|  |
| --- |
| 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 | Global Financial Markets Association’s Commodity Derivatives Group (GFMA CWG) |
| Activity | Banking sector |
| Are you representing an association? |[x]
| Country/Region | Other |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_CP\_MAR\_1>

* GFMA CWG welcomes the opportunity to respond to the consultation launched by ESMA on the review of the Market Abuse Regulation (MAR).
* GFMA CWG supports the regime which EU legislators introduced in 2014 to tackle insider dealing in commodity derivatives (and spot commodity) markets. We do not see a need to change this regime.
* GFMA CWG understands that ESMA may seek simplification of the regime and contemplate further alignment between the regime applicable to securities markets and that for commodity derivatives markets. However, we strongly believe that such alignment is not appropriate and that the reasons for separate definitions of inside information are still valid.

<ESMA\_COMMENT\_CP\_MAR\_1>

1. Do you consider necessary to extend the scope of MAR to spot FX contracts? Please explain the reasons why the scope should or should not be extended, and whether the same goals could be achieved by changing any other piece of the EU regulatory framework.

<ESMA\_QUESTION\_CP\_MAR\_1>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_1>

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

<ESMA\_QUESTION\_CP\_MAR\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_2>

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

<ESMA\_QUESTION\_CP\_MAR\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_3>

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

<ESMA\_QUESTION\_CP\_MAR\_4>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_4>

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

<ESMA\_QUESTION\_CP\_MAR\_5>

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>

To answer Question 6, we do not consider it appropriate for Article 30 MAR points (e), (f) and (g) to refer to submitters within supervised contributors and assessors within administrators of commodity benchmarks. The purpose of Article 30(e), (f) and (g) is to ensure that if a director or other manager of a firm oversees a business which breaches MAR, they should be banned (temporarily or permanently) from exercising management control over another investment firm (under (e) and (f)) or from dealing on own account (under (g)).

The prohibition on dealing on own account does not seem to be relevant to benchmark submitters or assessors, as their breach would not relate to control of inside information or market manipulation.

In relation to points (e) and (f), while a person discharging managerial responsibilities will be someone senior within an investment firm, the same will not necessarily be true of a benchmark submitted or assessor. If they are sufficiently senior that they are a person discharging managerial responsibilities, then they are already covered by points (e), (f) and (g). If they are not senior enough to be a person discharging managerial responsibilities then it seems inappropriate to hold them responsible for the breaches of the institution that employs them.

<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>

To answer question 16, no, we have not identified information on commodity derivatives which could be considered to be "inside information" on commodity derivatives but which is not included in the current definition of Article 7(1)(b) MAR.

<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>

We have answered Question 17 and 18 together here. We consider that the current definition of inside information in Article 7(1)(b) MAR provides for an appropriate balance, and that it allows commodity producers and other commodity market participants to hedge their commercial activities.

In particular:

* Recital 20 MAR provides that it is not appropriate or practicable to extend the scope of MAR to behaviour that does not involve financial instruments, for example, to trading in spot commodity contracts that only affects the spot market.
* The specific definition in Article 7(1)(b) MAR for inside information in relation to commodity derivatives enables commodity producers and other commodity market participants to undertake hedging transactions by specifying that information will only be "inside information" in relation to commodity derivatives where it is reasonably expected to be disclosed or required to be disclosed in accordance with legal or regulatory provisions at the EU or national level, market rules, contract, practice or custom, on the relevant commodity derivatives markets or spot markets.
* This additional criterion in relation to commodity derivatives is important because of the differences between the circumstances in which inside information may arise in relation to securities (i.e., in relation to the relevant instruments or in relation to the issuer of those instruments) and the circumstances in which inside information could arise in relation to commodity derivatives without this additional criterion. Most importantly, without this additional criterion, inside information could arise in relation to either party to a commodity derivative contract, meaning that the parties could no longer trade and posing a significant barrier to hedging activity and to the effective functioning of the market.

<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>

As noted above, we have answered Question 17 and 18 together here. We consider that the current definition of inside information in Article 7(1)(b) MAR provides for an appropriate balance, and that it allows commodity producers and other commodity market participants to hedge their commercial activities.

In particular:

* Recital 20 MAR provides that it is not appropriate or practicable to extend the scope of MAR to behaviour that does not involve financial instruments, for example, to trading in spot commodity contracts that only affects the spot market.
* The specific definition in Article 7(1)(b) MAR for inside information in relation to commodity derivatives enables commodity producers and other commodity market participants to undertake hedging transactions by specifying that information will only be "inside information" in relation to commodity derivatives where it is reasonably expected to be disclosed or required to be disclosed in accordance with legal or regulatory provisions at the EU or national level, market rules, contract, practice or custom, on the relevant commodity derivatives markets or spot markets.
* This additional criterion in relation to commodity derivatives is important because of the differences between the circumstances in which inside information may arise in relation to securities (i.e., in relation to the relevant instruments or in relation to the issuer of those instruments) and the circumstances in which inside information could arise in relation to commodity derivatives without this additional criterion. Most importantly, without this additional criterion, inside information could arise in relation to either party to a commodity derivative contract, meaning that the parties could no longer trade and posing a significant barrier to hedging activity and to the effective functioning of the market.

<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>

In answer to Question 19, we do not consider that the general definition of inside information in Article 7(1)(a) MAR could be used for commodity derivatives.

If the general definition of inside information in Article 7(1)(a) MAR was applied to commodity derivatives, it would mean that a vastly wider range of information would become "inside information" in relation to commodity derivatives than in relation to other financial instruments. Since the disclosure requirement in relation to inside information only applies to issuers, with other persons being restricted from disclosing information under Article 10 MAR, this very broad definition of inside information could lead to significant disruption of the commodity and commodity derivative markets.

For example, non-public information about a particular mine or refinery, about disruption of deliveries due to weather or other factors, or about the financial situation of a significant market participant could be precise, non-public and price sensitive in relation to a particular commodity derivative contract. The parties to a commodity derivative contract would not be able to cleanse themselves by disclosing this information (as they are restricted from doing so under Article 10 MAR and, in contrast to the securities markets, there is no "issuer" who is required to disclose this information to the market). If there is no requirement to disclose this information then it is unlikely that it would be disclosed publicly in many cases as it may not be in the commercial interests of the affected entity to disclose the information, and other market participants may not be permitted to disclose the information (e.g., because this may breach confidentiality obligations or may involve litigation risk). As a result, in contrast to the securities markets where non-public information relating to the issuer will be disclosed periodically by the issuer, cleansing the market and enabling trading to resume, in the commodity markets a counterparty to a derivative could potentially be in possession of inside information indefinitely and would not be able to trade at all until the information somehow becomes public.

The existing provision in MAR Article 7(1)(b) clarifying that information in relation to commodity derivatives is only inside information "where this is information which is reasonably expected to be disclosed or is required to be disclosed" in accordance with legal or regulatory provisions, market rules, contract, practice or custom is aimed at addressing this problem and currently operates to give clarity to the market while also protecting effectively against misuse of non-public information.

Prohibiting counterparties to commodity derivatives from trading while in possession of this information, and while unable to cleanse themselves, would materially affect the ability of commodity producers and other commodity market participants to hedge their exposures and would have a significant impact on the effective functioning of these markets.

There are many other examples that we could provide to ESMA if this would be helpful.

MAR (and its predecessor, the Market Abuse Directive[[1]](#footnote-2)) protects commodity derivative market participants and avoids these difficulties arising in relation to commodity derivatives by making a distinction between inside information in relation to securities and in relation to commodity derivatives.

If this distinction was removed, it would be necessary to introduce safeguards to replicate this protection and to enable commodity producers to undertake hedging transactions based on proprietary inside information related to their commercial activities and to protect other commodity spot and derivative market participants.

One way to do this would be to create a new safe harbour (e.g., where a person in possession of inside information places orders or enters into transactions for the purposes of hedging activity). However, any safe harbour would only relate to the prohibited activities of insider dealing and unlawful disclosure – it would not change the fact that a much wider range of information would become "inside information" and therefore any person dealing in commodity derivatives would need to have systems in place to identify and monitor relevant information and ascertain before trading that each transaction falls within the safe harbour. Given the fact that insider dealing is a criminal offence in most EU jurisdictions, it is likely that many market participants would err on the side of caution and limit trading when they are in possession of relevant information. As a result, even introduction of a safe harbour is still likely to have a significant effect on the effective functioning of commodity derivative markets.

We would strongly recommend that the existing definition of inside information in relation to commodity derivatives in Article 7(1)(b) should be retained.

 Article 1 of Directive 2003/6/EC stated that "in relation to derivatives on commodities, "inside information" shall mean information of a precise nature which has not been made public, relating, directly or indirectly, to one or more such derivatives and which users of markets on which such derivatives are traded would expect to receive in accordance with accepted market practices on those markets".

<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>

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>

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>

TYPE YOUR TEXT HERE

<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>

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>

1. [↑](#footnote-ref-2)