

MAR Legislative Tracker

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The Simmons & Simmons MAR Legislative Tracker

This Legislative Tracker provides you with an update on the EU's Market Abuse Regulation, setting out:

- a high level background to, and summary of the main aims of, the Regulation
- a table of the key dates in the process of agreeing the Level 1 text (with links to the relevant documents)
- a table setting out what is currently known about the consultation process for Level 2 / Level 3 measures and
- an annex setting out the specific Level 2 / Level 3 measures which ESMA must develop, the timing of ESMA's work (where known) and which ESMA document (discussion paper, consultation paper or Final Report) deals with each measure.

Background

The EU's **Market Abuse Directive (MAD)** was adopted in 2003 with the intention of providing a comprehensive framework to tackle insider dealing and market manipulation practices and so increase investor confidence and market integrity throughout the EU.

Following a review of the regime, and taking into account lessons learned since its introduction - both from the financial crisis of 2008 and the subsequent LIBOR/EURIBOR scandals - the European Commission (the Commission) identified a number of deficiencies in the existing rules. These included:

- gaps in the regulation of new markets, platforms and over the counter (OTC) trading
- gaps in the regulation of commodities and commodity derivatives
- ineffective enforcement by regulators
- a lack of legal certainty, which undermined the effectiveness of MAD and
- administrative burdens, especially for small and medium-sized companies (SME).

Summary

To address these issues, in October 2011, the Commission adopted a proposal for a **Regulation on insider dealing and market manipulation (MAR)** and a **Directive on Criminal Sanctions for Insider Dealing and Market Manipulation (CSMAD)**. Together known as MAD 2, these proposals created an updated regulatory regime covering market abuse, offering greater legal certainty as well as tougher and more harmonised sanctions.

Amended proposals for both MAR and CSMAD were adopted by the Commission in July 2012 to make provision the inclusion of manipulation of benchmarks as abusive behaviour.

Level 1 texts for MAR and CSMAD were agreed between the Commission, the Council of the EU and the European Parliament in June 2013 and published in the OJ in June 2014.

MAR amends the existing market abuse regime by, among other things:

- **extending the regime's scope** to cover a wider range of securities and derivatives, including those traded on/admitted to trading on a multilateral trading facility (MTF) or organised trading facility (OTF) - or for which a request for admission to trading has been made - and to certain related OTC traded instruments which can have an effect on the covered underlying market;
- including inside information for **spot commodity contracts** within the definition of 'inside information' and extending market manipulation to include spot commodities in some circumstances
- creating the new offence of **an attempt at market manipulation**;
- creating the new offence of **manipulating a benchmark**;
- prohibiting certain types of abusive conduct in the context of **algorithmic and high frequency trading**;
- regulating **market soundings**, by requiring specified steps to be taken before undertaking a market sounding and by imposing detailed record-keeping requirements;
- extending the **obligation to disclose inside information to the public** to include issuers of financial instruments admitted to trading on a MTF or OTF;
- extending the **suspicious transactions reporting requirement** so that investment professionals must also report suspicious orders;
- introducing **a modified, less onerous, regime** for issuers whose instruments are admitted to trading on SME growth markets;
- providing that **persons discharging managerial responsibilities (PDMR)** must notify the pledging or lending of financial instruments by or on their behalf (or by a person closely associated with them), as well as transactions undertaken by a portfolio manager or other person on behalf of the PDMR;
- introducing mechanisms to enable reporting of breaches of the regulation to competent authorities by **whistleblowers**;
- **introducing minimum rules for administrative measures, sanctions and fines** - regulators must be given the power to impose fines of up to at least EUR 5 million in the case of an individual and EUR 15 million (or 15 per cent of annual turnover) in the case of a legal person.

MAR entered into force on 02 July 2014 and the majority of provisions apply from **03 July 2016**.



Jonathan Melrose
Partner – London
 Financial Markets
 D +44 20 7825 4515
 E jonathan.melrose@simmons-simmons.com



Darren Fox
Partner – London
 Financial Markets
 D +44 20 7825 4069
 E darren.fox@simmons-simmons.com



Nicholas Colston
Partner – London
Financial Markets
D +44 20 7825 4147
E nicholas.colston@simmons-simmons.com



Richard Sims
Partner – London
Financial Markets
D +44 20 7825 3924
E richard.sims@simmons-simmons.com

Where are we in the process?

Table 1: Key stages in development of Level 1 text

Level 1 Text	Date
<i>Commission Proposal</i>	20 October 2011
<i>Amended Proposal</i>	25 July 2012
<i>European Parliament position</i>	08 October 2012
<i>Council General Approach</i>	05 December 2012
<i>Political Agreement</i>	24 June 2013
<i>European Parliament adoption</i>	10 September 2013
<i>European Council adoption</i>	14 April 2014
<i>Publication in OJ</i>	12 June 2014
<i>Corrigendum to Level 1 text</i>	21 October 2016
Entry into force	02 July 2014
Effective Date - see below	

MAR will apply from **03 July 2016**, with the following exceptions:

- the following articles apply **from 02 July 2014**:
 - **Art 4(4) and 4(5)**: notifications and lists of financial instruments
 - **Art 5(6)**: exemption for buy-back programmes and stabilisation
 - **Art 6(5) and 6(6)**: exemption for monetary, public debt management and climate policy activities
 - **Art 7(5)**: inside information
 - **Art 11(9), (10) and (11)**: market soundings
 - **Art 12(5)**: market manipulation
 - **Art 13(7) and 13(11)**: accepted market practices
 - **Art 16(5)**: prevention and detection of market abuse
 - **Art 17(2)(iii), (3), (10) and (11)**: public disclosure of inside information
 - **Art 18(9)**: insider lists
 - **Art 19(13), (14) and (15)**: managers' transaction
 - **Art 20(3)**: investment recommendations and statistics
 - **Art 24(3)**: cooperation with ESMA
 - **Art 25(9)(ii)(iii)(iv)**: obligation to co-operate
 - **Art 26(2)**: co-operation with third parties
 - **Art 32(5)**: reporting of infringements
 - **Art 33(5)**: exchange of information with ESMA
- The provisions in which MAR refers to OTFs, SME growth markets, emission allowances or auctioned products based thereon only applied when MiFID2/MiFIR became effective on **03 January 2018**.

Table 2: Development of Level 2 / Level 3 measures

ESMA DP 2013/1649 – ESMA’s policy orientations on possible implementing measures under the Market Abuse Regulation (DP)

Covers	Published	Closed	Submission to EU Commission
Conditions to be met by buy-back programmes and stabilisation measures to benefit from the exemption from market abuse prohibitions (Article 5(6))¹	14 Nov 2013	27 Jan 2014	This issue was included in ESMA’s <i>Final Report</i> , on draft technical standards, submitted to the EU Commission on 28 September 2015 and in the EU Commission’s <i>Delegated Regulation</i> dated 08 March 2016 and published in the OJ on 30 June 2016
Arrangement and procedures required for market soundings , from the perspective of both the sounding and the sounded market participants (Article 11(9) and (10) and (11))	14 Nov 2013	27 Jan 2014	<p>Issues in respect of Article 11(9) were included in ESMA’s <i>Final Report</i> on draft technical standards, submitted to the EU Commission on 28 September 2015 and in the EU Commission’s <i>Delegated Regulation</i> dated 17 May 2016 and published in the OJ on 17 June 2016.</p> <p>Issues in respect of Article 11(10) were included in ESMA’s <i>Final Report</i> on draft technical standards, submitted to the EU Commission on 28 September 2015 and in the EU Commission’s <i>Implementing Regulation</i> dated 17 May 2016 and published in the OJ on 17 June 2016</p> <p>Issues in respect of Article 11(11) were included in ESMA’s <i>Final Report</i> on market soundings and delay of disclosure of inside information, published on 13 July 2016</p>
Specification of the indicators of market manipulation (Article 12(5))	14 Nov 2013	27 Jan 2014	This issue was included in ESMA’s <i>Final Report</i> on technical advice on possible delegated acts, submitted to the EU Commission on 03

¹ ESMA’s Discussion Paper (DP) was issued before the Level 1 text was published in the Official Journal (OJ) and is based upon the version of MAR which existed between political agreement and formal legal review. The article numbers used in the DP differ, therefore, from those in the Regulation as published. The article numbers in the table above are those used in the version of MAR which was published in the OJ.

			February 2015 and in the EU Commission's <i>Delegated Regulation</i> dated 17 December 2015 and published in the OJ on 05 April 2016
Accepted market practices (Article 13(7))	14 Nov 2013	27 Jan 2014	This issue was included in ESMA's <i>Final Report</i> on draft technical standards, submitted to the EU Commission on 28 September 2015 and in the EU Commission's <i>Delegated Regulation</i> , dated 26 February 2016 and published in the OJ on 10 June 2016
Arrangement, systems and procedures to put in place for the purpose of suspicious transactions and order reporting as well as its content and format (Article 16(5))	14 Nov 2013	27 Jan 2014	This issue was included in ESMA's <i>Final Report</i> on draft technical standards, submitted to the EU Commission on 28 September 2015 and in the EU Commission's <i>Delegated Regulation</i> ² , dated 09 March 2016 and published in the OJ on 17 June 2016
Issues relating to public disclosure of inside information and the conditions for delay (Article 17(10))	14 Nov 2013	27 Jan 2014	This issue was included in ESMA's <i>Final Report</i> on draft technical standards, submitted to the EU Commission on 28 September 2015 and in the European Commission's <i>Implementing Regulation</i> dated 29 June 2016 and published in the OJ on 30 June 2016
Establishing a non-exhaustive indicative list of the legitimate interests of issuers and situations in which delay of disclosure of inside information is likely to mislead the public (Article 17(11))	14 Nov 2013	27 Jan 2014	This issue was included in ESMA's <i>Final Report</i> on market soundings and delay of disclosure of inside information published on 13 July 2016
Format for insider lists (Article 18(9))	14 Nov 2013	27 Jan 2014	This issue was included in ESMA's <i>Final Report</i> on draft technical standards, submitted to the EU Commission on 28 September 2015 and in the Commission's <i>Implementing Regulation</i> dated 10 March 2016 and published in the OJ on 11 March 2016
Managers' transactions (Article 19(13) and (14))	14 Nov 2013	27 Jan 2014	This issue was included in ESMA's <i>Final Report</i> on technical advice on possible delegated acts, submitted to the EU Commission on 03 February 2015 and in the

² Note that the Commission Delegated Regulation of 09 March 2016 was amended by a **Corrigendum**, published in the Official Journal on 27 April 2017

Commission's *Delegated Regulation* dated 17 December 2015 and published in the OJ on 05 April 2016

Issues concerning the format and template for notification and public disclosure of managers' transactions (Article 19(15))	14 Nov 2013	27 Jan 2014	This issue was included in ESMA's <i>Final Report</i> on draft technical standards, submitted to the EU Commission on 28 September 2015 and in the EU Commission's <i>Implementing Regulation</i> dated 10 March 2016 and published in the OJ on 05 April 2016
Arrangements for fair presentation and disclosure of conflicts of interests by producers and disseminators of investment recommendations (Article 20(3))	14 Nov 2013	27 Jan 2014	This issue was included in ESMA's <i>Final Report</i> on draft technical standards, submitted to the EU Commission on 28 September 2015 and in the EU Commission's <i>Delegated Regulation</i> ³ dated 09 March 2016 and published in the OJ on 17 June 2016
Reporting of violations and related procedures (Article 32(5))	14 Nov 2013	27 Jan 2014	This issue was included in ESMA's <i>Final Report</i> on technical advice on possible delegated acts, submitted to the EU Commission on 03 February 2015 and in the Commission's <i>Implementing Directive</i> dated 17 December 2015 and published in the OJ on 18 December 2015

ESMA CP 2014/808 – ESMA's draft technical advice on possible delegated acts concerning the Market Abuse Regulation (CP1)

Covers	Published	Closed	Submission to EU Commission
Specification of the indicators of market manipulation (Article 12(5))			All these issues were included in ESMA's <i>Final Report</i> on technical advice on possible delegated acts, submitted to the EU Commission on 03 February 2015 and (with the exception of those under Article 32(5)), in the EU Commission's <i>Delegated Regulation</i> dated 17 December 2015 and published in the OJ on 05 April 2016
Minimum thresholds for the purpose of the exemption for certain participants in the emission allowance market from the requirement to publicly disclose inside information (Article 17(2))	11 July 2014	15 Oct 2014	
Specification of the competent authority for notification of delays in public disclosure of inside information (Article 17(3))			

³ See footnote 2

Managers' transactions
(Article 19(13) and (14))

Reporting of infringements
(Article 32(5))

ESMA CP 2014/809 – ESMA's draft technical standards on the Market Abuse Regulation (CP2)

Covers	Published	Closed	Submission to EU Commission
The following issues were included in ESMA's <i>Final Report</i> on draft technical standards, submitted to the EU Commission on 28 September 2015			The EU Commission adopted:
Buy-backs and stabilisation: the conditions for buy-back programmes and stabilisation measures (Article 5(6))			<ul style="list-style-type: none"> a <i>Delegated Regulation</i> in respect of Article 5(6) on 08 March 2016
Market soundings (Article 11(9) and (10))			<ul style="list-style-type: none"> a <i>Delegated Regulation</i> in respect of Article 11(9) on 17 May 2016 an <i>Implementing Regulation</i> in respect of Article 11(10) on 17 May 2016
Accepted market practices (Article 13(7))	15 July 2014	15 Oct 2014	<ul style="list-style-type: none"> a <i>Delegated Regulation</i> in respect of Article 13(7) on 27 February 2016
Suspicious transaction and order reporting (Article 16(5))			<ul style="list-style-type: none"> a <i>Delegated Regulation</i>⁴ in respect of Article 16(5) on 09 March 2016
Technical means for public disclosure of inside information and delays (Article 17(10))			<ul style="list-style-type: none"> an <i>Implementing Regulation</i> in respect of Article 17(10) on 29 June 2016
Insider List (Article 18(9))			<ul style="list-style-type: none"> an <i>Implementing Regulation</i> in respect of Article 18(9) on 10 March 2016
Managers' transactions: format and template for notification and disclosure (Article 19(15))			<ul style="list-style-type: none"> an <i>Implementing Regulation</i> in respect of Article 19(15) on 10 March 2016 and

⁴ See footnote 2

Investment recommendations
(Article 20(3))

- a *Delegated Regulation*⁵ in respect of Article 20(3) on 09 March 2016

ESMA CP 2016/162 – ESMA’s draft guidelines on the Market Abuse Regulation (CP3)

Covers	Published	Closed	Next steps
Guidelines for persons receiving market soundings (Article 11(11))			These issues were included in ESMA’s <i>Final Report</i> , published on 13 July 2016
Guidelines on legitimate interests of issuers to delay disclosure of inside information and situations in which such delay is likely to mislead the public (Article 17(11))	28 Jan 2016	31 Mar 2016	ESMA’s guidelines on <i>delay in the disclosure of inside information</i> was published in translation on ESMA’s website on 20 October 2016 and will take effect two months after publication (i.e., from 20 December 2016) ESMA’s guidelines on <i>persons receiving market soundings</i> were published on 20 October 2016 and re-published on 10 November 2016. Accordingly, they will take effect two months after re-publication (i.e., from 10 January 2017)

ESMA CP 2016/444 – ESMA’s guidelines on information expected or required to be disclosed on commodity derivatives markets or related spot markets under MAR (CP4)

Covers	Published	Closed	Next steps
Guidelines to establish a list of information which is reasonably expected or is required to be disclosed on commodity derivatives markets or spot markets (Article 7(5))	30 Mar 2016	20 May 2016	These issues were included in ESMA’s <i>Final Report</i> , published on 30 September 2016 ESMA’s guidelines on <i>information relating to commodity derivatives markets or related spot markets for the purpose of the definition of inside information on commodity derivatives</i> were published on 17 January 2017. Accordingly, they will take effect two months after publication (i.e., from 17 March 2017)

⁵ See footnote 2

Annex

(i) Level 2 Measures

MAR contains a number of areas in which the Commission and/or ESMA are mandated to develop Level 2 measures.

These are as follows:

- A. Notifications and list of financial instruments (Article 4)
- B. Exemption for buy-back programmes and stabilisation measures (Article 5)
- C. Exemption for monetary and public debt management activities and climate policy activities (Article 6)
- D. Market soundings (Article 11)
- E. Market manipulation (Article 12)
- F. Accepted market practices (Article 13)
- G. Prevention and detection of market abuse (Article 16)
- H. Public disclosure and inside information (Article 17)
- I. Delaying the public disclosure of inside information (Article 17(4) and (5))
- J. Insider lists (Article 18)
- K. Managers' transactions (Article 19)
- L. Investment recommendations and statistics (Article 20)
- M. Cooperation with ESMA (Article 24)
- N. Obligation to cooperate (Article 25)
- O. Cooperation with third countries (Article 26)
- P. Reporting of infringements (Article 32)
- Q. Exchange of information with ESMA (Article 33).

Looking at each of these in turn:

A. Notifications and list of financial instruments

(i) What does Level 1 say?

Article 4 of MAR states that:

- "1. Market operators of regulated markets and investment firms and market operators operating an MTF or an OTF shall, without delay, notify the competent authority of the trading venue of any financial instrument for which a request for admission to trading on their trading venue is made, which is admitted to trading, or which is traded for the first time.

They shall also notify the competent authority of the trading venue when a financial instrument ceases to be traded or to be admitted to trading, unless the date on which the financial instrument ceases to be traded or to be admitted to trading is known and was referred to in the notification made in accordance with the first subparagraph.

Notifications referred to in this paragraph shall include, as appropriate, the names and identifiers of the financial instruments concerned, and the date and time of the request for admission to trading, admission to trading, and the date and time of the first trade.

Market operators and investment firms shall also transmit to the competent authority of the trading venue the information set out in the third subparagraph with regard to financial instruments that were the subject of a request for admission to trading or that were admitted to trading before 2 July 2014, and that are still admitted to trading or traded on that date.

2. Competent authorities of the trading venue shall transmit notifications that they receive pursuant to paragraph 1 to ESMA without delay. ESMA shall publish those notifications on its website in the form of a list immediately on receipt. ESMA shall update that list immediately on receipt of a notification by a competent authority of the trading venue. The list shall not limit the scope of this Regulation.
3. The list shall contain the following information:
 - (a) the names and identifiers of financial instruments which are the subject of a request for admission to trading, admitted to trading or traded for the first time, on regulated markets, MTFs and OTFs;
 - (b) the dates and times of the requests for admission to trading, of the admissions to trading, or of the first trades;
 - (c) details of the trading venues on which the financial instruments are the subject of a request for admission to trading, admitted to trading or traded for the first time; and
 - (d) the date and time at which the financial instruments cease to be traded or to be admitted to trading.”

(ii) What is ESMA’s mandate?

Article 4(4) of MAR requires ESMA to develop:

- **draft regulatory technical standards (RTS)** to lay down:
 - the content of the notifications as referred to in **Article 4(1)** and
 - the manner and conditions of the compilation, publication and maintenance of the list referred to in **Article 4(3)**.

Article 4(5) of MAR requires ESMA to develop:

- **draft implementing technical standards (ITS)** to lay down the timing, format and template of the submission of notifications under **Article 4(1) and (2)**.

(iii) Timing

ESMA consulted on these measures under:

- ESMA **DP 2014/548** – MiFID II / MiFIR and
- ESMA **CP 2014/1570** – Consultation paper on MiFID II / MiFIR - part 1.

ESMA’s draft technical advice to the Commission on these measures is contained in its **Final Report**, published on **28 September 2015**.

The Commission adopted Level 2 measures under **Article 4(4)** in its **Delegated Regulation** published on **01 March 2016**. The final **Delegated Regulation** was published in the Official Journal on **10 June 2016** and entered into force the following day. The **Delegated Regulation** will have effect from **03 July 2016**.

The Commission adopted Level 2 measures under **Article 4(5)** in its **Implementing Regulation** published on **11 March 2016**. The final **Implementing Regulation** was published in the Official Journal on **17 March 2016** and entered into force the following day. The **Implementing Regulation** will have effect from **03 July 2016**.

B. Exemption for buy-back programmes and stabilisation measures

(i) What does Level 1 say?

Article 5 of MAR states that:

- “1. The prohibitions in **Articles 14** and **15** of [MAR] do not apply to trading in own shares in buy-back programmes where:
- (a) the full details of the programme are disclosed prior to the start of trading;
 - (b) trades are reported as being part of the buy-back programme to the competent authority of the trading venue in accordance with paragraph 3 and subsequently disclosed to the public;
 - (c) adequate limits with regard to price and volume are complied with; and
 - (d) it is carried out in accordance with the objectives referred to in paragraph 2 and the conditions set out in this Article and in the regulatory technical standards referred to in paragraph 6.
-
4. The prohibitions in **Articles 14** and **15** of [MAR] do not apply to trading in securities or associated instruments for the stabilisation of securities where:
- (a) stabilisation is carried out for a limited period;
 - (b) relevant information about the stabilisation is disclosed and notified to the competent authority of the trading venue in accordance with paragraph 5;
 - (c) adequate limits with regard to price are complied with; and
 - (d) such trading complies with the conditions for stabilisation laid down in the regulatory technical standards referred to in paragraph 6.”

(ii) What is ESMA's mandate?

Article 5(6) of MAR requires ESMA to develop **draft RTS** to specify the conditions that buy-back programmes and stabilisation measures referred to in **Article 5(1) and (4)** must meet, including conditions for trading, restrictions regarding time and volume, disclosure and reporting obligations, and price conditions.

(iii) Timing

ESMA consulted on these measures under:

- ESMA **DP 2013/1649** – possible implementing measures (**DP**) and
- ESMA **CP 2014/809** – draft technical standards (**CP2**).

ESMA's draft technical advice to the Commission on these measures is contained in its **Final Report**, published on **28 September 2015**.

The Commission adopted Level 2 measures under **Article 5(6)** in its **Delegated Regulation** dated **08 March 2016**. The **Delegated Regulation** was published in the Official Journal on **30 June 2016**, entered into force the following day and will have effect from **03 July 2016**.

C. Exemption for monetary and public debt management activities and climate policy activities

(i) What does Level 1 say?

Article 6(1) of MAR states that the Regulation's provisions does not apply to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy by:

- (a) a Member State
- (b) the members of the European System of Clearing Banks
- (c) a ministry, agency or special purpose vehicle of one or several Member States, or by a person acting on its behalf
- (d) in the case of a Member State that is a federal state, a member making up the federation.

Article 6(3) of MAR states that the Regulation does not apply to "the activity of a Member State, the Commission or any other officially designated body, or of any person acting on their behalf, which concerns emission allowances and which is undertaken in pursuit of the Union's climate policy in accordance with [the EU's Directive on establishing a scheme for greenhouse gas emission allowance trading within the Community]".

(ii) What is the Commission's mandate?

Article 6(5) of MAR empowers the Commission to adopt **delegated acts** to extend the exemption referred to in **Article 6(1)** to certain public bodies and central banks of third countries.

The Commission must **present a report** to the European Parliament and to the Council of the EU assessing the international treatment of public bodies charged with, or intervening in, public debt management and of central banks in third countries. The report must include a comparative analysis of the treatment of those bodies and central banks within the legal framework of third countries, and the risk management standards applicable to the transactions entered into by those bodies and central banks in those jurisdictions. If the report concludes that the exemption of the monetary responsibilities of those third-country central banks from the obligations and prohibitions in MAR is necessary, the Commission must also extend the exemption referred to in **Article 6(1)** of MAR to the central banks of those third countries.

Article 6(6) of MAR further empowers the Commission to adopt **delegated acts** to extend the exemption set out in **Article 6(3)** to certain designated public bodies of third countries that have entered into an agreement with the Union to provide for the mutual recognition of allowances between the Community scheme and other greenhouse gas emissions trading schemes, pursuant to **Article 25** of the EU's Directive on establishing a scheme for greenhouse gas emission allowance trading within the Community.

(iii) Timing

In line with **Article 6(5)** of MAR, the Commission presented a report to the European Parliament and to the Council, assessing the international treatment of certain public bodies charged with, or intervening in, public debt management and of central banks in third countries. The Commission concluded that it was appropriate to extend the exemption set out in **Article 6(1)** to certain public bodies and central banks of those third countries.

Accordingly, by **Article 3** of its *Delegated Regulation* adopted on **17 December 2015**, the Commission extended the exemption from the obligations and prohibitions under MAR when carrying out monetary, exchange-rate or public debt management policy to the public bodies and central banks of third countries listed in **Annex I** of the *Delegated Regulation*. The *Delegated Regulation* was published in the Official Journal on 05 April 2016, entering into force on the twentieth day following publication (i.e. on 24 April 2016). The *Delegated Regulation* will have effect from **03 July 2016**.

The Level 1 text sets no deadline for adoption of **delegated acts** under **Article 6(6)**.

D. Market soundings

(i) What does Level 1 say?

Article 11 of MAR states:

3. A disclosing market participant shall, prior to conducting a market sounding, specifically consider whether the market sounding will involve the disclosure of inside information. The disclosing market participant shall make a written record of its conclusion and the reasons therefor. It shall provide such written records to the competent authority upon request. This obligation shall apply to each disclosure of information throughout the course of the market sounding. The disclosing market participant shall update the written records referred to in this paragraph accordingly.
4. For the purposes of **Article 10(1)** [Unlawful disclosure of inside information], disclosure of inside information made in the course of a market sounding shall be deemed to be made in the normal exercise of a person's employment, profession or duties where the disclosing market participant complies with paragraphs 3 and 5 of this Article.
5. For the purposes of paragraph 4, the disclosing market participant shall, before making the disclosure:
 - (a) obtain the consent of the person receiving the market sounding to receive inside information;
 - (b) inform the person receiving the market sounding that he is prohibited from using that information, or attempting to use that information, by acquiring or disposing of, for his own account or for the account of a third party, directly or indirectly, financial instruments relating to that information;
 - (c) inform the person receiving the market sounding that he is prohibited from using that information, or attempting to use that information, by cancelling or amending an order which has already been placed concerning a financial instrument to which the information relates; and
 - (d) inform the person receiving the market sounding that by agreeing to receive the information he is obliged to keep the information confidential.

The disclosing market participant shall make and maintain a record of all information given to the person receiving the market sounding, including the information given in accordance with points (a) to (d) of the first subparagraph, and the identity of the potential investors to whom the information has been disclosed, including but not limited to the legal and natural persons acting on behalf of the potential investor, and the date and time of each disclosure. The disclosing market participant shall provide that record to the competent authority upon request.

6. Where information that has been disclosed in the course of a market sounding ceases to be inside information according to the assessment of the disclosing market participant, the disclosing market participant shall inform the recipient accordingly, as soon as possible.

The disclosing market participant shall maintain a record of the information given in accordance with this paragraph and shall provide it to the competent authority upon request.

...

8. The disclosing market participant shall keep the records referred to in this Article for a period of at least five years."

(ii) What is ESMA's mandate?

Article 11(9) of MAR requires ESMA to develop **draft RTS** to determine "appropriate arrangements, procedures and record keeping requirements" for persons to comply with the requirements laid down in **Article 11(4), (5), (6) and (8)** of MAR.

To ensure uniform conditions of application of **Article 11** of MAR, **Article 11(10)** requires ESMA to develop **draft ITS** to “specify the systems and notification templates” to be used by persons to comply with the requirements established by **Article 11(4), (5), (6) and (8)**, “particularly the precise format of the records referred to in paragraphs 4 to 8 and the technical means for appropriate communication of the information referred to in paragraph 6 to the person receiving the market sounding”.

For ESMA’s **Guidelines** addressed to persons receiving market soundings under **Article 11(11)** of MAR, see section ii ‘Level 3 Measures’, sub-section B, ‘Market soundings’, below.

(iii) Timing

ESMA consulted on these measures under:

- ESMA **DP 2013/1649** – possible implementing measures (**DP**) and
- ESMA **CP 2014/809** – draft technical standards (**CP2**).

ESMA’s draft technical advice to the Commission on these measures is contained in its **Final Report**, published on **28 September 2015**.

The Commission adopted Level 2 measures under **Article 11(9)** in its **Delegated Regulation** dated **17 May 2016**. The **Delegated Regulation** was published in the Official Journal on **17 June 2016**, entered into force the following day and will have effect from **03 July 2016**.

The Commission adopted Level 2 measures under **Article 11(10)** in its **Implementing Regulation** dated **17 May 2016**. The **Implementing Regulation** was published in the Official Journal on **17 June 2016**, entered into force the following day and will have effect from **03 July 2016**.

E. Market Manipulation

(i) What does Level 1 say?

Article 12(1) of MAR sets out a number of activities which will comprise market manipulation. These include activities which employ “a fictitious device or any other form of deception or contrivance”, which disseminate information which gives “false or misleading signals” or which secure, or are likely to secure, prices at an abnormal or artificial level.

Annex 1 of MAR sets out the following non-exhaustive indicators relating to (a) “false or misleading signals and to price securing” and (b) “the employment of a fictitious device or any other form of deception or contrivance”:

“A. Indicators of manipulative behaviour relating to false or misleading signals and to price securing

For the purposes of applying point (a) of **Article 12(1)** of [MAR], and without prejudice to the forms of behaviour set out in paragraph 2 of that Article, the following non-exhaustive indicators, which shall not necessarily be deemed, in themselves, to constitute market manipulation, shall be taken into account when transactions or orders to trade are examined by market participants and competent authorities:

- (a) the extent to which orders to trade given or transactions undertaken represent a significant proportion of the daily volume of transactions in the relevant financial instrument, related spot commodity contract, or auctioned product based on emission allowances, in particular when those activities lead to a significant change in their prices;
- (b) the extent to which orders to trade given or transactions undertaken by persons with a significant buying or selling position in a financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances, lead to significant changes in the price of that financial instrument, related spot commodity contract, or auctioned product based on emission allowances;
- (c) whether transactions undertaken lead to no change in beneficial ownership of a financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances;

- (d) the extent to which orders to trade given or transactions undertaken or orders cancelled include position reversals in a short period and represent a significant proportion of the daily volume of transactions in the relevant financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances, and might be associated with significant changes in the price of a financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances;
- (e) the extent to which orders to trade given or transactions undertaken are concentrated within a short time span in the trading session and lead to a price change which is subsequently reversed;
- (f) the extent to which orders to trade given change the representation of the best bid or offer prices in a financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances, or more generally the representation of the order book available to market participants, and are removed before they are executed; and
- (g) the extent to which orders to trade are given or transactions are undertaken at or around a specific time when reference prices, settlement prices and valuations are calculated and lead to price changes which have an effect on such prices and valuations.

B. Indicators of manipulative behaviour relating to the employment of a fictitious device or any other form of deception or contrivance

For the purposes of applying point (b) of **Article 12(1)** of this Regulation, and without prejudice to the forms of behaviour set out in paragraph 2 of that Article thereof, the following non-exhaustive indicators, which shall not necessarily be deemed, in themselves, to constitute market manipulation, shall be taken into account where transactions or orders to trade are examined by market participants and competent authorities:

- (a) whether orders to trade given or transactions undertaken by persons are preceded or followed by dissemination of false or misleading information by the same persons or by persons linked to them; and
- (b) whether orders to trade are given or transactions are undertaken by persons before or after the same persons or persons linked to them produce or disseminate investment recommendations which are erroneous, biased, or demonstrably influenced by material interest”.

(ii) What is the Commission’s mandate?

Article 12(5) of MAR empowers the Commission to adopt **delegated acts** specifying the indicators laid down in **Annex I** of MAR, “in order to clarify their elements and to take into account technical development on financial markets”.

(iii) Timing

ESMA consulted on these measures under:

- ESMA **DP 2013/1649** – possible implementing measures (**DP**)
- ESMA **CP 2014/808** – draft technical advice on possible delegated acts (**CP1**).

ESMA’s draft technical advice to the Commission on these measures is contained in its **Final Report**, published on **03 February 2015**.

The Commission adopted a **Delegated Regulation** on **17 December 2015**. The **Delegated Regulation** was published in the Official Journal on **05 April 2016**, entering into force on the twentieth day following publication (i.e. on **24 April 2016**). The **Delegated Regulation** will then have effect from **03 July 2016**.

F. Accepted market practices

(i) What does Level 1 say?

Article 13 of MAR states:

- “2. A competent authority may establish an accepted market practice, taking into account the following criteria:
- (a) whether the market practice provides for a substantial level of transparency to the market;
 - (b) whether the market practice ensures a high degree of safeguards to the operation of market forces and the proper interplay of the forces of supply and demand;
 - (c) whether the market practice has a positive impact on market liquidity and efficiency;
 - (d) whether the market practice takes into account the trading mechanism of the relevant market and enables market participants to react properly and in a timely manner to the new market situation created by that practice;
 - (e) whether the market practice does not create risks for the integrity of, directly or indirectly, related markets, whether regulated or not, in the relevant financial instrument within the Union;
 - (f) the outcome of any investigation of the relevant market practice by any competent authority or by another authority, in particular whether the relevant market practice infringed rules or regulations designed to prevent market abuse, or codes of conduct, irrespective of whether it concerns the relevant market or directly or indirectly related markets within the Union; and
 - (g) the structural characteristics of the relevant market, inter alia, whether it is regulated or not, the types of financial instruments traded and the type of market participants, including the extent of retail-investor participation in the relevant market.

A market practice that has been established by a competent authority as an accepted market practice in a particular market shall not be considered to be applicable to other markets unless the competent authorities of those other markets have accepted that practice pursuant to this Article.

3. Before establishing an accepted market practice in accordance with paragraph 2, the competent authority shall notify ESMA and the other competent authorities of its intention to establish an accepted market practice and shall provide the details of that assessment made in accordance with the criteria laid down in paragraph 2. Such a notification shall be made at least three months before the accepted market practice is intended to take effect.

Within two months following receipt of the notification, ESMA shall issue an opinion to the notifying competent authority assessing the compatibility of the accepted market practice with paragraph 2 and with the regulatory technical standards adopted pursuant to paragraph 7. ESMA shall also assess whether the establishment of the accepted market practice would not threaten the market confidence in the Union’s financial market. The opinion shall be published on ESMA’s website”.

(ii) What is ESMA’s mandate?

Article 13(7) of MAR requires ESMA to develop **draft RTS** specifying the criteria, the procedure and the requirements for establishing an accepted market practice under **Article 13(2), (3) and (4)**, and the requirements for maintaining it, terminating it, or modifying the conditions for its acceptance.

(iii) Timing

ESMA consulted on these measures under:

- ESMA **DP 2013/1649** – possible implementing measures (**DP**)
- ESMA **CP 2014/809** – draft technical standards (**CP2**).

ESMA’s draft technical advice to the Commission on these measures is contained in its **Final Report**, published on **28 September 2015**.

The Commission adopted Level 2 measures under **Article 13(7)** in its *Delegated Regulation* dated 26 February 2016. The *Delegated Regulation* was published in the Official Journal on **10 June 2016**, entering into force on the day following publication. The *Delegated Regulation* will have effect from **03 July 2016**.

G. Prevention and detection of market abuse

(i) What does Level 1 say?

Article 16 of MAR states:

“1. Market operators and investment firms that operate a trading venue shall establish and maintain effective arrangements, systems and procedures aimed at preventing and detecting insider dealing, market manipulation and attempted insider dealing and market manipulation, in accordance with Articles 31 and 54 of [MiFID 2].

A person referred to in the first subparagraph shall report orders and transactions, including any cancellation or modification thereof, that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation to the competent authority of the trading venue without delay.

2. Any person professionally arranging or executing transactions shall establish and maintain effective arrangements, systems and procedures to detect and report suspicious orders and transactions. Where such a person has a reasonable suspicion that an order or transaction in any financial instrument, whether placed or executed on or outside a trading venue, could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation, the person shall notify the competent authority as referred to in paragraph 3 without delay”.

(ii) What is ESMA's mandate?

Article 16(5) of MAR requires ESMA to develop **draft RTS** to determine:

- appropriate arrangements, systems and procedures for persons to comply with the requirements established in **Article 16(1) and (2)** and
- the notification templates to be used by persons to comply with the requirements established in **Article 16(1) and (2)**.

(iii) Timing

ESMA consulted on these measures under:

- ESMA **DP 2013/1649** – possible implementing measures (**DP**)
- ESMA **CP 2014/809** – draft technical standards (**CP2**).

ESMA's draft technical advice to the Commission on these measures is contained in its *Final Report*, published on **28 September 2015**.

The Commission adopted Level 2 measures under **Article 16(5)** in its *Delegated Regulation* dated **09 March 2016**. The *Delegated Regulation* was published in the Official Journal on **17 June 2016**, entering into force on the day following publication. The *Delegated Regulation* will have effect from **03 July 2016**. (A *Corrigendum* to the *Delegated Regulation* was published in the Official Journal on 27 April 2017.)

H. Public disclosure and inside information

(i) What does Level 1 say?

Article 17 of MAR states:

- “1. An issuer shall inform the public as soon as possible of inside information which directly concerns that issuer.

The issuer shall ensure that the inside information is made public in a manner which enables fast access and complete, correct and timely assessment of the information by the public and, where applicable, in the officially appointed mechanism referred to in Article 21 of [the Transparency Directive]. The issuer shall not combine the disclosure of inside information to the public with the marketing of its activities. The issuer shall post and maintain on its website for a period of at least five years, all inside information it is required to disclose publicly.

This Article shall apply to issuers who have requested or approved admission of their financial instruments to trading on a regulated market in a Member State or, in the case of instruments only traded on an MTF or on an OTF, issuers who have approved trading of their financial instruments on an MTF or an OTF or have requested admission to trading of their financial instruments on an MTF in a Member State.

2. An emission allowance market participant shall publicly, effectively and in a timely manner disclose inside information concerning emission allowances which it holds in respect of its business, including aviation activities as specified in Annex I to Directive 2003/87/EC [on establishing a scheme for greenhouse gas emission allowance trading within the Community] or installations within the meaning of Article 3(e) of that Directive which the participant concerned, or its parent undertaking or related undertaking, owns or controls or for the operational matters of which the participant, or its parent undertaking or related undertaking, is responsible, in whole or in part. With regard to installations, such disclosure shall include information relevant to the capacity and utilisation of installations, including planned or unplanned unavailability of such installations.

The first subparagraph shall not apply to a participant in the emission allowance market where the installations or aviation activities that it owns, controls or is responsible for, in the preceding year have had emissions not exceeding a minimum threshold of carbon dioxide equivalent and, where they carry out combustion activities, have had a rated thermal input not exceeding a minimum threshold.

.....

8. Where an issuer or an emission allowance market participant, or a person acting on their behalf or for their account, discloses any inside information to any third party in the normal course of the exercise of an employment, profession or duties as referred to in Article 10(1), they must make complete and effective public disclosure of that information, simultaneously in the case of an intentional disclosure, and promptly in the case of a non-intentional disclosure. This paragraph shall not apply if the person receiving the information owes a duty of confidentiality, regardless of whether such duty is based on a law, on regulations, on articles of association, or on a contract.
9. Inside information relating to issuers whose financial instruments are admitted to trading on an SME growth market, may be posted on the trading venue’s website instead of on the website of the issuer where the trading venue chooses to provide this facility for issuers on that market”.

(ii) What is the Commission’s/ESMA’s mandate?

Article 17(2) of MAR empowers the Commission to adopt **delegated acts** establishing a minimum threshold of carbon dioxide equivalent and a minimum threshold of rated thermal input for the purposes of the application of the exemption provided for in the second subparagraph of Article 17(2).

Article 17(10) of MAR requires ESMA to develop **draft ITS** to determine the technical means for appropriate public disclosure of inside information as referred to Article 17(1), (2), (8) and (9).

(iii) Timing

In respect of the **delegated acts** required by **Article 17(2)**, ESMA consulted on these measures under:

- ESMA **CP 2014/808** – draft technical advice on possible delegated acts (**CP1**).

ESMA's draft technical advice to the Commission on these measures is contained in its **Final Report**, published on **03 February 2015**.

The Commission adopted a **Delegated Regulation** on **17 December 2015**. The **Delegated Regulation** was published in the Official Journal on **05 April 2016**, entering into force on the twentieth day following publication (i.e. on **24 April 2016**). The **Delegated Regulation** will then have effect from **03 July 2016**.

In respect of the **draft ITS** required by **Article 17(10)**, ESMA consulted on these measures under:

- ESMA **DP 2013/1649** – possible implementing measures (**DP**)
- ESMA **CP 2014/809** – draft technical standards (**CP2**).

ESMA's draft technical advice to the Commission on these measures is contained in its **Final Report**, published on **28 September 2015**. By letter dated **25 May 2016**, the Commission indicated to ESMA that it requested amendments to the draft ITS as these would, in the Commission's view, impose a double disclosure obligation on emission allowance market participants subject to disclosure requirements under both MAR and REMIT.

On 17 June 2016, ESMA published an **Opinion** in which it opposed the amendments suggested by the Commission.

The Commission adopted an **Implementing Regulation** in respect of **Article 17(10)** on 29 June 2016. The **Implementing Regulation** was published in the Official Journal on **30 June 2016**, entering into force the day following publication and having effect from **03 July 2016**.

I. Delaying the public disclosure of inside information

(i) What does Level 1 say?

Article 17 of MAR states:

- "4. An issuer or an emission allowance market participant, may, on its own responsibility, delay disclosure to the public of inside information provided that all of the following conditions are met:
- (a) immediate disclosure is likely to prejudice the legitimate interests of the issuer or emission allowance market participant;
 - (b) delay of disclosure is not likely to mislead the public;
 - (c) the issuer or emission allowance market participant is able to ensure the confidentiality of that information.

In the case of a protracted process that occurs in stages and that is intended to bring about, or that results in, a particular circumstance or a particular event, an issuer or an emission allowance market participant may on its own responsibility delay the public disclosure of inside information relating to this process, subject to points (a), (b) and (c) of the first subparagraph.

Where an issuer or emission allowance market participant has delayed the disclosure of inside information under this paragraph, it shall inform the competent authority specified under paragraph 3 that disclosure of the information was delayed and shall provide a written explanation of how the conditions set out in this paragraph were met, immediately after the information is disclosed to the public. Alternatively, Member States may provide that a record of such an explanation is to be provided only upon the request of the competent authority specified under paragraph 3.

5. In order to preserve the stability of the financial system, an issuer that is a credit institution or a financial institution, may, on its own responsibility, delay the public disclosure of inside information, including information which is related to a temporary liquidity problem and, in particular, the need to receive temporary liquidity assistance from a central bank or lender of last resort, provided that all of the following conditions are met:
 - (a) the disclosure of the inside information entails a risk of undermining the financial stability of the issuer and of the financial system;
 - (b) it is in the public interest to delay the disclosure;
 - (c) the confidentiality of that information can be ensured; and
 - (d) the competent authority specified under paragraph 3 has consented to the delay on the basis that the conditions in points (a), (b) and (c) are met.
6. For the purposes of points (a) to (d) of paragraph 5, an issuer shall notify the competent authority specified under paragraph 3 of its intention to delay the disclosure of the inside information and provide evidence that the conditions set out in points (a), (b) and (c) of paragraph 5 are met. The competent authority specified under paragraph 3 shall consult, as appropriate, the national central bank or the macro-prudential authority, where instituted, or, alternatively, the following authorities:
 - (a) where the issuer is a credit institution or an investment firm the authority designated in accordance with Article 133(1) of [the Capital Requirements Directive];
 - (b) in cases other than those referred to in point (a), any other national authority responsible for the supervision of the issuer.

The competent authority specified under paragraph 3 shall ensure that disclosure of the inside information is delayed only for a period as is necessary in the public interest. The competent authority specified under paragraph 3 shall evaluate at least on a weekly basis whether the conditions set out in points (a), (b) and (c) of paragraph 5 are still met.

If the competent authority specified under paragraph 3 does not consent to the delay of disclosure of the inside information, the issuer shall disclose the inside information immediately.

This paragraph shall apply to cases where the issuer does not decide to delay the disclosure of inside information in accordance with paragraph 4.

....

7. Where disclosure of inside information has been delayed in accordance with paragraph 4 or 5 and the confidentiality of that inside information is no longer ensured, the issuer or the emission allowance market participant shall disclose that inside information to the public as soon as possible.

This paragraph includes situations where a rumour explicitly relates to inside information the disclosure of which has been delayed in accordance with paragraph 4 or 5, where that rumour is sufficiently accurate to indicate that the confidentiality of that information is no longer ensured”.

(ii) What is the Commission’s/ESMA’s mandate?

Article 17(3) of MAR empowers the Commission to adopt delegated acts specifying the competent authority for the notifications of **Article 17(4) and (5)**.

Article 17(10) of MAR requires ESMA to develop **draft ITS** to determine the technical means for delaying the public disclosure of inside information as referred to in **Article 17(4) and (5)**.

(iii) Timing

In respect of the **delegated acts** required by **Article 17(3)**, ESMA consulted on these measures under:

- ESMA **CP 2014/808** – draft technical advice on possible delegated acts (**CP1**).

ESMA’s draft technical advice to the Commission on these measures is contained in its **Final Report**, published on **03 February 2015**.

The Commission adopted a *Delegated Regulation* on **17 December 2015**. The *Delegated Regulation* was published in the Official Journal on **05 April 2016**, entering into force on the twentieth day following publication (i.e. on **24 April 2016**). The *Delegated Regulation* will then have effect from **03 July 2016**.

In respect of the *draft ITS* required by **Article 17(10)**, ESMA consulted on these measures under:

- ESMA *DP 2013/1649* – possible implementing measures (**DP**)
- ESMA *CP 2014/809* – draft technical standards (**CP2**).

ESMA's draft technical advice to the Commission on these measures is contained in its *Final Report*, published on **28 September 2015**. By letter dated **25 May 2016**, the Commission indicated to ESMA that it requested amendments to the draft ITS as these would, in the Commission's view, impose a double disclosure obligation on emission allowance market participants subject to disclosure requirements under both MAR and REMIT.

J. Insider Lists

(i) What does Level 1 say?

Article 18 of MAR states:

- "1. Issuers or any person acting on their behalf or on their account, shall:
- (a) draw up a list of all persons who have access to inside information and who are working for them under a contract of employment, or otherwise performing tasks through which they have access to inside information, such as advisers, accountants or credit rating agencies (insider list);
 - (b) promptly update the insider list in accordance with paragraph 4; and
 - (c) provide the insider list to the competent authority as soon as possible upon its request.
-
4. Issuers or any person acting on their behalf or on their account shall update the insider list promptly, including the date of the update, in the following circumstances:
- (a) where there is a change in the reason for including a person already on the insider list;
 - (b) where there is a new person who has access to inside information and needs, therefore, to be added to the insider list; and
 - (c) where a person ceases to have access to inside information.
- Each update shall specify the date and time when the change triggering the update occurred".

(ii) What is ESMA's mandate?

Article 18(9) of MAR requires ESMA to develop *draft ITS* to determine the precise format of insider lists and the format for updating insider lists referred to in **Article 18**.

(iii) Timing

ESMA consulted on these measures under:

- ESMA *DP 2013/1649* – possible implementing measures (**DP**)
- ESMA *CP 2014/809* – draft technical standards (**CP2**).

ESMA's draft technical advice to the Commission on these measures is contained in its *Final Report*, published on **28 September 2015**.

The Commission adopted Level 2 measures under **Article 18(9)** in its *Implementing Regulation* dated **10 March 2016** and published in the Official Journal on **11 March 2016**. The *Implementing Regulation* entered into force on **12 March 2016** and will have effect from **03 July 2016**.

K. Managers' transactions

(i) What does Level 1 say?

Article 19 of MAR states:

“1. Persons discharging managerial responsibilities, as well as persons closely associated with them, shall notify the issuer or the emission allowance market participant and the competent authority referred to in the second subparagraph of paragraph 2:

- (a) in respect of issuers, of every transaction conducted on their own account relating to the shares or debt instruments of that issuer or to derivatives or other financial instruments linked thereto;
- (b) in respect of emission allowance market participants, of every transaction conducted on their own account relating to emission allowances, to auction products based thereon or to derivatives relating thereto.

Such notifications shall be made promptly and no later than three business days after the date of the transaction.

The first subparagraph applies once the total amount of transactions has reached the threshold set out in paragraph 8 or 9, as applicable, within a calendar year.

....

12. Without prejudice to Articles 14 and 15, an issuer may allow a person discharging managerial responsibilities within it to trade on its own account or for the account of a third party during a closed period as referred to in paragraph 11 either:

- (a) on a case-by-case basis due to the existence of exceptional circumstances, such as severe financial difficulty, which require the immediate sale of shares; or
- (b) due to the characteristics of the trading involved for transactions made under, or related to, an employee share or saving scheme, qualification or entitlement of shares, or transactions where the beneficial interest in the relevant security does not change”.

(ii) What is the Commission's/ESMA's mandate?

Article 19(13) of MAR empowers the Commission to adopt **delegated acts** specifying the circumstances under which trading during a closed period may be permitted by the issuer, as referred to in Article 19(12), including the circumstances that would be considered as exceptional and the types of transaction that would justify the permission for trading.

Article 19(14) of MAR empowers the Commission to adopt **delegated acts** specifying types of transactions that would trigger the requirement referred to in Article 19(1).

To ensure uniform application of Article 19(1), Article 19(15) of MAR requires ESMA to develop **draft ITS** concerning the format and template in which the information referred to in Article 19(1) is to be notified and made public.

(iii) Timing

In respect of the **delegated acts** required under Article 19(13) and (14), ESMA consulted on these measures under:

- ESMA **CP 2014/808** – draft technical advice on possible delegated acts (**CP1**).

ESMA's draft technical advice to the Commission on these measures is contained in its **Final Report**.

The Commission adopted a **Delegated Regulation** on **17 December 2015**. The **Delegated Regulation** was published in the Official Journal on **05 April 2016**, entering into force on the twentieth day following publication (i.e. on **24 April 2016**). The **Delegated Regulation** will have effect from **03 July 2016**.

In respect of the **draft ITS** required under **Article 19(15)**, ESMA consulted on these measures under:

- ESMA **DP 2013/1649** – possible implementing measures (**DP**)
- ESMA **CP 2014/809** – draft technical standards (**CP2**).

ESMA's draft technical advice to the Commission on these measures is contained in its **Final Report**, published on **28 September 2015**.

The Commission adopted Level 2 measures under **Article 19(15)** in its **Implementing Regulation** published on **05 April 2016**. The **Implementing Regulation** entered into force on **06 April 2016** and has effect from **03 July 2016**.

L. Investment recommendations and statistics

(i) What does Level 1 say?

Article 20 of MAR requires those who produce or disseminate investment recommendations or other information recommending or suggesting an investment strategy to “take reasonable care to ensure that such information is objectively presented, and to disclose their interests or indicate conflicts of interest concerning the financial instruments to which that information relates”.

(ii) What is ESMA's mandate?

Article 20(3) of MAR requires ESMA to develop **draft RTS** to “determine the technical arrangements for the categories of person referred to in [**Article 20(1)** of MAR], for objective presentation of investment recommendations or other information recommending or suggesting an investment strategy and for disclosure of particular interests or indications of conflicts of interest”.

(The technical arrangements laid down in the **draft RTS** are not to apply to journalists who are subject to equivalent appropriate regulation in a Member State, including equivalent appropriate self-regulation, provided that such regulation achieves similar effects as those technical arrangements.)

(iii) Timing

ESMA consulted on these measures under:

- ESMA **DP 2013/1649** – possible implementing measures (**DP**)
- ESMA **CP 2014/809** – draft technical standards (**CP2**).

ESMA's draft technical advice to the Commission on these measures is contained in its **Final Report**, published on **28 September 2015**.

The Commission adopted Level 2 measures under **Article 20(3)** in its **Delegated Regulation** on **09 March 2016**. Following endorsement by the European Parliament and Council, the **Delegated Regulation** was published in the Official Journal on **17 June 2016** and entered into force the following day. The **Delegated Regulation** will have effect from **03 July 2016**. (A **Corrigendum** to the **Delegated Regulation** was published in the Official Journal on 27 April 2017.)

M. Cooperation with ESMA

(i) What does Level 1 say?

Article 24(2) of MAR requires competent authorities, without delay, to provide ESMA with all information necessary to carry out its duties under the Regulation which established it.

(ii) What is ESMA's mandate?

Article 24(3) of MAR requires ESMA to develop **draft ITS** to determine the procedures and forms for exchange of information as referred to in **Article 24(2)**.

(iii) Timing

ESMA submitted a **Final Report** containing its **draft ITS** on cooperation among national competent authorities, ESMA, the Commission and other bodies to the Commission on **06 February 2018**.

N. Obligation to cooperate

(i) What does Level 1 say?

Article 25 of MAR sets out various requirements by which competent authorities must cooperate with each other and with ESMA where necessary for the purposes of MAR, unless one of the exceptions in **Article 25(2)** applies.

In particular, competent authorities must exchange information without undue delay and cooperate in investigation, supervision and enforcement activities.

By **Article 25(2)**, a competent authority may refuse to act on a request for information or a request to cooperate with an investigation only in the following exceptional circumstances, i.e., where:

- communication of relevant information could adversely affect the security of the Member State addressed, in particular the fight against terrorism and other serious crimes
- complying with the request is likely adversely to affect its own investigation, enforcement activities or, where applicable, a criminal investigation
- judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the Member State addressed or
- a final judgment has already been delivered in relation to such persons for the same actions in the Member State addressed.

(ii) What is ESMA's mandate?

Article 25(9) of MAR requires ESMA to develop **draft ITS** to determine the procedures and forms for exchange of information and assistance as referred to in **Article 25**.

(iii) Timing

ESMA submitted a **Final Report** containing its **draft ITS** on the exchange of information and assistance among national competent authorities to the Commission on **30 May 2017**.

Commission Implementing Regulation (EU) 2018/292 of 26 February 2018 on procedures and forms for exchange of information and assistance between competent authorities was published in the Official Journal on **27 February 2018**.

O. Cooperation with third countries

(i) What does Level 1 say?

Article 26(1) of MAR requires competent authorities, where necessary, to conclude cooperation arrangements with supervisory authorities of third countries concerning the exchange of information with supervisory authorities in those third countries and the enforcement of obligations arising under MAR in third countries.

The cooperation arrangements must ensure at least an efficient exchange of information to allow the competent authorities to carry out their duties under MAR.

(ii) What is ESMA's mandate?

To ensure consistent harmonisation of the provisions in **Article 26** of MAR, **Article 26(2)** requires ESMA to develop **draft RTS** containing a template document for cooperation arrangements to be used by competent authorities of Member States where possible.

(iii) Timing

ESMA was to have submitted its **draft RTS** to the Commission by **03 July 2015**.

P. Reporting of infringements

(i) What does Level 1 say?

Article 32 of MAR requires the competent authorities of Member States to establish effective mechanisms to enable reporting of actual or potential infringements of MAR to competent authorities.

(ii) What is the Commission's mandate?

Article 32(5) of MAR requires the Commission to adopt **implementing acts** to specify the procedures referred to in **Article 32(1)**. These are to include the arrangements for reporting and for following-up reports, and measures for the protection of persons working under a contract of employment and measures for the protection of personal data.

(iii) Timing

ESMA consulted on these measures under:

- ESMA **DP 2013/1649** – possible implementing measures (**DP**)
- ESMA **CP 2014/808** – draft technical advice on possible delegated acts (**CP1**).

ESMA's draft technical advice to the Commission on these measures is contained in its **Final Report**, published on 03 February 2015.

The Commission adopted Level 2 measures under **Article 32(5)** in its **Implementing Directive** published on **17 December 2015**.

Q. Exchange of information with ESMA

(i) What does Level 1 say?

Article 33 of MAR requires competent authorities of Member States to provide ESMA annually with:

- aggregated information regarding all administrative sanctions and other administrative measures imposed by the competent authority in accordance with **Articles 30, 31 and 32** of MAR; and
- anonymised and aggregated data regarding all administrative investigations undertaken in accordance with those Articles.

(ii) What is ESMA's mandate?

Article 33(5) of MAR requires ESMA to develop **draft ITS** to determine the procedures and forms for exchange of information as referred to in **Article 33**.

(iii) Timing

ESMA submitted a *Final Report* containing its **draft ITS** to the Commission on **26 July 2016**. The Commission's *Implementing Regulation* was published in the Official Journal on **30 June 2017**, coming into effect on the twentieth day following publication.

(ii) Level 3 Measures

A. Inside information

(i) What does Level 1 say?

Article 7(1) of MAR sets out types of information which would be inside information. These include:

- “(b) In relation to commodity derivatives, information of a precise nature, which has not been made public, relating, directly or indirectly to one or more such derivatives or relating directly to the related spot commodity contract, and which, if it were made public, would be likely to have a significant effect on the prices of such derivatives or related spot commodity contracts, and where this is information which is reasonably expected to be disclosed or is required to be disclosed in accordance with legal or regulatory provisions at the Union or national level, market rules, contract, practice or custom, on the relevant commodity derivatives markets or spot markets”.

(ii) What is ESMA’s mandate?

Article 7(5) of MAR requires ESMA to “issue **guidelines** to establish a non-exhaustive indicative list of information which is reasonably expected or is required to be disclosed in accordance with legal or regulatory provisions in the Union or national law, market rules, contract, practice or custom, on the relevant commodity derivatives markets or spot markets as referred to in [**Article 7(1)(b)**]. ESMA must “duly take into account specificities of those markets” in its guidelines.

(iii) Timing

ESMA consulted on these measures under

- **ESMA CP 2016/444** – ESMA’s guidelines on information expected or required to be disclosed on commodity derivatives markets or related spot markets under MAR (**CP 4**)

ESMA’s **Final Report** on Information on commodity derivatives markets or related spot markets was published on **30 September 2016**.

ESMA’s Guidelines on **Information relating to commodity derivatives markets or related spot markets for the purpose of the definition of inside information on commodity derivatives** were published in translation on ESMA’s website on 17 January 2017 and will take effect two months after publication, i.e., on **17 March 2017**.

B. Market soundings

(i) What does Level 1 say?

Article 8 of MAR states:

- “1. For the purposes of this Regulation, insider dealing arises where a person possesses inside information and uses that information by acquiring or disposing of, for its own account or for the account of a third party, directly or indirectly, financial instruments to which that information relates. The use of inside information by cancelling or amending an order concerning a financial instrument to which the information relates where the order was placed before the person concerned possessed the inside information, shall also be considered to be insider dealing. In relation to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (EU) No 1031/2010 [on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances], the use of inside information shall also comprise submitting, modifying or withdrawing a bid by a person for its own account or for the account of a third party.

2. For the purposes of this Regulation, recommending that another person engage in insider dealing, or inducing another person to engage in insider dealing, arises where the person possesses inside information and:
 - (a) recommends, on the basis of that information, that another person acquire or dispose of financial instruments to which that information relates, or induces that person to make such an acquisition or disposal, or
 - (b) recommends, on the basis of that information, that another person cancel or amend an order concerning a financial instrument to which that information relates, or induces that person to make such a cancellation or amendment.
3. The use of the recommendations or inducements referred to in **paragraph 2** amounts to insider dealing within the meaning of this Article where the person using the recommendation or inducement knows or ought to know that it is based upon inside information.
4. This Article applies to any person who possesses inside information as a result of:
 - (a) being a member of the administrative, management or supervisory bodies of the issuer or emission allowance market participant;
 - (b) having a holding in the capital of the issuer or emission allowance market participant;
 - (c) having access to the information through the exercise of an employment, profession or duties; or
 - (d) being involved in criminal activities.

This Article also applies to any person who possesses inside information under circumstances other than those referred to in the first subparagraph where that person knows or ought to know that it is inside information.
5. Where the person is a legal person, this Article shall also apply, in accordance with national law, to the natural persons who participate in the decision to carry out the acquisition, disposal, cancellation or amendment of an order for the account of the legal person concerned”.

Article 10 of MAR states:

- “1. For the purposes of this Regulation, unlawful disclosure of inside information arises where a person possesses inside information and discloses that information to any other person, except where the disclosure is made in the normal exercise of an employment, a profession or duties.

This paragraph applies to any natural or legal person in the situations or circumstances referred to in Article 8(4).
2. For the purposes of this Regulation the onward disclosure of recommendations or inducements referred to in Article 8(2) amounts to unlawful disclosure of inside information under this Article where the person disclosing the recommendation or inducement knows or ought to know that it was based on inside information”.

(ii) What is ESMA’s mandate?

Article 11(11) of MAR requires ESMA to issue **guidelines**, addressed to persons receiving market soundings, regarding:

- the factors that such persons are to take into account when information is disclosed to them as part of a market sounding in order for them to assess whether the information amounts to inside information
- the steps that such persons are to take if inside information has been disclosed to them in order to comply with **Articles 8 and 10** of MAR and
- the records that such persons are to maintain in order to demonstrate that they have complied with **Articles 8 and 10**.

(iii) Timing

ESMA consulted on these measures under:

- ESMA *DP 2013/1649* – possible implementing measures (**DP**)
- ESMA *CP 2016/162* – Draft guidelines on the Market Abuse Regulation (**CP3**).

ESMA's *Final Report* on market soundings and delay of disclosure of inside information was published on **13 July 2016**.

ESMA's Guidelines *Persons receiving market soundings* were published in translation on ESMA's website on 20 October 2016. They were re-published on 10 November 2016, following rectification of an issue in the Polish language version. They will take effect two months after re-publication (i.e., from **10 January 2017**)

C. Public disclosure and inside information

(i) What does Level 1 say?

Article 17(4) of MAR permits an issuer or an emission allowance market participant, on its own responsibility, to delay disclosure to the public of inside information provided that all of the following conditions are met:

- “(a) immediate disclosure is likely to prejudice the legitimate interests of the issuer or emission allowance market participant;
- (b) delay of disclosure is not likely to mislead the public;
- (c) the issuer or emission allowance market participant is able to ensure the confidentiality of that information”.

(ii) What is ESMA's mandate?

Article 17(11) of MAR requires ESMA to issue **guidelines** to establish a non-exhaustive indicative list of:

- the legitimate interests of issuers, as referred to in **Article 17(4)(a)** and
- situations in which delay of disclosure of inside information is likely to mislead the public as referred to in **Article 17(4)(b)**.

(iii) Timing

ESMA consulted on these measures under:

- ESMA *DP 2013/1649* – possible implementing measures (**DP**)
- ESMA *CP 2016/162* – Draft guidelines on the Market Abuse Regulation (**CP3**).

ESMA's *Final Report* on market soundings and delay of disclosure of inside information was published on **13 July 2016**.

ESMA's Guidelines *Delay in the disclosure of inside information* were published in translation on ESMA's website on 20 October 2016 and will take effect two months after publication (i.e., from **20 December 2016**).

Offices

Abu Dhabi

Simmons & Simmons Middle East LLP
Level 10 The ADNIC Building Khalifa Street
PO Box 5931 Abu Dhabi United Arab Emirates
T +971 2 651 9200 F +971 2 651 9201

Amsterdam

Simmons & Simmons LLP
PO Box 79023 1070 NB
Claude Debussylaan 247 1082 MC Amsterdam
The Netherlands
T +31 20 722 2500 F +31 20 722 2599

Beijing

Simmons & Simmons
33rd Floor China World Tower 3
1 Jianguomenwai Avenue
Beijing 100004 People's Republic of China
T +86 10 8588 4500 F +86 10 8588 4588

Bristol

Simmons & Simmons LLP
One Linear Park Temple Quay
Bristol BS2 0PS United Kingdom
T +44 20 7628 2020 F +44 20 7628 2070

Brussels

Simmons & Simmons LLP
Avenue Louise 149 b 16 1050 Brussels Belgium
T +32 2 542 09 60 F +32 2 542 09 61

Doha

Simmons & Simmons Middle East LLP
Level 5 Al Mirqab Tower Al Corniche Street
PO Box 23540 Doha State of Qatar
T +974 4409 6700 F +974 4409 6701

Dubai

Simmons & Simmons Middle East LLP
Level 7 The Gate Village Building 10
Dubai International Financial Centre
PO Box 506688 Dubai United Arab Emirates
T +971 4 709 6600 F +971 4 709 6601

Düsseldorf

Simmons & Simmons LLP
BroadwayOffice Breite Straße 31
40213 Düsseldorf Germany
T +49 2 11-4 70 53-0 F +49 2 11-4 70 53-53

Frankfurt

Simmons & Simmons LLP
MesseTurm Friedrich-Ebert-Anlage 49
60308 Frankfurt am Main Germany
T +49 69-90 74 54-0 F +49 69-90 74 54-54

Funchal

Sociedade Rebelo de Sousa in association with
Simmons & Simmons
Av. Zarco nº2-2º 9000-069 Funchal Madeira
T +351 291 20 22 60 F +351 291 20 22 61

Hong Kong

Simmons & Simmons
13th Floor One Pacific Place
88 Queensway Hong Kong
T +852 2868 1131 F +852 2810 5040

Jeddah

Hammad & Al-Mehdar in alliance with Simmons & Simmons
Office #1209, King Road Tower, Malik Road,
PO Box 864 Jeddah 21421
Kingdom of Saudi Arabia
T +966 92000 4626 F +966 2 606 9190

Lisbon

Sociedade Rebelo de Sousa in association with
Simmons & Simmons
Rua D. Francisco Manuel de Melo 21
1070-085 Lisbon Portugal
T +351 21 313 2000 F +351 21 313 2001

London

Simmons & Simmons LLP
CityPoint One Ropemaker Street
London EC2Y 9SS United Kingdom
T +44 20 7628 2020 F +44 20 7628 2070

Luxembourg

Simmons & Simmons Luxembourg LLP
Royal Monterey 26A Boulevard Royal
Luxembourg L-2429 Luxembourg
T +352 26 21 16 01 F +352 26 21 16 02

Madrid

Simmons & Simmons LLP
Calle Miguel Angel 11 5th floor 28010 Madrid Spain
T +34 91 426 2640 F +34 91 578 2157

Milan

Studio Legale Associato in affiliation with
Simmons & Simmons LLP
Corso Vittorio Emanuele II 1 20122 Milan Italy
T +39 02 72505.1 F +39 02 72505.505

Munich

Simmons & Simmons LLP
Lehel Carré, Thierschplatz 6
80538 Munich Germany
T +49 89-20 80 77 63-00 F +49 89-20 80 77 63-01

Paris

Simmons & Simmons LLP
5 boulevard de la Madeleine 75001 Paris France
T +33 1 53 29 16 29 F +33 1 53 29 16 30

Riyadh

Hammad & Al-Mehdar in alliance with Simmons & Simmons
Office No 1802 Level 18 Al Anoud Tower 2
Olaya King Fahad Road
Riyadh Kingdom of Saudi Arabia
T +966 11 484 7145 F +966 12 606 9190

Shanghai

Simmons & Simmons
40th Floor Park Place 1601 Nanjing Road West
Shanghai 200040 People's Republic of China
T +86 21 6249 0700 F +86 21 6249 0706

Singapore

Simmons & Simmons Asia LLP
12 Marina Boulevard #38-04
Marina Bay Financial Centre Tower 3 Singapore 018982
T +65 6831 5600 F +65 6831 5688

Tokyo

Simmons & Simmons Gaikokuho Jimu Bengoshi Jimusho
(Gaikokuho Joint Enterprise TMI Associates)
23rd floor Roppongi Hills Mori Tower
6-10-1 Roppongi Minato-ku Tokyo 106-6123 Japan
T +81 3 6438 5255 F +81 3 6438 5256

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