

**9/2019**

**Consultazioni**

**Assonime risponde alla consultazione dell'ESMA per la revisione del  
Regolamento sugli abusi di mercato**

# Reply form for the Consultation Paper on MAR review report

## 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	Assonime
Activity	Other Financial service providers
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Italy

## Introduction

**Please make your introductory comments below, if any:**

<ESMA\_COMMENT\_CP\_MAR\_1>

*Before answering to the questionnaire we would like to underline that two major issues have not been tackled in the present Consultation Paper ((hereinafter “CP”). We think that the MAR Review should be fully exploited in order to solve these major problems as a different approach will otherwise concentrate only upon marginal problems affecting the Regulation.*

*The first one relates to the **twofold notion of inside information** both for the market abuse prohibitions and disclosure duties; the European Commission, in its mandate, recognizes that “inside information can undergo different levels of maturity, and degree of precision through its lifecycle and therefore it might be argued that in certain situations inside information is mature enough to trigger a prohibition of market abuse but insufficiently mature to be disclosed to the public” and invites ESMA to collect information on the different use of the mechanism of delay across Member States.*

*Listed companies are confronted with a high level of **legal uncertainty** due to the unclear interpretation of fundamental legal definitions. This is the case e.g. of the notion of “inside information” which is the same for market abuse prohibition (insider dealing, unlawful disclosure and market manipulation) and for the duty of disclosure.*

*Moreover, as this notion also includes intermediate steps in a protracted process<sup>1</sup>, it is too broad and **creates the risk of a premature disclosure**<sup>2</sup>. A premature disclosure is harmful both for investors, as torrents*

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The requirement of the precision of the inside information referred to the protracted process has been inserted in MAR (art. 7.2) due to the ECJ decision *Geltl/Daimler* but the insertion was due to a wrong question asked by the national Court because, even if the concrete case concerned when to disclose, the national Court asked the ECJ about the definition of inside information, therefore “the case came to focus on Art. 1 MAD and not Art 6 MAD<sup>1</sup>”, as it should be (see J. Lau Hansen, *Say when: when must an issuer disclose inside information?*, “Nordic & European Company Law”, n. 16-03, June 2016, fn. 6). As a consequence, the ECJ has stated that an “intermediate step” in a protracted process can be considered inside information (see *Geltl* case). Article 7(3) MAR codifies the ECJ’s approach and adopts a definition of “inside information” which reflects the Court’s opinion in the *Geltl* case. Under this approach, the concept of “inside information” is a very broad concept which, in the view of the MSG, is justified when considered from the perspective of prohibiting insider trading law”, see MSG, *Advice to ESMA, Response to ESMA’s Consultation Paper on draft guidelines on market abuse regulation*, 31 March 2016.

2

See J Hansen, ‘*The Hammer and the Saw: A short critique of the recent compromise proposal for a Market Abuse Regulation*’ (2012) at [ssrn.com/abstract=2193871](http://ssrn.com/abstract=2193871). See also J. Hansen and D. Moalem, *The MAD disclosure regime and the twofold notion of inside information: the available solution*, “Capital Market Law Journal”, 3/2009 and C. Di Noia

of potentially unreliable information could be disclosed; and for issuers, as it could harm their ability to conduct business and protect sensitive information, increases the costs of disclosure and enhances litigation risks.<sup>3</sup>

Therefore, we think that, as the ESME Report suggested<sup>4</sup>, a **distinction between the definition of inside information for the purpose of market abuse prohibition and for the disclosure obligations would be useful**, as the use of a single definition forces a disclosure at an early stage, creating uncertainty on when an information becomes “inside information”; therefore, increasing the risk that issuers will be in breach of disclosure obligation and of market abuse prohibitions<sup>5</sup>.

Moreover, delaying the disclosure of inside information - which could be the remedy for the premature disclosure of information<sup>6</sup> - is possible only under strict conditions and ESMA considers the delay as exceptional<sup>7</sup>.

One of the **conditions to delay** is that the delay “is not likely to mislead the public”; as stressed in the ESME Report, this condition is almost impossible to comply with because “the definition of “inside information” per se implies that a reasonable investor would use it as a basis for her decisions: thus, any delay in the dissemination is almost by definition misleading and it is very difficult to think of a circumstance in which delay would be permissible under this test”<sup>8</sup>. This condition, therefore, “should be modified in order to allow

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and M. Gargantini, *Issuers at midstream: disclosure of multistage in the current and in the proposed EU Market Abuse Regime*, European Company and Financial Review”, 2012.

See recently J. Payne, *Disclosure of inside information*, Law Working Paper n. 422/2018, October 2018, ECGI, p. 9, available at [file:///C:/Users/paola\\_spatola/Downloads/SSRN-id3244401.pdf](file:///C:/Users/paola_spatola/Downloads/SSRN-id3244401.pdf). The Author states: “Before the introduction of MAR there were questions raised regarding the 2003 MAD, particularly about the inclusion of both the conduct regulation and information regulation concepts within the market abuse regime and about whether, for example, the definition of inside information should be the same for both purposes. It had been hoped that the decision of the CJEU in *Geltl* might provide some much-needed clarity to this area, but it did not do so. The Court in *Geltl* did not address the dual nature of inside information within the 2003 MAD, and indeed the expansive view of inside information adopted by the CJEU in that decision (the idea that an intermediate step could constitute a set of circumstances or an event and so could be ‘precise’ for the purposes of the general definition of inside information) potentially exacerbated the problems inherent in the dual function of inside information within the market abuse regime. When MAR was negotiated, there was considerable pressure to adopt different definitions of inside information for the two different functions, in order to address these concerns. This suggestion was not successful, however, and there is a single concept of inside information within MAR that is relevant both to issuer disclosure and the prohibition on insider dealing. Further, because MAR follows the ruling in *Geltl* and incorporates into the regime the idea that processes with multiple stages can generate inside information that needs to be disclosed at intermediate steps in the process, the risk that issuers will be in breach of their disclosure obligations if they fail to disclose negotiations and other multiple stage processes progress is intensified. This linking of inside information disclosure and the prohibition on insider trading therefore potentially exacerbates the difficulties.”

<sup>3</sup> See J. Payne, *Disclosure of inside information*, Law Working Paper n. 422/2018, October 2018, ECGI, fn. 2.

<sup>4</sup> The opportunity to differentiate the notion of inside information was stressed by the ESME Report (see *ESME Report, Market Abuse EU legal framework and its implementation by Member States: a first evaluation*, Bruxelles, 6<sup>th</sup> July 2007).

<sup>5</sup> C. Di Noia, [Public hearing on the review of the MARKET ABUSE DIRECTIVE – European Parliament, 24 January 2012](#).

<sup>6</sup> See SMSG, *Advice to ESMA, Response to ESMA’s Consultation Paper on draft guidelines on market abuse regulation*, 31 Marzo 2016, fn. 2.

<sup>7</sup> “However, it should be borne in mind that the possibility to delay the disclosure of inside information as per Article 17(4) of MAR represents the exception to the general rule of disclosure to be made as soon as possible according to Article 17(1) of MAR, and therefore should be narrowly interpreted” (see ESMA Consultation Paper – *Draft Guidelines on the Market Abuse Regulation*, 28 January 2016 | ESMA/2016/162, par. 69).

<sup>8</sup> See Esme Report, *Market Abuse EU legal framework and its implementation by Member States: a first evaluation*

companies to trust on a **safer legal basis** when they decide to disclose negotiations when they can be confident, with a sufficient degree of certainty, that a positive outcome is reached”<sup>9</sup>.

The other conditions (prejudice of a legitimate interests of the issuer and measures to ensure confidentiality) should be enough to grant the issuer the possibility to delay the communication of information not enough mature.

Moreover, concerning the condition of the “prejudice of a legitimate interest of the issuers”, ESMA’s guidelines remain overly restrictive. The removal by ESMA of “impending developments that could be jeopardized by premature disclosure” from the CESR’s list illustrative examples is unhelpful to issuers. As a result, issuers may assume that impending developments are incapable of constituting a legitimate interest justifying delayed disclosure<sup>10</sup>.

In some Member States, after the entry into force of MAR, issuers made an extensive use of the delay compared to the situation under the MAD<sup>11</sup>. In our view, this is the evidence that issuers fear the premature disclosure of information and try to avoid it, using the delay.

It is therefore of paramount importance the survey that ESMA is conducting regarding the use of the delay in the Member States.

We see also a **lack of coherence between Transparency directive and MAR** as to the disclosure of financial information and the notion of inside information (in particular, concerning to the moment in time when inside information in a protracted process must be disclosed to the market). The problem is especially relevant for periodic financial information (annual and half-yearly financial statements) for which, apart from the cases of profit warnings that should be immediately disclosed, there is a problem of identifying the moment in which the information becomes “inside” and then should be disclosed<sup>12</sup>.

<sup>9</sup> See C. Di Noia and M. Gargantini, *Issuers at midstream: disclosure of multistage in the current and in the proposed EU Market Abuse Regime*, “European Company and Financial Review”, p. 520.

<sup>10</sup> See also European Issuers, *Response to EC Consultation SME Listing*, 26 February 2018, p. 24.

<sup>11</sup> While according to some CAs the delay is physiological under MAR. See Consob, *Proposta di adozione di due comunicazioni recanti l'adozione delle Guide operative Gestione delle informazioni privilegiate e raccomandazioni di investimento, documento di consultazione*, 6 aprile 2017, p. 5. According to the Consob Annual Report in 2018 the use of delay has increased (362 delays in 2018 under MAR while under the previous regime there were 5/6 delays every year see p.129)

<http://www.consob.it/documents/46180/46181/Rel2017.pdf/60ed0b08-e6ef-4030-99e5-21c5cee14921>

<sup>12</sup> J. Lau Hansen, *Say when: when must an issuer disclose inside information?* “Nordic & European Company Law”, n. 16-03, June 2016 cit., nt. 6 “In this context, it should be noted that ‘delay’ only occurs where Art 17(4) is relied on. Some inside information may be timed in such a way that its disclosure need not be deemed ‘delayed’ even if the information qualified as inside information before it was disclosed. This is notably the case in respect of financial reporting, which is often disclosed subject to a ‘finance calendar’ that is made public at the beginning of the issuer’s financial year. Such a calendar undertakes to specify the dates when financial reports from the issuer can be expected by the market and enables market participants to be ready for the report. The content of financial reporting may comprise inside information and so the persons preparing this reporting within the issuer may be subject to the insider dealing bans even before the financial report is finished. It may be argued that as long as a financial report is not approved by the company body competent to do so (such as a board of directors), it is not final and thereby not sufficiently ‘precise’; but if the content of the reporting is likely to be adopted, and it often is, especially very close to its predetermined disclosure date, it would be relevant to qualify the financial report as inside information even before its final adoption. Hence, any person trading on its content would violate the insider dealing ban. Yet it would still be wrong to describe the later disclosure of the financial report as a ‘delay’. On the contrary, where the financial report is disclosed according to the previously disclosed finance calendar it is ‘timely’ as required by Art 17(1) and the issuer does not have to notify the NCA of any delay.”

The uncertainty of what constitutes an inside information has consequences also on the **management of the insider list** as it is not clear when the latter must be activated (if issuers have to publish as soon as possible inside information according to art. 17.1, the insider list should be opened only in case of delay). Some competent Authorities have a different approach according to which they suggested to create a sort of quasi-insider list before an information become formally an insider information<sup>13</sup>; this approach is an evident signal that the management of information from a market abuse perspective is critical before an information is mature to be subject to disclosure obligation and to the related delay procedure.

**In conclusion, a viable and preferred solution to solve all the problems illustrated above would be differentiating the notion of inside information for the purpose of disclosure (new definition of “price sensitive” information, as illustrated below) from the notion of inside information for the purpose of market abuse prohibition (current article 7).** In particular, **we suggest replacing article 17§1 with the following:** “An issuer shall inform the public as soon as possible of any major new developments in its sphere of activity which is not public knowledge and which might, by virtue of their effect on its assets and liabilities or financial position or on the general course of its business, lead to substantial movements in the prices of its shares”. This was the definition used for the disclosure obligation in the directive on admission to listing (Directive 79/279/EEC). Compared to MAR, this definition did not mandate disclosure of prospective events, and therefore did not require issuers to gauge whether a significant development – besides being reasonably able to affect the price of the relevant financial instrument – was reasonably likely to occur<sup>14</sup>.

We think that differentiating the notion of inside information for public disclosure would allow a **better enforcement of the market abuse prohibitions**. At the same time, there will be a **huge simplification of companies’ administrative burdens**.

**A second-best solution could be:**

- i) **modifying the conditions for the delay in order to allow issuers to use the delay as a remedy against a premature disclosure<sup>15</sup>.** The condition that a listed company does not mislead the public when delaying disclosure of inside information should **be deleted or modified** stating for example that: “the purpose of the delay of the disclosure is not to mislead the public” (art. 17.4b)) and;
- ii) **providing a wider set of examples of legitimate interests and re-introducing, among the examples in the ESMA’s guidelines, also the case of “impending developments that could be jeopardized by premature disclosure”.**

<sup>13</sup> See Consob, Linee Guida - gestione delle informazioni privilegiate, ottobre 2017, par. 3.3.

<sup>14</sup> See also EuropeanIssuers, *Response EC Consultation SME Listing*, 26 February 2018, p. 16.

<sup>15</sup> See SMSG, *Advice to ESMA, Response to ESMA’s Consultation Paper on draft guidelines on market abuse regulation*, 31 Marzo 2016, fn. 2; the Advice states: “Moreover, a general consensus has emerged that the right to delay disclosure of inside information is no longer to be interpreted in a narrow way (which is acknowledged by the NCAs, courts and also in literature)”.



*The other major issue that should be tackled under the MAR Review regards the **scope of application**; MAR has been extended to trading platforms (MTFs) beyond regulated markets. This extension has substantially increased the level of regulation for smaller companies listed on these MTFs, as these companies now must compile insider lists, notify managers' transactions and comply with the duty to publish inside information although many MTFs before MAR had already in place some rules on disclosure of price sensitive information<sup>16</sup>.*

*Many smaller companies entered those junior markets because they considered themselves not ready to cope with a more stringent regulatory environment yet and wanted to benefit from lighter and more proportionate rules. Extension of MAR to MTFs endangers the business model of some of these markets developed to attract small growing companies to capital markets.*

*Some simplifications have been proposed in the context of the SME Listing Package but available only for SMEs on SME Growth Markets. Though this is helpful, the key issue of the extended scope remains. We therefore advocate for excluding non-regulated markets from the scope of certain MAR provisions (especially on disclosure and insider lists).*

*Moreover, it would be useful to verify which kind of activity of enforcement has been put in place on MTFs by the Competent Authorities, further to the extension of the rules to MTFs. Therefore, we would suggest ESMA conducting a survey among Member States in this regard.*

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<ESMA\_COMMENT\_CP\_MAR\_1>

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<sup>16</sup> See Veil and C. Di Noia, SME Growth Markets, D. Busch a G. Ferrarini, Regulation of the EU Financial Markets: MiFID II and MiFIR, Oxford University Press, 2017, p. 354 e ss

**Q1. 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>

*No, we don't think there is a real need for the spot FX wholesale market to be covered by the market abuse regime.*

*The spot FX market is mainly an OTC market where the price is not necessarily determined by the interaction of demand and supply in a trading venue. Furthermore, as already recognised by ESMA, (i) the spot FX market wouldn't fit within the MAR's framework and (ii) many of the most important market participants have adhered to the FX Global Code.*

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_1>

**Q2. 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>

*Yes, we agree that structural changes would be necessary. This is an additional argument not to include FX spot markets in the scope of MAR.*

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_2>

**Q3. 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_3>

**Q4. 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_4>

**Q5. 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>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP\_MAR\_5>

**Q6. 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>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP\_MAR\_6>

**Q7. 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>  
*In general, we welcome initiatives aimed at streamlining the obligations related to buy back programmes. We deem appropriate to simplify the reporting mechanism by notifying buy-back programmes only to one National Competent Authority ("NCA"). We would prefer option 2, i.e. reporting to the NCA where the issuer have requested admission to trading, because this is the only option where the issuer has full knowledge and therefore full control. Though option 3 also would reduce the number of NCAs reported to, the issuer would still have to monitor constantly what the most liquid market is. Furthermore, the NCA to report might change over time depending on whether there are changes in liquidity pools.*

TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP\_MAR\_7>

**Q8. 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>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP\_MAR\_8>

**Q9. 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>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP\_MAR\_9>

**Q10. 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>

*We also welcome a harmonization of the set of information to be provided to the NCA, as suggested by ESMA. We only ask to check if, according to ESMA proposal, there is no overlap between field 3 (i.e., trading venue transaction identification code) and field 36 (i.e., venue MIC code) and to better specify the difference between field 7 (i.e., buyer identification code) and field 12 (i.e., buyer decision maker code LEI).*

TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP\_MAR\_10>

**Q11. Do you agree with ESMA's preliminary view?**

<ESMA\_QUESTION\_CP\_MAR\_11>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP\_MAR\_11>

**Q12. 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>  
*We agree with ESMA's view that is much more useful for the market participants to have buy-back transactions data only in aggregate form. In particular (i) aggregate volume traded, (ii) weighted average price per share and (iii) total consideration on a daily basis best suit to satisfy the need to know of market participants*  
<ESMA\_QUESTION\_CP\_MAR\_12>

**Q13. 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>

*See our comments in the introduction on the twofold notion of inside information.*

*We would also like to underline one more issue that should be tackled under the MAR Review which concerns the circulation of information within the same group of companies; according to recital 19, MAR "is not intended to prohibit discussions of a general nature regarding the business and market developments between shareholders and management concerning an issuer. Such relationships are essential for the efficient function of markets and should not be prohibited by this Regulation". Upon certain conditions - it is possible to share inside information with third parties on a selective basis (eg. major shareholders for a capital increase). For example – under an obligation of confidentiality and organizational measures suitable to segregate inside information - if necessary for the purposes of a company decision, the directors could encourage a moment of dialogue with the main shareholders, ensuring, in any case, that the confidentiality of the information is not jeopardised and considering the need to involve the major shareholders for the decision. This is a typical example, in our view, of the "duties" that should legitimate a selective disclosure according to art. 17.8 MAR; **MAR Review should therefore include a specific safe harbour for intragroup circulation of information.***

*Concerning emission allowances, some of our members reported that they have never experienced a single case of inside information concerning emission allowances since the first application of MAR, also because the price significance of information related to emission allowance never materially occurs, given the peculiarities of this market. Even in the remote case of significance, outages are already covered by definition of inside information and consequential disclosure obligations provided by EU Regulation No. 1227/2011 on wholesale energy market integrity and transparency ("REMIT"). Hence, wholesale energy market participants under REMIT have difficulties in identifying further information held by them in respect of emission allowances and derivatives thereof.*

*Therefore, we propose to introduce an incorporation by reference to the definition of inside information provided by REMIT into the definition of inside information provided by Article 7(1)(c) MAR to avoid these adverse consequences for wholesale energy market participants. This would mean that wholesale energy market participants would have to comply exclusively with the "lex specialis" REMIT definition of insider information with regard to emission allowances and derivatives thereof."*

<ESMA\_QUESTION\_CP\_MAR\_13>

**Q14. Do market participants consider that the definition of inside information is sufficient for combatting market abuse?**

<ESMA\_QUESTION\_CP\_MAR\_14>

*No. The definition of inside information is even too wide as illustrated above and therefore not sufficient to combat market abuse in practice. The differentiation of the notion would help.*

<ESMA\_QUESTION\_CP\_MAR\_14>

**Q15. 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_15>

**Q16. 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_16>

**Q17. 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>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP\_MAR\_17>

**Q18. 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>  
*No difficulties have been encountered.*  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP\_MAR\_18>

**Q19. 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>  
*Article 7(1) (b) of MAR must be kept separate from the definition set forth in Article 7(1) (a).*  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP\_MAR\_19>

**Q20. What changes could be made to include other cases of front running?**

<ESMA\_QUESTION\_CP\_MAR\_20>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP\_MAR\_20>

**Q21. 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>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP\_MAR\_21>

**Q22. 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>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP\_MAR\_22>

**Q23. What benefits do pre-hedging behaviours provide to firms, clients and to the functioning of the market?**

<ESMA\_QUESTION\_CP\_MAR\_23>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP\_MAR\_23>

**Q24. What financial instruments are subject to pre-hedging behaviours and why?**

<ESMA\_QUESTION\_CP\_MAR\_24>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP\_MAR\_24>

**Q25. 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>

*As already illustrated in the Introduction the delay of disclosure, which should be the solution not to prematurely publish inside information, raise certain problems:*

- i) *the first one is linked to the “**function**” of the delay in the MAR. Already the MAD has created a legal setting where the possibility of delaying the publication of inside information must be regarded as the natural counterweight to a rather broad definition of inside information (which is the same both for the market abuse prohibitions and for the duty of disclosure). This has not changed with the MAR, but what has changed is that **ESMA considers the delay as exceptional**<sup>17</sup>. However, this is neither clear from the level 1 text nor it is reasonable from a broader perspective. As the legislator in the MAR, like in the MAD, has opted for a **rather broad definition of inside information** (covering both the market abuse prohibitions and the duty of disclosure), **the delay should be regarded as the natural counterweight to protect the legitimate interests of the issuer. This should be clarified in level 1.** M&A transactions may serve as a perfect example: they cannot take place without the option of delaying the disclosure of inside information; and this is, by the way, also in the interest of investors;*
- ii) *the second problem is related to the **condition stating that the delay should not be “likely to mislead the public”**. As stressed in the ESME Report<sup>18</sup> and by other authors<sup>19</sup>, this condition - taken literally - it is almost impossible to comply with, because “the definition of “inside information” per se implies that a reasonable investor would use it as a basis for her decisions: thus, any delay in the dissemination is almost by definition misleading and it is very difficult to think of a circumstance in which delay would be permissible under this test”. This condition, therefore, **should be deleted or “modified** in order to allow companies to trust on a **safer legal basis***

<sup>17</sup> ESMA Final Report /2015/1455, § 172. However, the Italian competent authority (CONSOB) in its guidelines tends to consider the delay as “physiological”. In Italy, in 2018, there were 362 delays (versus 3-4 before the introduction of MAR) many of those delays are linked to extraordinary operations or periodical financial information.

<sup>18</sup> See Esme Report, Market Abuse EU legal framework and its implementation by Member States: a first evaluation.

<sup>19</sup> The Law of Capital Markets in the EU, Sergakis, 2018, p. 109



when they decide to disclose negotiations when they can be confident, with a sufficient degree of certainty, that a positive outcome is reached”<sup>20</sup>.

- iii) finally, concerning the condition of the “prejudice of a legitimate interest of the issuers” ESMA’s guidelines remain overly restrictive. The **removal by ESMA of “impending developments that could be jeopardized by premature disclosure” from the list of illustrative examples** is unhelpful to issuers. As a result, issuers may assume that impending developments are incapable of constituting a legitimate interest justifying delayed disclosure. Therefore, we think that the case of “impending development should be re-inserted.

<ESMA\_QUESTION\_CP\_MAR\_25>

**Q26. 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 most important problem is linked to the twofold notion of inside information and to assessment of the condition of not misleading the public, see the introduction.

<ESMA\_QUESTION\_CP\_MAR\_26>

**Q27. 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>

MAR has already resulted in a **complex regulation with heavy bureaucratic and burdensome procedures**. Introducing a system and controls mandatory requirement for identifying, handling and disclosing inside information would only **create additional burdens on issuers**, without solving any of the problems the issuers raised in several occasions and restated in answer to Q.25 above. Moreover, ESMA fails to explain which problems the introduction of these new requirements intends to solve.

In our view, it’s up to the **issuers to decide how to organise themselves to be compliant with the legislation** to find solutions adapted to the scale, size and nature of their business. Consob issued some guidelines regarding the management of inside information recommending to set up some procedures for the monitoring of information which can develop into inside ones but these guidelines are, however, just recommendations and, consequently, not binding.

Finally, we also find **misleading the reference to article 16 MAR** which was set up for a different purpose i.e. detecting and reporting suspicious transactions, through “professional” people in the framework of their “professional activity”.

Article 17, on the contrary, is about publishing inside information.

**Proportionality is one of the major problems of MAR as it has been extended to MTFs without considering the scale, size and nature of the companies listed on those markets (see the Introduction).**

<sup>20</sup> See C. Di Noia and M. Gargantini, Issuers at midstream: disclosure of multistage in the current and in the proposed EU Market Abuse Regime,” European Company and Financial Review”, p. 520.



We take the opportunity to raise **another issue related to the scope of application of art. 16 MAR**. Due to a broad interpretation in a Q&A of ESMA (Q6.1) and differently from the previous regime, the abovementioned rules are applicable also to non-financial counterparties (NFC) professionally arranging or executing transactions in financial instruments. The ESMA Q&A brings into scope non-financial firms whose main activities however do not consist in arranging or executing financial transactions on a professional basis. NFC's engage in financial transactions on an ancillary basis only, with the main objective to hedge risks resulting directly related to their commercial or treasury financing activities (mainly with derivatives on exchange rate or taxes). Hence, decisions to use financial instruments are taken based on operative requirements, within the framework of internal guidelines, and not with the aim to chase opportunities in financial markets. Moreover, NFC's mostly act as clients of the financial sector in the respective transactions, not as providers or market makers. Therefore, **NFCs should not have to comply with the obligation of Art. 16 MAR**. From our perspective the review of the MAR should clarify the scope of Art. 16 MAR by excluding non-financial firms. It has never been the political intention to bring the "real economy" into the scope of that regime. Rather, it appears to be a mixture of an ambiguous wording (such as the reference to a trading desk for which there is no definition) and a far-reaching interpretation of ESMA that resulted in the current situation.

<ESMA\_QUESTION\_CP\_MAR\_27>

**Q28. Please provide examples of cases in which the identification of when an information became "inside information" was problematic.**

<ESMA\_QUESTION\_CP\_MAR\_28>

Difficulties arise for example with reference to the identification of **the moment in time in which a set of circumstances may reasonably be expected to come into existence** (this is the case, for example, of a negotiation or a participation to a procedure for the award of public work contracts; being multi-stage events in a protracted process it is not easy for the issuer to identify the moment in which the information becomes inside. There is always the risk to communicate information which are not mature enough)

<ESMA\_QUESTION\_CP\_MAR\_28>

**Q29. 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>

ESMA, in a Q&A dated September 2017, clarified that when the issuer has delayed the disclosure of an inside information and this information has subsequently lost the element of price sensitivity, that information ceases to be inside information and thus is considered out of scope of art. 17.1 MAR. Therefore, the issuer is neither obliged to publicly disclose the information, nor to inform the NCA, in accordance with art. 17.5, that the disclosure of such information was delayed.

ESMA proposes that the issuer should notify the NCA of the delay of disclosure of inside information even if that information has lost its inside nature; the purpose is to enable the NCA to better identify possible cases of insider dealing.

**We do not agree on this proposal as it would pose problems of confidentiality and it would create more confusion on the notion of inside information.** Moreover, it would add further administrative burdens on issuers while the NCAs have already at their disposal many other tools to detect abusive behaviours (the

*communications of suspicious transactions by intermediaries, the communications of managers' transactions under art. 19 MAR, the insider lists).*

<ESMA\_QUESTION\_CP\_MAR\_29>

**Q30. 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>

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<ESMA\_QUESTION\_CP\_MAR\_30>

**Q31. 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_31>

**Q32. 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_32>

**Q33. Do you agree with the proposed amendments to Article 11 of MAR?**

<ESMA\_QUESTION\_CP\_MAR\_33>

*It should be clarified that art. 11 is a real mandatory safe harbour, that means, that the subjects mentioned in art. 11 that sound the market in a way described in art. 11 are always safe; however, they can do market sounding in any other way provided that they comply with MAR duties.*

*Furthermore, the documentation duties are too extensive and should be simplified: this is why to our knowledge market participants currently do not want to be sounded.*

*Considering all above **while we support the SMEs' Listing Package exemption** to all issuers seeking a private placement of bonds when these issuers already have financial instruments admitted to trading on a trading venue, we **would like to extend this exemption also to private placements of shares.***

<ESMA\_QUESTION\_CP\_MAR\_33>

**Q34. 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>

*It could be useful to clarify the perimeter of the application of the market sounding; it could be useful to clarify for example that market soundings always refer to a “transaction” involving **financial instruments** (as referred in art. 2 MAR determining the scope of application) so that the provisions on market soundings are not applicable in cases where the transaction involves only tangible assets (to make an example the transaction of a gas company for the sale of one of its refineries should not be subject to the market sounding provisions as it does not involve any financial instruments).*

*We agree that it may be difficult in practice to distinguish between a mere negotiation and market sounding process. It should be clarified that negotiation between parties does not fall into market sounding definition.*

*More specifically:*

- *a list of cases/categories of transaction in which market sounding rules are out of scope (“illustrative list” as main reference for the operability including the following cases: one-to-one negotiations, transactions concern tangible assets, participation in a competition for the acquisition of a non-listed company, opportunity of joint acquisition of a non-listed company, meeting with banks or advisor aimed at discussing possible future investments) should be provided.*
- *a list of phases of the transaction in which market sounding rules could not be applied, as per example interactions with the potential counterparty for scouting or negotiations purposes should be provided.*

*As far as the scope of the definition of market sounding is concerned, we believe that the scope is clear: to assess the interest of potential investors in a potential transaction.*

*Notwithstanding the above, the definition of market sounding should be integrated also by clarifying that if the transaction to be developed outside the European market involves a Europe-based company as “issuer”, market sounding rules could be applied in any case ensuring a safe harbour.*

*We think that either an amendment to the Level I Regulation or ESMA’s guidelines could help in clarifying the circumstances above mentioned.*

<ESMA\_QUESTION\_CP\_MAR\_34>

**Q35. 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>

*According to the current status of the laws in force and the ESMA guidelines and cases published until now, in our view the applicability of the market soundings regulations on acquisition/disposal transactions is limited to the initial step of each transaction, during the phase of identification of opportunities for potential acquisition/disposal transactions, prior to preparing the preliminary investigation/pre-trial work and before due diligence activities*

<ESMA\_QUESTION\_CP\_MAR\_35>

**Q36. 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>

*A clarification of what constitutes the “announcement” could be useful; it is not clear if the announcement above mentioned refers to the price sensitive communication of the issuer and related to the transaction for which market sounding is put in place or it is something different.*

<ESMA\_QUESTION\_CP\_MAR\_36>

**Q37. 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_37>

**Q38. 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 do not agree on making the use of recording facilities compulsory for all soundings. More flexibility should be allowed to listed issuer which, differently from intermediaries, do not use mandatory recorded telephones lines.*

<ESMA\_QUESTION\_CP\_MAR\_38>

**Q39. Do you agree with ESMA’s preliminary view on the usefulness of insider list? If not, please elaborate.**

<ESMA\_QUESTION\_CP\_MAR\_39>

*The management of the insider list is not only very burdensome also due to all the information that must be gathered by the issuer and inserted in the list but also not clear due to the notion of inside information (see the introduction). As illustrated above, if inside information must be published as soon as possible, the insider list should be open only in case of delay. Considering all above we question if the legislator reached the best balance between the supposed usefulness of these lists and the huge administrative burdens on companies. Therefore, we suggest some simplifications along the lines provided in answer to Q 44.*

<ESMA\_QUESTION\_CP\_MAR\_39>

**Q40. Do you consider that the insider list regime should be amended to make it more effective? Please elaborate.**

<ESMA\_QUESTION\_CP\_MAR\_40>

*In order to simplify the regime, a possible solution could be also the deletion of some of the information required in the Annex of the Delegated Regulation 2016/347 and could regard: the national identification number, personal address*

<ESMA\_QUESTION\_CP\_MAR\_40>

**Q41. 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>

**Q42. 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>

*We agree with ESMA to expand the scope of Article 18(1) of MAR 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, such as auditors. In some Member States according to the interpretation of some CAs, auditors are already included among the subjects to which art. 18.1 MAR was applicable<sup>21</sup>.*

<ESMA\_QUESTION\_CP\_MAR\_42>

**Q43. 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>

*We think that permanent section of the insider list should be maintained; the problem of inflation of people in the permanent insider list is a matter of supervision.*

*We welcomed SMEs Listing Package final agreement to set forth an obligation for SMEs on SMEs Growth Markets to keep only insider lists of those persons “who, due to the nature of their function or position within the issuer, have regular access to inside information” as this is a simplification.*

*However there are some more problems affecting the regime of insider list in general. As stated before, Issuers must publish inside information as soon as possible, according to article 17.1 and therefore the*

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<sup>21</sup> See Consob's guidelines on the management of inside information October 2017 (see par.5.2.6).

*insider list should be opened only in case of delay. However, in some Member States the competent authorities take a different approach and ask for the insider list to be opened before, in the space of time necessary for the issuer to public the price sensitive information. It should be very helpful that the final sentence of Article 2, paragraph 1 of Commission Implementing Regulation (EU) 2016/347 is redrafted as follows: "... New sections shall be added to the insiders' list upon the identification of new inside information, as defined in Article 7 of Regulation (EU) No 596/2014, **provided that the disclosure of the inside information has been delayed according to article 17, paragraphs 4 or 5, of Regulation (EU) no. 596/2014.**"*

*On the other side due to the fact that also intermediate steps in a protracted process may constitute inside information it seems that issuer should keep the insider list at the level of each piece of inside information rather than that of each transaction.*

<ESMA\_QUESTION\_CP\_MAR\_43>

#### **Q44. Do you agree with ESMA's preliminary view?**

<ESMA\_QUESTION\_CP\_MAR\_44>

*ESMA would like to clarify in Level 1 that the issuer should not have to keep the entire list of natural persons having access to inside information but just one contact person for each external provider having access to inside information; those external service providers should include in their own insider lists the natural or legal persons accessing the piece of inside information working for them under a contract of employment or under any other type of arrangement. This is already a common practice in some member States.*

**We fully support ESMA.** Clarifications in Level 1 avoid diverging interpretations and prevent problems for issuers related to the different supervisory practices related to cross-border provisions of services.

<ESMA\_QUESTION\_CP\_MAR\_44>

#### **Q45. 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>

<ESMA\_QUESTION\_CP\_MAR\_45>

#### **Q46. 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 types and the number of transactions to be notified have been increased according to MAR and compared to the previous regime (let's think, for example, to gifts, inheritances and donations that were not included among the transactions to be notified under MAD and are completely passive from the PDMR's point of view). It would be therefore interesting to gather data from the NCAs about the number of transactions notified under MAR in comparison with the ones notified under the previous regime in order to ascertain if the market has been overflood with communications of marginal value as we suppose.*



In order to avoid an overflow of useless information we propose **to raise the threshold** for management transactions up **to 100.000 euro**.

This is not the only problem affecting manager transactions, as issuers need also **clearer guidance on which kind of PDMR transactions need or do not need to be disclosed, taking into account** the scope of the relevant provisions in the context of different types of transaction. Regarding the guidance on the transaction to be disclosed, it should be clarified that **no notification duty is required for shares granted for free**; the moment in which shares are granted for free to PDMRs (meaning the moment in which shares are credited in the account of the PDMR) should not be notified (there is no discretion by the PDMR and there is no signaling value for the market) while **when the shares are sold there should be a notification**. A different interpretation would imply a duplication of notifications, more work to be done by the issuer's staff and the increase of indirect costs. For **phantom stock**, the notification duty should be excluded as the PDMR has only the right to receive cash.<sup>22</sup>

We support the aggregation of transactions as a means of making the disclosure exercise as simple as possible. This should be continued and be on a same day basis with no netting, with only the highest and lowest prices (not the weighted average) disclosed.

In any case we suggest simplifying the system of notification making **the Competent Authorities responsible for disclosing managers' transactions to the public** (this is already an option left to Member States which has been exercised by the AFM in the Netherlands).

On the **timing for the notifications**, we welcome the modification recently adopted in the SME listing package and extended to all issuers.

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<ESMA\_QUESTION\_CP\_MAR\_46>

**Q47. 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>  
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<ESMA\_QUESTION\_CP\_MAR\_47>

**Q48. Did you identify alternative criteria on which the reporting threshold could be based? Please explain why.**

<ESMA\_QUESTION\_CP\_MAR\_48>

We suggest a **modification on how to calculate the threshold**. In order to avoid the notification of irrelevant amount and reduce administrative burdens, we suggest that the notification should be done for tranches of threshold. In practice, once the threshold has been reached, the calculation of the threshold

<sup>22</sup> See also European Issuers, *Response EC Consultation SME Listing*, 26 February 2018, p. 22.

*should restart from zero until a new threshold has been reached again (meaning that all the following amounts must be summed up until they reach again the threshold).*

<ESMA\_QUESTION\_CP\_MAR\_48>

**Q49. On the application of this provision for EAMPs: have issues or difficulties been experienced?**

<ESMA\_QUESTION\_CP\_MAR\_49>

<ESMA\_QUESTION\_CP\_MAR\_49>

**Q50. 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

*See answer to Q.48*

<ESMA\_QUESTION\_CP\_MAR\_50>

**Q51. 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 consider that the 20% threshold included in Article 19(1a)(a) and (b) is appropriate.*

<ESMA\_QUESTION\_CP\_MAR\_51>

**Q52. 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>

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<ESMA\_QUESTION\_CP\_MAR\_52>

**Q53. 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MAR\_53>



**Q54. 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>

No.

<ESMA\_QUESTION\_CP\_MAR\_54>

**Q55. 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 persons closely associated with PDMRs, including any benefits and downsides.**

<ESMA\_QUESTION\_CP\_MAR\_55>

*As already well explained in the CP the possible extension of closed periods to issuers would have several downsides considering also that issuers would be always subject to sanctions in case of infringements of artt. 14 and 15 of MAR. For the above mentioned reasons **we would not extend closed periods to issuers**. In addition, we highlight that the extension of closed periods to 30 days to corporate issuers can create significant market stress and negative impacts on the management of the financial needs of the issuers, limiting the capital funding process and increasing financial risks. Specifically: (i) the concentration of all issuers in a narrow market time frame (this can have a negative impact on the issuances and on the capacity to ensure the financing needs, in particular for the corporates with low credit ratings) as well as a risk of potential impact on the share price and (ii) the increase in the execution risk of the corporate issuances due to the higher market volatility and the shorter possible market windows.*

***As far the possible extension to closely associated persons we agree with ESMA** stating that indirect transactions conducted through or for a closely associated person are already subject to provisions of closed period and that this extension would place burdens on PDMRs to make sure that they correctly identify the closely associated persons and on issuers that would have to provide communications on the closed period start and end dates to them. All these burdens would be disproportionate.*

*Moreover, an explicit extension of the closed period obligations should not affect the exemption ensured to buy-back programme managed, independently, by an investment firm should according to art. 4, par. 2, let. b) of the EU Delegated Regulation 2016/1052.*

<ESMA\_QUESTION\_CP\_MAR\_55>

**Q56. 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>

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<ESMA\_QUESTION\_CP\_MAR\_56>

**Q57. 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>

**Q58. 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>  
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<ESMA\_QUESTION\_CP\_MAR\_58>

**Q59. 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>  
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<ESMA\_QUESTION\_CP\_MAR\_59>

**Q60. Do you agree with ESMA's preliminary view? If not, please elaborate.**

<ESMA\_QUESTION\_CP\_MAR\_60>  
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<ESMA\_QUESTION\_CP\_MAR\_60>

**Q61. 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>  
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<ESMA\_QUESTION\_CP\_MAR\_61>

**Q62. 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>  
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**Q63. Do you agree with ESMA's conclusion? If not, please elaborate.**

<ESMA\_QUESTION\_CP\_MAR\_63>  
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<ESMA\_QUESTION\_CP\_MAR\_63>

**Q64. Do you agree with ESMA preliminary view? Please elaborate.**

<ESMA\_QUESTION\_CP\_MAR\_64>  
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<ESMA\_QUESTION\_CP\_MAR\_64>

**Q65. 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>  
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<ESMA\_QUESTION\_CP\_MAR\_65>

**Q66. 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>  
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<ESMA\_QUESTION\_CP\_MAR\_66>

**Q67. 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>  
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<ESMA\_QUESTION\_CP\_MAR\_67>

**Q68. 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>



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<ESMA\_QUESTION\_CP\_MAR\_68>

**Q69. What are your views regarding those proposed amendments to MAR?**

<ESMA\_QUESTION\_CP\_MAR\_69>  
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<ESMA\_QUESTION\_CP\_MAR\_69>

**Q70. 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>  
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<ESMA\_QUESTION\_CP\_MAR\_70>

**Q71. Please share your views on the elements described above.**

<ESMA\_QUESTION\_CP\_MAR\_71>  
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