

In case of discrepancies between the French and the English text, the French text shall prevail.

Luxembourg, 11 January 2017

To all market participants concerned

CIRCULAR CSSF 17/648

Re: Guidelines of the European Securities and Markets Authority (ESMA) in relation to the factors, the steps and the records that the persons receiving the market soundings will have to consider and implement according to Article 11(11) of Regulation (EU) No 596/2014 on market abuse (“MAR”)

Ladies and Gentlemen,

The purpose of this circular is to implement “MAR Guidelines - Persons receiving market soundings” (Ref.: ESMA/2016/1477) (hereinafter, the “Guidelines”), published on 10 November 2016 by ESMA, into Luxembourg regulations.

The Guidelines are addressed to persons receiving market soundings and more particularly concern:

- a) the **factors** that such persons are to take into account when information is disclosed to them as part of a market sounding in order for them to assess whether the information amounts to inside information;
- b) the **steps** that such persons are to take if inside information has been disclosed to them in order to comply with Articles 8 and 10 of MAR; and
- c) the **records** that such persons are to maintain in order to demonstrate that they have complied with Articles 8 and 10 of MAR.

The Guidelines are attached to this circular and are available on ESMA’s website <http://www.esma.europa.eu>.

This circular enters into force on the day of its publication.

Yours faithfully,

COMMISSION FOR THE SUPERVISION OF THE FINANCIAL SECTOR

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Annex: MAR Guidelines - Persons receiving market soundings (Ref.: ESMA/2016/1477 EN)



European Securities and
Markets Authority

MAR Guidelines

Persons receiving market soundings



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1 Scope

Who?

1. These guidelines apply to Competent Authorities and persons receiving market soundings.

What?

2. These guidelines apply in relation to the factors, the steps and the records that the persons receiving the market soundings will have to consider and implement according to Article 11(11) of Regulation (EU) No 596/2014 of the European Parliament and of the Council.

When?

3. These guidelines apply from 10/01/2017.

2 References, abbreviations and definitions

ESMA Regulation	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority) amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC
MSR	Person receiving the market sounding
DMP	Disclosing market participant
MAR	Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (Market Abuse Regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC
RTS on market soundings	Commission Delegated Regulation (EU) 2016/960 of 17 May 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the appropriate arrangements, systems and procedures for disclosing

market participants conducting market soundings

3 Purpose

4. Article 11(11) of MAR provides that ESMA shall issue guidelines addressed to persons receiving market soundings (MSR) regarding:
 - a) the **factors** that such persons are to take into account when information is disclosed to them as part of a market sounding in order for them to assess whether the information amounts to inside information;
 - b) the **steps** that such persons are to take if inside information has been disclosed to them in order to comply with Articles 8 and 10 of MAR; and
 - c) the **records** that such persons are to maintain in order to demonstrate that they have complied with Articles 8 and 10 of MAR.
5. The purpose of these guidelines is to ensure common, uniform and consistent approach in relation to the requirements that MSRs are subject to. These guidelines aim at reducing the overall risk of spreading of the inside information communicated in the course of the market sounding and at providing tools for the Competent Authorities to effectively conduct investigations on suspected market abuse cases.

4 Compliance and reporting obligations

4.1 Status of the guidelines

6. This document contains guidelines issued under Article 11(11) of MAR. Competent authorities and financial market participants must make every effort to comply with guidelines and recommendations.

4.2 Reporting requirements

7. Competent Authorities to which these guidelines apply must notify ESMA whether they comply or intend to comply with the guidelines, with reasons for non-compliance, within two months of the date of publication by ESMA to [\[MARguidelinesGL2@esma.europa.eu\]](mailto:MARguidelinesGL2@esma.europa.eu). In the absence of a response by this deadline, competent authorities will be considered as non-compliant. A template for notifications is available from the ESMA website.

8. The persons receiving market soundings are not required to report whether they comply with these guidelines.

5 Guidelines for persons receiving market soundings

1. Internal procedures and staff training

9. The MSR should establish, implement and maintain internal procedures that are appropriate and proportionate to the scale, size and nature of their business activity, to:
 - a. ensure that, where the MSR designates a specific person or a contact point to receive market soundings, that information is made available to the DMP;
 - b. ensure that the information received in the course of the market sounding is internally communicated only through pre-determined reporting channels and on a need-to-know basis;
 - c. ensure that the individual(s), function or body entrusted to assess whether the MSR is in possession of inside information as a result of the market sounding are clearly identified and properly trained to that purpose;
 - d. manage and control the flow of inside information arising from the market sounding within the MSR and its staff, in order for the MSR and its staff to comply with Articles 8 and 10 of MAR.
10. The MSR should ensure that the staff receiving and processing the information obtained in the course of the market sounding are properly trained on the relevant internal procedures and on the prohibitions, under Articles 8 and 10 of MAR, arising from being in possession of inside information. The training should be appropriate and proportionate to the scale, size and nature of MSR's business activity.

2. Communicating the wish not to receive market soundings

11. After being addressed by a DMP, the MSR should notify it whether they wish not to receive future market soundings in relation to either all potential transactions or particular types of potential transactions.

3. MSR's assessment as to whether they are in possession of inside information as a result of the market sounding and as to when they cease to be in possession of inside information

12. MSRs should independently assess whether they are in possession of inside information as a result of the market sounding taking into consideration as relevant factors the DMP's assessment and all the information available to the individual(s), function or body

entrusted within the MSR to conduct that assessment, including information obtained from sources other than the DMP. In conducting that assessment, the individual(s), function or body should not be required to access information behind any information barrier established within the MSR.

13. Further to the DMP's notification that the information disclosed in the course of the market sounding is no longer inside information, MSRs should independently assess whether they are still in possession of inside information taking into consideration the DMP's assessment and all the information available to the individual(s), function or body entrusted within the MSR to conduct that assessment, including information obtained from other sources than the DMP. In conducting that assessment, the individual(s), function or body should not be required to access information behind any information barrier established within the MSR.

4. Assessment of related financial instruments

14. Where the MSR has assessed they are in possession of inside information as a result of a market sounding, for the purposes of complying with Article 8 of MAR the MSR should identify all the issuers and financial instruments to which they believe that inside information relates.

5. Written minutes or notes

15. Where in accordance with point (d) of Article 6(2) of the RTS on market soundings the DMP has drawn up written minutes or notes of the unrecorded meetings or unrecorded telephone conversation, the MSRs should, within five working days after receipt:
 - a. sign those minutes or notes, where they agree upon their content; or
 - b. provide the DMP with their own version of those minutes or notes duly signed, where they do not agree upon their content.

6. Record keeping

16. MSRs should keep records in a durable medium that ensures accessibility and readability for a period of at least five years of:
 - a. the internal procedures referred to in paragraph 1;
 - b. the notifications referred to in paragraph 2;
 - c. the assessments referred to in paragraph 3 and the reasons therefor;
 - d. the assessment of related instruments referred to in paragraph 4;
 - e. the persons working for them under a contract of employment or otherwise performing tasks through which they have access to the information



communicated in the course of the market soundings, listed in a chronological order for each market sounding.