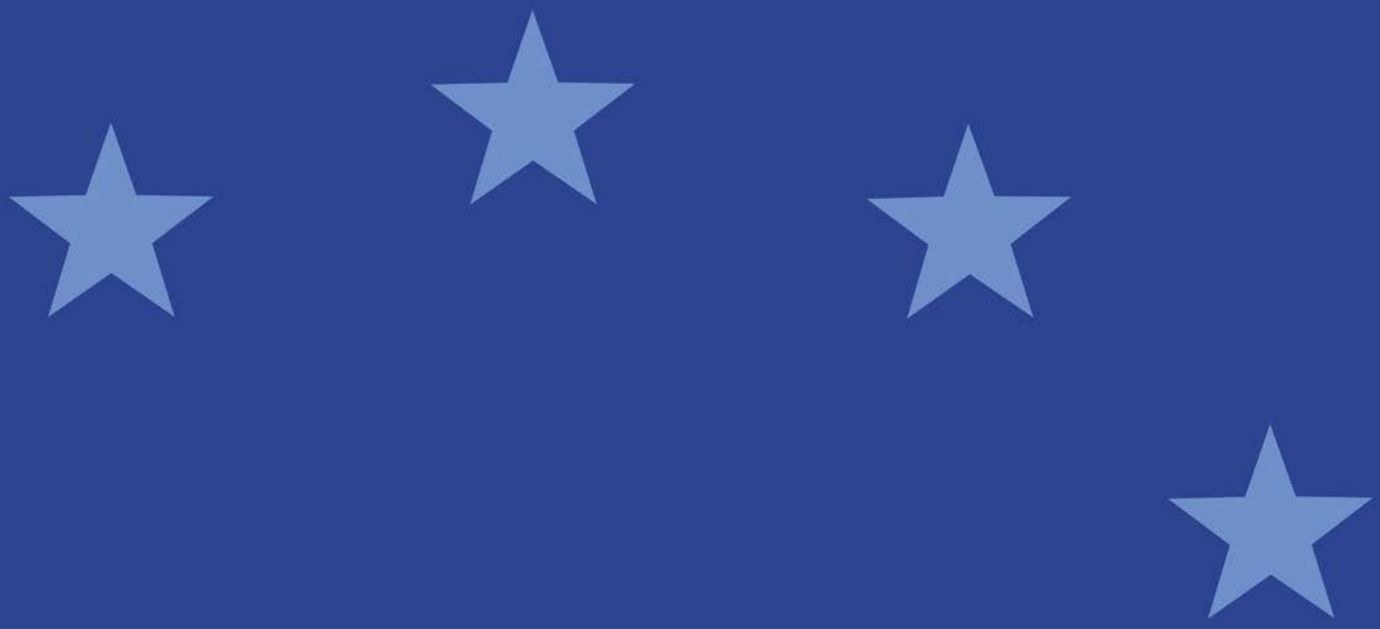
esma European Securities and Markets Authority

Reply form for the Consultation Paper on MAR review report



3 October 2019

European Securities and Markets Authority

Date: 3 October 2019

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 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 under the headings 'Legal notice' and 'Data protection'.

General information about respondent

Name of the company / organisation	Finance Finland
Activity	
Are you representing an association?	☒
Country/Region	Finland

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_CP_MAR_1>
Finance Finland welcomes the opportunity to respond to ESMA's consultation paper regarding the MAR review report.

Finance Finland represents the majority of banks, insurers, finance houses, securities dealers, fund management companies and financial employers operating in Finland. It has approximately 340 member organisations.

<ESMA_COMMENT_CP_MAR_1>

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>
The scope of MAR should not be extended to FX spot contracts based on ESMA's reasoning.
Including spot FX in the scope of MAR would not only affect MAR, but also MiFID/MiFIR and likely also other regulation of banks, payment ser-vice providers as well as other businesses. Due to the many inter-links of MAR and other regulations, we are of the opinion that spot FX should not be mechanically imple-mented in MAR.

FX Global Code, which is an internationally developed and recognized governance framework, is basically built to fulfill missing parts of MIFID II from wholesale market point of view. FX Global Codes point is to promote higher standards in the wholesale FX market. It is also meant cover whole process of wholesale market and trading, which means that all necessary parties, buy and sell sides and also trading platforms vendors should all commit to the Code. After that the coverage is good enough to be able to monitor all different kind of market abuses (market impact, suspicious trading, market toxicity etc.).

Adding FX spot under MAR and the scope of obligations to maintain records under Article 25 and to report transactions under Article 26 of MiFIR will also cause development and maintenance costs.
<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>
FFI agrees with ESMA's preliminary view. FX Global Code covers FX spot and also FX derivatives. It co-vers internal and external processes and behavior to both ways (to market and to customer side). Be-cause FX spot market is an OTC market it probably will mean that current framework of MAR is not very suitable also to cover FX spot. Furthermore, we are referring to the NSA's response.)
<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>
FFI partly agrees with ESMA's analysis. MAR and the EU Directive 2014/57/EU ("MAD") together impose not only administrative sanctions but also criminal sanctions, and market manipulation is a criminal of-fence in most countries. MAD requires that member states implement criminal sanctions for market abuse, and MAR will therefore to some extent also determine what constitutes a criminal offence.
Any potential conflicts with local law implementing MAD should be analysed before the prohibitions and definitions in MAR are amended, as it might also trigger a need for amending MAD. Any amendments should be subject to careful consideration of principles of criminal law and proceedings of justice.

In relation to manipulation of benchmarks, the prohibition in MAR is limited to values that by reference to it determine the amount payable under, or the value of, a financial instrument. The scope of the BMR is, as ESMA concludes, wider and is not tied to only financial instruments. We believe it may be impractical to apply the same broad scope-approach to manipulation of benchmarks and question the potential benefits.

We agree with ESMA's analysis that it may be beneficial to await the outcome of the BMR revision before revising the benchmark definition in MAR. However, we are of the opinion that the definition in MAR should not solely be a reference to the definition of a benchmark in the BMR, since the latter is too extensive and unprecise to be desirable in a regulation of criminal character such as MAR. We would also welcome clarification of the definition of benchmark in MAR.

<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>
No. We believe that e.g. suspension of authorisations given under the BMR would preferably be governed by the BMR to avoid the risk of conflicts of authority and application. The NCA which is to apply MAR might not be the same NCA that the administrator or supervised contributor is under supervision by under the BMR. We also believe that such rules might be difficult to apply in practice in respect of persons located in third countries.
If an administrator of a benchmark or a supervised contributor is found to manipulate a benchmark, that would likely mean it is non-compliant with the BMR which may be reason for suspension of authorisation under the BMR.
<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>
We believe that NCAs has far-reaching authority to request necessary documentation in order to investigate market abuse, as well as request documentation from persons already subject to the BMR.
<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>
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<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>

Yes, we agree. The provision is burdensome. Issuer or the party making the reporting may have difficulties to find out all the markets and trading venues (especially MTF's) where equities are traded. The reporting obligation may therefore be difficult or almost impossible to be fulfilled. Further, it is questionable whether reporting to many NCAs is beneficial at all from a market abuse perspective.
<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>
Instead of choosing one of ESMA's options, we would propose a combination of option 2 and option 3. This would mean reporting to the NCA in the jurisdiction where primary trading is done, in com-bination with the option that the NCA in question, upon request, forwards the information to other NCAs.
In addition to this, we would like to draw attention to how the "most relevant market" is defined. Definition should however be created. Creation of such definition should be possible.
<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>
FFI agrees with this.
<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>
Yes, the list of the fields includes relevant and adequate information.
<ESMA_QUESTION_CP_MAR_10>

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

<ESMA_QUESTION_CP_MAR_11>
FFI agrees with ESMA's preliminary view.
<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>
No.
<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>
Our members report some difficulties relating to this issue.

The legal assessment of at what moment the information shall be deemed to be of a "precise nature" according to article 7 MAR may be problematic, especially in cases where the relevant circumstance or event is part of a protracted process which may result in a particular future event but which is not within the control of the issuer (e.g., investigations or re-views by public authorities).

When it comes to the inside information for persons charged with the execution of orders (engagements involving a sale of a large stock), assessment can be challenging. As the definitions of "precise nature" and "significant price effect" are open for interpretation, it is sometimes difficult to assess when such information is significant enough and when it is precise enough to form inside information. This also applies to situations where no specific mandate or order has been given and discussions have ended but financial service provider's understanding is that a willingness to sell still prevails. The assessment when such information no longer is considered inside information is challenging. Any clarity on these aspects would be advisable.
<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>
There is no need to expand the definition of inside information. To the contrary, narrowing down and/or clarifying the definition could prove more effective in combatting market abuse.
<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>
No, we haven't.
<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>
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<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>
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<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>
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<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>
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<ESMA_QUESTION_CP_MAR_19>

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

<ESMA_QUESTION_CP_MAR_20>
There is no need to expand the definition of inside information. To the contrary, narrowing and/or clarification of the definition could prove more effective in combatting market abuse. This could be achieved by either clarifying or completely removing the second part of Article 7(2), which can be difficult to interpret and apply.

Articles 7(3) can be removed along with Article 7(2). Furthermore, we believe that if information about a part of a process in itself amounts to inside information, it should be captured by Article 7(1) independently.

Article 7(4) is a hypothetical test of what information a “reasonable investor” might potentially use as basis for his or her investment. decision. It can create difficulties in practice since it can be hard to define which real investor that would apply to.

Issuers and market participants have become familiar with and established robust procedures for handling and disclosing inside information, and there is an international infrastructure for information. Hence, the definition of inside information could be narrowed and made more stringent without losing efficiency.

In addition to this, article 7(1)(d) should be extended to other categories of persons that may be aware of a future relevant order.
<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>
Additional guidance in the form of examples of specific situations relating to financial instruments with low liquidity and illiquid markets may serve a purpose for some market participants and issuers. However, we strongly believe that any potential regulation or guidance in this area should be of safe harbour character since the circumstances in each case might vary greatly between different markets and types of financial instruments and transactions. It is important that any regulation or guidance does not disrupt liquidity or prevent the possibility of conducting transactions or making markets.
<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>
Pre-hedging is an important element to ensure liquidity in the markets and important tool to manage risks. Pre-hedging should not be deemed as misuse of client information. A definition of pre-hedging could be added to MAR and specify the conditions where pre-hedging is allowed. We refer to NSA's response to see the detailed analysis of this issue.
<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>
See the previous answer.
<ESMA_QUESTION_CP_MAR_23>

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

<ESMA_QUESTION_CP_MAR_24>
Financial instruments trading in OTC markets where investment firms trade in principal capacity.
<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>
Articles 17(4)(a) and 17(4)(b) would require more clarification. ESMA has provided some clarification about this in MAR Q&A but further clarification is needed e.g. what is really meant by a) "is likely to prejudice legitimate interests of the issuer or emission allowance market participant"; and by b) "delay of disclosure is not likely to mislead the public". We would need more examples, but however the list of examples cannot be exhaustive. Similar kind of interpretation problem is in the prospectus regulation 2017/1129 Article 29(1) when you need to assess whether there is a "significant new factor" to be disclosed and whether you need to supplement the prospectus or not.

It would be beneficial if the ESMA MAR Guidelines regarding delayed disclosure of inside information could be further developed to also include different types of issuers, as well as examples of other situations in which inside information may arise and there may be a legitimate reason for the issuer to delay the disclosure. Such situations could for example include ongoing, protracted, inspections or reviews by public authorities in which the outcome of such investigation or review would likely be jeopardized by immediate public disclosure. It could also be a situation where an issuer is listed on multiple venues in different time zones and where delayed disclosure would be beneficial to protect the integrity of the financial markets.
<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>
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<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>
FFI is of the opinion that it is not necessary to include a specific requirement in MAR for issuers to have systems and controls for identifying, handling, and disclosing inside information as an issuer already today must, in practice, have such systems and controls in place to comply with their obligation ns under article 17 MAR. Furthermore, there is no system or control that could automatically identify and control inside information. Situations vary a lot and the interpretation should be made case-by-case. High-level and generic requirement would only create unnecessary complexity and uncertainties for the issuers without any corresponding gain in the efficiency of their controls and systems compared to 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>
Normally the process for identifying circumstances or events which may comprise inside information is unproblematic. The legal assessment of when the information at hand shall be deemed to be of a “precise nature” according to article 7 MAR may in some cases be problematic if the circumstances or event is part of a protracted process that may result in a particular future event, but which is not within the issuer’s control.
<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>

FFI is of the opinion that the proposed requirement will increase the administrative burden for the NCAs as well as the issuers, without a corresponding increase in the efficiency of the NCAs monitoring of insider dealings or attempted insider dealings. We furthermore note that the NCAs and/or other public authorities already as of today has far-reaching authority to request information on an ad hoc basis in connection with any investigation or criminal proceeding relating to insider dealings or other market abuse.
<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>
FFI supports an amendment of Article 17(5) MAR in order to clarify that in case a listed issuer which is not a credit or financial institution, but which is directly or indirectly controlling a listed or non-listed credit or financial institution, receives information regarding financial difficulties in a credit or financial institution, it should be able to delay the disclosure of such information on the same basis as the credit or financial institution under Article 17(5). This would be in line with the goal to achieve the overarching principle of said Article; i.e., to safeguard the financial stability of the Institution and of the financial system.
<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>
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<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>
There have been situations in which supervisory authorities have implied that they expect an issuer to abstain from the disclosure of certain information received by it from such authorities (e.g., as part of an ongoing inspections), which results in a difficult position for the issuer (especially when such authority is also the competent authority under MAR).
<ESMA_QUESTION_CP_MAR_32>

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

<ESMA_QUESTION_CP_MAR_33>
FFI's members have contradictory views on this. Due to that FFI is of the opinion that market sounding procedures should continue to be optional and flexibility should be retained. Article 11 should be viewed as a safe harbour regulation, which is also supported by recital 35.
<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>
As in the SME listing package, where a municipality (or similar type of an issuer, with listed bonds) is considering an issue of a bond and the contemplated issue is not considered inside information it should be clear that MAR sounding requirements need not to be followed. This could be clarified in secondary level regulation.
<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>
High level interaction on no names basis where the relevant issuer cannot be identified from the context should not trigger MAR sounding obligations (assuming that no inside information is disclosed).
<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>
Reference to "prior to the announcement" is helpful as it is a concrete step and gives clarity to the duration of the obligation to comply with MAR sounding rules. If this is taken out, a similar reference should be included elsewhere in the definition so that the current meaning of publishing an announcement does not change.
<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>
There are generally no major problems indicated from the persons receiving market sounding.

From buy-side point of view there can be situations where DMP is smaller and less professional participant and contacts directly to asset manager without giving a possibility not to receive the sounding. This can happen when issuer is only planning issuance and not (yet) using any financial service provider and making random calls to possible investors. This can sometimes be problematic to an asset manager..
<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>
Written records and meeting minutes should be seen as adequate record keeping. Recording should not be made compulsory for all soundings.

Clarity in MSR record keeping requirements regarding case-by-case refusals. There is an interpretation problem in situations where you consider when sounding and inside information is expired or is it still a valid issue. Issuer/DMP may do sounding but the time goes by and the issuer neither publicly say that transaction is executed nor publicly inform that it has considered to do this kind of transaction. There are market participants who know about the sounding and the situation and participants who do not. Parties who have received the sounding may guess that this time the offer was not successful but, in the future, it may happen. After how long time sounding is not valid and there is no "inside information" without no further info from issuer in these kinds of situations? Similar situations may occur when parties are using non-disclosure agreements.
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<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>
Yes we do.

<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>
We don't support any changes to the insider list regime. It might be impossible to determine beforehand the persons who effectively will access the information.
We believe that ESMA should allow issuers to include or exclude individuals with potential access to inside information as they please, as the administrative burden to check which individuals with potential access actually have "gained access" may be heavy for some issuers where technological or administrative means are lacking, but very light for other issuers with effective measures of access logging and reporting al-ready in place. Issuers should therefore be free to decide for themselves which solution would be most beneficial for them.
<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>
All the systems should have log-in data to database and servers available and system which send alerts to the function responsible for insider list management within the issuer. Only with such an alert system could the issuer properly maintain always up-to-date insider list and be able to promptly provide the NCA

with the list upon request. All the systems do not have that kind of features and it would be disproportionate to demand those to be built for this purpose.
<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>
FFI is of the view that the scope of article 18(1) should not be extended. An issuer should not be responsible for registering and informing an individual in an external organisation, regardless of how that individual has received the specific inside information. Such a responsibility would be very administratively burdensome for the issuer and would create risk such as the risk of GDPR incidents where personal data of insiders is requested and sent between organisations.

We would further question here is all the information in insider list template really needed based on Commission Implementing Regulation No (EU) 2016/347 annex 1 and model 1, e.g. home address or former names of insider to insider list? For instance in Finland social security number and current name of insider or current name and business ID of company should be enough and leave no room for misunderstandings. This could simplify the process.

<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>
FFI's members have contradictory views on this. Due to that the flexibility should be retained and it should be possible to use also permanent lists as an option to avoid extra administrative burden and replicating the personal details in each event-based insider list. However, the use on permanent list should always be optional.
<ESMA_QUESTION_CP_MAR_43>

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

<ESMA_QUESTION_CP_MAR_44>
Yes we do, the reduction of the administrative burden is needed. Further, if there would be less information collected from each insider or company (see Q42 above), it would also be easier to maintain these insider lists. This would apply to all the parties involved.
<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>

In order to ease the administrative burden on keeping lists, the amount of information could be easily decreased and keep only the information enough to identify the persons on the lists. FFI sees that the following fields are enough: name, national ID, work phone, work e-mail, reason for becoming insider and time of becoming insider. This is also to align with information that is provided in relation to MIFID II.

If legal persons acting on behalf or on the account of the issuer are explicitly required through Article 18 to keep their own insider list, then there should also be included a responsibility for issuers to notify such legal persons acting on their behalf or their account whenever they have shared information that the issuer classifies as inside information with them. Such a notification could be very simple but to the point and should be in writing.

The Commission has provided a template for issuers to use when drawing up insider lists. However, there is little guidance for issuers where they need to inform individuals within their own organisation in possession of inside information of the legal and regulatory duties entailed to being an insider. Even though the implementation of MAD differs in the member states, a basic notification template could be useful. We therefore suggest that ESMA draws up a template for such a notification, for issuers to use when registering new insiders on an insider list.

<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>
FFI proposes that the threshold would be increased from 5.000 euros to at least 20.000 euros. This should apply similarly in all EU member countries without country specific considerations by NCAs.

In addition to the reporting threshold, we would also appreciate a review of the kind of transactions in scope of art. 19 MAR. We propose that only transactions which involve an active investment/divestment decision by a PDMR should be included. The second and third paragraph needs to be amended as well to include a strict requirement for NCA:s to make information regarding PDMR transactions public. Currently the NCA approach to Article 19(3) is varying between the member states and a few NCA:s provide a service through which PDMR:s can upload transaction reports to be displayed in a public register. This would ease the administrative burden for both issuers and the PDMR:s themselves, and harmonize the process for transaction reporting across the NCA:s supervisory field.

Further we would like to comment about the Article 19 strict three days' time limit to notify managers' transactions. This 3 days' limit is given to manager and if manager gives this info on third day to issuer, issuer may have no time to process and disclose the info forward. We would suggest that the manager would have three days' time and then the issuer company would have e.g. two days' time to process and disclose that info forward after it has received the info from the manager.
<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>
FFI proposes the same 20.000 euros limit to all the EU Member countries, as mentioned in Q46.

<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>
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<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>
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<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>
FFI has not identified any alternative criteria. Having only one threshold is appropriate, because it is simple to understand and easy to implement.
<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>
FFI is of the opinion that the 20% threshold is appropriate. However, we would also appreciate to include a corresponding threshold in art. 19(11) MAR in order to clarify the connectivity between art. 19(1) (i.e., the scope of the notification obligation) and art. 19(11) (i.e., the closed period) since it cannot be correct that a non-notifiable transaction under art. 19(1) should be in scope of the closed period prohibition.
<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>
No we haven’t, present system is appropriate.
<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>
FFI proposes that art. 19(11) MAR is amended in order to exclude dealings by a PDMR in conjunction with certain corporate events in which a PDMR is not treated differently than any other shareholder, for example when (i) subscribing (or undertaking to subscribe) for the PDMR's pro rata share in a rights issue or (ii) accepting (or under-taking to accept) a public takeover offer.

Furthermore, we also propose that all transactions executed under a discretionary asset management mandate are excluded from the prohibition to trade during the closed period since the PDMR has no possibility to influence or affect any transactions by the asset manager.

For the sake of clarity, art.19(11) should be extended to closely associated persons.
<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>
FFI does not see a need for clarifications.
<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 persona closely associated with PDMRs, including any benefits and downsides.

<ESMA_QUESTION_CP_MAR_55>
We see that it is unnecessary to limit the transactions of persons closely associated with managers. As stated in the MAR review report, the extension of the closed period to closely associated persons would place extra administrative burden on the PDMRs and on the issuers.
With respect to the issuer, we agree with the identified issues raised by ESMA and deem the current framework under MAR to be sufficiently effective while we only see downsides with expanding the scope of Article 19(11) to include the issuer.

As regards persons closely associated with PDMR, we also agree with ESMA's assessment that the risk of such persons committing market abuse is significantly lower than PDMRs and that the prohibition of insider dealing and attempted insider dealing is sufficient and proportionate as means for mitigating this risk and preventing market abuse.
<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>
We support the extension to other financial instruments than shares.
<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>
With reference to ESMA's statement relating to cases when a contract relating to a certain issuer's financial instrument was executed by a PDMR outside of the closed period but require completion during the closed period, we would like to highlight that such delivery of financial instruments should already under the current MAR regime be allowed. Hence, it should not be added to the list of exemptions under art. 19(12) since such transactions are not at all within the scope of art. 19 MAR. Where a decision to trade is made outside of the closed period, the PDMR is not trading during the closed period, nor is there any other conduct by the PDMR during the closed period as the contract requires the acquisition or sale of the relevant financial instruments (cf. Art. 9(3) MAR which states that performing a contractual obligation entered into prior to possessing inside information shall not be considered insider dealing).
<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>
MAR responsibilities should not be extended to CIUs. Price determination if CIUs is totally different compared to equities. Most of the CIUs in Finland are not admitted to trading or traded on a trading venue. As of today, all CUIs should be covered by Article 7 regarding inside information, and the obligations arising therefrom (Art. 17 regarding the disclosure obligation and Art. 18 regarding insider lists). However, it is important to note that investment certificates consist of a portfolio of financial instruments, which is why individual events are unlikely to have an impact on the portfolio's overall value.
<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>
Whilst acknowledging the PDMR obligation is a useful tool to enhance market integrity and transparency, the need to cover CIU's and their management companies does not seem relevant. CIU's are financial instruments, but as the value of the CIU depends on the underlying shares/bonds held in a CIU it does not seem relevant to extend the PDMR obligation to management companies.
<ESMA_QUESTION_CP_MAR_59>

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

<ESMA_QUESTION_CP_MAR_60>

If the definition of “relevant persons” in UCITS/AIFMD were mirrored to the PDMR definition, the scope and PDMR obligations would be widened substantially and would also include employees of a management company, cf. e.g. art. 3(3)(b) of the UCITS directive.
<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>
The PDMR obligation should only be applicable for persons with the ability to impact the pricing of the financial instruments, which is not the case for a managing person in a management company as the Net asset value depends on the underlying financial instruments held by a listed fund. Using the definition of “relevant person” in the UCITS/AIFMD would widen the scope significantly, as employees of the management company would also be in scope.
<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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<ESMA_QUESTION_CP_MAR_62>

Q63. Do you agree with ESMA’s conclusion? If not, please elaborate.

<ESMA_QUESTION_CP_MAR_63>
Yes. If ESMA should conclude to extend the PDMR obligation to CIUs this should be expressly mentioned in MAR.
<ESMA_QUESTION_CP_MAR_63>

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

<ESMA_QUESTION_CP_MAR_64>
MAR should explicitly specify obligations of CIU’s with and without legal personality and in addition the obligations of management companies to comply with the requirement of disclosing inside information.
<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>
We support the proposed amendments to MAR. NCAs should have possibility to cooperate and share information with tax authorities upon request, including an exchange of information across EU. However, new regulation should not increase administrative, reporting or monitoring requirements to regulated entities.
<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>
No, we are not in favor of that in order to avoid double-sanctions if criminal offences for infringements exist.
<ESMA_QUESTION_CP_MAR_70>

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

<ESMA_QUESTION_CP_MAR_71>
In general, cross-border enforcement of MAR sanctions should be possible. At this point, we are referring to NSA's answer.

We would like also to address that the sanctions regime in MAR seems tailored to larger companies. MAR provides, for offences of insider dealing and market manipulation, a maximum fine of 5 million EUR for natural persons. Member States can also impose even higher maximum administrative fines. The market capitalization of a company listed on SME Growth Markets may be around only one million EUR. Such disproportionality could be reviewed bearing in mind that many listed companies are indeed SME's.
<ESMA_QUESTION_CP_MAR_71>