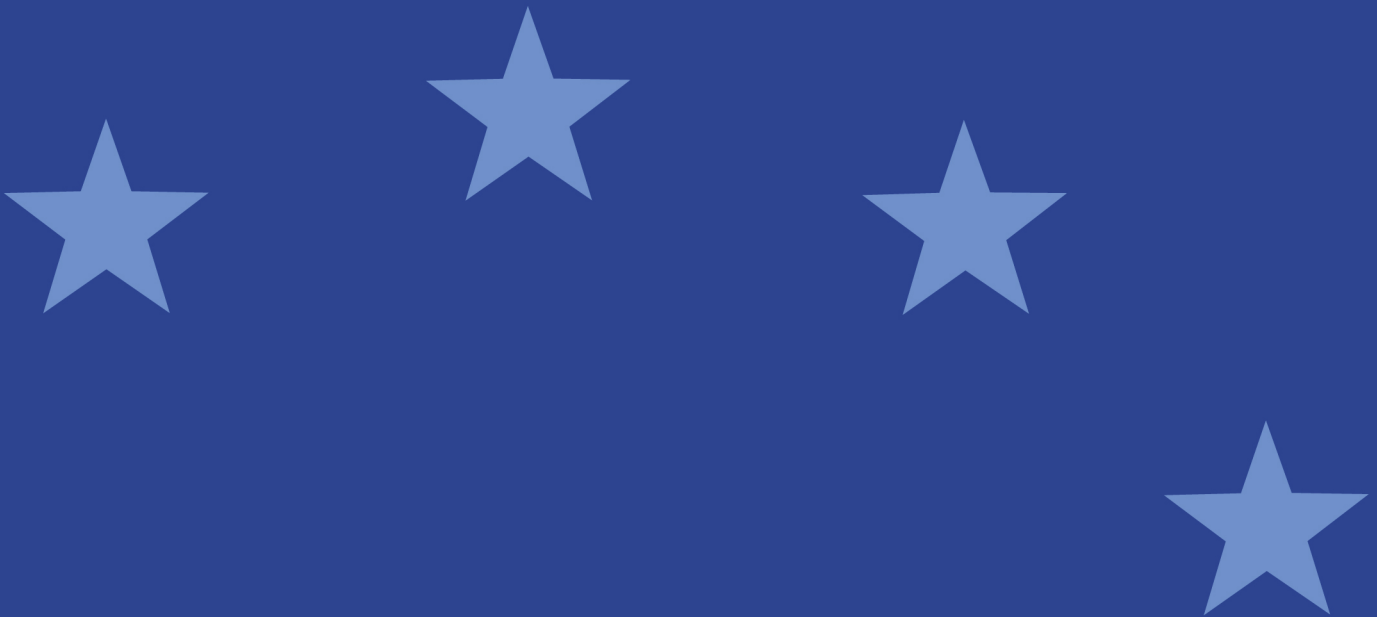




European Securities and
Markets Authority

Reply form for the ESMA MAR Technical advice





European Securities and
Markets Authority

Date: 20 August 2014



Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the ESMA Consultation Paper - Draft technical advice on possible delegated acts concerning the Market Abuse Regulation (MAR), published on the ESMA website ([here](#)).

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, please follow the instructions described below:

- i. use this form and send your responses in Word format;
- ii. do not remove the tags of type <ESMA_QUESTION_TA_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- iii. 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:

- i. if they respond to the question stated;
- ii. contain a clear rationale, including on any related costs and benefits; and
- iii. describe any alternatives that ESMA should consider

To help you navigate this document more easily, bookmarks are available in “Navigation Pane” for Word 2010 and in “Document Map” for Word 2007.

Responses must reach us by **15 October 2014**.

All contributions should be submitted online at www.esma.europa.eu under the heading ‘Your input/Consultations’.

Naming protocol - In order to facilitate the handling of stakeholders responses please save your document using the following format:

ESMA_MAR_CP_TA_NAMEOFCOMPANY_NAMEOFDOCUMENT: e.g. if the respondent were ESMA, the name of the reply form would be ESMA_MAR_CP_TA_ESMA_REPLYFORM or ESMA_MAR_CP_TA_ESMA_ANNEX1

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 under the heading 'Disclaimer'.



General information about respondent

Are you representing an association?	Yes
Activity:	Investment Services
Country/Region	Finland



Introduction

Please make your introductory comments below, if any:

< ESMA_COMMENT_MAR_TA_1 >

Federation of Finnish Financial Services (FFI) represents financial companies. Our objective is to secure a benign operating environment, well-functioning financial market and effective payment systems. We also promote loss prevention in addition to social welfare and safety. The FFI represents banks, insurers, authorized pension companies, finance houses, securities dealers and financial employers operating in Finland.

< ESMA_COMMENT_MAR_TA_1 >

II. Specification of the indicators of market manipulation

Q1: Do you agree that the proposed examples of practices and the indicators relating to these practices clarify the indicators of manipulative behaviours listed in Annex I of MAR?

<ESMA_QUESTION_MAR_TA_1>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TA_1>

Q2: Do you think that the non-exhaustive list of indicators of market manipulation proposed in the CP are appropriate considering the extended scope of MAR in terms of instruments covered? If not, could you suggest any specific indicator?

<ESMA_QUESTION_MAR_TA_2>

Regarding the proposed examples of practices and indicators relating to these practices to clarify the indicators of manipulative behaviour in Annex 1 of MAR we have some comments and observations.

We support the aim of the proposal - to assist the market - about the specification of the indicators of market manipulation. We are, however, not convinced of the need of so many examples. There is an obvious risk that the proposed specifications are too detailed. We are worried that the result of this level of details could be that market manipulation done in slightly another manner or way could be regarded outside the scope of the regulation. Even if the examples are indicative and the list is non-exhaustive, the amount of examples and detail, could be read or understood as more or less exhaustive. Furthermore, we are not sure that such a detail list will assist for example courts in their decision of certain behaviour. The risk with so much detail is that the discussion will be focused on the details instead of the abusive behaviour.

To shorten the list it could be enough to state that some of those practices can be done by using cross-product strategies or acting on different venues and that of course also OTC-transactions could be used to manipulate the market.

<ESMA_QUESTION_MAR_TA_2>

Q3: Do you consider that the practice known as “Phishing”¹ should be included in the list of examples of practices set out in the draft technical advice?

<ESMA_QUESTION_MAR_TA_3>

In our opinion “phishing” should not be included. The concept is too general and is not something directly associated with market abuse. Phishing is a fraudulent action and can in the same way as forgery and fraud be used in connection with market abuse – but cannot on its own be considered as market abuse.

<ESMA_QUESTION_MAR_TA_3>

Q4: Do you support the reference to OTC transactions in the context of cross product manipulation (i.e. where the same financial instrument is traded on a trading venue and OTC) and inter-trading venue manipulation (i.e. where a financial instrument traded on a trading venue is related to a different OTC financial instrument)?

<ESMA_QUESTION_MAR_TA_4>
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<ESMA_QUESTION_MAR_TA_4>

¹ In this context, “phishing” should be understood as the attempt to acquire sensitive information, such as passwords or account details, by masquerading as a trustworthy entity in an electronic communication.



III. Minimum thresholds for the purpose of the exemption for certain participants in the emission allowance market from the requirement to publicly disclose inside information

Q5: If you do not agree with the suggested thresholds, what would you consider to be appropriate thresholds of CO₂ emissions and rated thermal input below which individual information would have no impact on investors' decisions? Please substantiate.

<ESMA_QUESTION_MAR_TA_5>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TA_5>

Q6: In your opinion, what types of entity-specific, non-public information held by individual market participants are most relevant for price formation or investment decisions in the emission allowance market?

<ESMA_QUESTION_MAR_TA_6>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TA_6>

IV. Determination of the competent authority for notification of delays in public disclosure of inside information

Q7: Do you agree with the proposals for determining the competent authority to whom issuers of financial instruments and emission allowances market participants should notify delays in disclosure of inside information?

<ESMA_QUESTION_MAR_TA_7>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TA_7>

Q8: Under point c) of paragraph 2 of the draft technical advice, in cases in which the issuer's financial instruments were admitted to trading or traded simultaneously in different MSs, which criteria should ESMA take into consideration to determine the relevant competent authority?

<ESMA_QUESTION_MAR_TA_8>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TA_8>

Q9: Do you consider it would be appropriate to determine in a different manner the competent authority for the purpose of Article 17(5) of MAR, where the delay has the scope of preserving the stability of the financial system? If so, should the competent authority be determined according to mechanism set out in Article 19(2) of MAR or in another way?

<ESMA_QUESTION_MAR_TA_9>
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<ESMA_QUESTION_MAR_TA_9>

V. Managers' transactions

Q10: Do you agree with the types of transactions listed in the draft technical advice that trigger the duty to notify?

<ESMA_QUESTION_MAR_TA_10>

In paragraph 91 ESMA considers that the scope of the transactions to be covered under the empowerment of article 19(14) is broad cannot be limited to only the three types of transactions explicitly listed in article 19(7).

We are not of the same opinion as ESMA and take notes that article 19(7) is an addition to article 19(1) which includes particular situations where transactions should be notified such as pledging and lending. The article 19(7) contains no wording to indicate that the special situations in the article are only a non-exhaustive list of special transactions, quite the opposite, the article is very detailed and specific about which transactions should be added to those in article 19(1).

Furthermore, the delegation of power to the Commission in 19(14) do not support a broad interpretation. It is of utmost importance that the mandate to the Commission is very clear and in particular in those cases the Commission is receiving a broad mandate to legislate. In absent of such broad mandate in this case ESMA should reconsider the assessment in paragraph 91.

Article 19(2) states that the notification of manager's transaction should be made within three working days of the transaction date. Regarding gifts, donations and inheritances Paragraph 97 states that the date of the transaction is to be determined by the applicable law of the Member State. We are not totally sure what is meant by transaction and transaction date in relation gifts, donations and inheritances and it would be of value if ESMA could further explore the issue. One way to address the problem could be that the relevant date should be the day when the financial instruments are received (on the account).

<ESMA_QUESTION_MAR_TA_10>

Q11: Under paragraph 3 of the draft technical advice, do you consider the use of a "weighting approach" in relation to indices and baskets appropriate or alternatively, should the use of such approach be discarded? Please provide an explanation.

<ESMA_QUESTION_MAR_TA_11>

We understand that only index-related products, baskets and shares/units of investment funds shall be reported if the weight carried by the issuer's shares and or debt financial instruments in the composition is 20% or more of the total composition of the index-related product, basket or investment fund at the time of the transaction. The SSSA supports the proposed weighting approach in relation to index-related products, baskets, and shares/units of investment funds (UCITS and AIFM).

Regarding trading during a closed period we find the text in Paragraphs 115 –117 rather confusing. In our opinion ESMA should draw a clear line between transaction executed in the context of a discretionary asset/portfolio management mandate and collective asset management, particularly UCITS.

We have no problem to understand the prohibition to trade during closed periods for the financial instruments own by a PDMR in the context of a discretionary asset/portfolio management mandate and furthermore that a PDMR could not invest in a basket and shares/units of investment funds if the above-mentioned threshold is reached during a closed period. But the rules and prohibition should in no regard relate to investments made by a collective asset management. A, fund, particularly a UCITS fund cannot make investment decisions based on circumstances related to a single unit holder. The discussion by ESMA in paragraph 115-117 is not entirely clear and we urge ESMA to make the above mentioned distinction.

<ESMA_QUESTION_MAR_TA_11>



Q12: Do you support the ESMA approach to circumstances under which trading during a closed period may be permitted by the issuer? If not, please provide an explanation.

<ESMA_QUESTION_MAR_TA_12>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TA_12>

Q13: Regarding transactions executed by a third party under a (full) discretionary portfolio or asset management mandate, do you foresee any issue with the proposed approach regarding the disclosure of such transactions or the need to ensure that the closed period prohibition is respected?

<ESMA_QUESTION_MAR_TA_13>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TA_13>

Q14: Do you consider the transactions included in the non-exhaustive list of transactions appropriate to justify the permission for trading during a closed period under Article 19(12)(b)?

<ESMA_QUESTION_MAR_TA_14>
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<ESMA_QUESTION_MAR_TA_14>

VI. Reporting of infringements

Q15: Do you agree with the analyses and the procedures proposed in the draft technical advice? Which best practices from existing national, European or international legislation or guidance could be useful for the protection of the reporting persons under the market abuse regime?

<ESMA_QUESTION_MAR_TA_15>
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<ESMA_QUESTION_MAR_TA_15>

Q16: Do you think there are other elements to be developed in relation to specific procedures for the receipt of reports of infringements under MAR and their follow-up, including the establishment of secure communication channels for such reports

<ESMA_QUESTION_MAR_TA_16>
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<ESMA_QUESTION_MAR_TA_16>

Q17: Do you see any other provision, measure or procedure currently in place under national laws of Member States that could complement the procedures proposed in the draft technical advice for the reporting of infringements of market abuse to competent authorities in order to increase the protection of personal data, especially in relation to:

- **compliance with data retention periods and notification requirements for data processing;**
- **protection of the rights related to data processing;**
- **security aspects of the data processing operation; and**
- **conditions for the management of reporting mechanisms (including limitations of cross-border data transferral)?**

<ESMA_QUESTION_MAR_TA_17>
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<ESMA_QUESTION_MAR_TA_17>

Q18: In the context of “the protection of employees working under contract of employment”, among the following common forms of unfair treatment - namely dismissal, punitive, transfers, harassments, reduction or loss of duties, status, benefits, salary or working hours, withholding of promotions, trainings, and threats of such actions - which are the most important forms of unfair treatment in case of reporting of infringements of market abuse to a competent authority? Which protection mechanisms against such unfair treatments would you consider effective (e.g. mechanisms for fair procedures and remedies including appropriate rights of defence)? Are you aware of any other aspects that could be relevant in this context? Please specify.

<ESMA_QUESTION_MAR_TA_18>
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<ESMA_QUESTION_MAR_TA_18>

Q19: Are you aware of any particular provision, measure or procedure currently in place under national laws of Member States or best practices that could effectively complement the mechanism of the competent authorities and the waiver of liability for report-



ing proposed in the draft technical advice, in order to increase the protection of employees working under a contract of employment? If yes, please provide examples.

<ESMA_QUESTION_MAR_TA_19>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MAR_TA_19>