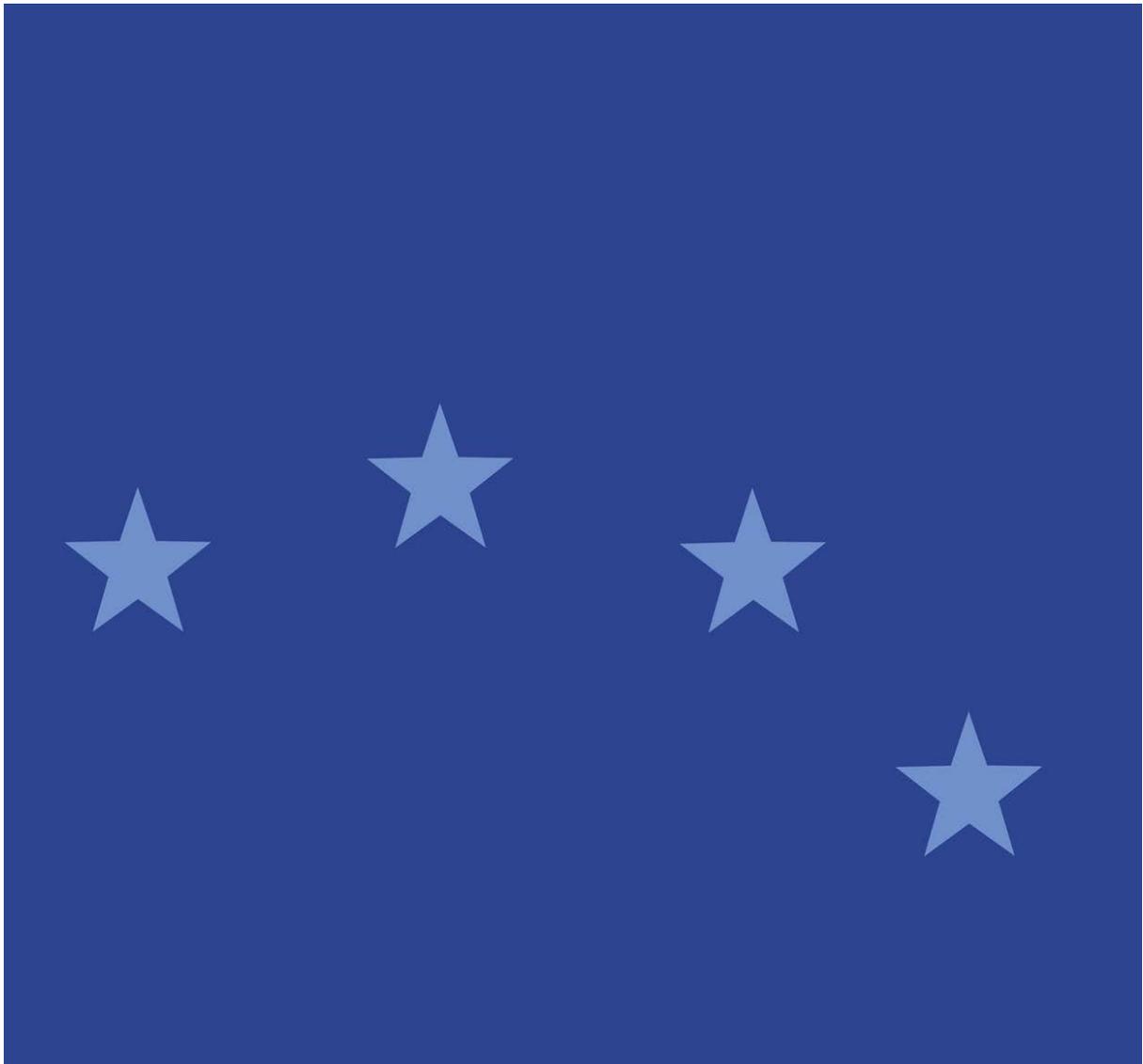


Reply form for the ESMA MAR Technical standards



II. Buy-backs and stabilisation: the conditions for buy-back programmes and stabilisation measures

Q1: Do you agree with the approach set out for volume limitations? Do you think that the 50% volume limit in case of extreme low liquidity should be reinstated? If so, please justify.

We agree that a simple and consistent volume participation limit is preferable to a more complex regime, and support a 25% per-venue participation limit. We think that the proposed reporting regime (disclosures to the trading venue, rather than a single competent authority) is the most workable approach, for the reasons outlined in II.1.2 par 20.

We would like to highlight the potential for deviations from best execution in edge cases where the participation limits are binding, and trading might be concentrated in those venues where the participation limit has not been reached yet. This may lead to a number of arbitrage opportunities at the expense of the corporate doing the buy-back. However, we would expect these cases to occur relatively infrequently, and do not think they warrant changing the simplicity of the current proposal.

Q2: Do you agree with the approach set out for stabilisation measures? If not, please explain.

We agree with the approach taken, in particular with the limits on over-allotment facilities that are not covered by a greenshoe option. We believe that the existing stabilization regime works well and is understood by market participants.

For secondary 'block trade' offerings, we believe that the distinction between private block trades, which are not covered under the safe harbour exemption, and publicly announced placements based on the 'significant distributions' criteria is likely sufficient. We would suggest revisiting the details of the selling method in Article 3(2)(c) for which the safe harbour is available (i.e. a publicly announced placement). As the incidence of private block trades is decreasing, it is conceivable that these could be seen as significant distributions under Article 3(2)(c) even if they are not publicly announced, by virtue of their size.

III. Market soundings

Q3: Do you agree with ESMA's revised proposals for the standards that should apply prior to conducting a market sounding?

We agree with ESMA's revised proposal.

Q4: Do you agree with the revised proposal for standard template for scripts? Do you have any comments on the elements included in the list?

We agree with the revised proposal for standard template scripts.

Q5: Do you agree with these proposals regarding sounding lists?

We agree with the proposals.

Q6: Do you agree with the revised requirement for DMPs to maintain sounding information about the point of contact when such information is made available by the potential investor?

We agree with the revised requirements.

Q7: Do you agree with these proposals regarding recorded communications?

We agree with these proposals.

Q8: Do you agree with these proposals regarding DMPs' internal processes and controls?

We agree with these proposals.

IV. Accepted Market Practices

Q9: Do you agree with ESMA's view on how to deal with OTC transactions?

We agree with ESMA's view that establishing AMP for OTC trading requires specific assessment of the substantial transparency levels, and that OTC transactions should not automatically be excluded.

Q10: Do you agree with ESMA's view that the status of supervised person of the person performing the AMP is an essential criterion in the assessment to be conducted by the competent authority?

We agree with ESMA's view – we would prefer that the default is for AMPs to be undertaken by supervised persons only. Any deviation from this should be the exception and justified by the competent authority assessing the AMP. We recommend that ESMA investigates the appropriate level of supervision for persons undertaking AMPs in OTC transactions, in particular, where trading venue membership might not be the appropriate definition of supervised person

V. Suspicious transaction and order reporting

Q11: Do you agree with this analysis regarding attempted market abuse and OTC derivatives?

We agree with ESMA's views expressed in relation to Q 11.

Q12: Do you agree with ESMA's clarification on the timing of STOR reporting?

We agree with ESMA's views expressed in relation to Q 12.

Q13: Do you agree with ESMA's position on automated surveillance?

We agree with ESMA's views expressed in relation to Q 13.

IX. Investment recommendations

Q27: Should the issuance of recommendations “on a regular basis” (e.g. every day, week or month) be included in the list of characteristics that a person must have in order to qualify as an “expert”? Can you suggest other objective characteristics that could be included in the “expert” definition?

With the advancement of social media such as Twitter and Facebook, or blogs, the definition of “regular basis” perhaps does not consider the real-time, event driven, opinions that may be rapidly disseminated.

Q29: Do you agree with the proposed standards for the objective presentation of investment recommendations and how they apply to the different categories of persons in the scope? If not, please specify.

EMSA notes that “recommendations produced by the same person and related to companies that belong to the same industry or to the same country should exhibit consistent common factors” (relating to the research methodology) – we believe that while using a consistent methodology or approach normally has clear advantages, the requirement here to exhibit consistent common factors is too prescriptive, and not needed.

Q30: Do you agree with the proposed standards for the disclosure of interest or indication of conflicts of interests and how they apply to the different categories of persons in the scope? If not, please specify.

We support disclosure of interest and indication of conflicts of interest. EMSA may wish to consider including the identification of Corporate Access payments - where the broker is being paid to arrange meetings with the company being recommended.

Q31: Do you consider the proposed level of thresholds for conflict of interest appropriate for increasing the transparency of investment recommendation?

Changing from a 5% threshold to a 0.5% threshold will provide greater transparency, and we would support this.

Q33: Do you agree that a disclosure is required when the remuneration of the person producing the investment recommendation is tied to trading fees received by his employer or a person related to the employer?

Yes, we agree it should be disclosed.