



European Securities and
Markets Authority

Questions and Answers

On the Market Abuse Regulation



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1 Background

1. The Market Abuse Regulation (No 596/2014, “MAR”)¹, aims at enhancing market integrity and investor protection. To this end MAR updates and strengthens the existing MAD framework, which will be repealed when MAR applies as of 3 July 2016, by extending its scope to new markets and trading strategies and by introducing new requirements. The implementation of the MAR will result in an EU-wide market abuse regime.
2. Regulation (EU) No 596/2014 of 16 April 2014 (MAR) is a ‘framework’ Level 1 regulation which has been supplemented by the following technical implementing measures thus constituting the MAR framework:
 - Commission implementing directive on reporting to competent authorities of actual or potential infringements of MAR²;
 - Commission delegated regulation on an exemption for certain third countries public bodies and central banks, the indicators of market manipulation, the disclosure thresholds, the competent authority for notifications of delays, the permission for trading during closed periods and types of notifiable managers’ transactions³;
 - Regulatory technical standards on financial instrument reference data under Article 4 of MAR⁴
 - Implementing technical standards on financial instrument reference data under Article 4 of MAR⁵;
 - Regulatory technical standards on disclosing market participants conducting market soundings⁶;

¹ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (Market Abuse Regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (Text with EEA relevance) - OJ L 173, 12.6.2014, p. 1–61

² Commission Implementing Directive (EU) 2015/2392 of 17 December 2015 on Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards reporting to competent authorities of actual or potential infringements of that Regulation - OJ L 332, 18.12.2015, p. 126–132

³ Commission Delegated Regulation (EU) 2016/522 of 17 December 2015 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards an exemption for certain third countries public bodies and central banks, the indicators of market manipulation, the disclosure thresholds, the competent authority for notifications of delays, the permission for trading during closed periods and types of notifiable managers’ transactions (Text with EEA relevance) - OJ L 88, 5.4.2016, p. 1–18

⁴ Commission Delegated Regulation (EU) 2016/909 of 1 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the content of notifications to be submitted to competent authorities and the compilation, publication and maintenance of the list of notifications (Text with EEA relevance) - OJ L 153, 10.6.2016, p. 13–22

⁵ Commission Implementing Regulation (EU) 2016/378 of 11 March 2016 laying down implementing technical standards with regard to the timing, format and template of the submission of notifications to competent authorities according to Regulation (EU) No 596/2014 of the European Parliament and of the Council (Text with EEA relevance) - OJ L 72, 17.3.2016, p. 1–12

⁶ Commission Delegated Regulation (EU) 2016/960 of 17 May 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the appropriate arrangements, systems and procedures for disclosing market participants conducting market soundings (Text with EEA relevance) - OJ L 160, 17.6.2016, p. 29–33

- Implementing technical standards on disclosing market participants conducting market soundings (systems, templates and records)⁷;
- Regulatory technical standards on accepted market practices⁸;
- Regulatory technical standards on the prevention, detection and reporting of abusive practices or suspicious orders or transactions⁹;
- Implementing technical standards on insider lists format¹⁰;
- Implementing technical standards on the notification and disclosure of managers' transactions¹¹;
- Regulatory technical standards on the 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 interest¹²;
- Regulatory technical standards for the conditions applicable to buy-back programmes and stabilisation measures¹³;
- Implementing technical standards laying down implementing technical standards with regard to the technical means for appropriate public disclosure of inside information and for delaying the public disclosure of inside information¹⁴.

⁷ Commission Implementing Regulation (EU) 2016/959 of 17 May 2016 laying down implementing technical standards for market soundings with regard to the systems and notification templates to be used by disclosing market participants and the format of the records in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council (Text with EEA relevance) - OJ L 160, 17.6.2016, p. 23–28

⁸ Commission Delegated Regulation (EU) 2016/908 of 26 February 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council laying down regulatory technical standards on the criteria, the procedure and the requirements for establishing an accepted market practice and the requirements for maintaining it, terminating it or modifying the conditions for its acceptance (Text with EEA relevance) - OJ L 153, 10.6.2016, p. 3–12

⁹ Commission Delegated Regulation (EU) 2016/957 of 9 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the appropriate arrangements, systems and procedures as well as notification templates to be used for preventing, detecting and reporting abusive practices or suspicious orders or transactions (Text with EEA relevance) - OJ L 160, 17.6.2016, p. 1–14

¹⁰ Commission Implementing Regulation (EU) 2016/347 of 10 March 2016 laying down implementing technical standards with regard to the precise format of insider lists and for updating insider lists in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council (Text with EEA relevance) - OJ L 65, 11.3.2016, p. 49–55

¹¹ Commission Implementing Regulation (EU) 2016/523 of 10 March 2016 laying down implementing technical standards with regard to the format and template for notification and public disclosure of managers' transactions in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council (Text with EEA relevance) - OJ L 88, 5.4.2016, p. 19–22

¹² Commission Delegated Regulation (EU) 2016/958 of 9 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the technical arrangements 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 (Text with EEA relevance) - OJ L 160, 17.6.2016, p. 15–22

¹³ Commission Delegated Regulation (EU) 2016/1052 of 8 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council for the conditions applicable to buy-back programmes and stabilisation measures (Text with EEA relevance) - OJ L 173, 30.6.2016, p. 34–41

¹⁴ Commission Implementing Regulation (EU) 2016/1055 of 29 June 2016 laying down implementing technical standards with regard to the technical means for appropriate public disclosure of inside information and for delaying the public disclosure of inside information in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council (Text with EEA relevance) - OJ L 173, 30.06.2016, p. 47–51

3. ESMA is required to play an active role in building a common supervisory culture by promoting common supervisory approaches and practices. In this regard, the Authority develops Q&As as and when appropriate to elaborate on the provisions of certain EU legislation or ESMA guidelines.

2 Purpose

4. The purpose of this document is to promote common supervisory approaches and practices in the application of MAR and its implementing measures. It does this by providing responses to questions posed by the general public and competent authorities in relation to the practical application of the MAR framework
5. The content of this document is aimed at competent authorities to ensure that in their supervisory activities and their actions are converging along the lines of the responses adopted by ESMA and at helping issuers, investors and other market participants by providing clarity on the content of the market abuse rules, rather than creating an extra layer of requirements.

3 Status

6. The Q&A mechanism is a practical convergence tool used to promote common supervisory approaches and practices under Article 29(2) of the ESMA Regulation¹⁵.
7. Therefore, due to the nature of Q&As, formal consultation on the draft answers is considered unnecessary. However, even if they are not formally consulted on, ESMA may check them with representatives of ESMA's Securities and Markets Stakeholder Group, the relevant Standing Committee's Consultative Working Group or, where specific expertise is needed, with other external parties.
8. ESMA will review these questions and answers to identify if, in a certain area, there is a need to convert some of the material into ESMA guidelines and recommendations. In such cases, the procedures foreseen under Article 16 of the ESMA Regulation will be followed.

4 Questions and answers

9. This document may be updated where relevant as and when new questions or issues arise. The date on which each question was last amended is included after each question for ease of reference.

¹⁵ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC Regulation, 15.12.2010, L331/84.



10. Questions on the practical application and the operation of the market abuse regime in Europe may be sent to the following email address at ESMA: info@esma.europa.eu.

Section 1 - Prevention and detection of market abuse

Question [last update 30 May 2016]: Does the obligation to detect and report market abuse under Article 16(2) of MAR apply to investment firms under MiFID only or do UCITS management companies, AIFMD managers or firms professionally engaged in trading on own account also fall within the scope of that obligation?

Answer: The definition of “person professionally arranging or executing transactions” laid down in point (28) of Article 3(1) of MAR is activity based, does not cross refer to definitions under MiFID and is independent from the latter, leading thus to consider that the scope of Article 16(2) of MAR is not only limited to firms or entities providing investment services under MiFID.

In the absence of any reference in the definition that would limit the scope and exclude particular categories of persons regulated by other financial European legislation, ESMA considers that the obligation to detect and identify market abuse or attempted market abuse under Article 16(2) of MAR applies broadly, and “persons professionally arranging or executing transactions” thus includes buy side firms, such as investment management firms (AIFs and UCITS managers), as well as firms professionally engaged in trading on own account (proprietary traders).

ESMA would also like to highlight that detecting and reporting suspicious orders and transactions under Article 16(2) of MAR should be applied by “persons professionally arranging or executing transactions” through the implementation of arrangements, systems and procedures that are appropriate and proportionate to the scale, size and nature of their business activity.

Section 2 – Managers’ transactions

*****NEW*** Question 1 [last update 26 October 2016]:** For transactions carried out under Article 19(1) of Regulation (EU) No 596/2014 of the European Parliament and of the council (MAR) in a currency which is not Euro (EUR), which exchange rate should be used to determine if the threshold set forth in Article 19(8) MAR of EUR 5 000 has been crossed?

Answer 1: If transactions are carried out in a currency which is not the EUR, the exchange rate to be used to determine if the threshold is reached is the official daily spot foreign exchange rate which is applicable at the end of the business day when the transaction is conducted. Where available, the daily euro foreign exchange reference rate published by the European Central Bank on its website should be used.

Question 2 [last update 13 July 2016]: Does the «*announcement*» of the interim or year-end financial results determines the timing of the closed period referred to in Article 19(11) of Regulation (EU) No 596/2014 (MAR)?

Answer 2: According to MAR, there should be only one closed period relating to the announcement of every interim financial report and another relating to the year-end report.

The term «*announcement*» of an interim or a year–end financial report used in Article 19(11) of MAR is the public statement whereby the issuer announces the information included in an interim or a year-end financial report that the issuer is obliged to make public according to the rules of the trading venue where the issuer’s shares are admitted to trading or national law. The date when the «*announcement*» is made is the end date for the thirty-day closed period.

With particular reference to the year-end financial report, the «*announcement*» is the public statement whereby the issuer announces, in advance to the publication of the final year-end report, the preliminary financial results agreed by the management body of the issuer and that will be included in that report. This can apply only if the disclosed preliminary financial results contain all the key information relating to the financial figures expected to be included in the year-end report. In the event the information announced in such way changes after its publication, this will not trigger another closed period but should be addressed in accordance with Article 17 of MAR.

In any case, persons discharging managerial responsibilities remain subject at all times to Articles 14 and 15 of MAR prohibiting insider dealing and attempted insider dealing, unlawful disclosure of inside information, as well as market manipulation and attempted market manipulation.

Section 3 – Investment recommendation and information recommending or suggesting an investment strategy

For the purpose of this section, it is recalled that:

- Article 3(1)(35) of MAR sets out that "*investment recommendation*" means "any information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public";
- article 3(1)(34) of MAR sets out that "*information recommending or suggesting an investment strategy means information:*
 - (i) *produced by an independent analyst, an investment firm, a credit institution, any other person whose main business is to produce investment recommendations or a natural person working for them under a contract of employment or otherwise, which, directly or indirectly, expresses a particular investment proposal in respect of a financial instrument or an issuer; or*
 - (ii) *produced by persons other than those referred to in point (i), which directly proposes a particular investment decision in respect of a financial instrument."*

*****NEW*** Question 1 [last update 26 October 2016]:** Do communications made orally or via electronic means such as telephone calls and "chat" functions, or communications labelled e.g. "morning notes" or "sales notes", constitute an "*investment recommendation*" under MAR?

Answer 1: Any communication that meets the criteria of the definition of investment recommendation within the meaning of Article 3(1)(35) of MAR in conjunction with Article 3(1)(34) of MAR will be deemed to fall within the scope of the investment recommendation regime. When determining whether a communication is an "*investment recommendation*", an assessment should be made based on the substance of the communication, irrespective of its name or label and the format, form, or the medium through which it is delivered (whether electronically, orally or otherwise). As such, whether a specific oral or electronic communication, or a communication labelled as "morning notes" or "sales notes", may be considered an investment recommendation within the meaning of MAR, it should be established on a case-by-case basis.

Where a standardised communication, including oral or electronic communication, is structured and pre-planned for distribution channels and it implicitly or explicitly suggests an

investment strategy in relation to a financial instrument or issuer, it should be regarded as "investment recommendation".

*****NEW*** Question 2 [last update 26 October 2016]:** Can communications that do not refer to either one or several financial instruments or issuers be considered investment recommendations under MAR?

Answer 2: Communications that meet the criteria of the definition of "*investment recommendation*" within the meaning of Article 3(1)(35) of MAR in conjunction with Article 3(1)(34) of MAR will be deemed to fall within the scope of the investment recommendation regime.

In particular, Article 3(1)(35) of MAR sets out that "*investment recommendation*" means "*information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers* [emphasis added], including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public".

Therefore, a communication that does not refer to either a financial instrument or an issuer, should generally not be considered an investment recommendation. However, the producer's assessment as to whether the above communication may be investment recommendation should be conducted on a case-by-case basis.

Communication relating solely to spot currency rates, sectors, interest rates, loans, commodities, macroeconomic variables or industry sectors and not referring to a financial instrument or an issuer would be considered as investment recommendation where it contains information assessed as allowing a reasonable investor to deduce that the communication is implicitly recommending specific financial instruments or issuers and provided that the other criteria of the definition of "*investment recommendation*" within the meaning of Article 3(1)(35) of MAR in conjunction with Article 3(1)(34) of MAR are met. For example, an opinion on a specific sector that is composed of a very limited number of issuers may be considered an investment recommendation regarding those issuers.

*****NEW*** Question 3 [last update 26 October 2016]:** Would an investment firm which produces an investment recommendation be considered to fall within the scope of Article 3(1)(34)(i) of MAR, even though the production of such recommendation is not its main business?

Answer 3: With regard to an investment firm, any information that comprises direct or indirect investment proposals in respect of a financial instrument or an issuer will be considered as information recommending or suggesting an investment strategy as defined under point (i) of Article 3(1)(34) of MAR. This is regardless of whether or not the production of investment

recommendations is the main business of the investment firm, noting that the condition “*whose main business is to produce investment recommendations*” contained in point (i) of Article 3(1)(34) of MAR concerns any other person than independent analysts, investment firms and credit institutions.

*****NEW*** Question 4 [last update 26 October 2016]:** Does material intended for distribution channels or for the public concerning one or several financial instruments that contains statements indicating that the concerned financial instruments are “undervalued”, “fairly valued” or “overvalued” fall within the definition of “investment recommendation” under MAR?

Answer 4: Such material which concerns one or several financial instruments admitted to trading on a regulated market or a multilateral trading facility or for which a request for admission to trading on such a market has been made, or, traded on a multilateral trading facility or an organised trading facility, is considered as information implicitly recommending or suggesting an investment strategy pursuant to Article 3(1)(34) of MAR, insofar as it contains a valuation statement as to the price of the concerned financial instruments.

Furthermore, material containing an estimated value such as a “quantitative fair value estimate” that is providing a projected price level or “price target”, or any other elements of opinion on the value of the financial instruments, is also considered to be information implicitly recommending or suggesting an investment strategy pursuant to Article 3(1)(34) of MAR.

As the material referred to above is an investment recommendation under MAR, it needs to comply with the relevant obligations and standards set out in MAR and Commission Delegated Regulation (EU) 2016/958 of the European Parliament and of the Council concerning the objective presentation of investment recommendations or other information recommending or suggesting an investment strategy and the disclosure of particular interests and conflicts of interest by producers of such recommendations. In addition, a third party that disseminates such material is considered as a disseminator of investment recommendations and therefore needs to comply with the relevant obligations and standards set out in MAR and Commission Delegated Regulation (EU) 2016/958 of the European Parliament and of the Council.