

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

CIRCULAR ON THE MARKET ABUSE REGULATION ('MAR') *Updated Questions and Answers relating to the Implementation of MAR*

This circular is being addressed to market participants, particularly issuers whose financial instruments are admitted to trading on a trading venue (regulated market, multilateral trading facility ('MTF') or organised trading facility ('OTF')) and to issuers who have requested that their financial instruments are admitted to trading on a trading venue.

This circular shall be read in conjunction with [MAR](#), its delegated regulations and previous circulars issued by the Authority.

Updates to the Questions and Answers relating to the Implementation of MAR

The Authority would like to inform market participants that the European Securities and Markets Authority ('ESMA') has on 1 October 2018 updated its Questions and Answers ('Q&As') on the Market Abuse Regulation.

The Q&As are intended to promote common supervisory approaches and provide responses to questions posed by the general public and market participants in relation to the practical application of legal provisions relating to unlawful behaviour in the financial markets.

ESMA has included three new Q&As relating to Delayed Disclosure of Inside Information as follows:-

- **Q&A 5.3 relating to the Assessment of the Relevant Conditions**

Q&A 5.3 provides clarification in relation to what elements should be considered by issuers that are credit/financial institutions and who intend to delay disclosure of inside information under Article 17(5) of MAR, in their assessment of the conditions contained therein. If a credit or financial institution opts for financial stability delay as specified under Article 17(5) of MAR, such issuer must provide evidence that points a), b) and c) of Article 17(5) have been met. The assessment of such condition is to be completed to the best of the institution's knowledge. Should the national competent authority ('NCA') consent to the delay, the institution is expected to share any additional information in relation to conditions for the delay.

In order to resort to the delay in disclosure of inside information, the following conditions shall be met:

- The disclosure should entail a risk of undermining the financial stability of both the issuer and the financial system (Article 17(5)(a) of MAR). For the disclosure of inside information to entail a risk of undermining the stability of the financial system, it is likely for it to pertain and be performed by an institution of relevance, e.g. in terms of impact and interconnection.

- It is in the public interest to delay the disclosure (Article 17(5)(b) of MAR). In assessing public interest issuers shall identify different entities that can be directly or indirectly affected by the decision to delay disclosure of information. Interests to be considered should not be only financial and should not be considered in isolation.
- The confidentiality of the information can be ensured (Article 17(5)(c) of MAR). Issuers shall assess the confidentiality of the information at the time of notification to the NCA and how should provide information on how confidentiality can be ensured during the period in which the information is delayed.

- **Q&A 5.4 relating to Notification of the Expected Duration**

Credit or financial institutions are expected to provide their assessment on the projected length of the delay and details in relation to expected trigger events when notifying the NCA of their intention to resort to financial stability delay. If consent is given by the NCA after conducting its own assessment, institutions should inform the NCA if they become aware of new events that may affect the duration of such delay.

- **Q&A 5.5 relating to NCA's Denial of Consent**

In the event that relevant conditions are not met, and as a result the NCA does not consent to the delay of disclosure of insider information, credit or financial institutions need to disclose the inside information immediately. Therefore, where the NCA does not consent to the delay of disclosure under Article 17(5) of MAR, institutions cannot resort to Article 17(4) of MAR.

A copy of the updated Q&As can be accessed through the following [link](#).

Contacts

Should you have any queries relating to the above kindly contact the Authority on pfma@mfsa.com.mt

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