efama

European Fund and Asset Management Association

EFAMA's COMMENTS TO ESMA's CONSULTATION PAPER ON THE MAR REVIEW REPORT

Introduction

EFAMA acknowledges the legislative requirement to review MAR, following MAR art. 38. We nevertheless disagree with the aspects of the consultation paper related to the application of the regulation to funds and asset managers as well as to FX spots.

Regarding the activities of Collective Investment Undertakings (CIU), we consider that the scope of instruments covered should be restricted to funds whose shares are traded on an equity trading venue (following MiFID II qualification of venues i.e. stock exchange, regulated market or Multilateral Trading Facilities (MTF)) and funds that are trading on secondary markets. We consider that the legislations dedicated to funds and fund managers (UCITS and AIFMD) already provide transparency to investors and detailed reporting to authorities that do not need to be duplicated with the provisions envisaged in the review of MAR.

Concerning the financial instruments subject to MAR, we want to remind that FX spots are not financial instruments neither under MiFID II nor under EMIR but are recognized as means of payment when the length of time of the transaction does not exceed 3 business days. Therefore, FX spot should not be considered under MAR but rather reported under AML rules or Payment Services Directive.

Q1: Do you consider necessary to extend the scope of MAR to spot FX contracts? Please explain the reasons why the scope should or should not be extended, and whether the same goals could be achieved by changing any other piece of the EU regulatory framework.

We consider it inappropriate to extend the scope of MAR to spot FX contracts because:

- Spot FX are not financial instruments according to MiFID II and therefore should not be included in the scope of MAR. Including spot FX in the scope of the regulation would create legal uncertainty around their nature and could impact the calculation of thresholds in other legislations;
- In terms of currencies, the concerns shared in §14 relate to the specific pivot role of one single currency, namely the USD, and should not be enlarged to the rest of the FX market as the Consultation Paper suggests
- As ESMA rightly notes the FX Global Code of Conduct ('the Code') developed by central banks and market participants from sixteen jurisdictions around the globe has already achieved progress in promoting higher standards in the wholesale FX market.

We therefore encourage ESMA to:

- Allow the market to use the reformed Code for a couple of years; and subsequently
- Evaluate whether it is necessary to supplement the Code with public policies, derived from other pieces of Financial regulation such as the Payment Service Directive or the Anti-Money Laundering Directive.

Q2: Do you agree with ESMA's preliminary view about the structural changes that would be necessary to apply MAR to spot FX contracts? Please elaborate and indicate if you would consider necessary introducing additional regulatory changes.

We agree in principle with ESMA's preliminary views, but have the following comments:

- Firstly, as rightly explained in §19, the FX spot market being predominantly an OTC market, the price determination may rely on the relationship and credit worthiness of the counterparties.
- Secondly and as mentioned in our reply to Q1, we want to insist on the fact that spot FX are not financial instruments according to the MiFID definition, but means of payment.
- Thirdly, and as rightly presented in §22, if MAR was to be expanded to spot FX contracts, NCAs would need to review the spot FX transactions. Considering the numerous and heavy issues encountered in the production and exploitation of trade and transaction reporting, we strongly recommend not to amend any of the EMIR or MiFIR reporting frameworks to include spot FX. Such initiative would be operationally almost impossible to apply.

Consequently, we recommend ESMA not to extend the scope of MAR to spot FX transactions.

Q3: Do you agree with this analysis? Do you think that the difference between the MAR and BMR definitions raises any market abuse risks and if so what changes might be necessary?

In principle, we agree with the analysis carried out by ESMA, but we consider that all prudential rules dealing with benchmark provisions should be covered in full under the BMR.

The BMR was adopted in 2016 after the MAR with a clear objective to cover failures of critical benchmarks such as Euribor/Libor which can impact market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in EU Member States. This involves, in our view, also the objective of prohibition of (attempted) manipulation of benchmarks.

We therefore suggest deleting in the MAR all references to market manipulation of benchmarks and, where required, to include the prohibition to engage in or attempt to engage in benchmark manipulation (including sanctions) in the BMR, to ensure legal and supervision consistency.

Q4: Do you agree that the Article 30 of MAR "Administrative sanctions and other administrative measures" should also make reference to administrators of benchmarks and supervised contributors?

In general, we would support strict sanction rules to avoid misbehaviour of administrators of benchmarks and of supervised contributors.

However, we consider that MAR is not the appropriate legislation to achieve that goal.

As described in our reply to Q3, the BMR was adopted in 2016 and complement the sanctioning regime provided by the MAR. In particular, the BMR establishes a common set of rules governing the production and use of benchmarks across different Member States including new rules ensuring the appropriate supervision of critical benchmarks, such as Euribor/Libor.

Therefore, we consider that all relevant supervisory activities and sanction regime to market abuse such as manipulation of benchmarks resulting from activities of benchmark administrators or supervised contributors should be covered solely under the BMR.

Q5: Do you agree that the Article 23 of MAR "Powers of competent authorities" point (g) should also make reference to administrators of benchmarks and supervised contributors? Do you think that is there any other provision in Article 23 that should be amended to tackle (attempted) manipulation of benchmarks?

See our reply to question Q4

Q6: Do you agree that Article 30 of MAR points (e), (f) and (g) should also make reference to submitters within supervised contributors and assessors within administrators of commodity benchmarks?

See our reply to question Q4

Q13: Have market participants experienced any difficulties with identifying what information is inside information and the moment in which information becomes inside information under the current MAR definition?

Some of our members active in real estate funds mentioned difficulties with identifying what information is inside information, the cases described in paragraph 3 of Article 7 of MAR.

From their perspective, this difficulty stems from the fact that the investments made by real estate funds may concern (and be influenced by) operations that may take place at different stages of a process (e.g. real estate sales may be subject to several phases of negotiations, depending on the progress made in the project's development).

According to this provision: "An intermediate step in a protracted process shall be deemed to be inside information if, by itself, it satisfies the criteria of inside information as referred to in this Article".

From our perspective, this provision is drafted in a too generic way and we ask ESMA to provide more precise indications about the case considered in Article 7, paragraph 3 of MAR.

Q14: Do market participants consider that the definition of inside information is sufficient for combatting market abuse?

We consider that the current framework is sufficiently detailed and extensive and does not need to be further extended.

We encourage ESMA to refrain from modifying reporting standards or reporting formats, except in case of severe lack or inconsistencies in reporting to avoid the cost of the modification of reporting infrastructures.

Q15: In particular, have market participants identified information that they would consider as inside information, but which is not covered by the current definition of inside information?

We do not have any information from members of such situation.

Q22: What market abuse and/or conduct risks could arise from pre-hedging behaviours and what systems and controls do firms have in place to address those risks? What measures could be used in MAR or other legislation to address those risks?

In relation to pre-hedging, one of the arguments for keeping the practice is that there are benefits to investors as prices can be driven down where risk is hedged. Our members are not aware of any evidence for this in practice.

If pre-hedging is to be allowed to continue, additional guidance from ESMA might be a helpful step for sell-side firms to differentiate between pre-hedging and potential front running, or even mere inadvertent price movement.
When quoting or engaging with a client on an instrument the broker/dealer should not be trading on their own book to position themselves to be able to offer more commercial terms than they may otherwise have been able to. This should be distinct from other hedging arrangements which may happen in anticipation or normal trading/hedging.

In relation to Request for Quotes (RFQs), RFQs, either bilaterally or through electronic platforms, are frequently used to obtain liquidity for large transactions.

In that context, we agree with ESMA that requests for quotes may meet the definition of inside information. However, we consider that, if based on those criteria, it is the case for the materiality of all trading information (orders, Indications of Interests (IoIs) and RFQs).

Therefore, we deem it crucial to insist on the fact that:

- RFQs always need to be considered on the facts and cannot be assumed as inside information on a general basis; and
- RFQs should NOT be qualified as inside information because they are requests for two-way prices and give no indication of the intended direction of trade.

Q25: Please provide your views on the functioning of the conditions to delay disclosure of inside information and on whether they enable issuers to delay disclosure of inside information where necessary.

MiFID II updates the way pre- and post-transaction information are provided to markets and investors. Even though we welcome ESMA's discussion about pre-hedging and on the functioning of the conditions to delay disclosure of inside information, we strongly recommend not to harm waivers and deferral mechanisms that were protected for the benefits of investors.

Q36: Do you think that the reference to "prior to the announcement of a transaction" in the definition of market sounding is appropriate or whether it should be amended to cover also those communications of information not followed by any specific announcement?

We consider that requiring an estimation of the "sounding" period may prove difficult as market conditions may require more sounding time or the issuer may want to test new transaction structures based on market sounding feedback, etc.

In those circumstances, the firm making the sounding cannot be held responsible for the protection of the qualification of inside information for an indefinite period because:

- "soundees" are typically regulated institutions and they need to make their own assessment based on their regulatory obligations (which cannot be delegated);
- the firm making the sounding does not know what information "soundees" may have from other sources.

To foster clarity for potential investors regarding the estimated date at which the information disclosed will cease to be inside information (e.g. because the transaction has become public), DMPs could include in the standard set of information, where possible, an *estimation* of the timing by which the information could cease to be inside information.

We would therefore suggest ESMA to envisage the possibility to for instance require Disclosing Market Participants (DMPs) to determine a fixed deadline for the cleansing in certain circumstances. However, we want to also raise ESMA's awareness to the potential adverse impact on the ability to raise capital/conduct transactions that public announcements of cleansing might have on in-process and/or failed transactions may be required by the issuer in order to investors by a fixed deadline.

Q37: Can you provide information on situations where the market soundings regime has proven to be of difficult application by DMPs or persons receiving the market sounding? Could you please elaborate?

Several consider to not receive market soundings anymore, precisely because of the excessive burden of the applicable regime.

Therefore, and should ESMA wish to encourage the activity of market sounding, we recommend a simplification of the market sounding procedures and requirements.

Q46: Does the minimum reporting threshold have to be increased from Euro 5,000? If so, what threshold would ensure an appropriate balance between transparency to the market, preventing market abuse and the reporting burden on issuers, PDMRs, and closely associated persons?

We are of the view that the EUR 5.000 amount is too low and should be increased to EUR 20.000 which would be in line with Art. 19(9) of MAR.

In relation to this threshold, we urge ESMA to act to harmonise the reporting requirements and align the thresholds for reporting. As the CP points out, so far four NCAs have decided to use increased threshold and a fifth NCA is likely to follow suit. Hence, while MAR's key objective is to harmonize across the EU and is a regulation, it has created an unleveled playing field in relation the PDMRs notification threshold.

In addition, some other legislations are contradicting the principles mentioned in this Consultation Paper, the existing 5,000€ threshold is troublesome as:

- it discourages paying PMDR in shares/units of the CUI; while
- on the contrary, the remuneration provisions under UCITS/AIFMD promote the payment of a significant part of Identified Staff's (e.g. PMDR) variable remuneration in shares/units of the CUI (or comparable instruments). [1]

Q48: Did you identify alternative criteria on which the reporting threshold could be based? Please explain why.

As a facilitator to report the transaction, we recommend introducing a "tranching" scheme, where the transactions would have to be reported from Euro 20.000 and by tranches of EUR 5.000 afterwards, and at least at every end of year at the latest.

[1] For the identified staff regarding an AIF, the minimum portion of 50% of variable remuneration that should be paid in *instruments* (Annex II, paragraph 1(m) of the AIFMD). For the identified staff regarding a UCITS a minimum portion of 50% should be in instruments as well. (see Art. 14b(1)(m) of the UCITS Directive). Instruments is defined as: *units or shares of the UCITS managed by the management company, equivalent ownership interests (including – for UCITS issuing only units – unit-linked instruments), subject to the legal structure of the UCITS concerned and its fund rules or instruments of incorporation, or share-linked instruments or equivalent non-cash instruments with equally effective incentives as any of the instruments referred to in this definition.*

This scheme would reduce the number of reporting occurrences without being detrimental to market transparency.

Q50: Did you identify alternative criteria on which the subsequent notifications could be based? Please explain why.

We do not see merit in extending those notifications.
Should ESMA nevertheless push for further detailed notifications, we are of the views that some specific additional thresholds (of EUR 20.000 each) should be defined for the 2 following additional dimensions:

- The amount of personal money invested by PDMR in order to comply with investment policies encouraging portfolio managers to invest in the funds they manage.
- The amount of personal money invested in the fund as support for pension scheme purpose

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.

There are many different types of listed funds and subjecting all of them indiscriminately to all the requirements of the MAR regime does not achieve MAR's objective of preventing market abuse and may even be counterproductive in view of the specific economic purpose that CIUs are meant to have. A distinction should therefore be made between ETF, CIUs admitted to trading on a trading venue and other CIUs.

As preliminary remark, we want to insist on the fact the scope of potential suspicious transactions in the investment fund industry is far less important than for other market actors, as our market role is to invest on clients' behalf's.

This procedural framework also prevents to observe positions window-dressing schemes in the records of investment funds.

We consider that MAR would generally apply to:

- CIUs whose shares are admitted to trading on a regulated market or an MTF or for which a request for admission to trading has been made. We believe that CUIs which are ETFs should be treated in the same way as other issuers as these are traded in a very comparable way as corporate shares admitted to trading on a trading platform. Unlike traditional open-end funds, ETF shares can be bought and sold on the exchange intraday. Because the size of the fund is intraday fixed in terms of both assets and shares outstanding, secondary market liquidity - supported by market makers - determines the price at which shares are bought or sold. Consequently, ETFs may trade intraday at premiums or discounts to the value of the underlying securities held by the ETF. Practice has shown that ETF prices may indeed significantly decouple from those of their constituent securities

in times market stress. ETF trades can also happen end-of-day primary market, facilitated by an approved group of institutional firms (Authorized Participants (APs)); and
- CIUs that are trading on secondary market.

However and in the event of Traded CIUs, we consider that the <u>subscription and redemption</u> of units/shares is in many cases performed at the relevant NAV (this showing that, as a matter of fact, CIUs should be entirely governed by its own specific legislation and <u>excluded from MAR</u> scope of application). Consequently, it would be necessary to exclude from the scope of application of MAR at least those CIUs which are mandatorily traded at their NAV.

We also consider that the <u>open-end funds</u> which are – for marketing or to serve a Tax Treaty purposes – <u>listed on a trading venue lack secondary market liquidity (such as</u> open-end on Euronext Fund Service (EFS[2])) should be excluded from MAR scope of application because :

- CIUs whose value is not determined by ordinary secondary market mechanisms cannot be the object of the illicit conducts defined under MAR.
- Non-traded CIUs are acquired/sold at their Net Asset Value ("NAV").
- CIUs have very specific mechanisms in place to calculate their NAV and such mechanisms have already been designed to prevent any potential market abuse. Subscriptions and redemption orders are executed on an unknown NAV and there exist rules to prevent (among others) late trading and market timing. Such rules and mechanisms are specifically designed to prevent market abuse in relation to this kind of instruments.
- ESMA seems to have supported this interpretation in point (i) of its Q&A on the Market Abuse Regulation which refers in sections 5.6, 5.7 and 8.4 to CIUs what have been admitted to trading and (ii) the Consultation paper itself, which mentions that any references to CIUs therein only address CIUs that have requested or approved admission of their financial instruments to trading on a regulated market or MTF (see indenture 223).

<u>PDMR obligations.</u>
As regards PDMR rules, it is important to note that managerial decisions are usually adopted by an external management company (please see 59 below), internal management actions are limited and have no real impact on the NAV.

Therefore, PDMR obligations should not apply where the issuer is a CIU, particularly when the latter has appointed an external management company (considering the very limited scope of their

[2] EFS is a primary market/NAV platform for open end funds located in Paris and Amsterdam. It enables clients to buy and sell funds by sending subscription/redemption orders via a Euronext member broker which act as distributors. The pricing of the shares issued or repurchased by the open-end fund from orders received through EFS is determined by the end-of-day calculation of their net asset value (NAV), with a predetermined adjustment reflecting the transaction costs of the fund as specified in the prospectus. The function of EFS is to facilitate in transmitting their orders to a fund and facilitate a fund in giving effect to its obligation to execute these orders. Brokers do not conduct any transactions with other brokers; market making, and secondary price-formation is absence in the case of EFS. Pricing is determined by the fund's NAV and bears no relation to the supply and demand for shares in the fund (whether channelled through EFS). The same goes for the open-end UCIs listed in on the Bourse de Luxembourg.

managerial decisions and the fact that all decisions concerning portfolio management, risk management, valuation, etc. are adopted by the relevant management company).

Disclosure of inside information.

The obligation to publicly disclose inside information applies in principle to CIUs that have requested or approved admission of their shares to trading on a regulated market or an MTF. For diversified CIUs with a daily NAV, the market price is closely linked to the applicable NAV, which should in principle discard the risk of inside information having a significant influence on the market price.

That is, even in case of Traded CIUs, their secondary market price is either the NAV (in many cases, where traded on an MTF) or closely tied to its NAV (such as in the case of ETFs).

The NAV is calculated considering the valuation of the relevant portfolio, which is diversified in accordance with applicable regulations and subject to very strict valuation rules.

CIUs specific legislation provides that subscriptions and redemption orders are executed on an unknown NAV and, as previously mentioned, there exist rules to prevent (among others) late trading and market timing. Such rules and mechanisms are specifically designed to prevent market abuse in relation to this kind of instruments. Besides, CIUs are subject to their own specific disclosure rules.

Directive 2013/50/EU, on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, takes the above into account and expressly excludes the application of its provisions to open-ended CIUs.

Therefore, market abuse provisions should be consistent since both regimes are related.

Insider lists.

Regarding the obligation to draw up insider lists, in practice for largely diversified CIUs that have requested or approved admission of their shares to trading on a regulated market or an MTF which publish their NAV daily, the cases where persons would have to be registered on the list should be rare.

Indeed, generally, trading possibilities on securities and derivatives instruments by investment funds are defined by investment policies and limited by risk management procedures implemented at fund level. As a matter of fact, buying and selling transactions are correlated respectively with subscriptions and redemption orders of end investors.

Moreover, transactions in derivative instruments have a somewhat permanent character in the sense that they are driven by a decision of the investment fund manager to use derivative instruments as an asset class or for hedging purposes.

Q59: Do you agree with ESMA's preliminary view? Please indicate which transactions should be captured by PDMR obligations in the case of management companies of CIUs.

We consider that PDMR obligations are adequately covered for CIUs in their specific legislation.

In line with our response to question 58 regarding the existence of strict investment policies and risk management procedures, we do not agree with ESMA's preliminary view. The management company has access to the same information as the board, so there is no risk to proceed to insider dealing. ESMA also recognizes that in case of CIUs that have appointed a management company, the managers of the relevant CIU have a very limited role in the day to day management of the CIU itself, since all decisions concerning the management of the portfolio, its valuation, calculation of net asset value, etc. are taken by the relevant management company (see indentures 226 and 227).

In addition, the AIFM and UCITS directives already provide limitations on transactions performed by management companies.

Additionally, and as rightly stated in indenture 230, the secondary market price of the CIU's units or shares is closely tied to its NAV. This is particularly the case for ETFs. Therefore, one could argue that managerial decisions in relations to the CIU have minor impact on the on the share price/unit than in non-CIUs companies, as the value of each single asset is not influenced by the CIU or its management company.

Consequently, the application of PDMR obligation to CIU and/or its management company, and the limitation of thresholds proposed to UCITS/CIU funds do not look applicable (see also our responses to the Section 9 of the CP).

It also deters management company members and/or board members of the CIU to invest in the fund they manage, contrary to other legislations requiring granting bonus partly in shares or units of the company.

Besides, CIUs specific rules already address ESMA's concerns. In particular, the comparison between MAR and UCITS/AIFMD shows the following:

- Notification of personal transactions: UCITS and AIFMD do not only establish obligations to inform about personal transactions by relevant persons (articles 13(2)(b) and (c) of Commission Directive 2010/43/EU and 63(1)o of Regulation 231/2013) but also by other persons which could have been advised or warned by such.
- Both UCITS and AIF are subject to ongoing disclosure of their NAV, half-yearly and annual reports and far more information than any other kind of financial instruments.

In any event, PDMR obligations should not apply at all to CIUs that have appointed an external management company. Given that open-ends CIU's share price mirrors the Net Asset Value, PDMR' decisions on the fund does not have significant impact on price-formation, since PDMRs belonging to the relevant CIU do not adopt decisions about investment of the portfolio, its valuation, NAV calculation, etc. Prohibition of transactions by said PDMRs during certain periods would jeopardize their ability as shareholders to take their investment decisions without any relevant grounds.

Therefore, PMDRs related to management companies of open-end CIUs should be exempted from the art 19 MAR obligations

Q60: Do you agree with ESMA's preliminary view? If not, please elaborate.

Considering the response to questions 58 and 59 regarding the existence of strict investment policies and risk management procedures, we do not agree with ESMA's preliminary view.

In case ESMA finally decides to include PDMR obligations for management companies, "relevant persons" within CIUs with legal personality managed by an external management company should not be considered as PDMR (since they have no real impact on the management of the company). Therefore, the prohibitions within MAR would unnecessarily limit their ability to make transactions as shareholders of the CIU. Moreover, we have difficulties understanding why the scope of manager transactions should be extended to relevant persons of CIUs that have only requested the admission of their shares to trading on a regulated market or an MTF.

Concerning the rules applicable to the person who oversees the waiving the prohibition of personal transactions in exceptional circumstances, they should be aligned with those provided for other issuers. In this respect, please note that MAR regime provides for the issuer (which should be the management company in the case at hand) to authorize the relevant transactions, but it is silent about who within the issuer should provide the relevant authorization.

Q61: What persons should PDMR obligations apply to depending on the different structures of CIUs and why? In particular, please indicate whether the definition of "relevant persons" would be adequate for CIUs other than UCITs and AIFs.

Please see our replies to Q58 and Q60:

We consider that only PDMRs related to ETF should be kept in scope of the art 19 MAR obligations.

In relation to CIUs with legal personality that have appointed an external management company, PDMR within the CIU should be clearly left out of the scope considering their limited impact on the CIUs day to day and performance and the lack of proportionality these limitations imply to their ability to subscribe and redeem their shares as shareholders of the CIU when there are no real grounds for such prevention.

Q62: ESMA would like to gather views from stakeholders on whether other entities than the asset management company (e.g. depository) and other entities on which the CIUs has delegated the execution of certain tasks should be captured by the PDMR regime.

Depositaries of funds being primarily in charge of safekeeping, record keeping and ownership verification of the fund's assets, we do not see any need to include this type of entity in the PDMR regime.

Any potential impact on their activity as investors, for example, would be captured, if applicable, by the relevant legislation which takes better into account the CIUs particularities.

Q63: Do you agree with ESMA's conclusion? If not, please elaborate.

There should be a level playing field, indeed, but they should all be left out of scope of MAR (please refer to previous comments, especially our reply to question Q58).

Q64: Do you agree with ESMA preliminary view? Please elaborate.

CIUs or their management companies are already subject to very strict disclosure obligations of any events that may affect the shareholder/unitholder to subscribe or redeem shares

Q65: Do you agree with ESMA's preliminary views? Do you consider that specific obligations are needed for elaborating insider lists related to CIUs admitted to traded or traded on a trading venue?

We agree with ESMA's preliminary view that there is no need to amend MAR in this respect.

Please note that the specific cases identified as potential "inside information" under question 5.7 of ESMA's Q&A should be reconsidered considering our comments below:

- Such information may not always have an impact on the NAV.
- Most situations are subject to immediate disclosure in accordance with the applicable specific legislation. Therefore, it becomes public immediately.
- In case there is any information which should be clearly considered as privileged and confidential, it would be subject to the applicable precautions considering the stock markets regulations.

We also want to remind that we consider that open-end UCI listed on a trading venue like EFS should excluded from the insider list obligations.

Q66: Please provide your views on the abovementioned harmonisation of reporting formats of order book data. In addition, please provide your views on the impact and cost linked to the implementation of new common standards to transmit order book data to NCAs upon request. Please provide your views on the consequences of using XML templates or other types of templates.

These questions are not relevant for our members because they do not qualify as trading venues.
However, we share ESMA's view that the transaction reporting required for investment firms under MiFIR and the analysis of transaction data by the relevant NCAs can be performed for market abuse purposes and we consider that no further data should be requested from these firms.

Q69: What are your views regarding those proposed amendments to MAR?

This section covering dividend arbitrage and multiple WHT reclaim schemes relates much more about pure fraud schemes than an abuse in market activities. Moreover, these fraudulent practices do not have obvious correlation on the prices of the financial instruments manipulated. MAR is already very consistent and does not need to be completed with non-essential provisions.

For these reasons we recommend not to include the proposals of the section 11.2 in the final report to the EC.

Besides, further to the open hearing held on 5 November, we understand better the reasons why this scope has been included in this CP (knowing that tax authorities do not have the same data toolkit as an NCA, the European Parliament made the request to include Cum/Ex treatment into MAR).

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