



April 2019

Briefing - Updated ESMA Q&A on Market Abuse Regulation (EU596/2014) ("MAR") considers potential inside information in the context of collective investment undertakings ("CIU")

**ESMA published a revised MAR Q&A on 29<sup>th</sup> March 2019.**

The Q&A lists a number of non-exhaustive cases where inside information may arise in the context of a CIU (including ETFs), stating that ultimately the decision must be made on a case by case basis, and that the below listed scenarios may not constitute inside information in all cases.

- a) Any situation with significant impact (appreciation or depreciation) on the valuation of the CIU assets and, as a result, on the value of the CIU's assets;
- b) Cases where the CIU has been affected by fraud, theft or an adverse tax ruling;
- c) Unexpected circumstances in the relation/redemption of units of a CIS including:
  - Any situation under which the CIU cannot issue/redeem units;
  - creation of excessive or insufficient units due to a material mistake.

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- d) Events that will directly affect the liquidity of the market in units of an ETF arising from events impacting the entities acting as counterparties in the secondary market, bankruptcy of the official liquidity provider/s, absence of authorized participants, decision to change the segment on which the CIUs are traded, etc.;
- e) Failure or delay of a counterparty to an OTC derivative impacting the return or the risk of the CIU;
- f) Failure or delay of a counterparty in a securities lending transaction;
- g) Issues relating to the total or partial liquidation of the CIU's assets; such as:
  - Immediate insolvency or termination of the CIU, or a sub-fund where the CIU is an umbrella fund;
  - Partial liquidation of the CIU's units; or
  - Modalities and payment terms preceding the liquidation or delisting of the CIU.

The updated Q&A also confirms that the obligations to disclose inside information without delay (and the obligations where a decision is taken by an issuer to delay publication) equally apply to collective investment schemes with no legal personality, with the obligations being discharged by the asset manager.

If you have any questions in relation to the above please contact a member of the Listing Team or your usual contact at Dillon Eustace.

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