

Milan, 27 August 2021

ESMA

201-203 Rue de Bercy
CS 80910
75589 Paris Cedex 12
France

Prot. n. 37/21

Re: ASSOSIM contribution to ESMA CP on review of *MAR Guidelines on delay in the disclosure of inside information and interactions with prudential supervision*

ASSOSIM¹ welcomes the opportunity to provide comments on the ESMA's Consultation paper in subject as better detailed here below.

Q1: Do you agree with the proposed amendment to the MAR Guidelines in relation to redemptions, reduction and repurchase of own funds?

Assuming that the inside information arises when the resolution to redeem is taken, issuers would be required to activate the delay mechanisms immediately, which would impose a disproportionate organisational burden. As a matter of fact, due to the lengths of the authorisation procedure, which may take up to 6 months, the market conditions may change, and the issuer may find it no longer worthwhile to exercise the option to redeem/repurchase its funds.

Q3: Do you agree with the proposed amendment to the MAR Guidelines in relation to draft SREP decisions and preliminary information related thereto?

About the proposal in the CP to consider the draft SREP decisions as inside information, we would favour instead the approach adopted by Consob in March 2019, which allows banks to assess the inside nature of such information based on the characteristics in Article 7 of MAR

¹ *Associazione Intermediari Mercati Finanziari - ASSOSIM* is the Italian Association of Financial Markets Intermediaries, which represents the majority of financial intermediaries acting in the Italian Markets. Assosim has nearly 80 members represented by banks, investment firms, branches of foreign brokerage houses, active in the investment services industry, mostly in primary and secondary markets of equities, bonds and derivatives, for some 82% of the Italian total trading volume.

(such as precision and materiality). Accordingly, pursuant to Article 7 of MAR, it would be the bank's responsibility to assess the insignificance of the information concerning the SREP outcomes; similarly, in the presence of the conditions in Article 17(4) or (5) of MAR, it would be the bank's responsibility to take exploit the delay in public disclosure in relation to all or some of the inside information.

Q4: Do you agree with the proposed amendments to the MAR Guidelines in relation to P2R?

Based on the assumption set out in our response to Q3, we would consider it disproportionate to regard the P2R as price sensitive in all circumstances. For instance, to the extent that the requirement were in line with that of previous years, it would not necessarily represent a relevant parameter for MAR discipline. Handling it as an inside information would thus be an unjustified burden on the issuer.

Q5: Do you agree with the proposed amendments to the MAR Guidelines in relation to P2G?

We do not agree with the proposed amendments in relation to P2G because, according to the ECB regulation, they qualify as non-binding suggestions. As such, they may not even be regarded as inside information. In any event (namely, to the extent that they are non-binding suggestions) the market might not be adequately prepared to receive and evaluate such information in the correct way, and indeed its disclosure has in the past led to difficult consequences for the banks concerned.

In our opinion, it would be preferable to consider P2G as not price sensitive information as a rule and, at the same time, to list the exceptional cases in which it could become price sensitive (such as when recommending a capital increase).

Q6: With regard to the examples listed in paragraph 130, do you agree with the examples when P2G may not be price sensitive, and do you consider it useful to list these examples in the MAR Guidelines?

Please, see our response to Q5.

Q9: Do you see any other element that ESMA should consider in a potential amendment to its MAR Guidelines?

Since its adoption, the requirement that the delay should not be likely to mislead the public has created several problems of interpretation. Among other things, it was certainly deemed misleading for the public to activate the delay, during the SREP processes, in connection with exchange of communications that suggested negative evaluations, even though such communication could be detrimental to the issuer's stability.

Accordingly, we would like to seize this opportunity to suggest that the proposal to review the concept of "misleading" be brought to the attention of the European Commission to clarify that, in principle, an information which does not contradict previous statements by the same issuer is not misleading, thus its disclosure may always be delayed.

We remain at your disposal for any further information or clarification.

Yours faithfully,



Gianluigi Gugliotta
Secretary General