

# Reply Form

**to the Consultation Paper on Draft technical advice  
concerning MAR and MiFID II SME GM**

## Responding to this Consultation Paper

ESMA invites comments on all matters in this Consultation Paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **13 February 2024**.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading 'Your input - Consultations'.

## Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

- Insert your responses to the questions in the Consultation Paper in this reply form.
- Please do not remove tags of the type < ESMA\_QUESTION\_LATA\_0>. Your response to each question has to be framed by the two tags corresponding to the question.
- If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.
- When you have drafted your responses, save the reply form according to the following convention: ESMA\_CP1\_ LATA\_nameofrespondent.

For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA\_CP1\_ LATA\_ABCD.

- Upload the Word reply form containing your responses to ESMA's website (**pdf documents will not be considered except for annexes**). All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading 'Your input - Consultations'.

## **Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

## **Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading '[Data protection](#)'.

## **Who should read this paper?**

All interested stakeholders are invited to respond to this consultation paper. This consultation paper is of primary interest to issuers, including SMEs, and trading venues, but responses are also sought from any other market participant including trade associations and industry bodies, institutional and retail investors, consultants and academics.

## 1 General information about respondent

Name of the company / organisation	Swedish Securities Markets Association
Activity	Trade Association
Are you representing an association?	<input checked="" type="checkbox"/>
Country / Region	Sweden

## 2 Questions

### Q1 Do you agree with the definition of protracted processes provided?

<ESMA\_QUESTION\_LATA\_1>

Yes.

However, although it follows from MAR that “..in a protracted process, only the final circumstances or final event shall be **required** to be disclosed, as soon as possible after they have occurred.” we consider that it would be helpful with a clarification that an issuer still has the flexibility and **option** to publish the inside information at an **earlier stage** than the “final event” without prejudice to the protection of confidentiality. ]

<ESMA\_QUESTION\_LATA\_1>

### Q2 Do you agree with the identified categories of processes and general principles?

<ESMA\_QUESTION\_LATA\_2>

Yes.

However, we have not assessed whether there could be any other categories than those presented by ESMA and, thus, whether such categories could be considered as exhaustive. ]

<ESMA\_QUESTION\_LATA\_2>

**Q3 Do you agree that for protracted processes that are entirely internal to the issuer the moment of disclosure should be the moment when the corporate body having the decision power has taken the decision to commit to the outcome of the process?**

<ESMA\_QUESTION\_LATA\_3>

|Yes. |

<ESMA\_QUESTION\_LATA\_3>

**Q4 Do you agree that in presence of a governance structure that foresees the approval of another body further to the management body's decision, the disclosure obligation should take place as soon as possible after the decision of the first body?**

<ESMA\_QUESTION\_LATA\_4>

|Yes. |

<ESMA\_QUESTION\_LATA\_4>

**Q5 Do you agree that for protracted processes involving the issuer and another party different from a public authority, the moment of disclosure should be when the competent bodies/persons of all parties involved, having the decision power under national law or bylaws, have taken the decision to sign off to the agreement?**

<ESMA\_QUESTION\_LATA\_5>

|Yes.

However, we would like to point out that, although ESMA's proposal is in line with Recital 67 of MAR, an agreement will in practice not be binding upon the parties until both parties have **signed** the agreement. Therefore, it could be argued that a sufficient degree of certainty is

not reached until the moment of signing of both parties. Also, depending on the definition of “agreement”, not all agreements should be included in the category as proposed by ESMA. |

<ESMA\_QUESTION\_LATA\_5>

**Q6 Do you agree that for protracted processes that are driven by a public authority with the involvement of the issuer, the moment of disclosure should be when the issuer has received the final decision from the public authority, even where the issuer and the public authority previously exchanged preliminary information that may on its own amount to inside information?**

<ESMA\_QUESTION\_LATA\_6>

|Yes.

However, it is important to be aware of the principle of public access to information in Sweden, meaning that the public is entitled to transparency regarding public sector activities, including e.g. decisions, (unless such right in an individual case is restricted by secrecy). This means that a final decision (or any other communication or information in the process) could become public before the issuer **receives** such decision. In such situations, the issuer (as well as the trading venues) must assess whether the confidentiality of the inside information can be ensured and – if not – the issuer must disclose the inside information at an earlier stage (while the trading venues also taking measures, such as trading halt, where appropriate). |

<ESMA\_QUESTION\_LATA\_6>

**Q7 Do you agree that for protracted processes that are triggered by the issuer and whose final outcome is decided by a public authority, two separate processes should be identified, and the moment of disclosure should occur upon completion of each of them as above outlined?**

<ESMA\_QUESTION\_LATA\_7>

|Yes.

However, please see Q6 above. |

<ESMA\_QUESTION\_LATA\_7>

**Q8 Do you agree that a hostile takeover can be considered a one-off event? Do you agree with the moment for disclosure identified for takeover processes?**

<ESMA\_QUESTION\_LATA\_8>

|We agree that a hostile takeover can be considered a one-off event. We also agree with the moment for disclosure identified for takeover processor.

However, we would like to point out that also in a hostile takeover, the issuer might be aware of a coming takeover bid in situations where e.g. the issuer has rejected such bid at an earlier stage. Further, also in hostile takeover processes, according to Swedish takeover rules, the issuer has an obligation to recommend/not recommend the shareholders to accepting the bid. |

<ESMA\_QUESTION\_LATA\_8>

**Q9 Do you agree with the proposed approach in relation to financial reports, profit warnings, earning surprises and forecasts? In particular, do you agree that profit warnings and earning surprises are to be considered as one-off events and as such should not be included in the list of protracted processes?**

<ESMA\_QUESTION\_LATA\_9>

|Yes. |

<ESMA\_QUESTION\_LATA\_9>

**Q10 Do you agree with the proposed approach in relation to recovery and resolution protracted process?**

<ESMA\_QUESTION\_LATA\_10>

|Yes.

However, please see Q1 above where it is requested with a clarification that an issuer is free to disclose inside information earlier than at the final stage. |

<ESMA\_QUESTION\_LATA\_10>

**Q11 Do you consider the list of protracted processes sufficiently comprehensive? Do you agree with the proposed moment of disclosure? Would you add or remove any process?**

<ESMA\_QUESTION\_LATA\_11>

|Yes, we consider the list of protracted processes sufficiently comprehensive and, unless otherwise stated in this Reply Form, we agree with the proposed moments of disclosure. |

<ESMA\_QUESTION\_LATA\_11>

**Q12 Do you agree that the inside information to be delayed may in some cases be assessed against more than one announcement, whenever a clear conclusion about the issuer's position on the subject matter cannot be drawn exclusively on the basis of the very latest communication?**

<ESMA\_QUESTION\_LATA\_12>

|Yes. |

<ESMA\_QUESTION\_LATA\_12>

**Q13 Do you agree with the list of communications presented in Article 4 of the draft delegated act? Do you consider it sufficiently comprehensive, or do you deem that any other cases should be added?**

<ESMA\_QUESTION\_LATA\_13>

|Yes, we agree with the list of communications, and we consider it sufficiently comprehensive.

In our view, the issuer shall – as is the procedure according to current legislation – make an overall assessment considering previous communications by the issuer (or any person perceived to represent the issuer) to the market. |

<ESMA\_QUESTION\_LATA\_13>

**Q14 Do you agree with the list of situations where there is a contrast between the inside information to be delayed and the latest announcement or**



**communication as presented by ESMA in [Annex II] of the proposed Delegated Act (Annex IV of this CP)? Do you consider it sufficiently comprehensive, or do you deem that any other situations should be added?**

<ESMA\_QUESTION\_LATA\_14>

|Yes, we agree with the list of situations, and we consider it sufficiently comprehensive.

However, we suggest that the wording “or any person perceived to represent the issuer” is added in the examples to make it consistent with Article 4 of the draft delegated act. |

<ESMA\_QUESTION\_LATA\_14>

**Q15 Do you have any views on the methodology used to conduct the analysis?**

<ESMA\_QUESTION\_LATA\_15>

|TYPE YOUR TEXT HERE |

<ESMA\_QUESTION\_LATA\_15>

**Q16 Do you agree that the methodology of calculation in Article 78(1) of CDR 2017/565 to assess if the SME GM meets the 50% criterion is suitable? Please explain.**

<ESMA\_QUESTION\_LATA\_16>

|TYPE YOUR TEXT HERE |

<ESMA\_QUESTION\_LATA\_16>

**Q17 Do you agree that the requirements in Article 78(1) of CDR 2017/565 ensure that the refusal to be registered as an SME GM does not simply occur as a result of a temporary failure to comply with the requirements specified in Article 33(3) of MiFID II? Please explain.**

<ESMA\_QUESTION\_LATA\_17>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_LATA\_17>

**Q18 Do you agree with the proposal not to specify further the requirements in Articles 78(2)(a) and 78(2)(b) of CDR 2017/565? Please elaborate.**

<ESMA\_QUESTION\_LATA\_18>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_LATA\_18>

**Q19 Do you agree with the proposal not to modify the requirements currently included in Articles 78(2)(c), (d) and (f) of CDR 2017/565? Please elaborate.**

<ESMA\_QUESTION\_LATA\_19>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_LATA\_19>

**Q20 Do you agree with the proposal to align the requirement in Article 78(2)(e) of CDR 2017/565 with those of the Growth Issuance Prospectus by requiring a statement on the working capital only for share issuances? Please elaborate.**

<ESMA\_QUESTION\_LATA\_20>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_LATA\_20>

**Q21 Do you agree with the proposal to include in Article 78(2)(g) of CDR 2017/565 the requirement that the financial reports published by SME GM issuers should be subject to audits?**

<ESMA\_QUESTION\_LATA\_21>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_LATA\_21>

**Q22 Do you agree with the proposal not to modify Articles 78(2)(h) and (i) of CDR 2017/565? Please elaborate.**

<ESMA\_QUESTION\_LATA\_22>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_LATA\_22>

**Q23 Do you agree with the proposals to meet the first and the second requirements under Article 33(3a) (a) and (b)? Please explain.**

<ESMA\_QUESTION\_LATA\_23>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_LATA\_23>

**Q24 Do you agree with the proposals to meet the third requirement under Article 33(3a) (c)? Please explain.**

<ESMA\_QUESTION\_LATA\_24>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_LATA\_24>

**Q25 Do you agree that no specific amendments are required for Article 79? Please explain.**

<ESMA\_QUESTION\_LATA\_25>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_LATA\_25>

**Q26 Do you agree that the requirements in Article 79 of CDR 2017/565 ensure that an SME GM is not deregistered due to a temporary failure to comply with the criteria an Article 33 of MiFID II?**

<ESMA\_QUESTION\_LATA\_26>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_LATA\_26>