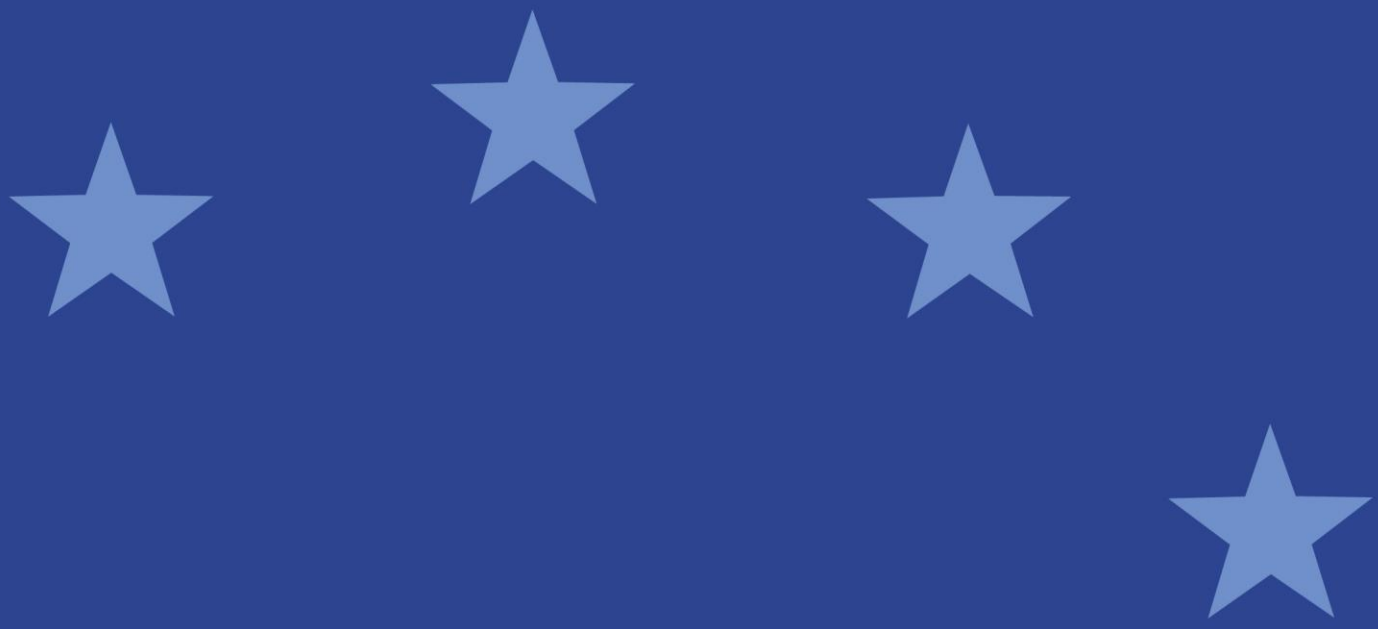
esma European Securities and Markets Authority

Reply form for the Consultation Paper on MAR review report



3 October 2019

European Securities and Markets Authority

Date: 3 October 2019

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the Consultation Paper on the MAR review report published on the ESMA website.

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, ESMA will only be able to consider responses which follow the instructions described below:

- use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
- do not remove the tags of type <ESMA_QUESTION_CP_MAR_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- 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:

- if they respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

Naming protocol

In order to facilitate the handling of stakeholders' responses please save your document using the following format:

ESMA_CP_MAR_NAMEOFCOMPANY_NAMEOFDOCUMENT.

e.g. if the respondent were ESMA, the name of the reply form would be:

ESMA_CP_MAR_ESMA_REPLYFORM or

ESMA_CP_MAR_ANNEX1

Deadline

Responses must reach us by **29 November 2019.**

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Publication of responses

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the headings 'Legal notice' and 'Data protection'.

General information about respondent

Name of the company / organisation	European Venue and Intermediaries Association
Activity	Regulated markets/Exchanges/Trading Systems
Are you representing an association?	☒
Country/Region	Europe

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_CP_MAR_1>
Representing 11 parent companies operating over 50 segment MIC MTFs and OTFs which list and admit non-equity instruments and derivative products onto MiFID trading venues, the European Venues and Intermediaries Association ["EVIA"] welcomes this opportunity to contribute our views on the prospective changes to MAR.

We welcome a broader approach because this would witness the scope of the regulation converging towards the actual ongoing supervisory expectations for the monitoring of activity on trading venues. We also welcome several of these proposals as in aggregate they should have the effect of levelling the playing field and perceptions between RM, MTF and OTF inside the MiFIR perimeter whilst similarly affording the scope for harmonisation with the third country trading venue regimes under which almost all our member firms additionally operate. We underline that the observed incidence of market abuse is far higher on regulated market order books than witnessed on the variety of matching technologies and methods than across the non-equity MTFs and OTFs.

The principal area upon which we provide comment concerns the proposals allied to spot FX, a product where member trading platform operators have expressed concerns to risks arising from the recent influx of non-regulated facilities operating as aggregators or as outsourced technology yet performing the self-same arranging and matching activities as those firms who operate within or together with the MiFIR perimeter.

Notable topics that we would provide caution around are firstly the imposition of order reporting where the required protocols and infrastructure technology is unavailable and would have adverse consequences for both liquidity and competition.

A second topic concerns benchmark administrators where a specific regime under BMR provides for a better regulation than MAR could do due to the specific nature of the activity. This is akin to physical energy deliveries where again a bespoke regulation has been required for self-evident reasons.
<ESMA_COMMENT_CP_MAR_1>

Q1. Do you consider necessary to extend the scope of MAR to spot FX contracts? Please explain the reasons why the scope should or should not be extended, and whether the same goals could be achieved by changing any other piece of the EU regulatory framework.

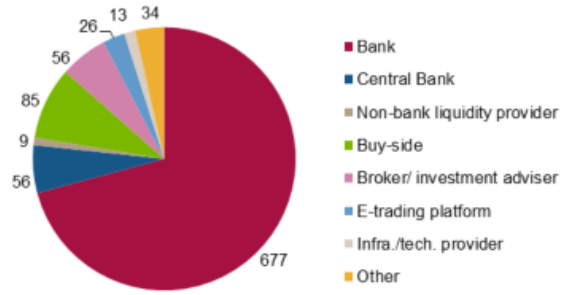
<ESMA_QUESTION_CP_MAR_1>

Yes, EVIA does agree that it is necessary to extend the scope of MAR to spot FX contracts. We believe the scope of MAR should not be directly aligned with that of MiFID, but that it can go wider to encompass the different roles played by currency transfers such as hedging, payments and funding. In principle, we would rather consider the broader risks presented by financial crime to the traded perimeter which therefore extends beyond the precise scope of investment products across the scope defined activities under the capital requirements regulation and through associated activities and arrangements that could happen in a system or on a platform such as payments, funding and post-trade processing.

Codes of Conduct: We are mindful that many of the identified harmful conduct provisions, as well as the best practices applicable to the spot FX market are set out in the Global FX Code of Conduct ["GFXCoC"]. We also recognise that when such codes are directly referenced into legal force via rules such as the UK Senior Managers and Certification Regime ["SMCR"], so the combination could effectively make the same conduct effect as a criminal regime such as the MAR. However, and noting the comments from BOE Governor Carney to the UK Parliament on 15th October that nothing less than criminal sanctions would suffice, we consider the limited reach of the code and of UK financial regime to be insufficient in respect of the size and nature of the spot FX markets. Further, as platform operators we would find it more difficult to monitor and police a principles defined code of conduct than we would for a legal statute and concomitant national rules.

The GFXCoC, with or without recourse to the supervisory perimeter such as in the UK, is neither a substitute for, nor an obfuscation with the market abuse perimeter. Rather it articulates conduct requirements across the supervisory perimeter, but all entirely within the legal perimeter. We would draw attention to the 14 standards set out by the FICC Market's Standards Board across the domain of financial instruments and investment products to draw the analogy that codification within the perimeter is separate and different to the legal establishment of the criminal perimeter.

Chart 6: Public commitments to the FX Global Code[18]



Source: Global Index of public registers as of 9 September.

The purpose of the GFXCoC is to address the mutual expectations and the specific technical considerations around FX market conduct. We do observe public adherence statements by a significant proportion of the market and that clients are requesting firms' adherence with the Code as part of their on-boarding process. An initial review process is currently ongoing which recognises that the code has been implemented globally across some sixteen jurisdictions and has already achieved progress in promoting higher ethical conduct standards. Preliminary statements from the FX Global Committee note that it complements the same objectives as MAR but that best practice does not replace the criminal perimeter. Therefore EVIA recommends that ESMA considers references to some of the specific considerations of the FXGCoC in a similar manner to that pioneered by the FCA, and as a consequence that it recommends extending FX spot under the MAR perimeter to facilitate the application of a consistent cross-border approach using the articulation developed by the code.

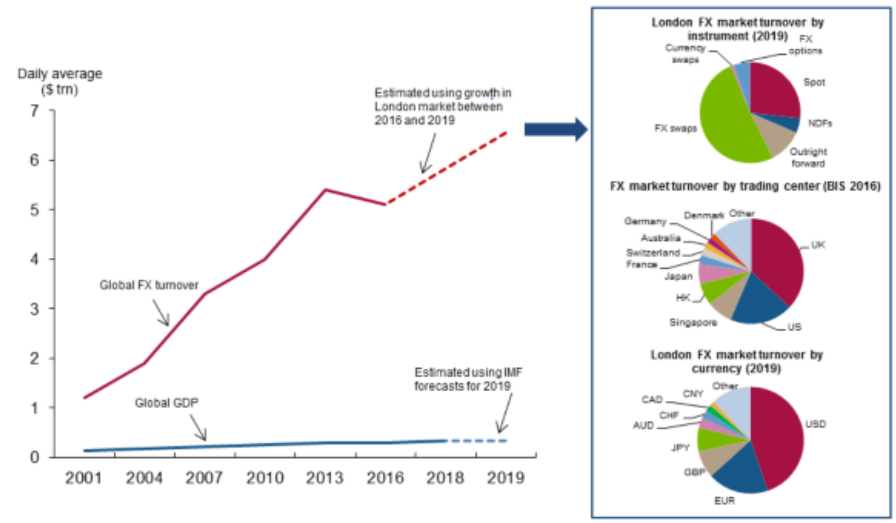
Activity versus Product: The nature of market participants also has a bearing in our opinion. The Price making function in the spot segment of the main G20 currencies has substantially moved away from the EU banks domain to that of specialist technology firms who may not be authorised as investment firms. We specifically note that unlike other segments of the wholesale markets, spot FX has become a liquidity pool provided by specialist technical non-bank market makers with limited permissions in the EU. For example, we understand that some six non-bank firms provide the bulk of global spot electronic low latency liquidity for major FX pairs: Citadel Securities, Flow Traders, HC Tech, Jump Trading, Virtu Financial and XTX Markets. Traditionally supervised firms such as banks and buyside firms conjointly form the market-takers or clients. It would therefore seem more appropriate to predicate the regulatory perimeter on the nature of the activity performed in the EU rather than on the MiFID perimeter of the instrument or on the nature of the permissions held under regional supervision.

Data Quantity: As operators of trading venues, we note the widespread apprehensions in processing and storing the quantity of order data in highly automated and low latency markets such as G20 FX Spot. When combined with the cross-asset monitoring requirements, there are concerns that these provisions would make the compliance hurdles either unassailable or uncompetitive resulting in a deterioration of competition. On balance, we do not consider these concerns to be a material negative case for trading venues, all of whom store and monitor orders and trades on a daily basis around the clock and around the globe, and to whom on the spot segment there still appear to be limited barriers to entry.

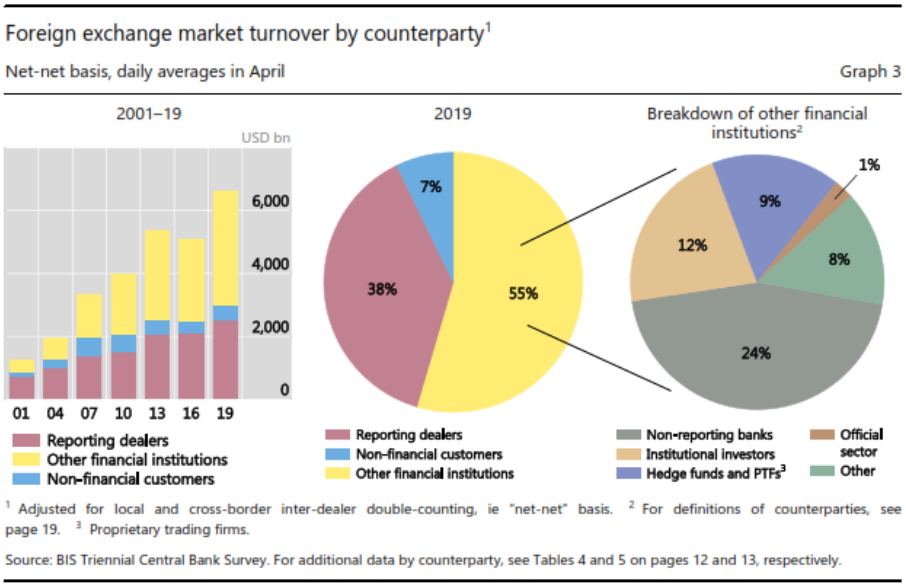
Concurrent Developments: We note the recent media reports on the outcome of internal reviews across the dealer bank sector, such as that recently reported where Citibank may reduce the number of websites and systems from 45 to 15 by the first quarter of 2020. Such numbers would not suggest a paucity of access nor of competition to us, but rather a disbenefit from fragmentation. This accords with our observations of the current playing field and these recent central bank comments and media quotes:

- *"My sources predict Citi will end up pricing to around 18-20 FX spot venues – that should be sufficient for anyone, especially clients, to tap into the bank's liquidity, and of course it has its own single dealer platform in which it has invested heavily, perhaps this is also a play to push more flow that way."* – P & L Magazine 31st October 2019.
- Run Lola run! The good, the bad and the ugly of FX market fragmentation - and what to do about it; Speech by Mr Andrew Hauser , Executive Director for Markets of the Bank of England, at the Tradetech FX 2019, Barcelona, 13 September 2019.

Chart 1: The global FX market at a glance



Sources: London Foreign Exchange Joint Standing Committee April 2019 survey, Bank for International Settlements triennial surveys, Bloomberg LP, International Monetary Fund and Bank calculations.



Consistency: EVIA observes that in some EU supervisory transpositions, spot FX is deemed to be inside the scope of MiFID, whilst in others it remains outside unless the instrument is traded as part of a package. Harmonisation is desirable, but this dispersion belies an inappropriate application of the regulatory perimeter in the recent swathe of recent EU legislative packages. In the first instance, and in order to provide for comity of approach, we commend that where the spot and other short dated legs of a package transaction or FX Strategy apply, so all components are brought into the scope of MiFID and are deemed to be financial instruments. Whilst this is indeed currently the normal market practice, further formalisation via guidance would greatly diminish the requirement to extend MAR under this consultation because MiFID itself does the extension.

MiFID/R Perimeter: In the second instance and more broadly, we remain concerned that the EU approach to the FX perimeter remains discordant to that in the US and nearly all other regulatory regimes. Commercial purposes, forward payments and funding trades should be regulated as such, but not under MiFID as investments. Given the global nature of the market combined with the fact that every FX trade is denominated and settled in USD, the relevance of harmonising towards a global standard perimeter cannot be understated. In this way FX forwards up to 12m terms should be exempted from MiFID but regulated as payments or as SFTs. However, MAR should apply to all cases, where MiFID should not. This demonstrates our opinion that in respect to FX at least, MiFID and MAR have been applied the wrong way around.

In general therefore, we would recommend that the broader application of MAR should be accompanied under MiFID REFIT with a reconsideration of the perimeter of FX trades that are not options or have other embedded leverage, with tenors under twelve months as either payments or funding trades and therefore treated under PSD2 or SFTR rather an as investments under MiFID.

<ESMA_QUESTION_CP_MAR_1>

Q2. Do you agree with ESMA's preliminary view about the structural changes that would be necessary to apply MAR to spot FX contracts? Please elaborate and indicate if you would consider necessary introducing additional regulatory changes.

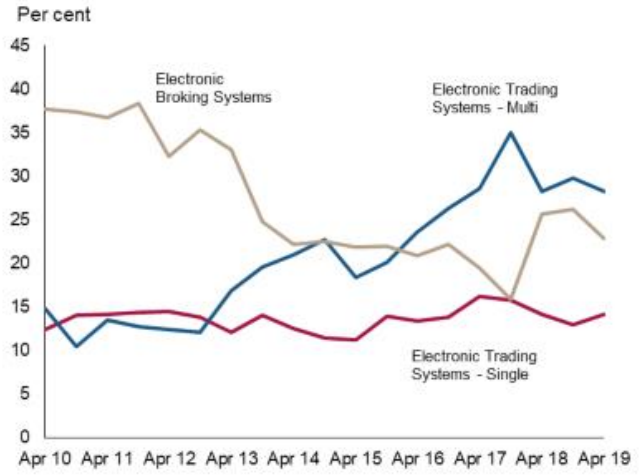
<ESMA_QUESTION_CP_MAR_2>

EVIA does not agree with ESMA's preliminary review that there will be significant structural changes necessary to apply MAR to spot FX contracts.

As firms operating the trading venues and platforms which conduct the vast majority of spot FX within the EU, EVIA would firmly refute the suppositions by ESMA that the trading systems, together with applicable rules and terms of business do not constitute adequate controls, transparency, and conduct requirements. Rather, all our members operate MiFID MTFs, SEFs and RMOs and maintain the same level of controls to spot markets as they do to other financial instruments and derivatives. This includes market monitoring, the storing and reporting of transactions and the capacity for transparency and best execution reporting.

We disagree with ESMA's characterisation of the spot FX market as an OTC market. All OTC trades would be identified as those occurring on single dealer platforms; as the recent Bank of England chart below illustrates, this is approximately only 10% of market volume.

Chart 3: Platform use as a share of spot FX turnover in the London market[4]



Source: London Foreign Exchange Joint Standing Committee surveys and Bank of England calculations.

To be clear, in our opinion, ESMA's characterisation is very far from reality, as are ESMA's further assumptions that price determination is not necessarily made through the interaction of demand and supply in a trading venue. Rather, because the small bilateral portion of spot market volumes are priced from multilateral venues in low latency real-time, the key concepts of MAR are already enshrined. This inverted situation has been further changed by the widespread role of non-authorised aggregators providing consolidated tapes which are executable at very low latencies and therefore due to the very nature of their activity in the FX spot markets and potential abuse, EVIA continue to recommend that FX spot be scoped into MAR

Clearly none of FX payments, SFTs nor derivatives have “issuers” as identified by ESMA. Therefore, no issuer LEI could be applicable. This is in common with many financial instruments and all derivatives. Therefore, the requirement exists for suitable amending provisions to be made to the regulation together with the implementing acts and guidelines.

Furthermore, ESMA’s comments pertaining to the relationship and credit worthiness of the counterparties are of very limited significance due to the widespread use of credit tools and clearing facilities combined with the relatively small capital burden of spot transactions upon balance sheet credit matrices. We note that in a forward looking capacity, there is widespread development and deployment of Fintech and RegTech credit tools from infrastructures such as Cobalt, notwithstanding the spot markets may tend towards immediate settlement via StableCoin tokenisation as set out by practitioners at the recent CFTC TACC hearing.

(22) Whilst ESMA’s concerns regarding the sheer number of orders and transactions generated in the spot FX market are relevant, we note firstly that this has not prevented a great many platforms and clients from exchanging that information on a global basis in low latency real-time, and secondly that NCAs would only need to receive and ingest this information periodically an on demand. Neither of these provisions would seem to provide adequate cause for concern and are further tempered by the low transaction to order ratio observed in low latency markets.

(23) In respect of the concerns that ESMA notes regarding common identifiers of contracts/transactions and attributes describing them, we would advise that since these products are not subject to the anticompetitive IP restrictions of exchange traded derivatives, most products and trades conform to the open standards long set by the utility middle-wares and market conventions common to previously OTC markets. This is an enormous benefit to NRAs and participants alike and provides a template for derivative markets. Furthermore, EVIA understands that the FSB workstream on Unique Product Identifiers is now ready to establish an ISO standard comprising critical data elements in addition to ISIN alignment.

Therefore, EVIA reiterates that due to the very nature of their activity in the FX spot markets and to mitigate any potential abuse, we would continue to recommend that FX spot be scoped into MAR..
<ESMA_QUESTION_CP_MAR_2>

Q3. Do you agree with this analysis? Do you think that the difference between the MAR and BMR definitions raises any market abuse risks and if so what changes might be necessary?

<ESMA_QUESTION_CP_MAR_3>
EVIA states that BMR already sets extensive requirements for Benchmark Administrator [“BA”]to have good governance and systems and control framework for ensuring the integrity of the indices they publish; this includes ensuring the data providers themselves have robust monitoring and surveillance controls to detect for market abuse. To consider additional provisions in MAR may duplicate requirements unnecessarily.
<ESMA_QUESTION_CP_MAR_3>

Q4. Do you agree that the Article 30 of MAR "Administrative sanctions and other administrative measures" should also make reference to administrators of benchmarks and supervised contributors?

<ESMA_QUESTION_CP_MAR_4>
EVIA do not agree MAR modification of article 30 (2) to also apply to benchmark administrators and supervised contributors as the purpose of the Benchmark Regulator is the supervision of these firms and this already includes imposing sanctions where there are breaches of the regulation including manipulation. If such clarity is lacking then we propose that these matters be included in the BMR which is currently going through a review.
<ESMA_QUESTION_CP_MAR_4>

Q5. Do you agree that the Article 23 of MAR "Powers of competent authorities" point (g) should also make reference to administrators of benchmarks and supervised contributors? Do you think that is there any other provision in Article 23 that should be amended to tackle (attempted) manipulation of benchmarks?

<ESMA_QUESTION_CP_MAR_5>
EVIA members do not think it is necessary to provide any further clarification to the definition of 'inside information' as we do not conceive of any difficulty in identifying indicators of insider dealing through various modes of electronic monitoring tools.

Such tools successfully provide a wide range of suite of insider trading alerts tailored to the firm's activity to identify potential breaches. In addition, there are a number of examples of insider information scenarios in the various regulatory guidance clarify this definition.

We would note however that by including spot FX into the scope of MAR, unless it is as a package component and therefore a "financial instrument," these transactions would not currently fall under the scope of Article 7.
EVIA does not agree modification to MAR Article 23 (g) to apply benchmark administrators and supervised contributors but to consider including this provision under the BMR framework which is also undergoing a review.
<ESMA_QUESTION_CP_MAR_5>

Q6. Do you agree that Article 30 of MAR points (e), (f) and (g) should also make reference to submitters within supervised contributors and assessors within administrators of commodity benchmarks?

<ESMA_QUESTION_CP_MAR_6>
EVIA propose any references to MAR applications to submitters should be made within the BMR.
<ESMA_QUESTION_CP_MAR_6>

Q7. Do you agree that there is a need to modify the reporting mechanism under Article 5(3) of MAR? Please justify your position.

<ESMA_QUESTION_CP_MAR_7>
No comments as EVIA members are not subject to Buy back programmes.

<ESMA_QUESTION_CP_MAR_7>

Q8. If you agree that the reporting mechanism should be modified, do you agree that Option 3 as described is the best way forward? Please justify your position and if you disagree please suggest alternative.

<ESMA_QUESTION_CP_MAR_8>
No comments as EVIA members are not subject to Buy back programmes
<ESMA_QUESTION_CP_MAR_8>

Q9. Do you agree to remove the obligation for issuers to report under Article 5(3) of MAR information specified in Article 25(1) and (2) of MiFIR? If not, please explain.

<ESMA_QUESTION_CP_MAR_9>
No comments as this is issuer reporting is not relevant to EVIA members.
<ESMA_QUESTION_CP_MAR_9>

Q10. Do you agree with the list of fields to be reported by the issuers to the NCA? If not, please elaborate.

<ESMA_QUESTION_CP_MAR_10>
No comments as issuer reporting is not relevant to EVIA members.

<ESMA_QUESTION_CP_MAR_10>

Q11. Do you agree with ESMA's preliminary view?

<ESMA_QUESTION_CP_MAR_11>
No comments as transparency of transactions related to Buy back programmes is not relevant to EVIA members.

<ESMA_QUESTION_CP_MAR_11>

Q12. Would you find more useful other aggregated data related to the BBP and if so what aggregated data? Please elaborate.

<ESMA_QUESTION_CP_MAR_12>
No comments as transparency of transactions related to Buy back programmes is not relevant to EVIA members.

<ESMA_QUESTION_CP_MAR_12>

Q13. Have market participants experienced any difficulties with identifying what information is inside information and the moment in which information becomes inside information under the current MAR definition?

<ESMA_QUESTION_CP_MAR_13>
EVIA members do not think it is necessary to provide any further clarification to the definition of 'inside information' as there is no difficulty in identifying indicators of insider dealing through various modes of electronic monitoring tools. Such tools successfully provide a wide range of suite of insider trading alerts tailored to the firm's activity to identify potential breaches. In addition, there are a number of examples of insider information scenarios in the various regulatory guidance clarify this definition.

<ESMA_QUESTION_CP_MAR_13>

Q14. Do market participants consider that the definition of inside information is sufficient for combatting market abuse?

<ESMA_QUESTION_CP_MAR_14>
Yes, EVIA does consider the definition of inside information is sufficient for combatting market abuse as mentioned above electronic solution tool providers and other mode of monitoring tools are able to provide relevant alerts /identification of potential inside dealing.

<ESMA_QUESTION_CP_MAR_14>

Q15. In particular, have market participants identified information that they would consider as inside information, but which is not covered by the current definition of inside information?

<ESMA_QUESTION_CP_MAR_15>
EVIA members have not identified any other information that they would consider as insider information.
<ESMA_QUESTION_CP_MAR_15>

Q16. Have market participants identified inside information on commodity derivatives which is not included in the current definition of Article 7(1)(b) of MAR?

<ESMA_QUESTION_CP_MAR_16>
EVIA has not come across any other insider information on commodity derivatives that is not included on the current definition. We believe that MAR definition is contains all the necessary elements to identify inside information.

<ESMA_QUESTION_CP_MAR_16>

Q17. What is an appropriate balance between the scope of inside information relating to commodity derivatives and allowing commodity producers to undertake hedging transactions on the basis of that information, to enable them to carry out their commercial activities and to support the effective functioning of the market?

<ESMA_QUESTION_CP_MAR_17>

EVIA understands this work to have already been done in respect of Wholesale Energy Products and urges ESMA to take reliance and either defer MAR to REMIT or to deploy the self-same approach within REMIT in the case of allowing commodity producers to undertake hedging transactions on the basis of that information, to enable them to carry out their commercial activities.
<ESMA_QUESTION_CP_MAR_17>

Q18. As of today, does the current definition of Article 7(1)(b) of MAR allow commodity producers to hedge their commercial activities? In this respect, please provide information on hedging difficulties encountered.

<ESMA_QUESTION_CP_MAR_18>
EVIA understands this work to have already been done in respect of Wholesale Energy Products and urges ESMA to take reliance and either defer MAR to REMIT or to deploy the self-same approach within REMIT in the case of allowing commodity producers to undertake hedging transactions on the basis of that information, to enable them to carry out their commercial activities.
<ESMA_QUESTION_CP_MAR_18>

Q19. Please provide your views on whether the general definition of inside information of Article 7(1)(a) of MAR could be used for commodity derivatives. In such case, would safeguards enabling commodity producers to undertake hedging transactions based on proprietary inside information related to their commercial activities be needed? Which types of safeguards would you envisage?

<ESMA_QUESTION_CP_MAR_19>
EVIA understands this work to have already been done in respect of Wholesale Energy Products and urges ESMA to take reliance and either defer MAR to REMIT or to deploy the self-same approach within REMIT in the case of allowing commodity producers to undertake hedging transactions on the basis of that information, to enable them to carry out their commercial activities.
<ESMA_QUESTION_CP_MAR_19>

Q20. What changes could be made to include other cases of front running?

<ESMA_QUESTION_CP_MAR_20>
EVIA does not believe that there are any other cases to include front running as the meaning and description is sufficient to apply across to all MiFID II financial instruments, also is a common approach taken by other regulations i.e. REMIT.

In the case of FX spot markets, and indeed for other related FX products, we note that the FXGCoC provides principles 09-18 in the consideration of order handling and execution practices. We can see no reason why the MAR guidelines should not specifically advise NCAs to utilise these tools in the application of MAR to FX products.

Indeed, and in line with our earlier comments, we would urge ESMA to direct MAR guidelines at the further 14 FICC practice standards currently established by the FMSB.
<ESMA_QUESTION_CP_MAR_20>

Q21. Do you consider that specific conditions should be added in MAR to cover front-running on financial instruments which have an illiquid market?

<ESMA_QUESTION_CP_MAR_21>
EVIA does not consider it is necessary to make any changes to MAR to cover front running in cases of illiquid market because the principle to regulation should remain constant. As part of the firms monitoring of potential breaches of front running, a number of factors will be taken into consideration as to whether this was a MAR breach or if in the best interest of the client, therefore will be determined on a case by case depending on the circumstances and as informed by case studies and level three guidelines.
<ESMA_QUESTION_CP_MAR_21>

Q22. What market abuse and/or conduct risks could arise from pre-hedging behaviours and what systems and controls do firms have in place to address those risks? What measures could be used in MAR or other legislation to address those risks?

<ESMA_QUESTION_CP_MAR_22>
EVIA does not consider that additional measures are necessary to address pre-hedging risks as these already exists in MAR under conflicts of interest and insider dealing. This MAR review commented that they have received number of suspicious transaction and order reports regarding pre-hedging behaviours, it is unclear whether any of these were in fact market abuse breaches or raised by the firm due to a lack of additional information to assess if these were MAR breaches.
Trading venues do not undertake pre-hedging activities and should not be able to receive pre-hedging notifications from market participants to exempt or influence the normal process of market monitoring.
<ESMA_QUESTION_CP_MAR_22>

Q23. What benefits do pre-hedging behaviours provide to firms, clients and to the functioning of the market?

<ESMA_QUESTION_CP_MAR_23>
Whilst EVIA does recognise the requirements for and the benefits from pre-hedging arrangements, these are not of direct purview nor the activity of our members operating as trading venue nor intermediaries.
In principle we would support the market codes of conduct which the do indeed recognise and in some cases provided clarification of accepted practises either in rules books or market practise standards documents.
As described below there are benefits to pre-hedging arrangements which the market have recognised in some cases provided clarification of accepted practises either in rules books or market practise standards documents.

<ESMA_QUESTION_CP_MAR_23>

Q24. What financial instruments are subject to pre-hedging behaviours and why?

<ESMA_QUESTION_CP_MAR_24>

Whilst EVIA does recognise the requirements for and the benefits from pre-hedging arrangements, these are not of direct purview nor the activity of our members operating as trading venue nor intermediaries. Some of the financial instruments that are subject to pre-hedging are:

- In the FX markets for the management of risks associated with one or more anticipated client order, designed to benefit the client in connection with such orders and any resulting transactions. This is covered in the FX Global Code under Principal 11.
- It is also permitted on the ICE Futures US markets when trading block trades as described in its Frequently asked questions number 24, on when these are allowed and who can undertake these arrangements.
- The Financial Markets Standard Board (FSMB) also recognises pre-hedging arrangements in the Final 3 July 2018 paper in the new issuance of fixed income instruments for the purpose of risk management activity.

What is noted that where this arrangement is recognised as an accepted practise, there are control frameworks to manage these behaviours in the permitted environment. It is also noted that some market participants include pre-hedging arrangements in their Terms of Business covering when it is used and how they address conflicts of interest risks.
<ESMA_QUESTION_CP_MAR_24>

Q25. Please provide your views on the functioning of the conditions to delay disclosure of inside information and on whether they enable issuers to delay disclosure of inside information where necessary.

<ESMA_QUESTION_CP_MAR_25>
No comments as this activity is not relevant to EVIA members.

<ESMA_QUESTION_CP_MAR_25>

Q26. Please provide relevant examples of difficulties encountered in the assessment of the conditions for the delay or in the application of the procedure under Article 17(4) of MAR.

<ESMA_QUESTION_CP_MAR_26>
No comments as this activity is not relevant to EVIA members
<ESMA_QUESTION_CP_MAR_26>

Q27. Please provide your view on the inclusion of a requirement in MAR for issuers to have systems and controls for identifying, handling, and disclosing inside information. What would the impact be of introducing a systems and controls requirement for issuers?

<ESMA_QUESTION_CP_MAR_27>
No comments as this is activity not relevant to EVIA members.

<ESMA_QUESTION_CP_MAR_27>

Q28. Please provide examples of cases in which the identification of when an information became "inside information" was problematic.

<ESMA_QUESTION_CP_MAR_28>
No comments as this activity is not relevant to EVIA members.

<ESMA_QUESTION_CP_MAR_28>

Q29. Please provide your views on the notification to NCAs of the delay of disclosure of inside information, in those cases in which the relevant information loses its inside nature following the decision to delay the disclosure.

<ESMA_QUESTION_CP_MAR_29>
No comments as this activity is not relevant to EVIA members
<ESMA_QUESTION_CP_MAR_29>

Q30. Please provide your views on whether Article 17(5) of MAR has to be made more explicit to include the case of a listed issuer, which is not a credit or financial institution, but which is controlling, directly or indirectly, a listed or non-listed credit or financial institution.

<ESMA_QUESTION_CP_MAR_30>
No comments as this activity is not relevant to EVIA members.
<ESMA_QUESTION_CP_MAR_30>

Q31. Please provide relevant examples of difficulties encountered in the assessment of the conditions for the delay or in the application of Article 17(5) of MAR.

<ESMA_QUESTION_CP_MAR_31>
No comments as this activity is not relevant to EVIA members.
<ESMA_QUESTION_CP_MAR_31>

Q32. Please indicate whether you have found difficulties in the assessment of the obligation to disclose a piece of inside information under Article 17 MAR when analysed together with other obligations arising from CRD, CRR or BRRD. Please provide specific examples.

<ESMA_QUESTION_CP_MAR_32>
No comment as issuer activity nor MREL is not relevant to EVIA members
<ESMA_QUESTION_CP_MAR_32>

Q33. Do you agree with the proposed amendments to Article 11 of MAR?

<ESMA_QUESTION_CP_MAR_33>
No comment as Market Sounding is not an activity undertaken by EVIA members.
<ESMA_QUESTION_CP_MAR_33>

Q34. Do you think that some limitation to the definition of market sounding should be introduced (e.g. excluding certain categories of transactions) or that additional clarification on the scope of the definition of market sounding should be provided?

<ESMA_QUESTION_CP_MAR_34>
No comment as Market Sounding is not an activity undertaken by EVIA members TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MAR_34>

Q35. What are in your view the stages of the interaction between DMPs and potential investors, from the initial contact to the execution of the transaction, that should be covered by the definition of market soundings?

<ESMA_QUESTION_CP_MAR_35>
No comment as Market Sounding is not an activity undertaken by EVIA members.
<ESMA_QUESTION_CP_MAR_35>

Q36. Do you think that the reference to "prior to the announcement of a transaction" in the definition of market sounding is appropriate or whether it should be amended to cover also those communications of information not followed by any specific announcement?

<ESMA_QUESTION_CP_MAR_36>
No comment as Market Sounding is not an activity undertaken by EVIA members.
<ESMA_QUESTION_CP_MAR_36>

Q37. Can you provide information on situations where the market soundings regime has proven to be of difficult application by DMPs or persons receiving the market sounding? Could you please elaborate?

<ESMA_QUESTION_CP_MAR_37>
No comment as Market Sounding is not an activity undertaken by EVIA members.
<ESMA_QUESTION_CP_MAR_37>

Q38. Can you provide your views on how to simplify or improve the market sounding procedure and requirements while ensuring an adequate level of audit trail of the conveyed information (in relation to both the DMPs and the persons receiving the market sounding)?

<ESMA_QUESTION_CP_MAR_38>
No comment as Market Sounding is not an activity undertaken by EVIA members.
<ESMA_QUESTION_CP_MAR_38>

Q39. Do you agree with ESMA's preliminary view on the usefulness of insider list? If not, please elaborate.

<ESMA_QUESTION_CP_MAR_39>
No comment as EVIA members are not subject to insider list due to the nature of their business.
<ESMA_QUESTION_CP_MAR_39>

Q40. Do you consider that the insider list regime should be amended to make it more effective? Please elaborate.

<ESMA_QUESTION_CP_MAR_40>
No comment as EVIA members are not subject to insider list due to the nature of their business.
<ESMA_QUESTION_CP_MAR_40>

Q41. What changes and what systems and controls would issuers need to put in place in order to be able to provide NCAs, at their request, the insider list with the individuals who had actually accessed the inside information within a short time period?

<ESMA_QUESTION_CP_MAR_41>
No comment as this is not relevant to EVIA members.
<ESMA_QUESTION_CP_MAR_41>

Q42. What are your views about expanding the scope of Article 18(1) of MAR (i.e. drawing up and maintain the insider list) to include any person performing tasks through which they have access to inside information, irrespective of the fact that they act on behalf or on account of the issuer? Please identify any other cases that you consider appropriate.

<ESMA_QUESTION_CP_MAR_42>
No comment as this is not relevant to EVIA members.
<ESMA_QUESTION_CP_MAR_42>

Q43. Do you consider useful maintaining the permanent insider section? If yes, please elaborate on your reasons for using the permanent insider section and who should be included in that section in your opinion.

<ESMA_QUESTION_CP_MAR_43>
No comment as this is not relevant to EVIA members.
<ESMA_QUESTION_CP_MAR_43>

Q44. Do you agree with ESMA's preliminary view?

<ESMA_QUESTION_CP_MAR_44>
No comment as this is not relevant to EVIA members.
<ESMA_QUESTION_CP_MAR_44>

Q45. Do you have any other suggestion on the insider lists that would support more efficiently their objectives while reducing the administrative work they entail? If yes, please elaborate how those changes could contribute to that purpose.

<ESMA_QUESTION_CP_MAR_45>
No comment as this is not relevant to EVIA members.
<ESMA_QUESTION_CP_MAR_45>

Q46. Does the minimum reporting threshold have to be increased from Euro 5,000? If so, what threshold would ensure an appropriate balance between transparency to the market, preventing market abuse and the reporting burden on issuers, PDMRs, and closely associated persons?

<ESMA_QUESTION_CP_MAR_46>
No comment as this is not relevant to EVIA members.
<ESMA_QUESTION_CP_MAR_46>

Q47. Should NCAs still have the option to keep a higher threshold? In that case, should the optional threshold be higher than Euro 20,000? If so, please describe the criteria to be used to set the higher optional threshold (by way of example, the liquidity of the financial instrument, or the average compensation received by the managers).

<ESMA_QUESTION_CP_MAR_47>
No comment as this is not relevant to EVIA members.
<ESMA_QUESTION_CP_MAR_47>

Q48. Did you identify alternative criteria on which the reporting threshold could be based? Please explain why.

<ESMA_QUESTION_CP_MAR_48>
No comment as this is not relevant to EVIA members.
<ESMA_QUESTION_CP_MAR_48>

Q49. On the application of this provision for EAMPs: have issues or difficulties been experienced?

<ESMA_QUESTION_CP_MAR_49>
No comment as this is not relevant to EVIA members.
<ESMA_QUESTION_CP_MAR_49>

Q50. Did you identify alternative criteria on which the subsequent notifications could be based? Please explain why.

<ESMA_QUESTION_CP_MAR_50>
No comment as this is not relevant to EVIA members
<ESMA_QUESTION_CP_MAR_50>

Q51. Do you consider that the 20% threshold included in Article 19(1a)(a) and (b) is appropriate? If not, please explain the reason why and provide examples in which the 20% threshold is not effective.

<ESMA_QUESTION_CP_MAR_51>
No comment as this is not relevant to EVIA members .
<ESMA_QUESTION_CP_MAR_51>

Q52. Have you identified any possible alternative system to set the threshold in relation to managers' transactions where the issuer's shares or debt instruments form part of a collective investment undertaking or provide exposure to a portfolio of assets?

<ESMA_QUESTION_CP_MAR_52>
No comment as this is not relevant to EVIA members.
<ESMA_QUESTION_CP_MAR_52>

Q53. Did you identify elements of Article 19(11) of MAR which in your view could be amended? If yes, why? Have you identified alternatives to the closed period?

<ESMA_QUESTION_CP_MAR_53>
No comment as this is not relevant to EVIA members .
<ESMA_QUESTION_CP_MAR_53>

Q54. Market participants are requested to indicate if the current framework to identify the closed period is working well or if clarifications are sought.

<ESMA_QUESTION_CP_MAR_54>
No comment as this is not relevant to EVIA members.
<ESMA_QUESTION_CP_MAR_54>

Q55. Please provide your views on extending the requirement of Article 19(11) to (i) issuers, and to (ii) persons closely associated with PDMRs. Please indicate which would be the impact on issuers and persona closely associated with PDMRs, including any benefits and downsides.

<ESMA_QUESTION_CP_MAR_55>
No comment as this is not relevant to EVIA members.
<ESMA_QUESTION_CP_MAR_55>

Q56. Please provide your views on the extension of the immediate sale provided by Article 19(12)(a) to financial instruments other than shares. Please explain which financial instruments should be included and why.

<ESMA_QUESTION_CP_MAR_56>

No comment as this is not relevant to EVIA members .
<ESMA_QUESTION_CP_MAR_56>

Q57. Please provide your views on whether, in addition to the criteria in Article 19(12) (a) and (b), other criteria resulting in further cases of exemption from the closed period obligation could be considered.

<ESMA_QUESTION_CP_MAR_57>
No comment as this is not relevant to EVIA members.
<ESMA_QUESTION_CP_MAR_57>

Q58. Do you consider that CIUs admitted to trading or trading on a trading venue should be differentiated with respect to other issuers? Please elaborate your response specifically with respect to PDMR obligations, disclosure of inside information and insider lists. In this regard, please consider whether you could identify any articulation or consistency issues between MAR and the EU or national regulations for the different types of CIUs, with regards for example to transparency requirements under MAR vis-à-vis market timing or front running issues.

<ESMA_QUESTION_CP_MAR_58>
No comment as this is not relevant to EVIA members .
<ESMA_QUESTION_CP_MAR_58>

Q59. Do you agree with ESMA's preliminary view? Please indicate which transactions should be captured by PDMR obligations in the case of management companies of CIUs.

<ESMA_QUESTION_CP_MAR_59>
No comment as this is not relevant to EVIA members.
<ESMA_QUESTION_CP_MAR_59>

Q60. Do you agree with ESMA's preliminary view? If not, please elaborate.

<ESMA_QUESTION_CP_MAR_60>
No comment as this is not relevant to EVIA members.
<ESMA_QUESTION_CP_MAR_60>

Q61. What persons should PDMR obligations apply to depending on the different structures of CIUs and why? In particular, please indicate whether the definition of "relevant persons" would be adequate for CIUs other than UCITs and AIFs.

<ESMA_QUESTION_CP_MAR_61>
No comment as this is not relevant to EVIA members .
<ESMA_QUESTION_CP_MAR_61>

Q62. ESMA would like to gather views from stakeholders on whether other entities than the asset management company (e.g. depository) and other entities on which the CIUs has delegated the execution of certain tasks should be captured by the PDMR regime.

<ESMA_QUESTION_CP_MAR_62>
No comment as this is not relevant to EVIA members.
<ESMA_QUESTION_CP_MAR_62>

Q63. Do you agree with ESMA's conclusion? If not, please elaborate.

<ESMA_QUESTION_CP_MAR_63>
No comment as this is not relevant to EVIA members
<ESMA_QUESTION_CP_MAR_63>

Q64. Do you agree with ESMA preliminary view? Please elaborate.

<ESMA_QUESTION_CP_MAR_64>
No comment as this is not relevant to EVIA members.
<ESMA_QUESTION_CP_MAR_64>

Q65. Do you agree with ESMA's preliminary views? Do you consider that specific obligations are needed for elaborating insider lists related to CIUs admitted to traded or traded on a trading venue?

<ESMA_QUESTION_CP_MAR_65>
No comment as this is not relevant to EVIA members.

<ESMA_QUESTION_CP_MAR_65>

Q66. Please provide your views on the abovementioned harmonisation of reporting formats of order book data. In addition, please provide your views on the impact and cost linked to the implementation of new common standards to transmit order book data to NCAs upon request. Please provide your views on the consequences of using XML templates or other types of templates.

<ESMA_QUESTION_CP_MAR_66>
EVIA fully supports order book harmonisation and understands that incumbent protocols, together with incipient developments such as the ISDA Common Domain Model will further promote such process and legal standardisation.

We maintain current reservations concerning the implication of reporting cross market order books as this would entail a huge amount of data sets that may also extend to include personal information ["PIId Data"] to be reported not only to regulator but to APA's.

Maintaining personal information should only be considered when an appropriate ISO standard for confidentiality and information security has been established as it continues be an additional

risk to parties along any transaction chain. We would note that several institutional clients have been requesting assurances on our members' own clients as to how they comply with GDPR by requesting firms to complete an extensive questionnaire which has posed a challenge to firms, in some cases having dedicated teams to respond to these. These reliance's and assurances sought are passed along the execution chain inhibiting liquidity and risk transfer. We note that we have escalated these concerns to certain EU NCAs already through various transaction and Cybersecurity forums.

At this stage venues only register an order at the point of the final instruction leading to the order. Venues do not capture anything else so providing a full order capture would be extremely costly or impossible.

We note that there were discussions in the phase of MiFID II of third-party provider short coding PIId data to resolve many of the issues firms currently have, but there was limited demand at the time mainly due to firms focusing on implementation of MiFID II. Revision of MAR could consider data in a simple format.
<ESMA_QUESTION_CP_MAR_66>

Q67. Please provide your views on the impact and cost linked to the establishment of a regular reporting mechanism of order book data.

<ESMA_QUESTION_CP_MAR_67>
EVIA supports this aspiration but would emphasise the current insufficiency of UPIs, common core economic terms and data element identifiers to implement this across any asset class outside of equities. Without simple and common implementation options, combined with global harmonisation, adverse consequences would abound such as liquidity diminishment, movement of trading off venue or outside the region, the migration of orders into IOIs and the reduction of venue competition.
<ESMA_QUESTION_CP_MAR_67>

Q68. In particular, please: a) elaborate on the cost differences between a daily reporting system and a daily record keeping and ad-hoc transmission mechanism; b) explain if and how the impact would change by limiting the scope of a regular reporting mechanism of order book data to a subset of financial instruments. In that context, please provide detailed description of the criteria that you would use to define the appropriate scope of financial instruments for the order book reporting.

<ESMA_QUESTION_CP_MAR_68>
EVIA supports an ad-hoc transmission mechanism on demand from the NCA. We concur with ESMA in limiting the scope of a regular reporting mechanism of order book data strictly to a subset of financial instruments which should be liquid equities where the types and frequency of observed market abuse are consequential, and the perimeter well known and therefore easily implemented.
<ESMA_QUESTION_CP_MAR_68>

Q69. What are your views regarding those proposed amendments to MAR?

<ESMA_QUESTION_CP_MAR_69>
EVIA support these proposals to allow NCA's the remit to take appropriate steps to investigate and sanction unfair behaviours that represent a threat to the integrity of the financial markets.
<ESMA_QUESTION_CP_MAR_69>

Q70. Are you in favour of amending Article 30(1) second paragraph of MAR so that all NCAs in the EU have the capacity of imposing administrative sanctions? If yes, please elaborate.

<ESMA_QUESTION_CP_MAR_70>
EVIA supports ESMA's view that there is no need to modify MAR in this respect as the administrative sanctions for insider dealing and market manipulation are already addressed in the respective Member States national law.
<ESMA_QUESTION_CP_MAR_70>

Q71. Please share your views on the elements described above.

<ESMA_QUESTION_CP_MAR_71>
EVIA does not comment.
<ESMA_QUESTION_CP_MAR_71>