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| 3 October 2019 |

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

Responding to this paper

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

*Instructions*

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

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

Responses are most helpful:

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

**Naming protocol**

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

ESMA\_CP\_MAR\_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

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

ESMA\_CP\_MAR\_ESMA\_REPLYFORM or

ESMA\_CP\_MAR\_ANNEX1

***Deadline***

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

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

***Publication of responses***

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

***Data protection***

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

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | London Stock Exchange Group plc |
| Activity | Regulated markets/Exchanges/Trading Systems |
| Are you representing an association? |  |
| Country/Region | Europe |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_CP\_MAR\_1>

LSEG welcomes the opportunity to respond to the ESMA consultation on MAR Review. We support the ESMA policy objective to ensure MAR is effective in combating market abuse, while providing appropriate alleviations – especially to SME issuers. The MAR framework does not need to be overhauled in its entirety – however we provide several important suggestions on its alignment with the Benchmark Regulation (BMR) and adjustments of definitions and thresholds.

1. **MAR scope – alignment with BMR** (Q1-6)

We support alignment of MAR and BMR, which does not impose any additional or conflicting requirements on benchmark administrators (includes record keeping, sanctions regime etc).

1. **Buy-back programmes** (Q7-12)

We support an issuer to be able to report this information to the NCA of a market where it has a primary market relationship, with this NCA, upon request, forwarding the information to the NCAs of the other venues where the shares are admitted to trading/are traded. Alternatively, a determination as to the “primary NCA” could be made.

1. **Inside information** (Q13-24)

Requirements extension risks attracting fewer companies to capital markets as result of the additional burden and cost for both the issuer and investor. We propose amendments for debt markets, alternative venues, incorrect use of inside information statements, the moment of disclosure and request for quote (RFQ).

1. **Delayed disclosure** (Q25-32)

Important mechanism, we consider the conditions that have to be met in order to delay the disclosure of inside information to be too burdensome, record keeping can be burdensome as well. We support alleviations for the SME GM.

1. **Market sounding** (Q34-38)

Important mechanism but concerns that the proposed amendments do not represent a clarification, but rather a move to a mandatory approach for market soundings. We support alleviations for the SME GM.

1. **Insider list** (Q39-45)

Important mechanism but needs calibration to become truly useful tool (permanent list), extensive from an administrative point of view, especially for SMEs. We do not support 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.

1. **Managers’ transactions** (Q46-57)

The threshold could be calibrated by NCAs as different thresholds could prove material to different markets. Once such threshold has been reached, the calculation of the threshold should restart from zero until such an amount has been reached again. We welcome the amendments to post-dealing notification timescales proposed by the SME Regulation

1. **MAR and collective investment undertakings** (Q58-65)

No responses.

1. **Competent Authorities, market surveillance and cooperation** (Q66-69)

We support more unified reporting formats but believe this should be based on the existing industry initiatives/formats. Regarding the order book reporting – the powers that NCAs have under the current regime suffices to achieve the supervisory objective and any additional reporting should be backed by an impact analysis, as it will bring additional costs and potential risk to the trading venues.

1. **Sanction and measure** (Q70-71)

We support an effective cross border sanctions regime, but believe that NCAs could be given additional powers via sectoral legislation as opposed to via MAR.

*Contact: Beata Sivak, bsivak@lseg.com*

<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>

We welcome ESMA’s efforts to introduce consistency between MAR and BMR. We note that BMR will be reviewed in the coming months as well and see it as an opportunity to ensure that the regulations are consistent and do not pose duplicative or conflicting obligations on market participants.

While we agree with the analysis that the definitions of a benchmark are broadly aligned in both regulations, to ensure consistency and support effective compliance with both regulations, we suggest that MAR cross-references BMR, and thus explicitly covers the same set of benchmarks, aligning the scope with BMR.

<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>

We understand the impetus to list additional market participants, such as benchmark administrators - however BMR already covers conduct of benchmark administrators extensively.

Market manipulation with regards to benchmark should face clear single sanctions regime. If the scope is extended explicitly to e.g. benchmark administrators, we suggest streamlining the administrative and pecuniary sanctions by making a reference to the BMR sanctions regime instead - in Article 30.2. e.g. “in respect of a benchmark administrator / supervised contributor, maximum administrative pecuniary sanctions are determined by Article 42 BMR”.

<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>

Requiring existing information is a reasonable addition to the NCA powers. With regards to benchmark administrators specifically, it should reference “existing information as required in BMR” to ensure clarity around the scope of the information. This is to avoid a potential new type of information, not foreseen by the BMR, to be requested - e.g. BMR does not refer to data traffic.

<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>

We understand the inclusion, as long as they are also persons discharging managerial responsibilities, not to affect administrative workers, who may be sending the inputs, but have no possibility to alter 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>

Yes. It would be unreasonable to require the issuer to report transactions relating to buyback programmes, where companies are unaware that their shares are traded on other venues – for example, on predominantly secondary market trading facilities, where issuer has not made an application for trading to that particular venue.

<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>

The proposed Option 3 relies on a determination of the most relevant market in terms of liquidity venue as defined in MiFIR, Article 26(1). This article relates to obligations on investment firms and competent authorities, as opposed to issuers. To avoid conflict in interpretation, a potential option would be for an issuer to be able to report such information to the NCA of a market where it has a primary market relationship. That NCA, upon request, should forward the information to the NCAs of the other venues where the shares are admitted to trading/are traded. Alternatively, a determination as to the “primary NCA” could be made, based on where issuer enjoys most liquidity.

<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>

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<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>

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<ESMA\_QUESTION\_CP\_MAR\_10>

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

<ESMA\_QUESTION\_CP\_MAR\_11>

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<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>

MAR covers significantly broader scope of financial instruments including those traded MTFs and OTFs as well as those that may be traded off market but can have an effect on such instruments. This extension risks attracting fewer companies to capital markets as a result of the additional burden and cost for both the issuer and investor. It had also substantially increased the level of regulation for small growing companies to be at the same level as companies listed on regulated markets.

• **The moment of disclosure.** We believe that MAR discipline on disclosure on inside information should be recalibrated to increase legal certainty with respect to the identification of the moment when the disclosure requirement is triggered. We suggest narrowing the scope of Article 17 of MAR to say that an issuer shall disclose inside information as soon as possible only in case it makes a reference to an event or circumstances that have occurred, even if not formalised. A too early trigger may force disclosure of events and transactions that have not yet occurred/concluded and may be prejudiced by their disclosure. The issuer might communicate information which is not sufficiently mature and potentially manipulative for the market. The delay procedure is currently the only method to avoid a premature disclosure, which became a frequent recourse, contrary to ESMA’s guidance.

• **Debt markets**. The requirements are overly detailed and prescriptive. E.g. issuers at MTFs dedicated to SMEs such as ExtraMot Pro3 have limited and stable number of bondholders of professional character but have nevertheless recorded a significant increase in compliance costs, leading to issuers excluding bonds from trading on this market. For debt issuers, the requirement to publish inside information could be limited to inside information that would directly influence the debt issuers ability to meet the repayment obligations of its debt issuance.

• **Alternative venues.** Financial instruments traded on alternative trading venues are not subject to such obligations. For example, an issuer’s obligations under MAR is a matter which is frequently discussed when listing bonds on EU Regulated Markets or MTFs, instead of other exchanges outside the single market e.g. TISE (Channel Islands) and Singapore and this can influence the listing decision of issuers particularly high yield companies or private equity owned issuers. Therefore, we would ask for consideration to be given to excluding non-regulated markets from the scope of certain MAR provisions.

• **Incorrect use of inside information statements.** We understand that some market participants include inside information statements on all announcements, even where there is no apparent inside information – they may then have to comply with additional requirements (e.g. insider list), whereby increasing their administrative burden and risk. We encourage ESMA to develop a guidance on this matter.

• **Requests for quote (RFQ).** Article 7 (1) (d) of MAR relates to persons charged with the execution of an order. We would welcome further clarification on whether a Request for quote (RFQ) should be considered equivalent to an order for the purposes of MAR, and wish to point to the to the guidance in the FMSB (FICC Markets Standards Board) Standards Code where this concern is addressed with recommended best practice. Specifically, where a firm in the chain of transmission is acting on behalf of a client or professional counterparty request, whether the obligation under Article 7 (1) (d) should apply irrespective of whether a firm in the chain considers itself to be acting proprietarily (professional counterparty) or as an executing broker (client). An RFQ most often originates from an “order” in an order management system (OMS) and also predominantly results in a trade. Therefore, an action taken by a firm in the chain of transmission may have an impact on the price of the financial instrument requested. In addition, see our response to Q22 – increased clarity around RFQ protocols regarding front running and pre-hedging would help trading firms in calibrating internal systems to avoid conflicts of interest between the firm and counterparty/client engagement that is increasingly intermingled.

In addition to the above, please refer to our comments in relation to inside information where disclosure has been delayed (dealt with in questions 25-32).

<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>

Yes, but it should be amended with respect to the obligation to disclose inside information, as described in response to Q13. There can be a potential damage to market efficiency where an overly wide disclosure obligation is adopted which prevents issuers being able to protect highly sensitive disclosures and where information is at a premature stage and therefore potentially unreliable disclosures could possibly feed market volatility.

<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>

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<ESMA\_QUESTION\_CP\_MAR\_18>

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

<ESMA\_QUESTION\_CP\_MAR\_19>

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<ESMA\_QUESTION\_CP\_MAR\_19>

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

<ESMA\_QUESTION\_CP\_MAR\_20>

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<ESMA\_QUESTION\_CP\_MAR\_20>

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

<ESMA\_QUESTION\_CP\_MAR\_21>

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<ESMA\_QUESTION\_CP\_MAR\_21>

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

<ESMA\_QUESTION\_CP\_MAR\_22>

As a trading venue we are not in position to deem whether individual investment firms’ behaviour in receipt of client information is appropriate. However, drawing a distinction between permissible actions prior to receipt of client/counterparty order or request information, versus after, would be a sensible step. LSEG would welcome ESMA Guidance on more precise definition of both front running behaviours and pre/anticipatory hedging, building on the guidance in the FMSB (FICC Markets Standards Board) Standards Code where this concern is addressed with recommended best practice.

Regarding the electronic request for quotes (RFQs) in ETFs, this would clarify where legitimate pre/anticipatory hedging begins and ends, specifically WRT client/counterparty contact. Currently the ‘case by case assessment’ does not seem to be realistic in a live trading context.

<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 ability to delay disclosure of inside information is important as issuers should be able to keep confidential information that may prejudice their legitimate interests (subject to the standard caveats that this is not likely to mislead the public and that confidentiality can be maintained).

We consider the conditions that must be met in order to delay the disclosure of inside information to be too burdensome (Art. 17(4) of MAR & ESMA 2016 Guidelines). E.g. the delay is susceptible to misleading the public when the inside information is materially different from the previous public announcement of the issuer on the matter to which the inside information refers to. With such a wide definition, almost all inside information could be misleading if not disclosed. We encourage the policymakers to provide a narrower definition (e.g. to allow companies to disclose negotiations once sufficiently certain that a positive outcome would be reached.)

Moreover, the record keeping requirements that applies where disclosure is delayed can be extensive. ESMA should consider alternative arrangements that maintain a Competent Authority’s ability to obtain information relating to an issuer’s reasoning to delay inside information and also reduce the administrative burden.

On this matter, LSEG supports the Commission’s existing approach in relation to SME GM where issuers would not be required to keep disclosure records, but they would still be required to notify the NCA of any delayed disclosure and provide justification, if requested.

<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>

The legitimate interests are specific. There may be other situations where issuers have legitimate interests and LSEG would support the reintroduction of a more generic legitimate interest which was permitted under the previous Market Abuse Directive - “impending developments that could be jeopardised by premature disclosure”.

On this point issuers should avoid disclosing impending developments which rather than inform the market, could misinform or mislead the market, in particular where the likelihood of the proposed transaction remains unclear and/or uncertain.

<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>

This should not be necessary as an issuer admitted to a public market will already be subject to an obligation to have appropriate systems and controls. ESMA refers to inserting a requirement for issuers to have in place systems and controls being consistent with the systems and controls requirement in Article 16. This is not consistent as Article 16 is specifically in relation to the important role of market operators and investment firms and their systems and controls around the prevention of market abuse, whereas Article 17’s principle purpose is disclosure of inside information by issuers.

Moreover, the same result may be achieved at domestic level, by National Competent Authorities, with regulatory guidance tailored to the issuers and trading venues concerned. For instance, in Italy, Consob in 2017 issued guidelines on management of price sensitive information, which take into account the particular requirements of types of issuers. A general rule laid down at MAR level might prove harmful for smaller issuers, such as bond issuers.

<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>

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<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 do not support this change as this will increase the burden on issuers in relation to their administrative obligations. If ESMA wishes to proceed, it should explain in more detail what the benefit and/efficiency to the market is in relation to this new requirement.

We believe that ESMA’s existing guidance is clear and helpful in this regard, i.e. this should not be notifiable either publicly to the market or to the NCA (as set out in ESMA’s existing Q&A guidance, Q5.2)..

<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>

We agree that the current wording of Article 17(5) of MAR should be extended.

<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>

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<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>

Market soundings are a valuable tool to gauge the opinion of potential investors and enhance shareholder dialogue, so care must be taken to avoid any additional burden to disclosing market participants (DMPs) which interfere with this objective. If any change is justified, it would need to be done in a way that minimises issues of legal uncertainty or misunderstanding whilst reassuring market participants that the purpose of Article 11 is to implement a safe harbour for market sounding in respect of Article 14(c).

We understand from discussions with market participants that there are concerns that the proposed amendments do not represent a clarification, but rather a move to a mandatory approach for market soundings. Any such move has the potential to disrupt information flows and flexibility around communications with investors, whilst imposing additional compliance burdens on all market soundings even where only public information is communicated. This would represent a clear restriction with limited obvious benefits. Anecdotally, the interactions between issuers and investors using the regime have considerably reduced since the implementation of MAR. In addition, a full application of MAR seems disproportionate for e.g. fixed income issuers who do not have equity listed in Europe.

<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>

The current definition of market sounding provided by Article 11 of MAR can be further clarified. The “communication of information” prior to an “announcement of a transaction” can be interpreted too broadly and prove burdensome for disclosing market participants (DMPs). The definition of market sounding should be limited to exclude certain categories of transaction. For example:

- Offerings by true debut issuers (that do not have securities admitted to a European market)

- Where the new transaction with all its potential terms, conditions and features and any non-deal specific information intended to be disclosed are not expected to affect the price of those already admitted financial instruments

- Where investor contacts can credibly be viewed as not intended to gauge interest in a possible transaction and conditions relating to it. For example, further debt issuances by a frequent investment grade issuer

- Transactions in financial instruments referred to only in Article 2(1)(d) should be excluded.

- Where the nexus with the EU is so low that it is reasonable for market participants to choose not to apply.

- Where issuers also consider adding retail to their issue but would need guidance from institutional investors before they are able to formalise the transaction. For example, there are several disadvantages for issuers of retail bonds in European markets. By allowing this relaxation authorities would start to address the significant discrepancy that exists between the retail and the wholesale regime.

Additionally, the “SME listing Regulation” amends MAR by providing an exemption, under certain conditions, for issuer of bonds on SME Growth markets from the requirements contained in article 11 in relation to market sounding. We believe that such exemption should be extended to the issuance of equity securities on SME Growth markets, given that there is no particular reason for a difference between the two asset classes.

<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>

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<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>

The wording is appropriate. Extending the wording could potentially add to uncertainty of the application of the regulation.

<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>

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<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 note that disclosing market participants already need to use recorded telephone lines in certain circumstances as per Commission Delegated Regulation 2016/960, Article 2(2). Requiring all market soundings to be recorded as suggested in the consultation paper could inhibit market soundings by way of physical meetings. Flexibility as to the method, whilst providing a clear procedure on how to ensure an adequate audit trail, is a preferable approach.

<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>

Yes, we agree that Insider lists are an important tool for competent authorities when investigating potential market abuse cases. However, in light of the wide range of information that must be gathered by the issuer and inserted in the list, its management may become very burdensome. We would suggest reconsidering the level of disclosure of personal data of insiders which do not seem necessary and, hence, disproportionate as the individuals can be identified via their employer.

LSEG supports the Commission’s approach in relation to SME GM issuers to include less burdensome requirements regarding the preparation, maintenance and presentation of insider lists. We are also supportive of the proposed revision of the insider list regime for SMEs in the proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 596/2014 (MAR) and (EU) 2017/1129 (Prospectus Regulation) as regards the promotion of the use of SME growth markets, whereby issuers whose financial instruments are admitted to trading on an SME growth market should include in their insider lists only those persons who, due to the nature of their function or position within the issuer, have regular access to inside information.

The new version of Article 18 of MAR is, however, unclear as to what constitutes a “regular access” to inside information, and we would suggest a clarification of this provision. In particular, we recommend to explicitly clarify whether such a list would replace both sections of the insider lists (event based and permanent insider lists), which would seem appropriate in order to achieve the objective of the Regulation and ultimately benefit growing issuers, or if it should be interpreted differently.

<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>

See above.

<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>

LSEG does not support this extension. Such advisers will already have professional as well as contractual obligations to maintain confidentiality.

It would seem more appropriate to amend article 18 so that it includes third counterparties who, despite not acting on behalf of the issuer, on their account or in the capacity of employees of the issuer, still have access to inside information, and are not, as of now, included in the insider lists (e.g. counterparties of an extraordinary transaction).

<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>

Yes. [see above Q39]]

<ESMA\_QUESTION\_CP\_MAR\_43>

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

<ESMA\_QUESTION\_CP\_MAR\_44>

LSEG is supportive of reducing the administrative burden on an issuer and are supportive of ESMA’s preliminary view.

<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>

The threshold could be calibrated by NCAs as different thresholds could prove material to different markets. The notification of transactions conducted by PDMRs on their own account, or by a person closely associated with them, provides both valuable information for market participants and a vital tool for competent authorities to supervise markets.

The current threshold is calculated adding together all transactions completed during a calendar year, without compensation; after exceeding this threshold, all transactions (including those for smaller amounts) must be disclosed. In our view, once such threshold has been reached, the calculation of the threshold should restart from zero until such an amount has been reached again.

It is important to take into account that in member states which do not use the Euro, we understand that issuers generally employ a haircut to the threshold to act as a buffer for any fluctuations in exchange rates.

We welcome the amendments to post-dealing notification timescales proposed by the SME Regulation.

<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>

See above.

<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>

Yes, we agree that 20% is an appropriate threshold and is consistent with the general rules concerning diversification of investments applicable to UCITS.

<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>

The rules around closed periods should be those of NCA/market operators and not an EU regulation. Closed period rules are closely related to governance and should not be conflated with the prevention of insider trading. Consideration should be given to removing this provision.

<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>

We believe this would be unduly burdensome on an issuer and risks leaking inside information, for example an issuer would have to inform them that they are in a close period for accounts.

<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>

LSEG supports the extension.

<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>

We are in principle in favour of harmonisation of reporting formats of order book data. However, we believe that the harmonisation of formats should be based on the existing industry standards which are already used by trading venues (such as comma separated value (CSV) templates) rather than requiring the implementation of different common standards, as requiring the use of XML templates.

<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>

We believe the current regime under Article 25 MiFIR and Article 25 of MAR should be maintained. The regime gives NCAs powers to request access to the order book data upon request or to undertake ongoing requests for the detection of potential market abuse cases.

Ongoing costs, related to the high volume of data (millions of transactions) which would be reported daily would increase operational risk and would include the additional cost of correcting errors and the risk of incurring in potential administrative fines for not reporting in the required formats or within the required deadline.

As such, if a daily or frequent process was required, we believe an independent centralised data collection and validation mechanism, similar in scope to the current Approved Reporting Mechanism construct for RTS22 data, would be a sensible step to provide coherent order and transactional datasets for centralised market oversight.

<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>

See above.

<ESMA\_QUESTION\_CP\_MAR\_68>

1. What are your views regarding those proposed amendments to MAR?

<ESMA\_QUESTION\_CP\_MAR\_69>

See above.

<ESMA\_QUESTION\_CP\_MAR\_69>

1. Are you in favour of amending Article 30(1) second paragraph of MAR so that all NCAs in the EU have the capacity of imposing administrative sanctions? If yes, please elaborate.

<ESMA\_QUESTION\_CP\_MAR\_70>

We understand that aim to achieve an effective cross-border sanctions mechanism, but believe that the NCAs could be empowered via applicable sectoral legislations, instead of MAR.

<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>