\_QUESTION\_CP\_MAR\_34>

In general, the market sounding regime of MAR caused significant uncertainty in Finland when it was introduced. Currently, the situation is more settled, but the regime has clearly restricted practices that were previously acceptable and facilitated the market but are now considered too include too much regulatory risk. Some institutions have categorically refused market sounding in order not to be implicated in MAR matters. Market professionals seem to be fairly accustomed to the market sounding protocol. The regulation is more difficult in cases where the issuer would need to carry out the market sounding process e.g. in respect of its major shareholder. The procedures and forms to be used in this connection based on Commission Delegated Regulation 2016/960 and Commission Implementing Regulation 2016/959 are alien to practice in particular for smaller and medium sized companies and their shareholders. We would support exclusion of specific categories of transactions from the scope of the market sounding regime.

<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>

Where market sounding applies, the DMPs tend to apply the regime from initial contact. In order to reduce uncertainty, it would be beneficial to exclude such initial contacts in which defined terms and conditions of the transaction, such as price and volume, are not discussed. The formal market sounding protocol should only apply where specific terms and conditions are discussed.,

<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>

Because of the regulatory burden caused by the market sounding regime, we would not support extending the application. In particular, since the market sounding regime also applies to issuers contacting their shareholders even where no market professional is necessarily engaged, the impact of an extension should be carefully considered.

<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>

As discussed in earlier responses, the case where the DMP is the issuer, the market sounding regime is overly burdensome and alien to practice. Small and medium sized issuers rarely have working access to recording facilities and are, therefore, subject to obligation to draft minutes of the market sounding conversations. The exchange of minutes is overly complex and awkward as correctly described by ESMA in section 160 of the Consultation Paper.

<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 believe a more principle based approach would be warranted. The documentation requirement, if any, should be set on the DMP’s side.

<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 recognize the concept of insider lists as a tool to manage the group of persons who have gained access to inside information. However, in practice the lists may be inflated because of caution applied by issuers and their advisors. In particular, it would be warranted to provide a possibility to exclude from the lists persons who have received a piece of information at one point but have not had access to the information continuously. For example, in a requisite KYC and conflict of interest process applied by attorneys, a number of persons in a law firm may have to be made insiders in respect of a project, but only a handful have continued access to information of the project and its development.

<ESMA\_QUESTION\_CP\_MAR\_39>

1. Do you consider that the insider list regime should be amended to make it more effective? Please elaborate.

<ESMA\_QUESTION\_CP\_MAR\_40>

We do not oppose the insider lists as such. However, the set of information which needs to be collected in an insider list should be reconsidered also in respect of privacy. We fail to see the need to list e.g. birth names personal telephone numbers and full home addresses in an insider list as the professional telephone number and address are included any way.

<ESMA\_QUESTION\_CP\_MAR\_40>

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

<ESMA\_QUESTION\_CP\_MAR\_41>

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<ESMA\_QUESTION\_CP\_MAR\_41>

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

<ESMA\_QUESTION\_CP\_MAR\_42>

Finnish attorneys-at-law typically represent and advise issuers and in this connection, the law firms and their representatives are either included in the issuer’s list of insiders or in the law firm’s list which is maintained because the law firm acts on behalf or on account of the issuer. We see no reason to extend the scope of Article 18(1) as this would create further uncertainty of the scope of obligations that are enforced by sanctions.

<ESMA\_QUESTION\_CP\_MAR\_42>

1. Do you consider useful maintaining the permanent insider section? If yes, please elaborate on your reasons for using the permanent insider section and who should be included in that section in your opinion.

<ESMA\_QUESTION\_CP\_MAR\_43>

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<ESMA\_QUESTION\_CP\_MAR\_43>

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

<ESMA\_QUESTION\_CP\_MAR\_44>

We agree with ESMA that there is a need to reduce the administrative burden for issuers regarding insider lists. We agree with the preliminary view explained in section 189 of the Consultation Paper that MAR Article 18 could be revised to specify that the issuer should only include one contact natural person for each legal person acting on behalf of or for the account of the issuer. The legal person will then keep its own insider list. It is our understanding that the members of the Finnish Bar Association already largely adhere to such practice in accordance with the FIN-FSA’s earlier guidance.

<ESMA\_QUESTION\_CP\_MAR\_44>

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

<ESMA\_QUESTION\_CP\_MAR\_45>

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<ESMA\_QUESTION\_CP\_MAR\_45>

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

<ESMA\_QUESTION\_CP\_MAR\_46>

Reporting of managers’ and closely associated persons’ transactions constitutes one of the most adverse effects of introduction of MAR. The benefit of such reports to markets has remained questionable. In Finland, the reporting obligation replaced a much more efficient and transparent system of disclosure of manager’s holdings. In order to reduce the disclosures that seem not to have any added value to the markets, we would support increasing the minimum threshold from EUR 5,000. The threshold could even be increased to EUR 20,000 without this affecting the functioning of the market. Finland has not used the option to increase the threshold.

<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>

Given that the current option has not been used in Finland and that there is a need for a level playing field in an increasingly common capital market, we would support a sufficiently high common threshold that should be substantially higher than the current EUR 5,000.

<ESMA\_QUESTION\_CP\_MAR\_47>

1. Did you identify alternative criteria on which the reporting threshold could be based? Please explain why.

<ESMA\_QUESTION\_CP\_MAR\_48>

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<ESMA\_QUESTION\_CP\_MAR\_48>

1. On the application of this provision for EAMPs: have issues or difficulties been experienced?

<ESMA\_QUESTION\_CP\_MAR\_49>

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<ESMA\_QUESTION\_CP\_MAR\_49>

1. Did you identify alternative criteria on which the subsequent notifications could be based? Please explain why.

<ESMA\_QUESTION\_CP\_MAR\_50>

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<ESMA\_QUESTION\_CP\_MAR\_50>

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

<ESMA\_QUESTION\_CP\_MAR\_51>

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<ESMA\_QUESTION\_CP\_MAR\_51>

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

<ESMA\_QUESTION\_CP\_MAR\_52>

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>

We consider that the closed window regime imposed on the managers by MAR Article 19(11) is too rigid for the purposes of a well functioning market. Firstly, the closed window excludes the managers (PDMR) almost without exception from the market for four months in a calendar year. Although the wording of MAR would seem to limit the closed window to periods preceding the annual and half yearly report only, the national interpretation by trading venues may have extended it also to the quarterly reports of the first and third quarter. The list of exceptions to the closed window provided in MAR Article 19(12) and the Commission Delegated Regulation 2016/522 do not give sufficient comfort for carrying out/completing totally acceptable transactions that are based on earlier commitments or that can only be exercised during the closed window because of a limited offer period. For example, participation in a rights issue by a manager may be subject to question based on provisions relating to the closed window.

It should be made clearer that based on the Transparency Directive, the closed window only relates to the annual and half yearly reports, i.e. that it shall normally be applied only two months per year.

<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>

See our response to Q53

<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 would strongly oppose the extension of the closed window to the issuers and the persons closely associated with PDMRs. The closed window regime is too rigid as it is and its extension to issuers and closely associated persons might have unexpected consequences. For example, such an extension could block major shareholders to subscribe in an issue of bonds or shares by the issuer. Furthermore, extension of the closed window to issuers could block issues for funding purposes for four months per year at worst. Without major changes to the loosen the grounds and procedure for exemptions from the closed window, the proposal to extend the regulation to any other parties would be highly counter-productive in particular in the relatively small Finnish market with a handful of institutional investors. Currently, a person could transact while having inside information (see recital 25 of MAR regarding execution of orders placed before a person receives inside information) whereas the same person could not transact during a closed window without having any inside information.

<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>

Referring to our response in Q53 and Q55, we would generally welcome loosening the grounds for exemption from the closed window regime.

<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>

As discussed in Q53 and Q55, there are a myriad of totally justifiable cases which should be automatically exempted from the closed window. Such cases include participation in issues on market terms applicable to all subscribers, fulfilment of prior commitments, and execution of prior orders.

<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>

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<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>

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<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>

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<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>

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<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>

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<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>

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<ESMA\_QUESTION\_CP\_MAR\_70>

1. Please share your views on the elements described above.

<ESMA\_QUESTION\_CP\_MAR\_71>

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<ESMA\_QUESTION\_CP\_MAR\_71>