

Questions and Answers – Market Abuse Regulation

MAR vs MiFID

- 1. To what extent will the wider scope of MiFID II financial instruments (Emission Allowances) and trading venues (OTFs) apply as at the July implementation date for MAR?**

As set out in Article 39.4 of MAR the provisions of MiFID I will be in place until MiFID II enters law. For practical purposes this means that: (i) For trading venues that will become regulated as an OTF under MiFID II there is no requirement to monitor orders and transactions (And report STORs) to the requirements set out in MAR until the implementation date of MiFID II. (ii) The MAR requirements regarding emission allowances – most notably in respect of EAMPs (disclosure of inside information, insider lists, managers' transactions, etc) are deferred until the implementation date of MiFID II.

Monitoring and Surveillance

- 2. In the circumstances where Front Office staff or surveillance and monitoring procedures notice “potential” market abuse by counterparties what should be the response post implementation of MAR? Will a STOR be required or something else?**

All suspicions should be reported using the STORs template whether based on a market participants employee behaviours or employees of other market participants.

- 3. Some trading venues will receive orders via voice, IM or email. Is there a requirement to match these orders that are filled with the executed transactions?**

No, there is no requirement in MAR to match each and every order to a transaction for surveillance and monitoring purposes.

- 4. In order to effectively monitor orders in the market is it sufficient to monitor our own market data with access to the best bid/offer price in the market at any given point in time? Or does MAR require analysis of every bid and offer at any point of time allowing analysis of market depth?**

There is no detailed requirement as to the level of market data that should be analysed. The best bid and offer observed in the market at the time of execution will be sufficient.

Inside Information

Definition of Inside Information – Commodity Derivatives

- 5. ESMA was mandated to issue guidelines to establish a non-exhaustive indicative list of information which is reasonably expected or is required to be disclosed in accordance with legal or regulatory provisions in law, market rules, contract, practice or custom, on the relevant commodity derivatives or spot markets as referred to in the definition of inside information for commodity derivatives**

For commodity firms, the definition of inside information for commodity derivatives is key so as to allow them to understand – and comply with - the full extent of the requirements stemming from it. Given the fact that ESMA that we are yet to see the publication of the consultation on the Guidelines, we are anticipating that application of the Guidelines should not be expected before their finalisation – and that commodity firms will also benefit from a transitional period to enable them to update systems, processes and controls in line with the final Guidelines.

- 6. Is there a requirement for Inside Information to be published, before it is used as an input to a trading decision, by non-issuers of commodity derivatives using the criteria defined in the Level 2 technical standards including “to the media?”**

There is no specific requirement on the method of publishing inside information for market participants that are not issuers or EAMPs.