esma European Securities and Markets Authority

Reply form for the ESMA MAR Technical standards

20 August 2014

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 standards on 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_MAR_TS_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_TS_NAMEOFCOMPANY_NAMEOFDOCUMENT: e.g.if the respondent were ESMA, the name of the reply form would be ESMA_MAR_CP_TS_ESMA_REPLYFORM or ESMA_MAR_CP_TS_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.

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General information about respondent

Are you representing an association?	Yes
Activity:	Issuer
Country/Region	Germany

Introduction

Please make your introductory comments below, if any:

< ESMA_COMMENT_MAR_TA_1>
Deutsches Aktieninstitut appreciates the opportunity to respond to ESMA's consultation on Draft Technical Standards under the Market Abuse Regulation (MAR).

As expressed in our previous comment on the discussion paper (DP) German listed companies strongly believe that transparency and the prohibition of abusive practices are pre-conditions for market integrity. However, duties of listed companies should provide for legal certainty as well as manageable compliance costs in order to promote the attractiveness of organised capital markets.

Against this background, we have a number of serious concerns regarding ESMA's proposals. In essence, we believe that ESMA is about to create additional compliance risks for listed companies as well as massive additional compliance costs that will in effect reduce the attractiveness of organised markets.

Regarding insider lists we oppose both the amount and the level of detail of information that ESMA intends to require with regard to each person to be entered on an insider list. This holds particularly true for private communication data such as private telephone numbers and e-mail addresses as well as the surname of birth. ESMA in fact will create massive additional bureaucratic burden for issuers and will most likely be in conflict with existing data protection laws. According to the MAR and as confirmed by ESMA in the public hearing on 15 January 2014, the purpose of the entries into insider lists is (i) to identify relevant persons and (ii) (albeit less clear from the level-1 text) to enable competent authorities to contact such persons. To achieve these objectives much less details are needed given the fact that Competent Authorities have far reaching competences in detecting further details in the case a suspicion emerges regarding insider dealing.

Regarding transactions of persons discharging managerial responsibilities (PDMRs) we believe that ESMA's proposals are too far-reaching as well. This applies for the level and detail of the notification as well as for the number of transactions that ESMA supposes to be relevant according to the draft technical advice. The guiding principle for ESMA should be to set standards that are realistically compliable and will provide markets with valuable signals. Both objectives will be counteracted by ESMA's proposals. We therefore urge ESMA to redraft its proposal.

Regarding the delay of the publication of inside information we are concerned that ESMA's proposals on confidentiality go too far. This holds true for the material aspect as to when an issuer has to respond to rumours in the market. We strongly prefer that a no comment-policy is possible unless there was a clear indication that the leak has occurred in the sphere of the issuer. Otherwise, incentives for abusive rumour spreading will be created. In addition, we are concerned that ESMA's documentation requirements in case of a delay will overburden issuers and will introduce binding standards of how confidentiality has to be ensured although MAR leaves flexibility to issuers in this important point.

It is worth noting that our opinion is based on the view of the biggest German listed companies. ESMA should be aware that these companies treat their capital markets duties in a very sensitive manner and have very sophisticated mechanism in place in order to ensure compliance with capital market duties. ESMA should also note that our view is widely shared among other German capital market participants, the scientific community and other European organisations.

< ESMA_COMMENT_MAR_TA_1>

II. Buy-backs and stabilisation: the conditions for buy-back programmes and stabilisation measures

Q1: Do you agree with the approach set out for volume limitations? Do you think that the 50% volume limit in case of extreme low liquidity should be reinstated? If so, please justify.

<ESMA_QUESTION_MAR_TS_1>
Deutsches Aktieninstitut generally wonders whether the safe harbour provision has been narrowed compared to the existing Regulation 2273/2003. The wording of Art. 5 (1) of MAR could imply that the Safe Harbour rules are only applicable to buy-back programmes carried out through the trading in own shares and not (also) to buy-backs with associated instruments such as financial derivatives, whereas for stabilisation purposes it is also possible to use associated instruments in the safe harbour regime.

As issuers may also use derivative instruments in buy-programmes it should be clarified at any rate that in cases in which a buy-back programme is carried out not only through the buy-back of shares, but also through associated instruments such as financial derivatives, the Safe Harbour rules are not inapplicable to the entire programme, but only to the extent that associated instruments are concerned.

Recital (2)/(3) of the draft RTS (Annex IV) should therefore be reworded as follows:

> *"[...] Accordingly, buy-back programmes will not benefit from the exemption provided in Regulation (EU) No 596/2014* ***insofar as the buy-back is carried out through associated instruments****."*

In addition to that, a clearer definition of the conditions for buy-back programmes and disclosure in Art. 3 of the draft RTS (Annex IV) is desirable:

- The "full details of the programme" are not clearly defined. Subsection 2 appears to imply that there may be further details than those listed ("the maximum consideration, the maximum number of shares to be acquired and the duration of the period for which authorization for the programme has been given") to be included in the disclosure. An exhaustive rather than an exemplary list of such details would be recommendable.

- As a consequence, in subsection 3 the scope of "subsequent changes" that require disclosure also remains unclear. A reference to the exhaustive list (proposed above for subsection 2) should be included.

- With regard to the "subsequent changes", a clarification would be appreciated that an "adequate public disclosure" in these cases does not require a disclosure of the "full details of the programme", but rather only of the change itself.

<ESMA_QUESTION_MAR_TS_1>

Q2: Do you agree with the approach set out for stabilisation measures? If not, please explain.

<ESMA_QUESTION_MAR_TS_2>
From our point of view the practice existing under Regulation 2273/2003 has worked well. The approach proposed in the CP follows the established principles and is therefore generally supported by us.

However, we would like to bring the following to your attention:

As regards item no. 48 of the CP we would prefer if a single reporting mechanism was established so that market participants would only have to provide information to one competent authority.

With respect to "refreshing the greenshoe" (items no. 54ff.) we would be grateful if ESMA reconsidered its position. Indeed a sell transaction would not be covered by the definition of "stabilisation" in Art. 3 para. 2 lit. d MAR and, therefore, would not benefit from the safe harbour according to Art. 5 MAR. Against this background, we support the statement that such sell transactions should not necessarily be deemed abusive. However, we do not think that any further acquisitions conducted for stabilising purposes after these sell transactions are executed cannot be covered by the safe harbour even if effected during the stabilisation period. The relevant securities may still be exposed to market volatility and such purchases still fall under the definition of stabilisation. If it has appropriately been disclosed to the public that after a potential "refreshing" such further stabilisation can be effected during the stabilisation period, we do not see any reason why these transactions should not benefit from the safe harbour.
<ESMA_QUESTION_MAR_TS_2>

III. Market soundings

Q3: Do you agree with ESMA's revised proposals for the standards that should apply prior to conducting a market sounding?

<ESMA_QUESTION_MAR_TS_3>
In general we agree to ESMA's revised proposals.

Nevertheless, we would welcome certain clarifications. According to item no. 69 of the CP ESMA distinguishes between market sounding and the actual conclusion of a transaction. As a market sounding does not make much sense without also executing a transaction, more guidance as to the treatment of such actual execution would be helpful. More specifically: Recital 23 of MAR states that the essential characteristic of an insider dealing is an unfair advantage being obtained from inside information to the detriment of third parties who are unaware of such information. Recital 24 continues this analysis as to whether someone has committed insider dealing should be made in the light of the purpose of MAR, i.e. protection of the integrity of the financial market and enhancement of investor confidence.

Both is based on the assurance that investors will be placed on an equal footing in terms of information and protected from the misuse of inside information. Accordingly, it is generally accepted under MAR that so-called "face-to-face" transactions are permissible and do not constitute an insider dealing. These transactions are executed between counterparties having the same level of information so that neither of them uses information to the disadvantage of the other. The German Competent Authority Bundesanstalt fuer Finanzdienstleistungsaufsicht (BaFin) has explicitly accepted this concept when information has been provided to an acquirer of a significant stake in a listed issuer in the course of his (confirmatory) due diligence provided the seller and the acquirer have the same level of information (BaFin Issuer Guide, item III.2.2.1.4.2.).

The concept of permitted "Face-to-Face" transactions is also important for issuers to raise capital, to obtain assurance from major shareholders, investors or underwriters that they are willing to provide financing or an underwriting commitment before an offering is announced. This is common practice e.g. in the context of rights issues, especially if the issuer is in distress. Notwithstanding the fact that the permissibility of "face-to-face" transactions can be deducted from Recitals 23 and 24 MAR, we believe an explicit confirmation to that effect by ESMA would be useful to ensure a consistent regulatory practice in all EU Member States.
<ESMA_QUESTION_MAR_TS_3>

Q4: Do you agree with the revised proposal for standard template for scripts? Do you have any comments on the elements included in the list?

<ESMA_QUESTION_MAR_TS_4>

<ESMA_QUESTION_MAR_TS_4>

Q5: Do you agree with these proposals regarding sounding lists?

<ESMA_QUESTION_MAR_TS_5>

<ESMA_QUESTION_MAR_TS_5>

Q6: Do you agree with the revised requirement for DMPs to maintain sounding information about the point of contact when such information is made available by the potential investor?

<ESMA_QUESTION_MAR_TS_6>

<ESMA_QUESTION_MAR_TS_6>

Q7: Do you agree with these proposals regarding recorded communications?

<ESMA_QUESTION_MAR_TS_7>

<ESMA_QUESTION_MAR_TS_7>

Q8: Do you agree with these proposals regarding DMPs' internal processes and controls?

<ESMA_QUESTION_MAR_TS_8>

<ESMA_QUESTION_MAR_TS_8>

IV. Accepted Market Practices

Q9: Do you agree with ESMA's view on how to deal with OTC transactions?

<ESMA_QUESTION_MAR_TS_9>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_9>

Q10: Do you agree with ESMA's view that the status of supervised person of the person performing the AMP is an essential criterion in the assessment to be conducted by the competent authority?

<ESMA_QUESTION_MAR_TS_10>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_10>

V. Suspicious transaction and order reporting

Q11: Do you agree with this analysis regarding attempted market abuse and OTC derivatives?

<ESMA_QUESTION_MAR_TS_11>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_11>

Q12: Do you agree with ESMA's clarification on the timing of STOR reporting?

<ESMA_QUESTION_MAR_TS_12>
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<ESMA_QUESTION_MAR_TS_12>

Q13: Do you agree with ESMA's position on automated surveillance?

<ESMA_QUESTION_MAR_TS_13>
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<ESMA_QUESTION_MAR_TS_13>

Q14: Do you have any additional views on the proposed information to be included in, and the overall layout of the STORs?

<ESMA_QUESTION_MAR_TS_14>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_14>

Q15: Do you have any additional views on templates?

<ESMA_QUESTION_MAR_TS_15>
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Q16: Do you have any views on ESMA's clarification regarding "near misses"?

<ESMA_QUESTION_MAR_TS_16>
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VI. Technical means for public disclosure of inside information and delays

Q17: Do you agree with the proposal regarding the channel for disclosure of inside information?

<ESMA_QUESTION_MAR_TS_17>
Deutsches Aktieninstitut basically agrees with the channels proposed. However, we have some concerns with respect to the extension of the reporting channels of the TD to issuers on MTFs and OTFs as this may further add to compliance costs for these rather small or medium sized companies and these issuers are not in the scope of the TD.
<ESMA_QUESTION_MAR_TS_17>

Q18: Do you believe that potential investors in emission allowances or, more importantly, related derivative products, have effective access to inside information related to emission allowances that have been publicly disclosed meeting REMIT standards as described in the CP, i.e. using platforms dedicated to the publication of REMIT inside information or websites of the energy market participants as currently recommended in the ACER guidance?

<ESMA_QUESTION_MAR_TS_18>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_18>

Q19: What would be the practical implications for the energy market participants under REMIT who would also be EAMPs under MAR to use disclosure channels meeting the MAR requirements for actively disseminating information that would be inside information under both REMIT and MAR?

<ESMA_QUESTION_MAR_TS_19>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_19>

Q20: Do you agree with ESMA's proposals regarding the format and content of the notification?

<ESMA_QUESTION_MAR_TS_20>
With respect to the paragraphs preceding Q20 of the consultation document, Deutsches Aktieninstitut would like to add the following remarks:

Item no. 235: We appreciate that ESMA clarifies that changes in an inside information will only trigger another disclosure if the change constitutes an inside information itself.

Item no. 251: It could be made clear that the posting of the inside disclosure on the website of the issuer may be fullfilled by posting a link to the relevant disclosure. As it reads now it could be interpreted that the relevant disclosure has to be made in html-text.

Item no. 259: We generally doubt that a fully uniform approach to notify the competent authorities is necessary. Basically, it should be left to the competent authorities to decide which information they deem necessary and sufficient to conduct their supervisory actions. If the authority even has the competence to allow the explanation to be provided only upon request of the authority, the authority should all the more be allowed to decide on the information it deems appropriate to fullfill its task.

Item no. 261: It may be difficult for the issuer determine a concrete "time" of the decision concerning a delay. Decisions like this are regularly taken during a meeting, a call or after an exchange of e-mails. Thus, it would be preferable to allow (or clarify such allowance) for a "time period" to be included in the notification.

Item no. 265: Deutsches Aktieninstitut is concerned about a detailed explanation of how confidentiality has been ensured. From our point of view it should be sufficient to confirm the fact that processes exist that aim at ensuring confidentiality and that these processes have been taken into account. In contrast to the descriptions of the first two conditions (legitimate interest at stake and the assessment on how the omission would not be likely to mislead the public) in the notifications appears to be reasonable. Art. 5 para 3 c) of the proposed draft implementing regulation **the description of how confidentiality has been ensured generally goes too far and should be redrafted accordingly.**

Item no. 267: It should be clarified that the notification has to be drafted in only one language even if the inside information is disclosed in multiple languages. Art 5 para. 5 of the draft implementing regulation should therefore read

> *"5. The notification and the written explanation shall be drafted in **one of the languages** in which the inside information is disclosed."*

Item no. 268: We also appreciate that ESMA does not consider it appropriate to impose a common template for the notification of delays.

<ESMA_QUESTION_MAR_TS_20>

Q21: Do you agree with the proposed records to be kept?

<ESMA_QUESTION_MAR_TS_21>
No. not necessarily.

Although we principally agree that internal records need to be kept in order to be able to demonstrate compliance with the duties regarding the delay of the disclosure of inside information, we feel that ESMA indirectly also defines compliance procedures for issuers in a detailed manner. From our point of view ESMA's interpretation is beyond the mandate of the level 2 as the MAR basically leave it to the issuers how they ensure confidentiality. **Art. 7 para 1. d) of the draft implementing regulation as well as item no. 274 of the explaining text should thus be deleted**.

Notwithstanding the issue above we would like to draw ESMA's attention to some additional issues in the explaining text preceding Q21 of the draft technical standards (i.e. items 269 to 276).

Item no. 269: We fully agree with ESMA's view not to specify the position of the person deciding on a delay. Issuers should principally be free in determining how they organise their compliance with the possibility to delay. This should include the possibility for the management board to delegate the task of deciding on delays without necessarily participating in the decision making, in order to make it possible to take and review the decision to delay at any time.

Item no. 271: We, however, definetily do not agree with ESMA's view that issuers should principally comment any rumor relating to a piece of undisclosed inside information. **From our point of view the obligation to comment on rumors should be interpreted in a way that only if the rumor clearly evidences that the leak has occurred in the "sphere of the issuer" the issuer should be obliged to disclose**. Otherwise, room for abusive rumor spreading would be created, in particular with respect to M&A activities. For instance, isssuers could be "forced" by their counterparties to disclose their intentions before decisions have been taken in ongoing negotiations. Or the media could speculate about possible takeovers and force issuers to react even if negotiations have not been finalized. This would

make bigger transactions for listed companies nearly impossible. In contrast to the impression created by the wording of item no. 271 of the consultation paper, Article 17(7) MAR does not exclude such an interpretation as the wording “irrespective from where the breach of confidentiality originates from” is not part of Article 17(7) MAR.

<ESMA_QUESTION_MAR_TS_21>

VII. Insider list

Q22: Do you agree with ESMA's proposals regarding the elements to be included in the insider lists?

<ESMA_QUESTION_MAR_TS_22>
No.

ESMA proposes a long list of detailed information that need to be included in insider lists (item no. 293 and Art. 8 of the proposed draft technical standard). As already expressed in our comment to the discussion paper the proposal definitely goes too far for the purpose of identifying and contacting relevant persons and, thus, is beyond the purpose of insider lists as set out in MAR.

From our point of view, the level of detail will not only contradict data protection laws in a number of member states. It will also create an enormous additional burden for issuers without resulting in any benefit for the work of competent authorities. In particular, private communication data (e-mail address, telephone number etc.) are not collected by issuers because it is simply not necessary.

Private communication data is not stored in the Human Resources IT reporting systems which are the basis for the creation and update of insider lists. The upgrade will thus be costly. ESMA should note that insider lists of bigger issuers may contain significantly over 1,000 persons that are employed around the world. Collecting and updating private communication data will have to be done manually which will be extremely time consuming and always bears the risk of resulting in incomplete data fields. The compliance with ESMA's proposal may thus prove to be impossible for practical reasons alone.

Please note that compliance may also be impossible for legal reasond as well because issuers may not have the legal power to ask for this kind of data and to check whether the employees' responses are correct.

In addition to that, ESMA should keep in mind that the more data and updates thereof are required by ESMA, the higher the risk of mistakes is. Given the fact that violations against Art. 13 MAR will be fined with up to 500,000 Euros for private and 1,000,000 Euros for legal persons this risk is not negligible from an issuer's perspective.

Furthermore, ESMA's proposal goes far beyond current practice. The proposal, therefore, is in contrast to the declared objective of the EU Commission to reduce administrative burden and costs of compliance. Deutsches Aktieninstitut would like to remind ESMA of the fact that the discussion on the revision of the MAR once started with the idea to drop insider lists completely (see call for evidence of EU-Commission, 20 April 2009). In addition to that, private communication data may be changed quickly so that the task of issuers is made even more complicated.

In effect, ESMA's proposal will therefore create compliance risks for issuers which decrease the attractiveness of organised capital markets as a source of finance.

ESMA should also take into account that insider lists (though already administratively burdensome) play only a minor role in authorities' investigations of suspicious transactions. The government's answer to a parliamentary request of the German Free Democratic Party (Freie Demokratische Partei - FDP) dated 27 July 2007 reveals that insider lists have been used only in ten percent of German regulator's insider investigations between November 2004 and July 2007 (see BT-Drs. 16/6136).

Against this background, the administration of insider lists should be as simple as possible. Thus, **Deutsches Aktieninstitut is of the opinion that the data to be presented should be limited to name, function, company address and the reason for the inclusion of the respective person.**

Following our serious reservations **we strongly recommend that the following items should be deleted from Art. 8 para 2 of the draft implementing regulation as well as the respective templates in the Annex**:

Surname of birth
Date of birth
Place of birth
National identification number
Private email-address
Private telephone number

Also, we would appreciate if ESMA stated clearly that is sufficient that issuers include in their lists the company of legal persons acting on behalf of the issuer. It should be absolutely clear that issuers are not obliged to include any natural person that is employed be service providers such as banks, accountants and law firm working on an issuer-related project in the list. Art. 8 of the draft implementing regulation should amended accordingly.

<ESMA_QUESTION_MAR_TS_22>

Q23: Do you agree with the two approaches regarding the format of insider lists?

<ESMA_QUESTION_MAR_TS_23>

We agree with ESMA's idea to grant issuers flexibility regarding the format of the insider lists (items no. 303 and no. 308). It is issuers' common practice to compile both general lists and deal specific lists, so that ESMA is right to accept both types of insider lists.

We thus agree with ESMA's point of view that it should not be mandatory to provide competent authorities with an integrated list. However, it has to be made clearer that issuers are allowed to provide competent authorities either with an integrated list or with a deal-specific list or with a combination of both. Art. 8 para 1 should therefore be amended as follows:

> *Pursuant to Article 18(1) of Regulation (EU) No 596/2014, the issuer or a person referred to in Article 18(8) of Regulation (EU) No 596/2014, or any person acting on its behalf or for its account, shall create and update the insider list in the form of either:*
>
> *a. a general list including all persons having access to any inside information as set out in Template 1 of Annex I of this Regulation; or*
>
> *b. a deal-specific or event-based list that includes all the persons having access to relevant deal-specific or event-based inside information as set out in Template 2 of Annex I of this Regulation,* ***or***
>
> ***c. a combination of both forms provided for in subparagraph a. and b.***

In addition to that, ESMA should **clarify that it is still possible to include persons who may have access to inside information due to their position in a listed company as "permanent" insiders** in the list. For these persons it would also be sufficient to have them identified without "allocating" them to specific projects. Template 1 needs to be amended accordingly.

As ESMA also rightly states issuers' should have some flexibility with regard to the exact electronic format in order to ensure smooth operation and interfaces with existing IT systems. In essence, secure delivery can be achieved only if the competent authority accepts secure formats using standard technologies that are generally and widely available. Issuers should not be required to invest in and administer new technologies solely for the purpose of being able to comply with this aspect of the Regulation.

Notwithstanding the comment above, we are concerned that issuers have to follow the templates ESMA is providing for this purpose in the Annex to the proposed draft technical standards. Templates may prove to be too inflexible with respect to an issuer's individual situation. This is particularly true if the lists need to

contain all the data fields that ESMA is going to ask for. Regarding the amount and level of detail to be provided by issuers please note our serious concerns explained in our response to Q22 above.

Another concern relates to ESMA's proposal regarding the updating of the lists (item no. 312 and Art. 9). From an issuers' point of view the duty to update the list should end as soon as the inside information is published or ceases to exist. Otherwise, issuers would be obliged to collect and update data for projects that has ended long before or for persons that may have left the company. The fact that ESMA is going to demand very detailed data will even make things worse. Item no. 312 as well as Art. 9 has to be clarified accordingly.

Art. 9 could be drafted as follows for this reason

1. *Pursuant to Article 18(4) of Regulation (EU) No 596/2014, the insider list shall be updated without undue delay after that underlying set of circumstances exists or event has occurred.* ***The duty to update the insider list will ends if the inside information ceases to exist or if the information is made public. In the same way, issuers are not obliged to update information on persons who have left the respective issuer.***

<ESMA_QUESTION_MAR_TS_23>

VIII. Managers' transactions format and template for notification and disclosure

Q24: Do you have any views on the proposed method of aggregation?

<ESMA_QUESTION_MAR_TS_24>
We clearly prefer option 3.

ESMA's proposal will create two different notifications regarding managers' transactions: an aggregated notification for the public and a detailed one on a transaction per transaction basis for the competent authorities.

The notification on a transaction per transaction basis will create an additional compliance duty which will significantly increase compliance costs for issuers and will make it more complicated to compile the notification. We are of the opinion that the MAR obligation should be interpreted against the background of the regulatory objective of the notification duty. The objective of the duty to report managers' transaction is mainly to inform markets on managers' expectations regarding the future development of the company in question. Other market participants may conclude from the notification whether a manager loses or gains trust in the future development of the respective company. An aggregated notification is absolutely sufficient for this purpose. In the same way, for the purpose of detecting potential insider dealings (which should not happen at all, because managers will only be allowed to trade if there is no insider knowledge) an aggregated notification is sufficient, not least because competent authorities get information on any single trade from the MiFID/MiFIR reporting of financial institutions.

We therefore urge ESMA not to overburden managers as well as companies with additional compliance duties. Art. 12 para. 3 of the draft implementing regulation should therefore read rather as follows

> *3. The notification template set out in in Annex III shall contain:*
>
> *a. in Section 1,* ***aggregated figures about the transactions carried out in each relevant financial instrument for a particular day*** *carried out by a person discharging managerial responsibilities or a closely associated person with such a person ~~in the relevant financial instruments for a particular day~~;*

Annex III should be drafted accordingly.

In addition to the comment above Deutsches Aktieninstitut would like to raise an important additional concern that should be taken into consideration by ESMA and the national competent authorities: According to Art. 19(1) MAR it is the PDMR's obligation to notify the competent authority and the issuer within 3 business days after the transaction has taken place. Unfortunately the level-1-text also obliges issuers to notify the public within 3 working days after the transaction. Thus, the level-1-text creates a situation where compliance for issuers may prove to be impossible. Imagine that a PDMR notifies the issuer at the end of the 3-days-period. Issuers then may have too little time to comply with their duties. **We therefore recommend to clarify the compliance duties in the sense that the issuers has at least one business day time to react on the PDMR's notification**. This is the more important as the revised MAR has shortened the notification period from 5 to 3 days which creates additional time pressure for both the PDMR and the issuer.

<ESMA_QUESTION_MAR_TS_24>

Q25: Do you agree with the content to be required in the notification?

<ESMA_QUESTION_MAR_TS_25>
No.

Deutsches Aktieninstitut is of the opinion that the notification of managers‘ transactions should be as lean as possible and should not be overloaded with more information than stipulated in the level-1-text.

First of all, we **do not see the need that private communication data (item no. 341.e) is included in the notification. At least for active PDMRs the work address and communication details should be sufficient.** This should be clarified regarding the field identifier 4. of the Annex.

We also remind ESMA to the fact that PDMRs necessarily need to draw on information they get from their bank where they hold their securities accounts in order to comply with their reporting requirements. This will even get more important in future, because ESMA is to demand MiFIR standards for the content and format of notification (item 343) which are in essence a compliance duty of banks and other financial institutions. Therefore, PDMRs will most likely have more difficulties to comply with the standards in due time.

In addition, the **inclusion of a national identification number appears to be superfluous** and should not be included in the notification according to Art. 19(6) MAR (item no. 344.).

Regarding the content of notification please refer also to our separate comment on the draft technical advice.
<ESMA_QUESTION_MAR_TS_25>

IX. Investment recommendations

Q26: Do you agree with the twofold approach suggested by ESMA of applying a general set of requirements to all persons in the scope and additional requirements to so-called "qualified persons" and "experts"?

<ESMA_QUESTION_MAR_TS_26>
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<ESMA_QUESTION_MAR_TS_26>

Q27: Should the issuance of recommendations "on a regular basis" (e.g. every day, week or month) be included in the list of characteristics that a person must have in order to qualify as an "expert"? Can you suggest other objective characteristics that could be included in the "expert" definition?

<ESMA_QUESTION_MAR_TS_27>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_27>

Q28: Are the suggested standards for objective presentation of investment recommendation suitable to all asset classes? If not, please explain why.

<ESMA_QUESTION_MAR_TS_28>
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<ESMA_QUESTION_MAR_TS_28>

Q29: Do you agree with the proposed standards for the objective presentation of investment recommendations and how they apply to the different categories of persons in the scope? If not, please specify.

<ESMA_QUESTION_MAR_TS_29>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_29>

Q30: Do you agree with the proposed standards for the disclosure of interest or indication of conflicts of interests and how they apply to the different categories of persons in the scope? If not, please specify.

<ESMA_QUESTION_MAR_TS_30>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_30>

Q31: Do you consider the proposed level of thresholds for conflict of interest appropriate for increasing the transparency of investment recommendation?

<ESMA_QUESTION_MAR_TS_31>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_31>

Q32: Do you think that the positions of the producer of the investment recommendation should be aggregated with the ones of the related person(s) in order to assess whether the threshold has been reached?

<ESMA_QUESTION_MAR_TS_32>
TYPE YOUR TEXT HERE
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Q33: Do you agree that a disclosure is required when the remuneration of the person producing the investment recommendation is tied to trading fees received by his employer or a person related to the employer?

<ESMA_QUESTION_MAR_TS_33>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_33>

Q34: Do you agree with the proposed standards relating to the dissemination of recommendation produced by third parties? If not, please specify.

<ESMA_QUESTION_MAR_TS_34>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_34>

Q35: Do you consider that publication of extracts rather than the whole recommendation by news disseminators is a substantial alteration of the investment recommendation produced by a third party?

<ESMA_QUESTION_MAR_TS_35>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_35>