

Stockholm, 29 April, 2026

The Swedish Securities Markets Association (SSMA)¹

Response to

ESMA's Consultation Paper²

on MAR Guidelines on delay in the disclosure of insider information³.

1. General comments

SSMA welcomes the opportunity to respond to this consultation paper. Amendments to the MAR Guidelines are necessary to align them with the new regime, and we are overall positive to the proposals set out in the consultation paper.

However, as reflected in our responses below, we believe that certain refinements would improve consistency between the MAR Guidelines and the EC list of protracted processes⁴, and clarify the scope of legitimate interests, which is essential for an effective and predictable application.

2. Questions

Q1: Do you see merits in maintaining the legitimate interest currently described in point b of Guideline 1 (i.e possibility for the issuer to delay the disclosure of its financial situation, where an immediate publication may jeopardise the measures to reestablish its viability)? Please indicate the arguments supporting your answer.

No.

We consider that the legitimate interest currently described in point b of

¹ The SSMA is a trade association representing the interests of investment firms active on the Swedish securities market, hereinafter referred to as "we" or "SSMA".

² ESMA74-268544963-1567.

³ MAR Guidelines on delay in the disclosure of public information first published on 20/10/2016 (ESMA/2016/1478) and reviewed on 13/04/2022 (ESMA70-159-4966).

⁴ The non-exhaustive list of final events or final circumstances in protracted processes referred to in Article 17(12), point (a), of Regulation (EU) No 596/2014 in Annex I of the DA implementing the Listing Act.

Guideline 1 of MAR Guidelines⁵, should be regarded as an intermediate step in a protracted process. As regards the final event of such protracted process, we consider it – as indicated in the same provision – to be the “*conclusion*” of such negotiations.

Since intermediate steps will be excluded from the disclosure obligation in article 17.1 of MAR⁶, we do not see the rationale for maintaining the legitimate interest for delaying the disclosure of such intermediate steps.

On the contrary, we consider such an approach inconsistent with the framework as reflected in the proposed amendments of MAR Guidelines as well as the EC list of protracted processes.

Also, in the EC list of protracted processes it is stated that – “*in case of [pre-insolvency] proceedings not supervised by a court*” – the moment of disclosure takes place “*as soon as possible after the issuer’s governing body has signed an agreement with creditors or any other arrangements foreseen for the case of pre-insolvency*”⁷. In our view, this is the final event that the legitimate interest currently described in point b of Guideline 1 of MAR Guidelines tries to protect. This provides an additional reason for deleting current point b of Guideline 1 of MAR Guidelines in accordance with ESMA’s view as reflected in point 38 of the consultation paper⁸.

Q2: What is your view on the legitimate interests which are proposed to be added to the MAR Guidelines? When commenting on a specific legitimate interest, please report in your answer the title as given in the relevant subsection.

Orders by a public authority to maintain confidentiality

We see the rationale for adding the issuer’s need to comply with an order received by a public authority as a legitimate interest. This clarifies for the issuer that an order issued by a public authority takes precedence over the disclosure obligation under MAR.

⁵ Point b reads as follows: “*the financial viability of the issuer is in grave and imminent danger, although even though not within the scope of the applicable insolvency law, and immediate public disclosure of the inside information would seriously prejudice the interests of existing and potential shareholders by jeopardising the conclusion of the negotiations designed to ensure the financial recovery of the issuer*”.

⁶ Regulation 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC in its revised version by Listing Act (regulation (EU) 2024/2809 of the European Parliament and of the Council of 23 October 2024 amending Regulations (EU) 2017/1129, (EU) No 596/2014 and (EU) No 600/2014 to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises.)

⁷ See No 25, third column, second paragraph.

⁸ Point 38 reads as follows: “*ESMA considers that MAR Guideline 1 is to be amended by deleting the legitimate interests which relate to a process contained in the EC list of protracted processes.*”

However, we would like to point out whether and when the issuer is required to disclose the inside information at a *later stage* is thereby left in the hands of the public authority. This means that the delayed disclosure may remain for an indefinite period.

Need to collect further information on the event or the circumstances to be disclosed

We support the proposal of, as a legitimate interest, adding the issuer's need to collect further information to enable a correct assessment by market participants. In our view, such legitimate interest is a natural consequence of the issuer's obligation under MAR to enable a "*complete [and] correct*" assessment of the inside information when making it public⁹.

However, referring to "*major incident or cyber-attack*" as examples may imply that a major incident is synonymous with a cyber-attack, creating a risk that the legitimate interest is considered applicable only in narrowly defined situations, even though it may, in fact, apply to any exceptional circumstance. A better alternative would be to only use "*cyber-attack*" and/or any other specific circumstance as an example of an exceptional event.

Risk to lose a business opportunity when participating in parallel procurement processes

We support the proposal of, as a legitimate interest, adding the issuer's interest not to lose a business opportunity when participating in parallel procurement processes.

However, the proposal, as a legitimate interest, refers only to "*the need to maintain the confidentiality of sensitive commercial information*", whereas an additional condition should be that disclosure of such sensitive information may *jeopardise* a business opportunity.¹⁰ We therefore propose that such wording is added.

Moreover, we do not see the rationale of including "*the conclusion of private negotiations*" in the proposal. We consider such situation is already covered by the EC list of protracted processes.¹¹ Also, in our view, only sensitive commercial information relating to "*a contract awarded in a public procurement*" should qualify as a legitimate interest. We therefore propose that such wording is deleted.

⁹ See article 17.1, second paragraph, of MAR.

¹⁰ See point 55-58 in the consultation paper.

¹¹ See No 1 in the EC list of protracted processes.

Q3: In addition to the case of parallel procurements of the same nature, are you aware of other instances where disclosure of sensitive commercial information may jeopardise an issuer's business opportunity, and should thus qualify as a legitimate interest for the delay?

No, see Q2.

Q4: In your view, which legitimate interests could be added to the MAR Guidelines for the purpose of the delay in the disclosure?

We do not have any proposals in this regard.
