European Securities and Markets Authority
103 rue de Grenelle
75345 Paris Cedex 07

By email: www.esma.europa.eu

29 November 2019

Dear Sir/Madam,

GC100 response to the ESMA Consultation Paper "MAR review report" (ESMA70-156-1459)

I am writing on behalf of the GC100.

GC100 is the association for the general counsel and company secretaries of companies in the UK FTSE 100. Membership includes general counsel and company secretaries from over 80 companies listed in the FTSE 100. Please note that, as a matter of formality, the views expressed in this letter do not necessarily reflect those of each and every individual member of GC100 or their employing companies.

Reporting obligations relating to share buyback programmes (Q7, Q8 and Q9)

In order to come within the buyback safe harbour in Article 5 of MAR, issuers must report all transactions relating to a buyback programme to the competent authority of ***each*** trading venue on which the shares are admitted to trading or are traded (*Article 2(2), Commission Delegated Regulation (EU) 2016/1052*).

As the consultation highlights, it can be difficult for issuers to establish all of the relevant competent authorities that should be notified, as issuers may not know every venue where their shares are being traded. Indeed, searches of the Financial Instruments Reference Database (FIRDS) can generate a huge number of results and it is not always apparent from the data presented whether shares are currently traded on a particular exchange or platform.

GC100 would, therefore, welcome a modification to the current reporting requirement. From the options proposed, GC100 would favour option 3, whereby trades are reported to only one national competent authority, being the national competent authority of the most relevant market in terms of liquidity. The term "liquidity" should, however, be clarified as again, it may not always be easy to determine which are the most liquid markets. GC100 believes that the "liquidity" determination should only need to be made at the start of the relevant buyback programme and should not have to be made continually.

GC100 Group
The Association of General Counsel and Company Secretaries of the FTSE 100
The GC100 Group is an unincorporated members' association administered by Thomson Reuters.
Secretary: GC100 c/o Thomson Reuters Legal UK & Ireland, 5 Canada Square/6th Floor, Canary Wharf, London, E14 5AQ
T: 44 (0)20 7542 1401 **E:** camlia.thomas@thomsonreuters.com

Alternatively, GC100 believes that a neater option would be for issuers to simply make a notification to the national competent authority of the issuer's home member state.

GC100 also welcomes the proposal to remove from Article 5(3) of MAR the obligation for issuers to report the information specified in Article 25(1) and 25(2) of MiFIR to benefit from the exemption in Article 5(1) of MAR.

Definition of inside information (Q13)

GC100 believes that that the current definition of inside information is both settled and well understood by its members and their advisers. It does not see a benefit in changing the definition.

Delaying disclosure of inside information (Q29)

We do not believe that a notification to a national competent authority should be required where an issuer delays the disclosure of inside information and that information subsequently ceases to be inside information. Our members are already subject to obligations designed to reduce the risk of insider dealing occurring and, if a national competent authority suspects that insider dealing may have taken place, it can request that information from the relevant issuer. As a result, we do not think that such a change is either necessary or sufficiently beneficial.

Insider lists (Q40 and Q41)

GC100 does not believe that the replacement of the existing insider list inclusion test with a more onerous test based on those persons who actually accessed, rather than had access to, inside information is necessary or desirable. Such a test would necessitate more costly and burdensome monitoring obligations for our members (for example, monitoring an individual's computer records to establish whether that individual had actually "accessed" a piece of inside information to which he or she had access) without, in our view, sufficient benefit.

Permanent insiders (Q43)

A large percentage of GC100 members have a permanent insiders section in their insider list. As Commission Implementing Regulation (EU) 2016/347 envisages, the ability to have a permanent insiders section avoids the need to have multiple entries for the same individuals in different sections of an insider list. It is therefore a very efficient and useful tool for issuers, as it saves duplication of information.

The identity of permanent insiders among GC100 members varies but, in general, the board of directors and the executive committee, that is, effectively all PDMRs, constitute permanent insiders. Some members do, however, include additional persons as permanent insiders, for example, the company secretary, senior members of the finance team and head of investor relations.

GC100 believes that if MAR were amended to require permanent insiders to specify, for every piece of inside information, all of the details that are required to be specified for non-permanent insiders in respect of every piece of inside information (including the date and time on which they gained access to

that inside information), the advantages of maintaining a permanent insiders section would be lost and, arguably, there would be no purpose to having such a section.

One contact natural person for insider lists (Q44)

GC100 welcomes ESMA's preliminary view that Article 18 of MAR could be revised to specify that an issuer should only include one contact natural person for each legal person acting on behalf or for the account of the issuer having access to inside information (that is, one contact person per external provider) and that each one of those legal persons include in their own insider list the natural or legal persons who have access to inside information and who are working for them under a contract of employment, or otherwise performing tasks through which they have access to inside information.

PDMR notifications under Article 19 of MAR (Q46)

GC100 has no comments on the minimum reporting threshold. Indeed, as the vast majority of GC100 members currently report all PDMR transactions, irrespective of the EUR 5,000 threshold, they are likely to continue to do so, even if the current minimum threshold were to be increased.

In terms of the current reporting process, however, GC100 members believe that it is administratively burdensome and unnecessarily duplicative, in that the same information must be submitted to the national competent authority and the market. Consequently, it is extremely time-consuming and onerous, especially as in the UK there are different forms for both notifications.

GC100 members suggest that, instead, MAR should be amended to enable the announcement that is made to the market (or, alternatively, the auto-populated National Storage Mechanism announcement) to be treated as the notification to the national competent authority.

Extension of the prohibition on dealing to issuers and PCAs (Q55)

GC100 believes that extending the dealing prohibition to prevent issuers and PCAs from dealing in a closed period is not necessary or desirable. In particular, our members are concerned that if they are prohibited from issuing or acquiring shares in a closed period, this could be unduly restrictive on their normal treasury and capital management activities, for example, conducting buybacks and capital raising exercises. In our view, the existing insider dealing prohibitions are sufficient to deal with this area and both issuers and PCAs are already subject to that regime.

If the prohibition were to be extended to issuers and PCAs, GC100 suggests that there should be exemptions in relation to the granting and vesting of employee share plan awards, to enable issuers to carry on business as usual during closed periods in respect of the operation of their employee share plans.

Exempt transactions under Article 19 of MAR (Q57)

GC100 would welcome an increase in the categories of transaction that are exempt from the dealing prohibition in Article 19(11), in particular, the dematerialisation of shares, the conversion of depositary receipts into shares and vice versa, and both the making and receipt of gifts and donations.

Thank you for the opportunity to share our views on the consultation. We would be happy to discuss our response in further detail should that be useful.

Yours sincerely,

Camelia Thomas
Secretariat, GC100