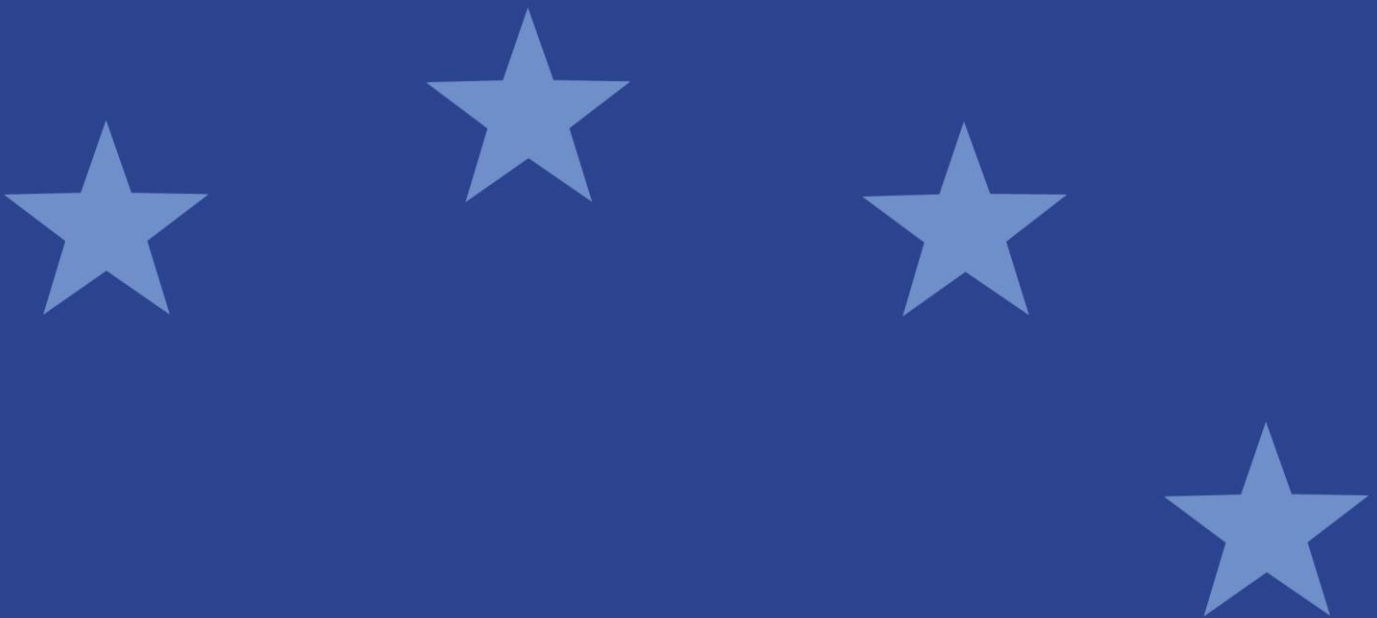




European Securities and  
Markets Authority

# Reply form for the Consultation Paper on MAR review report



3 October 2019

## Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the Consultation Paper on the MAR review report published on the ESMA website.

### *Instructions*

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

- use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
- do not remove the tags of type <ESMA\_QUESTION\_CP\_MAR\_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- if you do not have a response to a question, do not delete it and leave the text "TYPE YOUR TEXT HERE" between the tags.

Responses are most helpful:

- if they respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

### **Naming protocol**

In order to facilitate the handling of stakeholders' responses please save your document using the following format:

ESMA\_CP\_MAR\_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

e.g. if the respondent were ESMA, the name of the reply form would be:

ESMA\_CP\_MAR\_ESMA\_REPLYFORM or

ESMA\_CP\_MAR\_ANNEX1

### **Deadline**

Responses must reach us by **29 November 2019**.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading 'Your input - Consultations'.



### ***Publication of responses***

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA's Board of Appeal and the European Ombudsman.

### ***Data protection***

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the headings 'Legal notice' and 'Data protection'.



## General information about respondent

Name of the company / organisation	European Association of Corporate Treasurers (EACT)
Activity	Non-financial counterparty
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Europe

## Introduction

*Please make your introductory comments below, if any:*

<ESMA\_COMMENT\_CP\_MAR\_1>

The EACT welcomes the opportunity to respond to this consultation on a review of the Market Abuse Regulation (MAR) and would like to focus our comments on the question of whether the scope of the MAR regime should be extended to the wholesale FX market, specifically the FX spot market.

The EACT is a not-for-profit organisation bringing together as its members 23 national treasury and finance professional associations (NTAs) in Europe. They bring together about 13,000 members representing 6,500 groups/companies

<ESMA\_COMMENT\_CP\_MAR\_1>

**Q1. Do you consider necessary to extend the scope of MAR to spot FX contracts? Please explain the reasons why the scope should or should not be extended, and whether the same goals could be achieved by changing any other piece of the EU regulatory framework.**

<ESMA\_QUESTION\_CP\_MAR\_1>

Whilst historically there were cases of misconduct in the FX spot market, we believe progress has been achieved to make the global FX markets more fair, effective, and resilient through the public-private collaboration that resulted in the FX Global Code. The EACT takes part in this by managing one of the global registries where corporates can make their commitment to the Code public. The Code, created with the impulse of several central banks<sup>1</sup>, is widely committed to by participants in the wholesale FX market, seeks to address issues of misconduct in the market, already covering aspects related to conflicts of interest, disclosure, and handling of inside information that an extension of the scope of MAR would equally seek to address.

FX spot transactions are mundane financial products used daily by exporters and importers to manage their foreign currency inflows and outflows. The EACT would urge for a careful assessment of whether to extend the market abuse regime to the FX spot market, in order to avoid duplication with the FX code. It is equally important that any extension of the scope of MAR to the FX spot market takes appropriate account of the idiosyncrasies of the market – i.e. trading is global and OTC and price formation is not inherently linked to supply and demand – and would not seek a blanket imposition of the current framework on the FX spot market. As highlighted in the consultation paper the structure of the spot market – i.e. its OTC nature, the specific nature of the FX trading platforms, the lack of transaction reporting requirements – is very different to the other classes of instruments covered by MAR and the MiFID 2/R framework. With this in mind, we believe there to be two possible courses of action:

First, ESMA might consider it appropriate and as alluded to in the CP to allow for more time for full market coverage of the FX global code and in anticipation of the first scheduled review of the Code in 2020. This would allow for a richer regulatory experience with how the market has been implementing the core tenants of the global code, before deciding on a separate regulatory course of action such as the creation of dedicated market abuse framework for the FX spot market, including dedicated record-keeping requirements, obligations to report suspicious transactions, as well as a sanctions regime.

Second, incorporating the main principles enshrined in the FX global code through either recital language or as an Annex in the existing Market Abuse Regulation to lend statutory status to those principles.

<ESMA\_QUESTION\_CP\_MAR\_1>

**Q2. Do you agree with ESMA's preliminary view about the structural changes that would be necessary to apply MAR to spot FX contracts? Please elaborate and indicate if you would consider necessary introducing additional regulatory changes.**

<ESMA\_QUESTION\_CP\_MAR\_2>

The EACT agrees that significant structural changes would be required to apply MAR to spot FX contracts, tackling in particular venue structure, the issue of transaction reporting, order book transparency, and venue controls, without imposing undue burdens on non-financial end-users, who primarily if not exclusively take recourse to the wholesale FX market for the hedging of commercial risks.

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<sup>1</sup> The central banks involved in this global effort include: Reserve Bank of Australia, Central Bank of Brazil, Bank of Canada, State Administration of Foreign Exchange (China), Bank of France, European Central Bank, Hong Kong Monetary Authority, Reserve Bank of India, Bank of Japan, Bank of Korea, Bank of Mexico, Monetary Authority of Singapore, Sveriges Riksbank, Swiss National Bank, Bank of England, and Federal Reserve Bank of New York



Assuming it is the desire of regulators to create a dedicated market abuse framework for the FX spot market, we would urge – in particular in relation to the imposition transaction reporting and record-keeping requirements – a mirroring of recent changes introduced through EMIR that have reduced the reporting burden for non-financial firms that engage in financial markets for hedging purposes.

<ESMA\_QUESTION\_CP\_MAR\_2>