

An update on MAR Technical Standards and MAR Q&A

The European and Securities Markets Supervision Unit [‘ESMA’] has published on its website two reports dated 13th July, 2016, and which are the following:

- Final Report on MAR Guidelines (Market soundings and legitimate interests)[https://www.esma.europa.eu/sites/default/files/library/2016-1130_final_report_on_mar_guidelines.pdf]; and
- MAR Q&A,[https://www.esma.europa.eu/sites/default/files/library/2016-1129_mar_qa.pdf].

ESMA has published the guidelines on market soundings and legitimate interests in accordance with the mandate it was given under the Market Abuse Regulation [‘MAR’]. Article 11(11) of MAR requires ESMA to issue guidelines addressed to MSRs, regarding:

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

Moreover, article 17(11) of MAR requires ESMA to issue guidelines to establish a non-exhaustive and indicative list of:

- a) legitimate interests of the issuer that are likely to be prejudiced by immediate disclosure of inside information; and
- b) situations in which delay of disclosure is likely to mislead the public.

The MAR Q&A deals with two issues, firstly with the notion of the prevention and detection of market abuse and secondly, with the issue of managers’ transactions. With regards to the prevention and detection of market abuse, the question that was imposed was whether the obligation to detect and report market abuse under article 16 (2) MAR applies to investment firms under MiFID only or whether UCITS management companies, AIFMD managers or firms professionally engaged in trading on own account also fall within the scope of that obligation. ESMA’s reply was that this obligation as arising under article 16 (2) MAR applies to all the parties outlined above.

With respect to the managers’ transactions, the question that has arisen is whether the date of the announcement of the interim or year-end financial results determines the timing of the closed period referred to in Article 19 (11) MAR. ESMA’s reply was that the thirty-day period shall start to apply from the date of the announcement.

Should you have any queries with respect to the above please do not hesitate to contact Mr Edward Grech, Senior Manager, Securities and Markets Supervision Unit by e-mail on (egrech@mfsa.com.mt) or Dr Ilona Schembri, Analyst, Securities and Markets Supervision Unit by email on (ischembri@mfsa.com.mt).