

ESMA

MAR
review report

29 November 2019

CONSULTATION AFG's RESPONSE





The Association Française de la Gestion financière (AFG) represents and promotes the interests of third-party portfolio management professionals. It brings together all asset management players from the discretionary and collective portfolio management segments. These companies manage at end 2017 €4,000 billion in assets, including €1,950 billion in French funds and €2,050 billion in discretionary portfolios and foreign funds.

The AFG's remit:

- Representing the business, financial and corporate interests of members, the entities that they manage (collective investment schemes) and their customers. As a talking partner of the public authorities of France and the European Union, the AFG makes an active contribution to new regulations,
- Informing and supporting its members; the AFG provides members with support on legal, tax, accounting and technical matters,
- Leading debate and discussion within the industry on rules of conduct, the protection and economic role of investment, corporate governance, investor representation, performance measurement, changes in management techniques, research, training, etc.
- Promoting the French asset management industry to investors, issuers, politicians and the media in France and abroad. The AFG represents the French industry – a world leader – in European and international bodies. AFG is of course an active member of the European Fund and Asset Management Association (EFAMA), of Pensions Europe and of the International Investment Funds Association (IIFA).

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Response the consultation on MAR review report

The Association Française de la Gestion Financière (AFG) is grateful for the opportunity to comment on the consultation by ESMA on MAR review report in which chapter 10 (questions 59 to 65) more specifically concerned asset management.

From our understanding, the questions 59 to 65 are stemming from the Q58. Accordingly to our Q58 answer, we consider that Q59 to Q65 are useless.

As AFG does not see any advantages for investment management companies to ask the Stock Exchange to admit funds units for trading and most of all, the implementation of the aforementioned provisions will not enhance the market abuse regulation based on the specificity of the CIUs comparatively to other financial instruments, we would like ESMA to reassess its views on these topics.

Q58: Do you consider that CIUs admitted to trading or trading on a trading venue should be differentiated with respect to other issuers? Please elaborate your response specifically with respect to PDMR obligations, disclosure of inside information and insider lists. In this regard, please consider whether you could identify any articulation or consistency issues between MAR and the EU or national regulations for the different types of CIUs, with regards for example to transparency requirements under MAR vis-à-vis market timing or front running issues.

Yes. CIUs should be differentiated in the application of Market Abuse Regulation.

When funds units are admitted for trading on a stock exchange market, some MAR obligations have to be considered as the units trading that do not reveal any potential market abuse risk due to the nature of the CIUs. A risk-based approach should be taken into consideration in order to assess the interest of introducing these new provisions to the CIUs as proposed by this consultation paper.

In France, for instance, some funds have a legal status but are legally represented by an investment management company, which is regulated under MAR meaning that the management company rolls out a market abuse framework in order to comply with Market Abuse Regulation. Moreover, the CIUs (excepted the ETF) are traded on a regulated Stock Exchange at their unknown unit's value. There is just one price per day on which trades will be executed. When the investor is placing an order to buy or sell funds units, he is doing it without the knowledge of the execution price. In this condition, it is quite difficult to consider that an investor could benefit from any market abuse as the investor is committed to buy or sell at an unknown price.

The portfolio manager or any employee of the management company have to comply with internal rules such as a Code of Conduct, a Market Abuse policy or procedure, dedicated controls, ...all rules that have been implemented in the day-to-day of the management company in order to avoid any inappropriate behaviors (professional or personal). It means that if an employee would benefit from a potential market abuse, he will therefore breach some internal rules or procedures in term of Professional Ethics.

Our view is just to remind that all these elements are still requested by regulation and apply to the funds managed by an investment management company that aims to mitigate the MAR risk.

It is important to remind everyone that the trading of funds units on a Stock Exchange Market is quite recent and the traded volumes are limited (exception for ETFs) in France. If ESMA's views were finally adopted as it is written in the consultation paper, it will probably increase the obligations for a management company while admitting funds unit on a Stock Exchange compared to the current process of subscription/redemption through a central administrator or a Transfer Agent. It will then introduce a distortion in term of MAR rules between the Stock Exchange and the other means to subscribe/redeem funds units.

At AFG, we think that these new provisions will not benefit to the funds units trading on a Stock Exchange. They also would not reduce the potential MAR risk. It clearly means that the Stock Exchange from this point of view would appear less competitive than current means to buy or sell funds units.

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