**QUESTIONS TO ADDRESS TO ESMA, EC AND NCAS**

1. **Do transactions carried out by issuers, and more particularly share and bond buybacks, fall or do not fall under the scope of the notification obligations defined by article 19 of MAR (Managers’ transactions)?**

ESMA has been looking at the issue whether the issuer, who is by default closely associated to any person in the company (Board Members, executives, etc.), should be notifying as per art. 19. ESMA does realise that this would make no sense. They are working on a Q&A on that which should be published next month.

It was decided **not to** address this issue with ESMA.

1. **Are non-profit entities from which the manager clearly cannot derive any economic benefit, closely-related persons? (for example, CEO of a listed company A is also working in an honorary capacity in the board of a non-for-profit foundation)**

ESMA has discussed it but did not agree on a drafting of the Q&A yet. During the discussions, they did broaden it also by the cross-border membership aspect. They intend to clarify it in a way that avoids burdens, but are confined by the level I.

To be addressed with ESMA and possibly EC.

1. **Is a legal entity a closely related person in case when the “link” between 2 issuers is solely created through the fact, that the (management or supervisory) board member of issuer A is at the same time supervisory board member of issuer B?**

Currently looking at this issue and intend to clarify it. Could not say more.

To be addressed with ESMA and possibly EC.

1. **Is the CEO of an issuers’ dependent company a PDMR (as defined in MAR art. 3.1 (25) point (b)) in case the CEO is not employed in the parent company (issuer)?**

ESMA did not look at it. It depends on the role of this person (CEO of issuers’ dependent company) in the parent company and whether he/she falls within the scope of a definition of a PDMR.

Seems to me that the answer was in line with the QCA feedback in the excel: “*This is a question of fact and the importance of the dependent company in question on the future developments and business prospects of the issuer. The CEO could be a PDMR if he has regular access to inside information relating directly or indirectly to the issuer and the power to take managerial decisions affecting the future developments and business prospects of the issuer.”*

It was decided **not to** address this issue with ESMA.

1. **Is a person who is not a spouse and is not in any legal regulated partnership relation, but is an actual partner (sharing the same household for more than one year) a closely related person (as in MAR art. 3.1 (26))?**

That depends on whether the national law provides for a (living) partner as an equivalent of a spouse. ESMA will not clarify further.

It was decided **not to** address this issue with ESMA.

1. **Does MAR art. 16 (2) (Prevention and detection of market abuse) apply to non-financial companies (NFC)?**

ESMA has not discussed it. The obligation is activity born and linked to executing transactions professionally, and not to the asset classes or types of entities. The personal view was in principle e.g. issuers trading for hedging purposes would not be caught by the regulation. They would be caught, though, if they do have a specialised trading desk or a subsidiary that is dedicated to trading (e.g. some energy companies).

In principle agreed to address with ESMA although the final decision will depend on the drafting, as DAI was not fully convinced.

1. **Are third parties such as bankers, lawyers, accountants, etc. working for the issuer on a specific transaction or project responsible for their own insider lists? (i.e. should the legal objective of MAR art. 18(2) be distinguished from MAR art. 18(1)?)**

ESMA is looking at this. They do not have a solution yet but are aware of the problem, which is a level 1 issue and therefore they are discussion it with the Commission. In most countries 3rd parties draw their own insider lists although this is in line with MAD while in MAR the wording was adjusted.

To be addressed with ESMA and possibly EC.

1. **In what situations delay of disclosure of inside information is NOT likely to mislead the public? (We have only a non-exhaustive list of situations in which delay of disclosure of inside information IS likely to mislead the public. That leaves no opportunity for the issuer to delay disclosure. As the list is non-exhaustive, any supervisory authority or any activist investor has opportunity to claim that the public was misled coming up with a case which is not on the list.)**

ESMA published guidelines with information that is likely to mislead the public. For the moment, no intention to publish a list of inside information which is NOT likely to mislead the public and would be difficult to do as really should be analysed on a case by case basis (there is a disclaimer in the regulation).

It was decided **not to** address this issue with ESMA.

1. **Potential New Issue: we discussed an idea that ESMA chould compile a list showing which EU members states have a national identification number that needs to be included in the personal data of persons on an insider list. The list should also show which number is thought to be the relevant one and where it can be collected from. This would help issuers with employees outside the home member state to compile insider lists.**

ESMA has not envisaged compiling and /or publishing such a list.

It was decided **not to** address this issue with ESMA.

1. **Does the obligation for a person on the insider list to acknowledge in writing his/her duties (MAR art. 18.2) can be satisfied by electronic means and/or automatic acknowledgement of receipt/reading?**

ESMA did not discuss it within its Standing Committee. Personal interpretation of the person from ESMA was that the paper form is not required as long as it can be evidenced and recorder. So, my conclusion is that yes, it can be satisfied by electronic means.

It was decided **not to** address this issue with ESMA. Rather suggested that members address their NCAs.

1. **Does the obligation for the issuer to report transactions relating to buy-back programmes (MAR, art. 5.3) applies to the competent authority of any and all trading venue on which its shares are traded, even if they are so traded without the issuer's consent (which could prove very burdensome and impractical)? Or can we apply Article 14.6 of MIF ("Where a transferable security, which has been admitted to trading on a regulated market, is also traded on an MTF without the consent of the issuer, the issuer shall not be subject to any obligation relating to initial, ongoing or ad hoc financial disclosure with regard to that MTF")?**

ESMA did not look at it. The obligation refers to all trading venues, although ESMA could look at special cases if needed. Nevertheless, in the future, a list of all financial instruments will be published on ESMA’s website in line with art. 4 of MAR, which application has been postponed.

In principle agreed to address with ESMA although the final decision will depend on the drafting and feedback from BaFin (DE NCA), as DAI was not fully convinced. AMF (the French Authority) already announced that the requirement applies to all securities and all trading venues.

1. **Not from excel list of questions: ESMA has been already approached regarding providing for a webpage with a comprehensive list with hyperlinks / a library of all level II and level III measures on MAR. They could consider it or discuss with the EC whether it could be published on EC webpage.**

To be addressed with ESMA and possibly EC.