

FINANCIAL SUPERVISORY AUTHORITY

RULE No.5/2017

for the application of the *MAR Guidelines – Persons receiving market soundings* and of the *MAR Guidelines – Delayed disclosure of inside information*

Based on the provisions of art. 1(2), art. 2(1) points (a) and (d), art. 3(1) point (b), art. 6(2) and of art. 14 of Government Emergency Ordinance no. 93/2012 on the establishment, organization and operation of the Financial Supervisory Authority, approved as amended and supplemented by Law no. 113/2013, including subsequent amendments and additions,

According to the provisions of art. 16(3) and art. 30(3) of 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,

According to the decision of the Financial Supervisory Authority's Board of 21.03.2017,

The Financial Supervisory Authority issues the present rule:

Art. 1. - The Financial Supervisory Authority applies the *MAR Guidelines - Persons receiving market soundings* provided in annex no. 1.

Art. 2. - The Financial Supervisory Authority implements the *MAR Guidelines - Delay in the disclosure of inside information* provided in annex no. 2.

Art. 3. - The persons receiving market soundings have the obligation to comply with the provisions of the guidelines stipulated under art. 1, in relation to the factors, the steps and the records that they have to consider and implement according to Article 11(11) of Regulation (EU) No 596/2014.

Art. 4. - Within the implementation of this rule, the expressions and terms “persons receiving market soundings”, “factors”, “steps” and “records” used under article 3 have the meaning provided in the guidelines mentioned under article 1.

Art. 5. - Any failure to comply with the provisions of article 3 shall be sanctioned according to the provisions of article 126 (2) point (a) of Law no. 24/2017 on issuers of financial instruments and market operations.

Art. 6. - Annexes no. 1 and 2 are an integral part of this rule.

Art. 7. - This rule shall be published in the Official Journal of Romania, Part I, and it shall take force on the date of its publication.

President of the Financial Supervisory Authority

Mișu Negrițoiu

Bucharest, 29.03.2017
No. 5

MAR Guidelines
Persons receiving market soundings

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1. Scope

Who does it apply to?

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

What is applied?

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 does it apply?

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]. 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

5.1. 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.

5.2. 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.

5.3. 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.

5.4. 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.

5.5. 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.

5.6. 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.

MAR Guidelines

Delay in the disclosure of inside information

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1. Scope

Who does it apply to?

1. These guidelines apply to Competent Authorities and issuers.

What is applied?

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 does it apply?

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]. 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

5.1. 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.

5.2. 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.