



European Securities and  
Markets Authority

# Reply form for the ESMA MAR Technical standards





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](http://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](http://www.esma.europa.eu) under the heading ‘Disclaimer’.



General information about respondent

Are you representing an association?	CEER
Activity:	Energy
Country/Region	European Union



## **Introduction**

**Please make your introductory comments below, if any:**

< ESMA\_COMMENT\_MAR\_TA\_1 >

TYPE YOUR TEXT HERE

< 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>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_MAR\_TS\_9>

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

<ESMA\_QUESTION\_MAR\_TS\_10>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_MAR\_TS\_10>





## **V. Suspicious transaction and order reporting**

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

<ESMA\_QUESTION\_MAR\_TS\_11>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_MAR\_TS\_11>

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

<ESMA\_QUESTION\_MAR\_TS\_12>  
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>

In their responsibility to implement REMIT, the sector-specific market abuse regime for electricity and gas wholesale markets, regulators in CEER follow the consultation on MAR technical standards very closely, with a focus on those technical standards that relate to the disclosure of information that would qualify as inside information under both MAR and REMIT.

We would like to point out that inside information related to the use and capacity of installations (e.g. the shutdown/construction of electricity power plants, of gas and electricity networks) can at the same time constitute inside information in relation to REMIT wholesale energy products (including financial instruments having electricity or gas as underlying) and in relation to MAR emission allowances products. This is apparently acknowledged in Recital (51) of MAR (that a duplication of disclosure for such information that are substantially the same under REMIT should be avoided).

Against this background, we propose comments on the envisaged approach and raise some concerns. We should welcome the opportunity to discuss these matters further.

#### **Specific comments**

REMIT and MAR have the same general concept with regard to the disclosure of inside information. It should be disclosed in a timely and effective manner. This includes e.g. dissemination to an interested public (as wide as possible), a timely disclosure in a manner which enables fast access that permits a complete, correct and timely assessment of the information by this public.

However (as correctly described in your consultation paper), public disclosure requirements under MAR are targeted specifically at issuers of financial instruments who have requested or approved admission of their financial instruments to trading on a venue as defined by the financial regulation. In other words, to those persons who are legally responsible for the obligations of the issue and whose business and operational activities have a strong and immediate link with the quotation of the related financial instruments.

CEER believes that applying the approach proposed for issuers of financial instruments would be disproportionate and detrimental for Emission Allowance Market Participants (EAMPs). In particular, with regard to the information to be disclosed under MAR which has substantially the same content as under REMIT, similar public disclosure requirements as those foreseen for the issuers of financial instruments on a MiFID venue would clearly result in an excessive burden on EAMPs. Nor would it take account of the fact that either information that qualifies as inside information and the impact that operational activities might have on the market for emission allowances (including auctioned products based thereon and derivatives thereof) are substantially different from those that are related with an issuer of financial instruments e.g. stocks.

We therefore consider that the REMIT regime already provides for an exhaustive framework that ensures both effective and proportionate disclosure of inside information, in terms of channels for public disclosure and of information content. CEER also believes that REMIT requirements are in line with those under the MAR regime although the procedure and contents partly differ.

In relation to the possibility of having effective access to inside information for potential investors in financial products, we would like to clarify that the requirements foreseen under REMIT, as detailed in the ACER Guidance, are exactly intended to favor the active distribution of information in a speedy and simultaneous manner, without the need actively to seek out any information. In particular, the use of a platform for the publication of inside information (e.g., platforms operated by the transmission system operator or by the energy exchange, transparency platforms in accordance with Regulations (EC) No. 714/2009 or

(EC) No 715/2009) does not merely imply the availability of information but allows for the effective access to that information. The minimum quality requirements listed in Chapter 7.2.2 of the ACER Guidance, including the use of RSS feeds, together with the obligation for market participants to inform via the ACER's European register of market participants where they disclose their information (according to Article 9 of REMIT) permits the interested public to process relevant information automatically. Therefore, we believe that, through this approach, the goal of an effective disclosure to the public is achieved as widely as possible (across the EU) and in an easy and fast manner. With regard to the possibility of using market participants' own website in the context of REMIT, we should clarify that this option was introduced as an interim solution in the ACER Guidance due to the lack of central inside information platforms at that early stage of REMIT implementation. Indeed, the use of the market participant's own website is foreseen only where adequate platforms to disclose inside information do not exist.

Moreover, we would like to highlight the risk that disclosure requirements under MAR that are meant for the issuers of financial instruments might not represent the most efficient and workable channels to disclose inside information relating to EAMPs (including energy market participants under REMIT). This concerns, in particular, information related to installations and physical assets.

Under MAR, there is no further specification of inside information in relation to EAMPs. At the same time, MAR seems to acknowledge the fact that inside information in relation to EAMPs could be very similar to that under the REMIT disclosure requirements (e.g. Recital 51 of MAR). Under REMIT, the notion of inside information has been specified in line with the tailored specific features of the energy markets. A major part of inside information refers to fundamental data on the use and capacity of physical assets and facilities. It typically includes information which is required to be made public in accordance with applicable regulations (e.g., Regulations (EC) No 714/2009 and (EC) No 715/2009, including guidelines and network codes adopted pursuant to those Regulations, as well as other regulatory provisions at Union or national level which establish the disclosure of relevant information). That information is very technical and continuously generated.

The application of MAR requirements for the publication of inside information, including fundamental data on the use and availability of physical assets and facilities could be extremely burdensome even for very large players, not least given the amount of information that is conventionally disclosed under the REMIT regime. Moreover, unless there is disclosure of the same content as requested under REMIT, by using the MAR requirements to actively disseminate information that would be inside information under both REMIT and MAR, energy market participants under REMIT that are also EAMPs under MAR would still risk not satisfying the REMIT regime.

**As a result of the above mentioned considerations CEER recommends that the REMIT disclosure regime should be accepted as a legitimate publication and distribution approach according to Article 17 MAR or should at least be accepted as legitimate in relation to disclosure of inside information related to fundamental data (e.g., installations, facilities and other physical assets) for market participants that are subject to both MAR and REMIT.**

**We would welcome further discussion of solutions with regard to means for appropriate disclosure of inside information that are substantially the same under both MAR and REMIT.**

.<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>

See answer to question 17.

<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>

See answer to question 17.

<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>

See answer to question 17.

<ESMA\_QUESTION\_MAR\_TS\_20>

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

<ESMA\_QUESTION\_MAR\_TS\_21>

<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>

<ESMA\_QUESTION\_MAR\_TS\_22>

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

<ESMA\_QUESTION\_MAR\_TS\_23>

<ESMA\_QUESTION\_MAR\_TS\_23>



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

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

<ESMA\_QUESTION\_MAR\_TS\_24>  
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>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_MAR\_TS\_27>

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

<ESMA\_QUESTION\_MAR\_TS\_28>  
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>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_MAR\_TS\_35>