

09 April 2019

## Updated Questions and Answers Relating to the Implementation of the Market Abuse Regulation ('MAR')

This circular is being addressed to market participants, particularly issuers whose financial instruments are admitted to trading on a Trading Venue<sup>1</sup> 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 on this matter.

### **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 29 March 2019 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 behavior in financial markets.

ESMA has through the updated Q&As, clarified the scope of firms subject to the MAR provision to detect and report suspicious orders and transactions, and has included new detailed answers on the:-

- i. Meaning of parent and related undertakings; and
- ii. Disclosure of inside information concerning emission allowances, referring to installations of other undertakings of the group of the Emission Allowance Market Participant.

The new Q&As are as follows:-

- **Q&A 5.6 relating to Disclosure of Inside Information by Collective Investment Undertakings**

Article 17(1) of MAR establishes the obligation of the issuer to inform the public as soon as possible of inside information which directly concerns that issuer, without exempting any sort of issuers.

Q&A 5.6 provides clarification in relation to the obligation of Collective Investment Undertakings ('CIU') without legal personality, to disclose inside information under Article 17 of

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<sup>1</sup> Article 4(1)(24) of Directive 2014/65/EU defines a Trading Venue as a Regulated Market, a Multilateral Trading Facility or an Organised Trading Facility.

MAR. A CIU without legal personality meets the definition of 'Issuer' contained in Article 3(1)(21) despite effective issuances, redemptions of shares/units and any obligations arising from MAR being carried out by the relevant asset manager. In this respect, the asset manager may be held responsible for possible infringement of the CIU's obligation to disclose under MAR.

A CIU without legal personality, like any other issuer may, on its own responsibility delay the disclosure of inside information, provided that all requirements set out in Article 17 of MAR are satisfied. The CIU's obligation to publicly disclose inside information under Article 17 of MAR strictly refers to instances involving 'inside information' that directly concerns the issuer, in terms of Article 7 of MAR.

- **Q&A 5.7 relating to specific cases of inside information that may arise with respect to CIUs**

In accordance with Article 7 of MAR, inside information is *"information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments"*.

Q&A 5.7 provides a non-exhaustive list of cases where inside information may arise, for CIUs admitted to trading or traded on a trading venue in general. The list does not cover all instances of inside information as ultimately the assessment has to be made on a case-by-case basis.

- **Q&A 11.2 relating to the meaning of 'parent' and 'related undertaking' in Article 17(2) of MAR**

In terms of Article 17(2) of MAR, an emission allowance market participant ('EAMP') shall *"disclose inside information concerning emission allowances which it holds in respect of its business [...] or installations [...] which the participant concerned, or its parent undertaking, owns or controls or for the operational matters of which the participant, or its parent undertaking or related undertaking, is responsible, in whole or in part"*.

In this respect, Q&A 11.2 provides a definition of the parent company by referring to the definition contained in Article 2 points (9) and (10) of Directive 2013/34/EU. In relation to related undertakings, ESMA makes reference to Article 4 of Regulation 1227/2011/EU (REMIT).

- **Q&A 11.3 relating to disclosure of inside information concerning emission allowances**

Q&A 11.3 provides a clarification in relation to the obligation which EAMPs have, to disclose inside information concerning emission allowances where such inside information relates to installations of other undertakings of the group of the EAMP.

In terms of Article 3(1)(20) of MAR, the following two requirements must be satisfied to be an EAMP;

- i. Any person that enters *“into transactions, including the placing of orders to trade, in emission allowances, auctioned products based thereon, or derivatives thereof”*; and
- ii. Exceeding a threshold of carbon dioxide equivalent (or having had a rated thermal input exceeding a minimum threshold, where the participant carries out combustion activities).

With respect to the first condition, persons entering into transactions or placing orders to trade in emission allowances, either directly or indirectly meet the definition of ‘Issuer’ set out in Article 3(1)(20) of MAR. This is the case for polluting companies that trade emission allowances through trading companies within the same group of companies. With regards to the second condition, Article 5 of the Commission Delegated Regulation (EU) 2016/522 provides the minimum threshold of carbon dioxide, equivalent to 6 million tonnes a year or 2,430 MW of rated thermal input. Such threshold applies at *“group level and relates to all business which the participant in the emission allowance market concerned, or its parent undertaking or related undertaking owns or controls or for the operational matters of which the participant concerned, or its parent undertaking or related undertaking is responsible, in whole or in part”*.

Furthermore, an EAMP is obliged to disclose inside information relating to emission allowances in the case of an installation of a related undertaking that is a parent company of the EAMP or a related company has an influence on the EAMP’s demand of emission allowances. The EAMP would also be responsible if it decides to delay disclosure of inside information in relation to emission allowances in accordance with 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](mailto:pfma@mfsa.com.mt).