



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.

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?	No
Activity:	Regulated markets/Exchanges/Trading Systems
Country/Region	Germany



Introduction

Please make your introductory comments below, if any:

< ESMA_COMMENT_MAR_TA_1 >

Deutsche Börse Group (DBG) appreciates the opportunity to respond to ESMA's Consultation Paper - Draft technical standards on the Market Abuse Regulation (MAR). DBG welcomes the agreement for a new regulation updating and strengthening the existing framework to ensure market integrity and investor protection. Through the introduction of provisions to prevent market abuse in the form of a regulation, a harmonized EU framework will be established facilitating legal certainty, simplified compliance, and avoidance of regulatory arbitrage. This framework will be further enhanced through the revised Market Abuse Directive (MAD) introducing an EU-wide system of sanctions to deter against market abuse.

DBG supports efficient, fair, orderly and transparent financial markets that meet the needs of well protected and informed investors and provide a source for companies to raise capital and for investors to hedge their portfolios.

Considering recent market developments in trading platforms and technologies, the implementation and application of new market abuse regime needs to be closely aligned with the evolving regulatory landscape which will be re-shaped, e.g. by the Markets in Financial Instruments Directive (MiFID II) and Regulation (MiFIR). DBG appreciates the opportunity to contribute to this task and hopes that our responses will be found helpful in this context.

Our main concerns refer to the need of a thorough calibration of regulatory requirements in a way which does not increase administrative burdens for small and medium enterprises dis-proportionally. Furthermore, we strongly support the approach to cover transactions taking place in the over the counter (OTC)-space within the new regime and propose catering to new market developments as social trading websites.

< 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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MAR_TS_4>

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

<ESMA_QUESTION_MAR_TS_5>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MAR_TS_6>

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

<ESMA_QUESTION_MAR_TS_7>



TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_7>

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

<ESMA_QUESTION_MAR_TS_8>
TYPE YOUR TEXT HERE
<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>

As an infrastructure provider and regulated market, Deutsche Börse Group supports 'Accepted Market Practices' as we allow these practices in our market and have the respective mechanisms in place that also support these practices (e.g. hedging). Additionally, we have further rules to ensure market integrity and a fair use of those well-defined practices.

Below, please find an excerpt of rules and regulations applicable to our derivatives exchanges ensuring a non-abusive behavior and thus, market integrity:

- Exchange rules: https://www.eurexchange.com/blob/exchange-en/3138-47006/294256/12/data/exchange_en.pdf_ab-29_11_2013.pdf

- Trading Conditions: https://www.eurexchange.com/blob/exchange-en/3138-136462/294830/4/data/trading_conditions_en_ab-25062013.pdf.pdf

- Clearing conditions: https://www.eurexchange.com/blob/exchange-en/3138-136778/238376/37/data/clearing_conditions_en_ab_19_12_2013.pdf.pdf

- Conditions for Utilization of the OTC Trade Entry Facilities:
https://www.eurexchange.com/blob/exchange-en/3138-47006/112770/19/data/otc_conditions_en.pdf_ab-2013_10_28.pdf

- Mistrade Regulations: https://www.eurexchange.com/blob/exchange-en/3138-47006/112874/2/data/mistrade_en.pdf.pdf

<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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_12>

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

<ESMA_QUESTION_MAR_TS_13>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_15>

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

<ESMA_QUESTION_MAR_TS_16>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_16>



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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_20>

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

<ESMA_QUESTION_MAR_TS_21>

Deutsche Börse Group wishes to highlight the need for clarity with regard to the application of articles 5 and 12 in relation to disclosure requirements for issuers. We support the aim of achieving the highest level of information disclosure. In the wake of the ongoing economic and financial crisis, we support the work of the G20 to strengthen financial supervision and regulation and to build a framework of internationally agreed high-level standards. We support the approach to maintain the highest level of transparency and disclosure requirements for European markets across all asset classes in line with the Prospectus and Transparency Directives. This is vital to ensure investor protection.

It is important to consider the limited means of small and medium enterprises (SMEs) to fulfil the same requirements as Big Caps. Therefore it is crucial to define exemptions for SMEs wherever appropriate. Furthermore, it is imperative that rules against insider dealing cannot be circumvented by trading in derivatives.

<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>

Deutsche Börse Group is concerned that the proposed scope of data that is required for an insider list is too large and increases administrative burdens on issuers disproportionately. Insider lists should include the following data:

- Name: First name, surname, birth surname
- Date and place of birth
- Work address

<ESMA_QUESTION_MAR_TS_22>

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

<ESMA_QUESTION_MAR_TS_23>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MAR_TS_23>



VIII. Managers' transactions format and template for notification and dis-closure

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

<ESMA_QUESTION_MAR_TS_24>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_24>

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

<ESMA_QUESTION_MAR_TS_25>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
Deutsche Börse Group would like to draw ESMA’s attention to "social trading websites". Through these platforms analysts or investors - even retail investors - can publish and explain their own investment strategy. Strategies which generate sufficient interest can be securitized and listed on-exchange so that other investors are enabled to buy the instrument and participate in the strategy. The platforms themselves are actively promoted and reach a wide audience. Therefore, it may be worth to consider whether promoting an investment strategy through a social trading platform requires a qualified person/expert status for the operator of the platform and/or for the "analysts" themselves.
<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>
TYPE YOUR TEXT HERE
<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

<ESMA_QUESTION_MAR_TS_32>

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>

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<ESMA_QUESTION_MAR_TS_35>