Reply Form

**to the Consultation Paper on Draft implementing technical standards on the extension of the use of the alleviated format of insider lists**

Responding to this Consultation Paper

ESMA invites comments on all matters in this Consultation Paper and in particular on the specific questions summarised in Annex 1. Comments 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.

ESMA will consider all comments received by **03 June 2024.**

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

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

• Insert your responses to the questions in the Consultation Paper in this reply form.

• Please do not remove tags of the type < ESMA\_QUESTION\_CPIL\_0>. Your response to each question has to be framed by the two tags corresponding to the question.

• If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.

• When you have drafted your responses, save the reply form according to the following convention: ESMA\_CP1\_ CPIL\_nameofrespondent.

For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA\_CP1\_ CPIL\_ABCD.

• Upload the Word reply form containing your responses to ESMA’s website (**pdf documents will not be considered except for annexes**). All contributions should be submitted online at *www.esma.europa.eu* under the heading *‘Your input - Consultations’.*

**Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. 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 not to disclose the response 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 heading ‘[Data protection](https://www.esma.europa.eu/about-esma/data-protection)’.

**Who should read this paper?**

All interested stakeholders are invited to respond to this consultation paper. This consultation paper is of primary interest to issuers, including SMEs, and trading venues, but responses are also sought from any other market participant including trade associations and industry bodies, institutional and retail investors, consultants and academics.

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | Związek Banków Polskich |
| Activity | Credit institution |
| Are you representing an association? |  |
| Country / Region | Poland |

# Questions

1. Do you agree with the proposed approach? Please explain.

<ESMA\_QUESTION\_CPIL\_1>

We are responding as an association. We agree with the proposed change. From the perspective of the compliance departments in banks, which are constantly involved in the protection and processing of inside information, creating lists of employees with access to inside information (i.g. insider lists) and creating software that enables safe and tight security for both the inside information itself and the personal data of insiders we see the changes proposed in Regulation 2022/1210 as a justified. So far, the scope of data collected in the scope of lists of people with access to inside information was definitely too wide, very often employees, involved persons questioned the collection of such a wide range of personal data, mainly due to concerns about their security and lack of justification, primarily in the scope of private telephone number and address of residence, as well as the PESEL (National Personal Identification Number). This applies to both lists of people with access to specific inside and permanent insiders. In our opinion, also taking into account the provisions of the regulation on the protection of personal data, the information collected within these lists should be minimized to a minimum, and the information should limit the possibility of identifying people who have access to inside information. The change will of course require adjustments to internal templates/systems and internal acts.

In addition to the proposed changes, we also suggest to consider introducing clarification to Regulation 2014/596 MAR in Article 18, of an issue which, in our opinion, has not been regulated in any way, and which would be very useful within market practice. The following is the content of the proposal:

"Banks and other financial institutions are responsible for the obligation to draw up, maintain and update insiders list regarding inside information entrusted by their client provided that the Issuer clearly marked entrusted information as inside information within the meaning of Article 7 of the MAR Regulation. They are obliged to provide that list only upon request of the relevant supervisory authority”.

The reasoning behind the proposal to implement the above into the content of the MAR regulation is the fact that, firstly, the issue of drawing up insiders lists and its disclosure by banks and other financial institutions has not been adequately specified in the regulations. The issue of disclosing the list of insiders only at the request of the relevant financial supervision authority has been included solely in the answer - A10.2 in Questions and Answers on Market Abuse Regulation (MAR), where, in our opinion, it is also not adequately specified that the criteria also applies to banks and other financial institutions, but only to persons acting on behalf of the issuer, i.e. advisors and consultants as it is stated in the body of the answer. It may be subject to doubt or dispute that a bank, by providing financial services such as ex. financing or guarantees, acts on behalf of the issuer. Assuming and interpreting broadly that answer A10.2 also applies to banks and other financial institutions, we understand that a bank may disclose insiders list only at the request of the relevant supervisory authority and not at the request of the issuer itself. In our opinion, this should be regulated in Regulation 596/2014 as ESMA QA essentially does not have full legislative power and is not generally applicable. Issuers, clients of banks and other financial institutions who provide inside information as part of their business relationships often send requests to banks or other financial institutions to provide to them insiders lists, which concern inside information entrusted to the bank or other financial institution in the course of activities undertaken between the parties, very often not being aware that they do not have such rights, which often leads to disputes.

Furthermore, in order to maintain transparency of the situation when a bank or other financial institution should be obliged to establish a insiders list while providing financial services to issuer, we have proposed the sentence “provided that the Issuer clearly marked entrusted information as inside information within the meaning of Article 7 of the MAR Regulation”. This is important because issuers very often do not indicate that some information will be published by the issuer in a current report (Article 17, Section 1 of MAR), as a result of which they treat the information as inside information, providing in the content of current report the name of the bank or other entity with which they cooperated on a given project/transaction, giving the erroneous assumption that the entity (bank or other financial institution) processed this information as inside information and that it was in fact processed with the standards of MAR where in reality the financial entity did not, due to the fact that it was not indicted by the issuer. In our opinion, this would facilitate the enforceability of marking this information in the bank or other financial institution - client relationship (and this is a fairly common problem) and would consequently unify market practice.<ESMA\_QUESTION\_CPIL\_1>

1. Do you consider the permanent section of the insider list for all issuers (and SMEs GM issuers in those MS that have opted out of the simplified regime) contained in Annex I useful?

<ESMA\_QUESTION\_ CPIL\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ CPIL\_2>