

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

Luxembourg, 20 December 2016

To all the relevant issuers of financial  
instruments

**CIRCULAR CSSF 16/646**

**Re: ESMA Guidelines on the delay in the disclosure of inside information in accordance with Article 17(4) of Regulation (EU) No 596/2014 on market abuse (“MAR”)**

Ladies and Gentlemen,

The purpose of this circular is to transpose the “MAR Guidelines - Delay in the disclosure of inside information” (Ref.: ESMA/2016/1478)” (hereinafter, the “Guidelines”), published on 20 October 2016 by ESMA, into Luxembourg law.

The Guidelines clarify some of the conditions under which an issuer may, under its own responsibility, delay the public disclosure of inside information in accordance with Article 17(4) of MAR. In particular, the Guidelines provide a non-exhaustive and indicative list of situations in which immediate disclosure of inside information is likely to prejudice the issuers’ legitimate interests and situations in which delay of disclosure is likely to mislead the public.

The Guidelines are issued by ESMA in accordance with Article 17(11) of MAR. Their purpose is to provide guidance by giving examples to assist the issuers in their decision to delay public disclosure of inside information under the aforementioned Article 17(4).

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

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

Yours faithfully,

COMMISSION de SURVEILLANCE du SECTEUR FINANCIER

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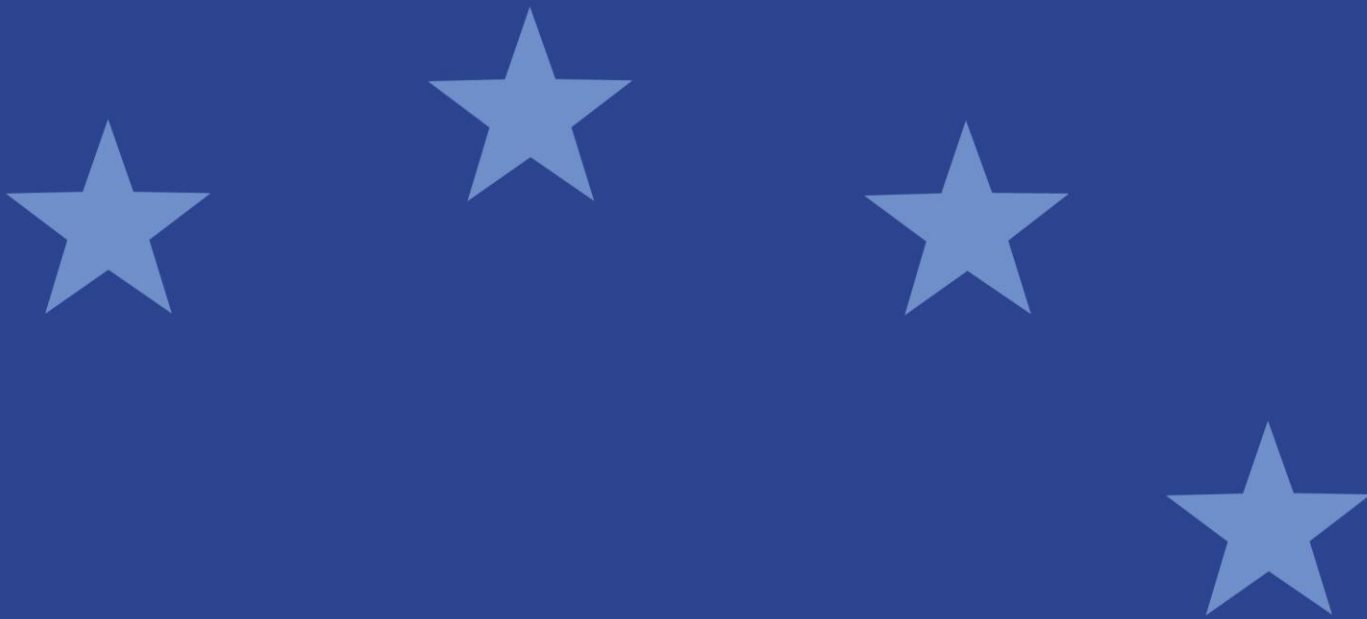
**Annex: MAR Guidelines - Delay in the disclosure of inside information" (Ref.: ESMA/2016/1478)**



European Securities and  
Markets Authority

# MAR Guidelines

**Delay in the disclosure of inside information**



## Table of Contents

1	Scope.....	3
2	Definitions .....	3
3	Purpose.....	3
4	Compliance and reporting obligations.....	4
4.1	Status of the guidelines .....	4
4.2	Reporting requirements.....	4
5	Guidelines on legitimate interests of issuers to delay the disclosure of inside information and situations in which the delay of disclosure is likely to mislead the public.....	4

## 1 Scope

### Who?

1. These guidelines apply to Competent Authorities and issuers.

### What?

2. These guidelines provide a non-exhaustive and indicative list of legitimate interests of the issuers that are likely to be prejudiced by immediate disclosure of inside information and situations in which delay of disclosure is likely to mislead the public, according to Article 17(11) of Regulation (EU) No 596/2014 of the European Parliament and of the Council.

### When?

3. These guidelines apply from 20/12/2016.

## 2 References, abbreviations and definitions

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
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

## 3 Purpose

4. The purpose of these guidelines is to provide guidance by giving examples to assist the issuers in their decision to delay public disclosure of inside information under Article 17(4) of MAR.

## **4 Compliance and reporting obligations**

### **4.1 Status of the guidelines**

5. This document contains guidelines issued under Article 17(11) of MAR. Competent authorities and financial market participants must make every effort to comply with guidelines and recommendations.

### **4.2 Reporting requirements**

6. 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 [[MARguidelinesGL3@esma.europa.eu](mailto:MARguidelinesGL3@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.
7. Issuers are not required to report whether they comply with these guidelines.

## **5 Guidelines on legitimate interests of issuers to delay the disclosure of inside information and situations in which the delay of disclosure is likely to mislead the public**

### **1. Legitimate interests of the issuer for delaying disclosure of inside information**

8. For the purposes of point (a) of Article 17(4) of MAR, the cases where immediate disclosure of the inside information is likely to prejudice the issuers' legitimate interests could include but are not limited to the following circumstances:
  - a. the issuer is conducting negotiations, where the outcome of such negotiations would likely be jeopardised by immediate public disclosure. Examples of such negotiations may be those related to mergers, acquisitions, splits and spin-offs, purchases or disposals of major assets or branches of corporate activity, restructurings and reorganisations.
  - b. the financial viability of the issuer is in grave and imminent danger, although not within the scope of the applicable insolvency law, and immediate public disclosure of the inside information would seriously prejudice the interests of existing and potential shareholders by jeopardising the conclusion of the negotiations designed to ensure the financial recovery of the issuer;
  - c. the inside information relates to decisions taken or contracts entered into by the management body of an issuer which need, pursuant to national law or the issuer's

bylaws, the approval of another body of the issuer, other than the shareholders' general assembly, in order to become effective, provided that:

- i. immediate public disclosure of that information before such a definitive decision would jeopardise the correct assessment of the information by the public; and
  - ii. the issuer arranged for the definitive decision to be taken as soon as possible.
- d. the issuer has developed a product or an invention and the immediate public disclosure of that information is likely to jeopardise the intellectual property rights of the issuer;
  - e. the issuer is planning to buy or sell a major holding in another entity and the disclosure of such an information would likely jeopardise the implementation of such plan;
  - f. a transaction previously announced is subject to a public authority's approval, and such approval is conditional upon additional requirements, where the immediate disclosure of those requirements will likely affect the ability for the issuer to meet them and therefore prevent the final success of the deal or transaction.

## **2. Situations in which delay of disclosure of inside information is likely to mislead the public**

9. For the purposes of point (b) of Article 17(4) of MAR, the situations in which delay of disclosure of inside information is likely to mislead the public includes at least the following circumstances:
  - a. the inside information whose disclosure the issuer intends to delay is materially different from the previous public announcement of the issuer on the matter to which the inside information refers to; or
  - b. the inside information whose disclosure the issuer intends to delay regards the fact that the issuer's financial objectives are not likely to be met, where such objectives were previously publicly announced; or
  - c. the inside information whose disclosure the issuer intends to delay is in contrast with the market's expectations, where such expectations are based on signals that the issuer has previously sent to the market, such as interviews, roadshows or any other type of communication organized by the issuer or with its approval.