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## ESMA updates Market Abuse Regulation Q&A

ESMA has recently made a series of updates to its Q&A on the Market Abuse Regulation (“MAR”) offering practical interpretation on a number of key obligations for listed issuers, including investment funds, ETFs and their service providers.

### Obligation on third party service providers to draw up and maintain their own insider lists.

Article 18(1) of MAR provides that “[*listed*] issuers or any person acting on their behalf or on their account ... shall draw up a list of all persons who have access to inside information and who are working for them under a contract of employment, or otherwise performing tasks through which they have access to inside information, such as advisers, accountants or credit rating agencies”

In the Q&A ESMA clarifies that persons acting on behalf or account of a listed issuer, such as third party service providers, are directly subject to an obligation to draw up, update and provide (upon request) to the relevant Competent Authority of the listed issuer, their own insider list under Article 18(1) of MAR where that service provider comes into possession of inside information relating to the listed securities.

In practice, many listed issuers had requested confirmations from service providers that they maintain such insider lists on behalf of the issuer, which will no longer be required, with responsibility lying

[www.dilloneustace.com](http://www.dilloneustace.com)

### Dillon Eustace Listing Team contacts:



**Tara O'Callaghan**

DD: +353 (0)1 673 1831

[tara.ocallaghan@dilloneustace.ie](mailto:tara.ocallaghan@dilloneustace.ie)



**Helen Daly**

DD: +353 (0)1 673 1830

[helen.daly@dilloneustace.ie](mailto:helen.daly@dilloneustace.ie)



**Fionnán Gannon**

DD: +353 (0)1 673 1867

[fionnan.gannon@dilloneustace.ie](mailto:fionnan.gannon@dilloneustace.ie)

directly on the service providers themselves to maintain their own lists.

It is only where a listed issuer has specifically delegated its responsibility for maintaining its own insider list to a third party service provider that the listed issuer remains ultimately responsible for drawing up, updating and providing insider lists to the relevant Competent Authority upon request. For example, where an ETF or listed investment fund has delegated the responsibility for drawing up and maintaining its insider lists to a compliance firm or other adviser, the listed issuer (and not the compliance firm) will retain ultimate responsibility for ensuring this is done in accordance with the requirements of MAR.

### Trading by Persons Discharging Managerial Responsibility during closed periods

Article 19(11) of MAR provides that *“a person discharging managerial responsibilities within an [listed] issuer shall not conduct any transactions on its own account or for the account of a third party, directly or indirectly, relating to the shares or debt instruments of the issuer or to derivatives or other financial instruments linked to them during a closed period of 30 calendar days before the announcement of an interim financial report or a year-end report which the issuer is obliged to make public”*

ESMA has confirmed that the types of "transaction" by a Person Discharging Managerial Responsibility (“**PDMR**”) prohibited during a closed period under Article 19(11) of MAR are the same as those types of transaction subject to the notification requirements set out under Article 19(1) of MAR.

ESMA has also clarified that PDMRs that trade during a closed period in the limited circumstances permitted under Article 19(2), are still under the general obligation to consider whether that trading constitutes insider dealing under Article 14.

The full ESMA Q&A can be found at the following link:

[ESMA Q&A on the Market Abuse Regulation](#)

For further information please contact your usual Dillon Eustace financial services contact.

**Dillon Eustace**  
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DILLON  EUSTACE

**Dublin**

33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022 Fax: +353 1 667 0042.

**Cayman Islands**

Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022 Fax: +1 345 945 0042.

**New York**

245 Park Avenue, 39th Floor, New York, NY 10167, U.S.A. Tel: +1 212 792 4166 Fax: +1 212 792 4167.

**Tokyo**

12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885 Fax: +813 6860 4501.

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