



DATA response to ESMA MAR Review (November 2019) – Chapter 10

The responses below were transferred to ESMA's reply form and submitted to ESMA via its website on 29 November 2019. Only the questions responded to are shown below.

Introduction

Please make your introductory comments below, if any:

The Depository and Trustee Association (DATA) represents UK depositaries of UCITS and AIFs.

DATA welcomes the opportunity to provide some comments in relation to the questions posed in Chapter 10. DATA recognises the importance of ensuring the interests of investors are protected, that conflicts of interests are appropriately managed in all structures and that the integrity of regulated markets is pre-served. In respect of the application of the requirements of the Market Abuse Regulation (MAR) to collective investment undertakings (CIUs), the following should be taken into consideration:

- i) The scope of MAR should not be extended to CIUs that are not listed; and
- ii) Any obligations on issuers of CIUs should not fall on the depository.

Please do not hesitate to contact us if you have any questions or wish to clarify any parts of our response.

Q59. Do you agree with ESMA's preliminary view? Please indicate which transactions should be captured by PDMR obligations in the case of management companies of CIUs.

It is not clear whether the assessment provided by ESMA is intended to apply only to listed CIUs, or is intended to capture all CIUs. It is DATA's view that the scope of MAR should not cover unlisted CIUs, noting that dealing in units in unlisted CIUs is based on the net asset value (NAV) of the CIU, not on market trading in the units. The requirements of the UCITS and AIFM Directives address conflicts that may arise in respect of unlisted CIUs.

Q62. ESMA would like to gather views from stakeholders on whether other entities than the asset management company (e.g. depository) and other entities on which the CIUs has delegated the execution of certain tasks should be captured by the PDMR regime.

UK depositaries typically have robust personal account dealing procedures for Investment Trusts and other listed CIUs for which they provide their services. However, the obligations of the depository in respect of CIUs are in respect of the safekeeping of assets, monitoring of cash flows in and out of the CIU and oversight of the activities of the management company or AIFM. The depository has no role in the management, product development or distribution of CIUs. Therefore in no circumstances should the depository be considered the issuer of a CIU (listed or otherwise), and any obligations on issuers should not fall on the depository.