

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

Luxembourg, 14 March 2017

To all market participants concerned

**CIRCULAR CSSF 17/653**

**Re: Guidelines of the European Securities and Markets Authority (ESMA) on the definition of inside information relating to commodity derivatives in accordance with Article 7(1)(b) of Regulation (EU) No 596/2014 on market abuse ("MAR")**

Ladies and Gentlemen,

The purpose of this circular is to implement “MAR Guidelines - Information relating to commodity derivatives markets or related spot markets for the purpose of the definition of inside information on commodity derivatives (Ref.: ESMA/2016/1480)”, published on 17 January 2017 by ESMA, into Luxembourg regulations.

The guidelines which were adopted by ESMA based on Article 7(5) of MAR relate to one of the criteria of the definition of inside information relating to commodity derivatives as set out in Article 7(1)(b) of MAR. In particular, they provide a non-exhaustive and indicative list of information which is reasonably expected or is required to be disclosed in accordance with legal or regulatory provisions in EU or national law, market rules, contract, practice or custom, on the relevant commodity derivatives markets or spot markets as referred to in point (b) of Article 7(1) 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

Jean-Pierre FABER	Françoise KAUTHEN	Claude SIMON
Director	Director	Director

Simone DELCOURT	Claude MARX
Director	Director General

**Annex:** MAR Guidelines - Information relating to commodity derivatives markets or related spot markets for the purpose of the definition of inside information on commodity derivatives (Ref.: ESMA/2016/1480 EN)



European Securities and  
Markets Authority

# MAR Guidelines

**Information relating to commodity derivatives markets or related spot markets for the purpose of the definition of inside information on commodity derivatives**



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# 1 Scope

## Who?

1. These guidelines apply to Competent Authorities and to investors, financial intermediaries, operators of trading venues and persons professionally arranging and executing transactions in commodity derivatives (together, “market participants”).

## What?

2. In accordance with Article 7(5) of Regulation (EU) No 596/2014 of the European Parliament and of the Council, these guidelines provide a non-exhaustive and indicative list of information which is reasonably expected or is required to be disclosed in accordance with legal or regulatory provisions in Union or national law, market rules, contract, practice or custom, on the relevant commodity derivatives markets or spot markets as referred to in point b of Article 7(1) of Regulation (EU) No 596/2014 of the European Parliament and of the Council.

## When?

3. These guidelines apply from 2 months after publication of the translation into the official languages of the European Union.

# 2 References, abbreviations and definitions

ESMA	European Securities and Markets Authority
EU	European Union
MAR	Market Abuse Regulation; 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 <sup>1</sup>
MiFID II	Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU <sup>2</sup>
OJ	Official Journal of the European Union

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<sup>1</sup> OJ L 173, 12.6.2014, p. 1–61

<sup>2</sup> OJ L 173, 12.6.2014, p. 349–496

REMIT

Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency<sup>3</sup>

### 3 Purpose

4. The purpose of these guidelines is to give indicative examples of information “which is reasonably expected or is required to be disclosed in accordance with legal or regulatory provisions in Union or national law, market rules, contract, practice or custom, on the relevant commodity derivatives markets or spot markets” as referred to in point (b) of Article 7(1) of MAR, which is one criteria of the definition of inside information relating to commodity derivatives under Article 7(1)(b) of MAR. These guidelines neither further specify the other criteria of the definition, (nor the concepts of preciseness of the information and its price sensitivity) nor do they impose additional requirements of information disclosure.

### 4 Compliance and reporting obligations

#### 4.1 Status of the guidelines

5. This document contains guidelines issued under Article 7(5) of MAR. Competent authorities and 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 [[MARguidelinesGL1@esma.europa.eu](mailto:MARguidelinesGL1@esma.europa.eu)]. A template for notifications is available on the ESMA website.
7. Market participants are not required to report whether they comply with these guidelines.

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<sup>3</sup> OJ L 326, 8.12.2011, p. 1–16

## **5 Guidelines on information relating to commodity derivatives markets or related spot markets for the purpose of the definition of inside information on commodity derivatives**

8. In accordance with Article 7(5) of MAR, these guidelines aim to establish a non-exhaustive indicative list of information reasonably expected or required to be disclosed in accordance with legal or regulatory provisions at Union or national level, market rules, contract, practice or custom, on the relevant commodity derivatives markets or spot markets as referred to in point (b) of Article 7(1) of MAR.
9. The fact that a particular type of information is not included in the list does not mean that it cannot be considered as inside information, nor does the inclusion of a type of information mean that it will automatically be inside information. The assessment as to whether the information is inside information will have to be conducted on a case by case basis against all of the criteria set out in Article 7(1)(b) of MAR.
10. For information to be considered “reasonably expected to be disclosed”, it should be (i) widely accessible in a non-discriminatory way after disclosure, (ii) contained in an official statement and not part of a private or personal opinion or analysis and (iii) not a rumour nor a speculative statement.
11. The following paragraphs set out examples of information that ESMA considers to be included in the non-exhaustive indicative list of information that is reasonably expected or required to be disclosed as referred to in Article 7(5) of MAR.

### **Examples of information relating directly to commodity derivatives**

12. Information required to be published by trading venues in accordance with Article 58(1)(a) of MiFID II<sup>4</sup> about the aggregate positions held by different categories of persons for the different commodity derivatives traded on their venue.

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<sup>4</sup> According to Article 58(1)(a) of MiFID II:

«1. Member States shall ensure that an investment firm or a market operator operating a trading venue which trades commodity derivatives or emission allowances or derivatives thereof:

(a) make public a weekly report with the aggregate positions held by the different categories of persons for the different commodity derivatives or emission allowances or derivatives thereof traded on their trading venue, specifying the number of long and short positions by such categories, changes thereto since the previous report, the percentage of the total open interest represented by each category and the number of persons holding a position in each category in accordance with paragraph 4 and communicate that report to the competent authority and to ESMA; ESMA shall proceed to a centralised publication of the information included in those reports».

According to Article 58(4), second sub-paragraph of MiFID II:

«The reports referred to in point (a) of paragraph 1 shall specify the number of long and short positions by category of persons, any changes thereto since the previous report, percent of total open interest represented by each category, and the number of persons in each category».

13. To the extent the commodity derivatives are standardised, market participants would reasonably expect to receive infrequent information about the circumstances affecting the fundamental characteristics of the commodity derivative or the contract on which such commodity derivative is based, such as a change of the underlying commodity specifications or of the underlying index of commodities, the periodic reshuffle of the underlying basket or a change of the delivery point.
14. Information about the stock levels or movements of commodities in warehouses and storage facilities required or reasonably expected to be published in accordance with the rules or practices of a commodity derivative market.

#### **Examples of information relating indirectly to commodity derivatives without a related spot market**

15. Information reasonably expected to be disclosed by public entities from the EU or outside the EU, such as Eurostat, the European Central Bank, National Central Banks or national statistical offices or institutes, in relation to official economic statistics and forecasts such as GDP, balance of payments data and inflation rates.
16. Information reasonably expected to be disclosed in a non-discriminatory way by information providers, non-profit organisations and governmental entities in relation to freight in the field of shipping.

#### **Examples of information directly relating to a spot commodity contract**

17. Information required to be publicly disclosed under REMIT for wholesale energy products (electricity and gas), including inside information as required under Article 4(1) of REMIT
18. Information about the auctions in the spot markets for energy commodity contracts (day auction, intraday auctions and balancing markets) issued after the day of delivery of power in accordance with legal or regulatory provisions under national law or the rules or practices of the spot market in energy commodities.
19. Statistical information made publicly available in the Joint Organisations Database Initiative (JODI) database about production, imports, exports, stocks, refinery intake and demand in relation to oil related products (e.g. crude oil, gasoline, kerosene) and in the JODI database for gas.
20. Official communications issued by conferences of oil producing countries when relating to decisions on production levels.
21. Information about the production, imports, exports and stocks of commodities on which a commodity derivative is based and transaction information about activity in the spot market



of commodities reasonably expected to be disclosed in accordance with the practices of that spot market.

22. Statistical information reasonably expected to be disclosed by public entities from the EU or outside the EU, at national level in relation to commodities.
23. Information reasonably expected to be disclosed by inter-agency platforms aimed at enhancing food market transparency and encouraging coordination of policy action in response to market uncertainty, such as the Agricultural Market Information System (AMIS).
24. Information reasonably expected to be disclosed by private entities regarding changes in the conditions governing the storage of commodities (opening hours, fees, etc.), their load-in or load-out rate or more generally their capacity to process the commodity for storage and delivery, stock levels or movements of commodities in warehouses published in accordance with the practices of a spot commodity market.
25. Information reasonably expected to be disclosed in relation to the existence of an important disease affecting agricultural commodities or changes in the subsidy policies relating to these products that result from decisions of public entities.
26. Information concerning the activities undertaken and measures taken by the Commission, the Member States and other officially designated bodies entrusted with the duty to manage agricultural markets under the Common Agricultural Policy (CAP) and fisheries under the Common Fisheries Policy (CFP) insofar as this information is made public by them.