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ESMA Launches Call for Evidence on Pre-Hedging

This Circular is being addressed to all market participants, particularly investment firms, credit institutions, proprietary traders, market makers, asset management companies and any other market participants, including trade associations and industry bodies, institutional and retail investors and academics, herein after referred to collectively as Stakeholders.

1.0 Background

The Authority would like to inform market participants that on 29 July 2022, the European Securities and Market Authority ('ESMA'), issued a [Call for Evidence](#) which is aimed at promoting discussion among Stakeholders and gathering further evidence on the practice of pre-hedging¹. Such discussion and evidence gathering could help ESMA develop appropriate guidance in this regard.

2.0 Call for Evidence

Pre-hedging has already been addressed by ESMA in the context of the MAR Review, identifying fundamentally diverging opinions on this practice. Whereas some market participants see pre-hedging as being essential for risk management and the correct functioning of markets, other Stakeholders consider that pre-hedging may amount to insider dealing if a broker were to use the information received from the client to make trades for its own account, including potentially trades against the client. Accordingly, in its [Final Report](#) on the MAR Review, ESMA acknowledged that there are fundamentally different views on pre-hedging. As a follow up to the MAR review, ESMA is therefore undertaking an analysis of that practice in the market.

Therefore, the call for evidence lays out the arguments in favour and against such practice, and it requests contributions from Stakeholders in order to properly delineate its admissibility in the context of the [Market Abuse Regulation](#) ('MAR') and MiFID/MIFIR.

¹ Pre-hedging takes place when a dealer acting as principal undertakes a trade in anticipation of a client order in order to manage the risk associated with a possible trade stemming from that order.

3.0 Next Steps

Stakeholders are invited to submit their responses by **30 September 2022**. The [Response Form](#) is to be submitted through the ESMA website by using the following [link](#).

Contact

Should you have any queries in relation to the above, kindly contact the Authority on pfma@mfsa.mt.