



ESMA MAR REVIEW REPORT

Issued 29 November 2019

ICAEW welcomes the opportunity to comment on the Review of the Market Abuse Regulation published by ESMA on 3 October 2019, a copy of which is available from this [link](#).

ICAEW is listed in the EU Transparency Register (ID number: 7719382720-34).

This ICAEW response of 29 November reflects consultation with the Corporate Finance Faculty. Recognised internationally as a source of expertise on corporate finance issues and for its monthly Corporate Financier magazine, the Faculty is responsible for ICAEW policy on corporate finance issues including submissions to consultations. The Faculty's membership is drawn from professional services groups, advisory firms, companies, banks, private equity, law firms, brokers, consultants and academics.

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KEY POINTS

1. ICAEW's response reflects the experience of its member professional services firms implementing the MAR, and our submission focuses on questions relating to insider lists.
2. In our members' experience reports from NCAs' on market practice, such as the **FCA's Market Watch, Issue 60**, are important for increasing awareness of, and education on, inside information and controlling access to it.

ANSWERS TO QUESTIONS ON SECTION 8

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

3. We agree that insider lists are a useful tool for investigating possible market abuse.

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

4. The clarification that ESMA proposes, that persons on insider lists should be those with actual access rather than potential or theoretical access, will help reduce inflation in the number of persons included on issuers' lists and for such lists to be provided within a short timescale.

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?

5. We do not comment regarding issuers' systems and controls.
6. In situations where a service provider that has been engaged by an issuer undertakes to provide the relevant regulator on request with a list of the service provider's own staff, our view is that it should not be a requirement for the service provider to also provide a copy of the list to the issuer. Instead, the service provider could simply give a formal confirmation to the issuer that the list has been sent to the relevant regulator. This will limit the circulation of individuals' sensitive personal data to the entity that actually requires it, and should assist service providers in meeting their own responsibilities under local data privacy legislation. Does ESMA agree with this view?
7. It would be helpful if ESMA could clarify if the relevant regulator is in fact intended to refer to the relevant national regulatory authority.

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.

8. It is a good idea for the scope of Article 18(1) to be explicit about including such persons on insider lists.
9. To prevent ambiguity, ESMA could also use this opportunity to clarify that the issuer is responsible for identifying to service providers when information is inside information.

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.

10. The exercise of determining who should be included in the permanent insider section is a useful process and allows an organisation to consider its specific circumstances. ESMA's commentary in paragraph 183 of the review paper should help guide the organisation's own considerations. ESMA's proposal in paragraph 185 to permit a permanent insider section to be event-based will contribute to the right permanent list being drawn up and maintained in each case.

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

11. We agree with the proposed revision to Article 18.

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.

12. We have no other suggestions.