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Final Report

Technical advice concerning MAR and MiFID II SME GM

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1 References, definitions, acronyms

Amending Regulation	Under the Listing Act, Regulation (EU) 2024/2809 of the European Parliament and of the Council of 23 October 2024 amending Regulations (EU) 2017/1129, (EU) No 596/2014 and (EU) No 600/2014 to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises

Amending Directive	Under the Listing Act, Directive (EU) 2024/2811 of the European Parliament and of the Council of 23 October 2024 amending Directive 2014/65/EU to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises and repealing Directive 2001/34/EC
Bank recovery and Resolution Directive or BRRD	Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council
CDR 241/2014	Commission Delegated Regulation (EU) No 241/2014 of 7 January 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for own funds and eligible liabilities requirements for institutions
CDR 2017/565	Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive
CESR	Committee of European Securities Regulators
CMOB	Cross Market Order Book
Company Law Directive	Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (codification)
CP	Consultation Paper
EBA	European Banking Authority

ESMA	European Securities and Markets Authority
European Commission or Commission	The European Commission
FIRDS	Financial Instruments Reference Database
FITRS	Financial Instruments Transparency System
IRRD	Directive (EU) 2025/1 of the European Parliament and of the Council of 27 November 2024 establishing a framework for the recovery and resolution of insurance and reinsurance undertakings
ITS	Implementing Technical Standards
List of protracted processes	The list contained in Annex I to the proposed delegated act (Annex IV of this final report)
Listing Act	The legislative package including a Regulation amending the Prospectus Regulation, the Market Abuse Regulation and the Markets in Financial Instruments Regulation (MiFIR) and a Directive amending the Markets in Financial Instruments Directive (MiFID II) and repealing the Listing Directive and introducing a new Directive on multiple vote share structures published in the Official Journal on 14 November 2024.
MAR Guidelines on delayed disclosure	ESMA's MAR Guidelines on Delay in the disclosure of inside information and interactions with prudential supervision (13/04/2022 - ESMA70-159-4966).
Market Abuse Regulation or MAR	Regulation 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse 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
Markets in Financial Instruments Directive II or MiFID II	Directive 2014/65/EU of the European Parliament and the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU
Markets in Financial Instruments Regulation or MIFIR	Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial

	instruments and amending Regulation (EU) No 648/2012
MIC	Market Identifier Code
MTF	Multilateral Trading Facilities
NCAs	National competent authorities
OTF	Organised Trading Facilities
RM	Regulated Markets
RTS 24	Commission Delegated Regulation (EU) 2017/580 of 24 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the maintenance of relevant data relating to orders in financial instruments
SMEs	Small and Medium Enterprises
SME GM	SME Growth Markets
SREP	Supervisory Review and Evaluation Process
Takeover Bid Directive	Directive 2004/25/EC of the European parliament and of the council of 21 April 2004 on takeover bids

2 Executive Summary

Reasons for publication

On 14 November 2024, the Listing Act package was published in the Official Journal. The Listing Act simplifies the listing requirements to promote better access to public capital markets for EU companies, in particular SMEs, by reducing the administrative burden on listed companies or companies that seek a listing. The legislative pack comprises a Regulation amending the Prospectus Regulation, MAR and MiFIR and a Directive amending MiFID II and repealing the Listing Directive. Furthermore, it introduced a new Directive on multiple vote share structures.

The Listing Act requires the Commission to adopt delegated acts in a number of areas within 18 months of its entry into force. In June 2024, ESMA received a request for technical advice from the Commission on a range of topics related to the legislative changes brought by the Listing Act, including the delegated acts to be adopted under MAR and MiFID.

This final report includes ESMA technical advice in respect to MAR and the part of MiFID regarding SME growth markets (SME GMs).

Contents

This final report contains ESMA's assessment and feedback received to the CP published in December 2024 on the disclosure of inside information in a protracted process, on situations of contrast between inside information to be delayed and the issuer's latest communications and on the requirements to be registered as an SME GM under Article 33 of MiFID II.

The final report starts with an introduction in Section 3 which provides information on the Listing Act and the Commission request to ESMA for technical advice. Section 4 covers the technical advice dedicated to MAR, and Section 5 the technical advice relating to MiFID and SMEs GMs.

The section on the MAR technical advice includes an introduction covering the changes brought to MAR and covers the disclosure of inside information in a protracted process, the conditions for delaying disclosure of inside information, including cases of conflict with previous public announcements, and the methodology and preliminary findings for identifying trading venues with significant cross-border activity for CMOB implementation.

Following the introduction containing the background and the mandate, the section on MiFID provides technical advice on conditions for MTFs or their segments to qualify as SME GMs, reviewing relevant legal provisions and suggesting targeted adjustments to MiFID II.

Next Steps

This report was submitted to the European Commission on 6 of May. The European Commission is to adopt the delegated acts for which the technical advice was requested by July 2026. ESMA stands ready to provide further technical assistance with respect to the delegated act to be adopted by the European Commission under the Listing Act.

3 Introduction

1. In December 2022, the Commission adopted a legislative proposal known as the "Listing Act" to promote better access to public capital markets for EU companies, in particular SMEs, by reducing the administrative burden on listed companies or companies that seek a listing. The package comprised a Regulation amending the Prospectus Regulation[1], MAR and MiFIR and a Directive amending MiFID II and repealing the Listing Directive. Furthermore, it introduced a new Directive on multiple vote share structures.

2. The legislative package was published in the Official Journal on 14 November 2024[2], and entered into force 20 days after. As some provisions have a deferred entry into application from 15 to 18 months after such date, the bulk of the provisions of the Listing Act will enter into application in July 2026. The Listing Act requires the Commission to adopt delegated acts in several areas within 18 months of its entry into force.

3. Several provisions included in the Listing Act require the adoption of Level 2 measures. These will consist of a number of implementing and delegated acts, some of them based on technical standards to be drafted by ESMA.

4. In this context, on 6 June 2024, ESMA received a formal request from the Commission to provide technical advice on certain delegated acts supplementing specific provisions of the Prospectus Regulation, MAR and MiFID II, as amended by the Listing Act. The deadline for the technical advice is 30 April 2025.

5. To respond to the call for advice, ESMA published several CPs[3], each of them focussing on one or more of the above-mentioned pieces of legislation.

6. In December 2024, ESMA published the CP on ESMA's advice relating to the delegated acts supplementing MAR and MiFID II[4].

7. With respect to MAR, in the CP ESMA presented a draft version of ESMA's technical advice on the delegated acts that the Commission shall adopt in respect of i) disclosure of inside information in a protracted process and ii) conditions to delay the disclosure of inside information, as well as iii) the methodology and the preliminary results for

[1] Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017.
[2] Regulation - EU - 2024/2809 - EN - EUR-Lex, Directive - EU - 2024/2810 - EN - EUR-Lex and Directive - EU - 2024/2811 - EN - EUR-Lex.
[3] Available at ESMA's dedicated website on the Listing Act: https://www.esma.europa.eu/esmas-activities/listing-act
[4] ESMA74-1103241886-1086 Consultation Paper on the Draft technical advice concerning MAR and MiFID II SME GM

identifying venues with a significant cross border dimension in view of the new mechanism for exchanging order data to detect and enforce the CMOB mechanism.

8. With respect to MiFID II, ESMA presented its technical advice on the delegated acts that the Commission should adopt regarding the requirements necessary for an MTF or a segment thereof to be registered as an SME GM.

9. ESMA has received 38 responses to this open consultation. ESMA has analysed the received feedback and has adjusted its initial proposals accordingly. This final report summarises, for each part of the technical advice (i) the original proposal from the consultation, (ii) the received feedback, and (iii) ESMA's conclusion and next steps.

10. Following this introduction, Section 4 covers the part of the advice dedicated to MAR and Section 5 the one relating to MiFID. Finally, Annex I contains ESMA's Cost-Benefit Analysis (CBAs), Annex II the Summary of questions, Annex III the proposed delegated act, Annex IV the Relevant Provisions of MAR and MiFID II as amended by the Listing Act, Annex V the Disclosure of inside information in third countries and Annex VI the technical advice on SME growth markets.

4 MAR Technical Advice

4.1 Disclosure of inside information in a protracted process

4.1.1 Background

11. One of the main changes introduced by the Listing Act regards the disclosure obligation contained in Article 17(1) in relation to "protracted processes".

12. Pursuant to the new Article 17(1) of MAR, the obligation for an issuer to inform the public as soon as possible about the inside information directly concerning the issuer shall not apply to "inside information related to intermediate steps in a protracted process […], where those steps are connected with bringing about or resulting in particular circumstances or a particular event. In a protracted process, only the final circumstances or final event shall be required to be disclosed, as soon as possible after they have occurred."

13. Consistently, the new paragraph 4a of Article 17 MAR specifies that the inside information relating to intermediate steps in a protracted process is not subject to the delayed disclosure requirements.

14. The new Article 17(12) of MAR requires the Commission to adopt delegated acts to establish and review, as necessary, (i) a non-exhaustive list of final events or final circumstances in protracted processes and, (ii) for each event or circumstance, the moment when it is deemed to have occurred and must be disclosed according to Article 17(1) of MAR.

15. Against this background, in the CP ESMA presented a draft delegated act detailing a non-exhaustive list of final events or final circumstances and the relevant moment of disclosure.

4.2 Interaction with the existing framework

4.2.1 Proposal

16. In the CP, ESMA **clarified that certain MAR provisions** will continue to **apply in the new regime** for disclosure of inside information in a protracted process.

17. Firstly, the **definition of inside information** of Article 7 of MAR remains applicable, and that the issuer's disclosure obligation remains subject to the possession of inside information. Consequently, whenever the information relating to the final events or circumstances in a protracted process does not meet the requirements set forth in the definition of inside information (i.e. precision, materiality and non-public nature), that final event or circumstance does not need to be publicly disclosed, despite being on the list of protracted process contained in the annex to the proposed delegated act.

18. Secondly, the **possibility to delay the disclosure** set forth in Article 17(4) of MAR remains applicable to the final event or circumstance identified in the list, whenever the relevant conditions are met[5].

19. Furthermore, as clarified by an amendment to Article 17(7) of MAR, the issuer is obliged to disclose as soon as possible the inside information regarding the protracted process whenever confidentiality is no longer ensured (e.g. in presence of rumours or leaks).

20. Considering the non-exhaustive nature of the list, ESMA also clarified in the CP that there may be other protracted processes that are not included in the proposed list. For those ones, the identification of the final events or circumstances remains an issuer's assessment, to be done in light of the general principles outlined in the CP.

21. The above-mentioned clarifications have been included into the recitals of the proposed delegated act which is part of the proposed technical advice.

4.2.2 Feedback

22. Some participants requested clarifications on the applicability of the definition of inside information, on the possibility to activate the delay mechanism under the new regime, and on the situations where rumours or leaks occur before the final event or circumstance.

23. A few requests were also made to adopt a flexible approach that considers each situation in its own merit. In this sense, a respondent claimed that the reference to "moment of

[5] It is also worth recalling that ESMA is mandated by the new Article 17(11) of MAR 5 to issue guidelines to establish a non-exhaustive indicative list of the legitimate interests of issuers for the delay of disclosure.

disclosure" is misleading, since disclosure is not automatic after any final circumstance/event as the issuer can still opt for delaying that communication, where the relevant conditions are met.

4.2.3 ESMA's assessment and final approach

24. ESMA recalls that the clarification on the scope of the public disclosure in relation to the final events or circumstances on the proposed list are contained in the recitals of the proposed delegated act.

25. Namely, Recital 4 and 5 indicate that (i) the definition of inside information remains applicable and that (ii) whenever the information relating to the final events or circumstances does not meet the conditions in the definition of inside information (i.e. precision, materiality and non-public nature), that final event or circumstance of a process does not need to be disclosed.

26. In that sense, where the issuer assesses that the information relating to the final event or circumstance is not precise, material or non-public, then no disclosure obligation arises.

27. The objective of the list of protracted processes is to reduce the burden for issuers in identifying the moment of disclosure, provided that the issuer has assessed to be in possession of inside information.

28. Similarly, Recital 6 clarifies that when the disclosure of a final event would prejudice the legitimate interest of the issuer and all the other conditions for the delay are met, the issuer may recur to the delay mechanism beyond the final event.

29. ESMA would like to point out that under the current regime, the delay mechanism is largely used for the intermediate steps of a protracted process, as public disclosure at that moment in time may prejudice the legitimate interest of the issuer in relation to the successful completion of the process. The changes brought by the Listing Act to the regime for disclosure of protracted processes is expected to reduce the use of the delay mechanism, as the disclosure obligation arises only when the events or circumstances become final. While further delaying the disclosure of inside information remains possible if the relevant conditions are met, that is expected to be happening only in a limited number of cases.

30. In addition, ESMA would like to highlight that Article 17(7) of MAR as amended by the Amending Regulation laid down that when the inside information relating to intermediate steps in a protracted process has not been disclosed (as in accordance with the new regime disclosure should take place only upon completion of the relevant process) if the confidentiality of the information can no longer be ensured (e.g. due to rumours or leaks) the issuer should disclose that inside information to the public as soon as possible.

31. To further enhance clarity, ESMA has added a recital in the proposed delegated act to remind market participants about that obligation, which applies in relation to all types of

inside information not yet disclosed to the public whenever confidentiality is no longer ensured (see new Recital 7).

4.3 Methodology

4.3.1 Proposal in the CP

32. Pursuant to the Commission's request, when drafting the list of protracted processes, ESMA took into account similar lists that have already been developed by EU national competent authorities before the entry into force of MAR, and in major jurisdictions outside the Union[6].

33. To distinguish between one-off events and protracted processes to be added to the list, ESMA proposed a **definition of protracted process**.

34. In respect of this objective, ESMA considered the definition of non-protracted process of Recital 67 of the Amending Regulation[7]. In contrast to this provision, ESMA defined a protracted process as a "*series of several actions or steps spread in time which need to be performed, in order to achieve a pre-defined objective or result*".

35. Moving from Recital 67 of the Amending Regulation, in the CP ESMA assumed that the disclosure should occur when there is **a degree of certainty** regarding the outcome of the process which is sufficient not to mislead investors with information which is still subject to changes[8].

36. ESMA identified three categories of protracted processes and for each one of them outlined general principles to identify the relevant moment of disclosure: (i) protracted processes that are entirely internal to the issuer, (ii) processes that involve the issuer and external counterparties and (iii) protracted processes that involve the issuer and public authorities.

4.3.2 Feedback to the consultation

37. Respondents generally supported ESMA's **definition of protracted processes**. However, several respondents raised concerns or suggested refinements.

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[6] For the lists developed by EU national competent authorities before the entry into force of MAR, see pg. 16 and followings. For the regime in third country jurisdictions see Annex [•]. The annex is reported in this Final Report and it is expanded to include also Hong Kong.

[7] Recital 67 of the Amending Regulation identifies a non-protracted process as "a one-off event or set of circumstances, notably when the occurrence of that event or set of circumstances does not depend on the issuer".

[8] To identify the moment of disclosure, the Commission requested in the mandate to "take into consideration the examples already included in recital (67) [of the Amending Regulation] with the view to applying the same approach also to other protracted processes". The first part of recital 67 of the Amending Regulation indicates that the objective of public disclosure of information is to "enable investors to take well-informed decisions" and consequently does not require issuers to disclose inside information about protracted processes at an early stage, not to mislead the investors. 26. The second part of the same recital clarifies that for mergers the disclosure moment should be "as soon as possible after the management has taken the decision to sign off on the merger agreement, once the core elements of the merger have been agreed upon" and for contracts "when the main conditions of the contract have been agreed upon".

38. Some respondents questioned that protracted processes are characterised by “pre-defined” objectives, arguing that these often evolve while the process is ongoing, and suggested a more flexible approach to better reflect real-case scenarios.

39. Other respondents proposed adjustments to the definition to better align with Recital 67 of the Amending Regulation, to clarify whether processes depend, at least in part, on the issuer. Some requested that the definition conveys the idea that the circumstances or events resulting from the process are part of the process itself.

40. Finally, some respondents suggested refining the wording by adding “decisions” alongside “actions or steps” to capture cases where key choices shape the process. They also suggested removing the requirement that steps “need to be performed”, to account for external factors beyond the issuer’s control.

41. A significant number of respondents were against ESMA identifying the final event or circumstance “when there is a ***degree of certainty*** regarding the outcome of the process which is sufficient not to mislead investors with information which is still subject to changes” (paragraph 51 of the CP). Respondents argued that such approach mixes the definition of what should qualify as inside information according to Article 7(2) of MAR with the definition of final events/circumstances, lacks clarity, and risks to lead to uncertainties.

42. Moreover, few respondents expressed the concern that the application of such criteria may move the disclosure earlier than when the final event/circumstance has occurred. These respondents recommended to adopt the criteria of “full certainty” for the moment of disclosure in protracted processes.

43. Respondents supported the identification of the three main categories of processes. However, the majority of respondents made suggestions, requested adjustments or clarifications that are reported in following sections.

44. A few respondents considered the list overall too extensive and detailed while a respondent recommended a shorter, principles-based list detailing only the principles used for the categories.

4.3.3 ESMA’s assessment and final approach

45. ESMA acknowledges the broad support for a **definition** of protracted processes. Considering the non-exhaustive nature of the list, a definition would support issuers in distinguishing one-off events from protracted processes that are not inserted in the list.

46. ESMA agrees with respondents about the opportunity to further align with Recital 67 and explicitly mention that processes depend “at least partly” on the issuer. This addition to the definition can also clarify that parties other than the issuer (e.g. an authority or private counterparty) can play a role in the process. Similarly, ESMA also agrees to add “decisions” to “steps and actions” to make the definition more exhaustive.

47. On the contrary, ESMA does not agree that a process could change its objective over time, and by "objective" ESMA means the general purposes of the process. Nevertheless, ESMA replaced "pre-defined" with "intended" to better qualify the objectives or results the process aims to achieve.

48. In light of the above, ESMA amended Recital 2 to clarify that "[…] by protracted process is meant a series of actions, steps, or decisions spread in time which need to be performed, at least in part by the issuer, in order to achieve an intended objective or result".

49. ESMA has taken into account the respondents' view according to which the "degree of certainty which is sufficient not to mislead investors with information which is still subject to changes" should be turned into that of full certainty.

50. ESMA adopted that principle in proposing a list of final events or circumstances in protracted processes and for each one identified when issuers are expected to disclose the relevant inside information.

51. For processes not on the list, the issuers are firstly expected to identify the category the process relates to, e.g. processes entirely internal to the issuer or processes that involve the issuer and another party.

52. Once the category of process has been identified, issuers should apply the principles to identify the moment of disclosure, as further outlined in the sections below. Given the support by the respondents, this approach as outlined in the CP has been maintained in the Final Report.

53. ESMA is of the view that the suggestion to adopt a principle-based list would not be compliant with the Commission's mandate, as that requested to be "as comprehensive as possible, capturing different types of protracted processes".

54. Finally, it should be recalled that in the new framework the definition of inside information remains applicable to each step of a protracted process. Therefore, there may be inside information at a very early stage of a protracted process, while the obligation to disclose that inside information does not apply until finalisation of that process.

4.4 Protracted processes that are entirely internal to the issuer

4.4.1 Proposal in the CP

55. In the CP, ESMA noted that for protracted processes that are entirely internal to the issuer (e.g. reorganisations, increases of capital and distributions of dividends), the issuer is the only actor involved. In such cases, the decision of the issuer, either taken by the governing body or via delegation, ensures *per se* a sufficient degree of certainty regarding the outcome of the process. Therefore, ESMA proposes for **the disclosure obligation to arise when the issuer has taken the relevant decision.**

56. In the CP, ESMA considered that where the decision of a body of the issuer needs to be validated or confirmed by another body (shareholders general meeting or the supervisory board in the two-tier corporate governance system), the initial body's decision marks the moment when a certain degree of certainty is achieved in respect of the outcome of the process. As a result, the proposal identified that as the moment of disclosure, despite the need for confirmation by another body.

57. In the CP, ESMA noted that the shareholders general meeting agenda is subject to forms of publicity, causing the information contained therein to no longer qualify as inside information. For that reason, ESMA took the view that in any case public disclosure cannot wait for the final decision of the shareholders general meeting.

4.4.2 Feedback to the consultation

58. The majority of respondents supported identifying the moment of disclosure when the issuer has taken the decision, but despite agreeing that disclosure should not wait for the approval of the shareholders general meeting, a respondent argued that when in the two-tier system the supervisory board needs to confirm the decision of the management board, only this last decision completes the decision-making process. In such cases, it is the supervisory board's decision which should trigger the disclosure.

59. Firstly, respondents argued that the current proposal disregards the presence of the two-tier corporate governance system across the EU and the crucial role of the supervisory board in those systems. Secondly, it was considered that ESMA's proposal places issuers operating under such two-tier corporate governance system in a disadvantageous position, as they would need to rely on their ability to delay disclosure to ensure an orderly internal decision-making process. Thirdly, it was signalled that the proposal would risk creating confusion in the market and mislead investors. Finally, they noted that the proposal contradicts ESMA's MAR Guidelines on delayed disclosure of inside information and interactions with prudential supervision[9].

60. A respondent suggested adding an obligation for the issuer to ensure that the decision of the supervisory body is to be arranged for as soon as possible and without any undue delay.

61. Additionally, a few respondents signalled that ESMA's proposal raises concerns on how to account for instances where the governing body delegates its final decision to another person or body. In that case, it was suggested that the final event should be attained when the final decision is taken (i.e. when the delegation is exercised, where the decision becomes effective).

62. Another issue raised by some respondents revolved around the identification of internal processes. Namely, some respondents cautioned that many internal processes comprise

[9] ESMA (2022). MAR Guidelines on the Delay in the disclosure of inside information and interactions with prudential supervision, ESMA70-159-4966. Available at: https://www.esma.europa.eu/document/guidelines-mar-delay-in-disclosure-inside-information-and-interactions-prudential

external elements as well as one or more steps involving counterparties (e.g. capital increases which involve agreements with investors).

63. For the case of **capital increase** specifically, some clarifications were requested on the type of decision the proposal refers to, and some respondents highlighted that the final event should be the final decision of the governing body (directly or via delegation), after all the relevant commitments/agreements have been signed and the feasibility of the transaction has been assessed against the shareholders or investors availability to provide the funds. A more general recommendation was to specify that only the formal decision is relevant for public disclosure purposes.

64. In relation to capital increase decisions, it was also suggested to delete the references to the "core conditions" of the transaction, or to specify what they include. A similar comment on the core conditions was also received in respect to **share buybacks**.

65. In the consultation, respondents also provided targeted feedback on the proposal relating to processes aimed at making **change in the management.** Namely, such requested included:

    a) to limit disclosure to change of "members *of a corporate body* holding a key position";

    b) to distinguish between appointments and dismissals. For the appointment, some respondents identify the moment of disclosure in the appointment decision of the governing body, whereas some others in the signing of the agreement between the appointed person and the issuer. For the dismissal, some respondents suggested to identify the moment of disclosure in the notification to the governing body;

    c) to incorporate in the proposed delegated act a clarification (currently only in footnote 20 of the CP[10]) that a termination of an employment contract can qualify as a protracted process only in case of negotiations, whereas a termination notice qualifies as a single one-off event to be disclosed immediately;

    d) to provide instructions for the event of resignation of a CEO.

66. Few respondents recommended to remove the reference to **significant amendments to Articles of Incorporations or bylaws** from the list, arguing they do not qualify as inside information. Some others argued that their inclusion on the list raises doubts on whether all amendments to the Articles of Incorporation or the bylaws classify as inside information and risk to be a deterrent to share and discuss proposals with shareholders through an open dialogue.

[10] The footnote reads: "A protracted process regarding the termination of an employment contract is foreseeable only in case of negotiations. Where the contract is terminated through a termination notice, the termination notice qualifies as a single off event to be disclosed immediately".

4.4.3 ESMA's assessment and final approach

67. ESMA acknowledged the positive feedback to the proposal to identify the moment of disclosure for issuer's internal processes as the moment when the issuer has taken the relevant decision.

68. ESMA acknowledges the respondents' views that where issuers adopted a two-tier system governance, whenever the supervisory board approval is requested by law, bylaws or statues, its decision finalises the decisional processes. Thus, ESMA amended its proposal to clarify that where a company has a two-tier board structure, wherever the law, bylaws or statutes require the supervisory board involvement, the governing body's decision should mean the moment when the supervisory board has adopted the decision (see Recital 8).

69. ESMA expects that issuers' internal decision-making processes ensure that the supervisory board's decision is taken without undue delay after the management board's decision. It should be recalled that, even where the protracted process has not come to a conclusion, in presence of leaks that show that confidentiality of the information is no longer ensured, public disclosure should take place as soon as possible.

70. It is also worth noting that, in line with what was already indicated in the CP, any reference to "governing body" should be understood as covering also those cases where the decision has been taken via delegation (see Recital 9).

71. In any case, it is worth recalling where the governing body's decisions are to be endorsed by the shareholders, public disclosure cannot wait until the shareholders general meeting. That is because at that point in time the information ceases to be confidential due to the forms of publicity connected with the summoning of the shareholders general meeting. Therefore, the issuer will have to publicly disclose the information after the governing body's decision, clarifying as opportune that the endorsement of the shareholders general meeting is still pending.

72. With specific reference to a **capital increase or decrease,** the decision to be disclosed is the one adopted by the governing body to propose the capital change to shareholders, who have to approve the increase or decrease of capital in a general shareholders general meetings, pursuant to Article 68 and 73 of the Company Law Directive respectively[11].

73. Regarding the **change of management**, ESMA notes that a key position within a company can be held by persons which are not part of the board of directors (e.g. CFO is not always part of the board of directors).

[11] Where the shareholder's general meeting has empowered the management board to proceed for an extensive period of time (e.g years), also the following decision of the management board is expected to be disclosed.

74. ESMA remarks that when there is a formal appointment of a key manager through decision of the governing body, as well as their dismissal, the disclosure should occur at the time of the decision of the relevant body of the issuer.

75. Differently, if there is no formal decision but directly a contract (e.g. for CFO, COO that are not part of the Board of Directors), its signing should be the moment of disclosure.

76. Furthermore, ESMA would like to recall that one-off events as notice of termination addressed to the issuer do not fall into the scope of this technical advice. The proposed delegated act provides issuers with the necessary guidance to perform a case-by-case assessment as to whether a particular situation constitutes a protracted process or a one-off event (e.g. Recital 2 of the proposed delegated act).

77. ESMA finally notes that such principles are applicable to key managers, including the CEO. As a result, the resignation of a CEO should be treated as a one-off event when not preceded by negotiations.

78. In light of the above, ESMA maintains its proposal.

79. **Significant amendments to Articles of Incorporations or bylaws.** The feedback received in relation to this point emphasizes that only those amendments that are of significant nature can qualify as inside information in accordance with Article 7 of MAR and thus should be subject to the obligation to disclose. The reference to "significant changes" in ESMA's proposal is to stress that circumstance. Taking this into account, each amendment to the articles of incorporation should be subject to a case-by-case assessment in order for issuers to determine whether they qualify as inside information.

80. Moreover, ESMA highlights that disclosure is only required at the final stage of the process, when the amendment is formally submitted to the shareholders for approval.

4.5 Protracted processes involving the issuer and another party different from a public authority

4.5.1 Proposal in the CP

81. In the CP, ESMA noted that for processes involving the issuer and another private party (mergers, disposal of relevant assets, agreements), the final result or outcome is subject to both the issuer and the counterparty's decision. As a result, when another private party is involved, disclosure should occur when both parties commit to the final outcome.

82. In the CP, ESMA noted that in case of extraordinary transactions (mergers, acquisitions of assets), the completion of the negotiations is followed by a decision by the respective governing bodies of the two parties. As a result, for such transactions, the proposal in the CP was that the disclosure should take place when the **governing bodies of both companies involved have taken the decision to sign off the agreement.**

83. ESMA stressed the importance of coordination in the parties' decision-making process to avoid any conflicting or non-synchronised communications to the public.

84. When **decisions are taken with a lower degree of formality** in comparison to extraordinary transactions, the proposal in the CP indicates that the disclosure should occur **as soon as possible after entering into the relevant binding agreement** (e.g. signing of the final agreement or any other act binding the parties according to the applicable law).

4.5.2 Feedback to the consultation

85. Contrary to ESMA's proposal, the majority of respondents identified in the signing of the agreement between the issuer and any private party (i.e. the moment when the agreement is legally binding) the final event or circumstance that triggers the obligation to disclose. The decision to proceed and enter into a binding agreement was deemed not sufficient, and neither entering into a non-binding agreement.

86. As an additional safeguard, one stakeholder recommended to envisage an obligation for issuers to ensure that the signing of the agreement is not unduly delayed.

87. Various reasons were outlined in support of this alternative approach.

88. Overall respondents expressed concerns that ESMA's proposal may undermine the objective of the Listing Act by requesting to disclose part of the process leading to the signing (including letter of intents or similar expressions of non-binding commitments executed early in the transaction process) which are merely preparatory and not the outcome of the process. Furthermore, respondents outlined that the current approach risks resulting in diverging interpretations across the EU as to when a decision to sign off actually takes place.

89. Moreover, it was highlighted that the proposal in the CP does not reflect market practice as issuers would never make a disclosure based on the decision to enter into a transaction or agreement and ESMA's proposal will make issuers reliant on their ability to delay disclosure.

90. Respondents further argued that the approach in the CP risks providing premature and misleading statement to the public if the other party does not eventually sign the binding agreement. In that sense, it was signalled that there is no guarantee that a resolution to sign results into the actual signing of the agreement. Moreover, any prior disclosure may "jeopardize" the outcome of negotiations, which are of a sensitive nature.

91. Lastly, respondents highlighted that the proposed approach would be difficult to implement as it requires close coordination of all the parties involved, as issuers may not be aware of the moment where the other party's internal decision is taken.

92. Some respondents however agreed that disclosure should be triggered by the decision of the governing body where a formal decision process is required by law (i.e. approval

of the common draft terms of the merger) before signing the final agreement. According to these respondents, in case of a merger, the final moment of disclosure should be the approval of the draft terms of the merger by the board of directors (or the supervisory board in the two-tier system). A respondent within this group suggested to align the wording of the proposal to Article 91 of the Company Law Directive, which requires the administrative bodies of the merging companies to draw up draft terms of merger.

93. In relation to mergers, acquisition or disposal of relevant assets and other material agreements, it was also suggested to delete the references to "core conditions" in the part of the proposal qualifying the decision of the governing body to be taken, or to specify what "core conditions" include if the wording is maintained.

94. Should ESMA retain its initial proposal, a respondent recommended providing further guidance on preliminary agreements, staggered approvals and coordination of disclosure between both parties to enhance the practical application of the proposed rule and to reduce uncertainty for issuers.

4.5.3 ESMA's assessment and final approach

95. ESMA takes note of the comments received and sees merits in partly amending its initial proposal.

96. ESMA acknowledges that in certain cases only the signing of the contract may mark the moment where there is agreement among the parties.

97. This is for example the case where signatories are empowered by law to sign on behalf of the companies, without any prior approval being needed.

98. In these cases, to provide legal certainty, ESMA agrees with the respondents that the moment of disclosure should be moved to the signing of a contract or to any other equivalent act with binding effects.

99. However, in some cases, special legal provisions subject the transaction to the shareholders' approval. As in those cases the inside information is subject to forms of publicity when it is communicated to the shareholders who are called to approve the transaction before the signing, it is essential that the disclosure takes place ahead of the shareholders' approval.

100. In light of the above, where the shareholders' approval of the transaction is necessary, ESMA maintains the view that the obligation to disclose the inside information should arise when the decision of the governing body has been adopted.

101. ESMA recalls that the involved issuers should promote coordination between their decision-making processes to ensure coordinated public disclosure.

102. While less likely under the new regime, ESMA recalls that where the relevant conditions are met, the recourse to the delay mechanism is still possible. In any case, in

accordance with Article 17(7) of MAR, in presence of leaks that show that confidentiality of the information is no longer ensured, public disclosure should take place as soon as possible.

103. With specific regard to mergers, ESMA agrees that a further alignment with the Company Law Directive[12] would enhance the clarity of the proposed delegated act. In particular, ESMA notes that for the merger, Article 91 refers to "draft terms of merger"[13], as opposed to "merger agreement" used in Recital 67 of the Amending Regulation.

104. ESMA also notes that Article 91 Company Law Directive specifies the minimum content of the draft terms of the merger. ESMA notes that an issuer can rely on this provision to identify the "core elements of the merger".

105. In light of all the above, ESMA partly amended the proposed delegated act to:

(i) postpone the obligation to disclose the inside information to the signing of the agreement or any other equivalent act with binding effects;

(ii) clarify that, wherever the shareholder's approval is necessary, the decision of the governing body remains the moment of disclosure;

(iii) for mergers, refine the wording of the proposal to better align with the Company Law Directive.

4.6 Protracted processes involving the issuer and a public authority

4.6.1 Proposal in the CP

106. Considering the processes involving public authorities, ESMA in the CP further distinguished between a) processes that are driven by the public authority with no initiative by the issuer (e.g. SREP and legal proceedings) and b) processes that are triggered by the issuer but are driven by a public authority (e.g. authorisation request).

107. In the CP ESMA noted that **protracted processes driven by a public authority** with the involvement of the issuers are characterised by several interactions and exchanges of information between the issuer and the authority before the issuance of the decision, which may not ensure certainty regarding the outcome of the process. Thus, the proposal requires the disclosure for such processes only when the formal decision of the authority is notified to the issuer.

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[12] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017L1132 Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law. Available at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017L1132

[13] The Company Law Directive also foresees that the draft terms of a merger (Article 92), of a cross-border merger (Article 123) or of a division (Article 138) "shall be published […] at least one month before the date fixed for the general meeting which is to decide thereon".

108. In **processes triggered by the issuer but driven by a public authority** (e.g. an authorisation request), in the CP ESMA identified two sequential processes: one internal process performed by the issuer and whose final event is the submission of the request to the authority, and a second one that is led by the authority which ends with the authority's decision further to the issuer's request (e.g. the granting or rejection of the authorisation).

109. In these cases, the proposal required the disclosure to occur both when the request is **submitted** to the authority and **when the issuer has received the final decision from the public authority**.

110. Lastly, in the CP ESMA proposed that for identification of inside information with respect to final events or circumstances of protracted processes not included in the proposed list - and thus subject to a case-by-case assessment - issuers follow by analogy the principles described.

111. Furthermore, the proposal indicates that issuers should always be able to provide a justification regarding the identification of the moment of disclosure in line with the approach adopted in the proposed delegated act, and more generally with the obligation to disclose the inside information as soon as possible.

4.6.2 Feedback to the consultation

112. In relation to **protracted processes driven by a public authority with the involvement of the issuer**, stakeholders were overall supportive of ESMA's proposal, as premature disclosure of preliminary exchanges could mislead investors and create unnecessary market speculation.

113. Nevertheless, some respondents advocated for more flexible rules. A few respondents argued that issuers should be able to disclose at an earlier moment that the one identified in ESMA's proposal if information becomes available earlier in the process, in order to prevent uncertainty and rumours.

114. Moreover, another respondent added that there are cases where the public authority requires that the issuer maintains the confidentiality of the information.

115. Finally, a few participants raised concerns regarding the definition of "final decision". They pointed out that administrative processes often involve multiple steps, including preliminary decisions and decisions subject to appeal. It was suggested that disclosure should not be required if a decision remains subject to appeal and does not immediately impact the issuer's business. Additional guidance was requested on interim decisions, lengthy procedures, and cases where regulatory decisions are made public before the issuer receives them.

116. In relation to protracted processes triggered by the issuer and whose final outcome is decided by a public authority, the feedback was mixed.

117. First, some respondents supported the approach proposed by ESMA as it ensures an additional level of transparency and provides investors with timely information on key regulatory developments.

118. On the contrary, more than half of the stakeholders opposed the proposal, arguing that requiring disclosure at the point of submission to the public authority is premature and potentially misleading. Among these respondents, several emphasized that the mere submission of an application does not necessarily constitute inside information, as the outcome remains uncertain. They argued that each situation should be assessed on a case-by-case basis and that mandatory disclosure at this stage could harm issuers' legitimate interests (e.g. in sensitive cases like M&A transactions or patent filings).

119. Moreover, respondents argued that ESMA's approach deviates from market practice and introduces unnecessary complexity. They recommended treating the entire process as a single protracted process, with disclosure occurring only when the final decision is made. More specifically, stakeholders recommended deleting items 17, 19, 21 and 23 of Annex 1 of the proposed delegated act.

120. In relation to the specific processes identified in Annex 1 of the proposed delegated act, a stakeholder sought clarity on whether the initiation of legal proceedings is also included in the protracted process or whether the item only applies to events during the legal proceedings. The respondent considered that since material legal claims may need to be disclosed also in the annual financial report, initiation of legal proceedings should be disclosed separately when such information constitutes inside information. Moreover, the respondent argued that when the legal proceedings are initiated by the issuer, preparation for such proceedings may constitute a protracted process and disclosure should be made once the legal proceedings have formally been initiated.

121. Regarding **administrative proceedings,** some respondents considered that the final event should be referenced as "final observations," with the corresponding entry in the last column revised to state: "as soon as possible after the issuer is formally informed by the competent authority of its final decision following the investigation."

122. In relation to **judicial proceedings,** a respondent considered that a judicial decision should only be disclosed whenever it is final and non-appealable.

123. Another respondent considered that the moment identified in the CP could be late if the matter heard by a court crosses the threshold of materiality.

124. One stakeholder recommended to consider the scenario in which the parties reach a settlement as an alternative final event.

4.6.3 ESMA's assessment and final approach

125. Regarding **protracted processes driven by a public authority with the involvement of the issuer,** given the overall support to the approach outlined in the CP, ESMA maintains its proposal, emphasising that nothing prevents issuers to disclose

inside information before the identified final event or circumstance. Annex 1 simply identifies the latest moment at which disclosure should take place (provided that the issuer does not rely on Article 17(4) of MAR to delay such disclosure).

126. Concerning the cases where a public authority requires the issuer to maintain the confidentiality of the information, ESMA reiterates that issuers can avail themselves of the legal mechanism envisaged in Article 17(4) of MAR to delay disclosure of information if the necessary conditions are met.

127. Regarding the comment that disclosure should not be required if a decision remains subject to appeal, ESMA notes that disclosure of inside information cannot wait until the decision is no longer subject to appeal, as its confidentiality would most likely be compromised.

128. In relation to **protracted processes triggered by the issuer and whose final outcome is decided by a public authority**, ESMA welcomes the feedback received from stakeholders. Whereas it acknowledges the concerns expressed in relation to its proposal, ESMA notes that if the filing of the request already constitutes inside information, issuers are to disclose it to the market.

129. Moreover, also in light of the concerns expressed, ESMA reiterates that if at the moment of filing a request with a public authority the relevant conditions are met, issuers can rely on the delay of disclosure in accordance with Article 17(4) of MAR.

130. Regarding **administrative proceedings,** ESMA agrees to change the moment of disclosure to "as soon as possible after the issuer is formally informed by the competent authority of its final decision following the investigation, even where the issuer and the public authority previously exchanged preliminary information that may on its own amount to inside information".

131. Finally, in relation to **judicial proceedings,** ESMA emphasizes that the confidentiality of the information cannot be maintained until a Court decision is no longer subject to appeal.

4.7 Specific processes: takeovers

4.7.1 Proposal in the CP

132. In the CP, ESMA distinguished between friendly and unfriendly takeovers. ESMA noted that only friendly takeovers are expected to imply a decisional process within the issuer, as usually in an unfriendly takeover there may be a bid by-passing the issuer's governing body.

133. The proposal thus took into consideration only friendly takeovers and indicated that the disclosure should occur when the management has decided to recommend/not recommend accepting the bid.

4.7.2 Feedback to the consultation

134. Many respondents disagreed with distinguishing between friendly and hostile takeovers, arguing that such a distinction lacks a clear legal basis and does not reflect the complexity of the process. They emphasized that such a distinction does not adequately reflect the reality of takeover processes, particularly since hostile takeovers can, over time, become friendly, and vice versa, making a strict categorization difficult and potentially misleading. Instead, they suggested focusing on whether the issuer is actively involved.

135. Several respondents pointed out that the current regulatory framework under the Takeover Bid Directive[14] already sets comprehensive disclosure obligations. According to these respondents, adding further distinctions could lead to regulatory confusion and warned against regulatory overlaps.

136. Some respondents argued that the target company typically lacks inside information before a public bid. However, others counterargued that certain takeovers often involve prior discussions, making them more similar to protracted processes.

137. On the timing of disclosure, some respondents suggested that the focus should be on when the issuer becomes aware of credible information about a bid, regardless of whether it is friendly or hostile. Others highlighted jurisdictional differences, where initial announcements and final bid terms may not align, requiring careful coordination with national rules.

4.7.3 ESMA's assessment and final approach

138. ESMA acknowledges the feedback received during the consultation on takeover processes, particularly regarding the distinction between friendly and hostile takeovers.

139. With respect to the Takeover Directive, ESMA notes that:

(i) Article 23(3) of MAR indicates that MAR applies without prejudice to laws, regulations and administrative provisions adopted in relation to takeover, including the Takeover Directive;

(ii) Article 1 of the Takeover Directive indicates the scope of the Directive covers "takeover bids for the securities of companies governed by the laws of Member States, where all or some of those securities are admitted to trading on a regulated market";

(iii) Article 8 of the Takeover Directive requires that "Member States shall ensure that a bid is made public in such a way as to ensure market transparency and integrity for the securities of the offeree company, of the offeror or of any

[14] Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids.

other company affected by the bid, in particular in order to prevent the publication or dissemination of false or misleading information". On the base of this provision, in some jurisdictions there is an obligation to maintain secrecy until a bid is made public;

(iv) Article 6 of the Takeover Directive prescribes how the bid should be made public;

(v) Article 9 requires that after the bid, the governing body of the target company communicates the bidder's offer document to the representative of its employees or the employees themselves and draw up and make public a document setting out its opinion on the bid, together with the reasons on which it is based, including its views on the effects of implementation on all the interests of the company, including employment.

140. In light of the above, ESMA acknowledges that any communication on the bid before the public announcement of the bid is made risks to conflict with the provisions of the Takeover Directive, which already provides some specific safeguards for market integrity, especially under the implementing national laws.

141. In light of the comments from the respondents, ESMA amended the initial proposal by removing the takeover from the list.

142. To clarify that in case of takeovers issuers are requested to comply with the specific disclosure rules foreseen by the relevant legislation, ESMA added a recital to indicate that the draft delegated act is without prejudice to the application of the Takeover Directive and any act adopted by Member States to ensure that a bid is made public in a way to ensure market integrity and prevent the publication or dissemination of false or misleading information.

4.8 Specific processes: financial reports, profit warnings, earnings surprises and forecasts

4.8.1 Proposal in the CP

143. In the CP, ESMA noted that the figures detailed in a **financial report** could be inside information and that thus the adoption of the report can be considered a protracted process to be disclosed.

144. As a result, the proposal included the issuance of a financial report in the list of protracted processes and it identifies the acknowledgement or the approval of the report by the governing body of the issuer as the final event to be disclosed.

145. Similarly, the proposed list included the production of **forecasts** and indicated that disclosure should take place as soon as possible after a forecast has been acknowledged or approved by the governing body.

146. In the CP, ESMA also took the view that **profit warnings and earnings surprises** cannot be considered as part of the processes aimed at producing the periodic financial reports. On the contrary, they are a separate piece of inside information **to be disclosed to the public** as soon as they are available to the issuer.

4.8.2 Feedback to the consultation

147. Most respondents agreed that financial reports constitute a protracted process. Some stressed the role of earnings calendars in ensuring predictable disclosure and cautioned against assuming that all financial reports contain inside information.

148. Some respondents supported the inclusion of forecasts in the list but warned that not every forecast contains inside information. Only a few respondents indicated that forecasts should be entirely discarded from the list.

149. The classification of profit warnings and earnings surprises as one-off events was debated. While some agreed that they should be disclosed immediately, others suggested disclosure should occur once figures are precise enough to indicate a material deviation from previous forecasts. Many respondents argued that these developments often involve an internal process of analysis and approval, highlighting that immediate disclosure could lead to premature or incomplete information reaching the market.

150. Few respondents suggested reclassifying dividends under “corporate actions”, alongside other financial decisions separate from periodic reporting.

4.8.3 ESMA’s assessment and final approach

151. ESMA acknowledges the overall positive feedback for the proposal on the production of **financial reports,** for which ESMA agreed to maintain the CP proposal.

152. With respect to **forecasts**, ESMA recalls that if the information the forecast refers to is not inside information (i.e. no precise, material or public information), no disclosure obligation arises.

153. ESMA also notes that including the production of forecasts as a separate item from the production of financial reports in the list of protracted processes highlights that the two are separate and independent.

154. With respect to **profit warnings and earnings surprises**, ESMA would like to remark that it is important to disclose them to the public as soon as possible.

155. The information triggering the profit warning or the earnings surprise may originate outside the issuer, in which case the relevant information may not need any further evaluation (e.g. the bankruptcy of a major client) or, on the contrary, as a result of the issuer’s internal assessment of financial data, which generally requires some analysis and verification by the issuer. However, in both cases, the process for the publication of profit warnings and earnings surprises is by design expected to occur in such a short

timeframe to impede its qualification as a protracted process. Therefore, the production of profit warnings and earnings surprises is to be considered a one-off event and the issuer cannot unduly delay its disclosure by postponing its acknowledgment or approval by the issuer's governing body.

156. ESMA recalls that profit warnings or earnings surprises cannot be considered part of the processes aimed at producing the periodic financial reports. Thus, they are to be considered standalone pieces of inside information, whose disclosure cannot be postponed until publication of the financial reports or until the dates set for the announcement of quarterly or annual earnings.

157. In light of this, ESMA has decided not to change its proposal.

158. Lastly, ESMA agrees that the **distribution of dividends** is a specifically regulated process that is separate from the process aimed at providing financial information to the public. ESMA notes the same can be concluded for interest payments. As a result, ESMA moved such processes from the category "Provision of Financial Information" to a category now renamed "Capital Structure, Dividends and Interest Payments"

4.9 Specific processes: Biotech companies trials and commercialisation authorisations

4.9.1 Proposal in the CP

159. In the CP, ESMA noted that the test phases conducted by biotech or pharmaceutical companies before submitting the request for the authorisation to commercialise a product (composed by test, medical trials and feedback requests) can be considered a process on their own given their length, structure, complexity, and the fact that their outcome can represent inside information.

160. In light of the above, ESMA proposed for the mentioned medical tests and trial to be qualified as a separate process from the submission of the request for commercialisation of the product to the relevant authority and required disclosure **as soon as the issuers have completed the medical trials**.

4.9.2 Feedback to the consultation

161. Limited feedback was provided on the proposal regarding biotech companies.

162. One respondent raised concerns about the lack of clarity in the suggestion, particularly regarding when the outcome of the medical trials should be considered sufficiently certain. They argued that if the results are negative, issuers might delay disclosure given the need for further analysis and recommended to delete the item.

4.9.3 ESMA's assessment and final approach

163. ESMA does not consider that sufficient specific arguments were provided for the removal of the process from the list.

164. ESMA notes that the possibility to delay disclosure with respect to the outcome of the tests pursuant to Article 17(4) of MAR still apply. Furthermore, ESMA notes that in some Member States like Belgium, biotech issuers commonly disclose intermediate results related to decisions on advancing to the next test phase, so the disclosure of the medical tests is already an existing practice.

165. Therefore, ESMA maintained its position, as previously outlined in the CP.

4.10 Specific processes: Credit Institutions

4.10.1 Proposal in the CP

166. With respect to the specific processes for credit institutions, ESMA's proposal included in the list of protracted process the SREP[15] and the redemption, reduction and repurchase of own funds process under Article 28(1) of CDR 241/2014[16].

167. In line with the MAR Guidelines on delayed disclosure and the principles for disclosure of processes involving the issuer and a public authority[17], ESMA's proposal required:

(i) disclosure of the SREP outcome upon receipt of the final SREP decision from the Prudential Competent Authority; and

(ii) disclosure of the reduction and repurchase of own funds, as soon as possible after the credit institution is notified that the reduction of funds has been authorised by the Prudential Competent Authority.

168. In addition, consistently with the input ESMA received from EBA on processes pertaining to crisis management of credit institutions described under the BRRD and the Single Resolution Mechanism Regulation[18], ESMA's proposal is to require the public disclosure of:

[15] See footnote no. 20.
[16] Commission Delegated Regulation (EU) No 241/2014 of 7 January 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for Own Funds requirements for institutions, OJ L 74, 14.3.2014, p. 8–26
[17] ttps://www.esma.europa.eu/sites/default/files/library/esma70-156-4966_final_report_on_mar_gls_on_delayed_disclosure_and_interactions_with_prudential_supervision.pdf
[18] Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010

(i) the recovery and early intervention measures according to the proposed timing for disclosure of the underlying processes identified in the list (e.g. mergers, acquisitions of business);

(ii) the resolution process "as soon as the decision of the resolution authority is published pursuant to Article 83 BRRD"; and

(iii) normal insolvency proceedings in accordance with the applicable national law "as soon as the decision of the relevant authority has been taken and notified to the institution in accordance with national law".

4.10.2 Feedback to the consultation

169. Feedback from the consultation indicated strong support for the proposal relating to the specific processes for credit institutions.

170. In particular, the proposal to disclose redemption, reduction, and repurchase of own funds only once the Prudential Competent Authority has given its approval to the transactions was particularly welcomed by respondents, given the restrictions of Article 28(1) of CDR 241/2014 to the announcement of this transaction before the authority's authorisation.

171. Few respondents suggested to consider the case where the governing body of the issuer takes a specific decision to proceed with the redemption, reduction, and repurchase of own funds after receiving the authority's authorisation. For this case, few respondents recommended identifying the final event to be disclosed in the issuer's decision to proceed with the transaction (as opposed to the receipt of the authority's authorisation). Some of these respondents indicated that this moment would be more adequate for disclosure purposes, considering that markets conditions may change and the issuers may even not pursue the transactions they sought authorisation for.

172. Very few respondents were against the proposal relating to recovery and resolution, arguing that it is unlikely that confidentiality of the notification of the resolution authority can be ensured. They also indicated that both recovery and resolution from the issuer's perspective are more perceived as a series of one-off events rather than a protracted process.

173. On the same topic, very few respondents also asked whether issuers are obliged to disclose a recovery or resolution process in cases of leaks or market rumours, pursuant to Article 17(7) MAR, which mandates public disclosure when confidentiality is no longer ensured.

4.10.3 ESMA's assessment and final approach

174. With respect to the suggestion to move the disclosure of redemption, reduction, and repurchase of own funds to the decision of the governing body of the issuer to proceed with the transaction after the authority's authorisation, ESMA notes that the request for

the authority's authorisation should be regarded as an autonomous process. Once the authority approves the transaction, any following decision by the governing body of the issuer on the transaction should be seen as a separate process.

175. In light of the general positive feedback received, and the considerations made above the proposal outlined in the CP is maintained.

4.11 Specific processes: additional items for the non-exhaustive list in Annex 1

4.11.1 Proposal in the CP

176. Annex I of the proposed Delegated Act includes a non-exhaustive list of protracted processes together with the final event or circumstance and moment for disclosure. In the CP, ESMA asked whether market participants would add any process to that list.

4.11.2 Feedback to the consultation

177. Some stakeholders recommended for ESMA to incorporate the following processes into the list of protracted processes:

(i) Issuers going through financial difficulties without having applied for bankruptcy;

(ii) Determination of a new or adjusted strategy;

(iii) Resignation of a member of the management on their own initiative (sometimes a one-off event, sometimes a protracted process);

(iv) Other types of changes in the capital structure (e.g. share split or share combination);

(v) Cybersecurity incidents;

(vi) Shareholder activism (e.g. sharing a proposal with the issuer to change the strategy or divest certain assets);

(vii) Material impairments;

(viii) Internal investigations (e.g. in relation to potential misconduct) that may – depending on the circumstances – be regarded as a protracted process;

(ix) Cases where the other party to an agreement defaults;

(x) Situations of a counterparty non-performing what contractually agreed;

(xi) Treatment of arbitration proceedings; and

(xii) Announcement that a member of the issuer's board or a CEO is subject to criminal proceedings

4.11.3 ESMA's assessment and final approach

178. ESMA acknowledges the feedback received and wishes to emphasise that the list of protracted processes is of a non-exhaustive nature.

179. The guiding principles and categories of processes developed by ESMA should enable issuers to perform a case-by-case assessment of each protracted process that is not listed in Annex 1 and whose outcome constitutes inside information in accordance with Article 7 of MAR. This assessment should be geared towards identifying the final event or circumstances of the protracted process as well as the moment of disclosure.

180. Furthermore, ESMA notes that some of the suggestions by stakeholders are already covered by the proposed list of protracted processes.

181. Other examples are not likely to be inside information or refer to one-off events such as the resignation of a member of the issuer's management.

182. Moreover, some processes like internal investigations could usually result in liability issue, change of management or other kind of processes for which guidance is already available in the list of protracted processes.

183. For these reasons, ESMA did not further expand the list of protracted processes.

4.12 Conditions to delay disclosure of inside information

4.12.1 Background information

184. As explained in the CP, while the regime for public disclosure of intermediate steps in protracted processes has been amended in the sense that disclosure should take place only upon completion of those processes, the Amending Regulation has maintained the mechanism for delaying the disclosure of inside information, with some amendments to the relevant conditions. Namely, the provision under Article 17(4)(b) of MAR whereby "*delay of disclosure is* ***not likely to mislead the public***" has been replaced by the following: "*the inside information that the issuer or emission allowance market participant intends to delay* ***is not in contrast with the latest public announcement or other type of communication*** *by the issuer or emission allowance market participant on the same matter to which the inside information refers*". The other conditions under Article 17(4)(a) and 17(4)(c) of MAR remain unchanged.

185. In parallel, the Amending Regulation empowers the Commission to adopt a delegated act to set out a non-exhaustive list of situations in which the inside information that the issuer or the emission allowance market participant intends to delay is in contrast with the latest public announcement or other type of communication by the issuer or

emission allowance market participant on the same matter to which the inside information refers.

186. In turn, the Commission has requested ESMA to provide technical advice on a list of examples where it is deemed that there is a contrast between the intended delayed inside information and the latest public announcement or other communication.

4.12.2 Proposal in the CP

187. Firstly, in the CP ESMA noted that the amendments introduced by the Listing Act are likely to reduce the burden for issuers who should now carry out a more limited assessment, only covering their latest announcement/communication on the same matter. However, while the Amending Regulation and the request for technical advice only refer to the latest announcement or communication, ESMA concluded in the CP that the inside information to be delayed may be assessed against more than one announcement or communication whenever a clear conclusion about the issuer's position on the subject matter cannot be drawn exclusively on the basis of the very latest communication.

188. Relatedly, with respect to the Commission's request to identify a comprehensive list of '*other types of communication by the issuer*', ESMA included in the CP a list of communications that would have the ability of generating and influencing market expectations, and which should therefore be considered relevant for the purpose of the issuer's assessment. This covers communications and press releases on the issuer's website or social media accounts, pre-close calls, communications in the context of the shareholder meeting, advertising and regulatory filings, as well as public interviews, roadshows, other public events and any other communication capable of reaching the public delivered by persons perceived as representing the issuer.

189. Lastly, pursuant to the Commission's request to provide technical advice on a list of examples where it is deemed that there is a contrast between the inside information to be delayed and the issuer's latest public announcement or communication on the same matter, ESMA presented a list of situations in the CP aiming at capturing different scenarios in the issuer's lifecycle where such a contrast may arise. This ranged from, inter alia, corporate governance events to business strategy, corporate finance or capital structure operations.

190. In relation to the list, ESMA concluded that whenever the inside information that the issuer intends to delay constitutes a material change compared to the latest public communication (or to the latest communications where relevant) on the same matter of the inside information, the condition under Article 17(4)(b) of MAR as amended by the Amending Regulation would not be met and the issuer would not be able to delay the disclosure of that inside information.

4.12.3 Feedback to the consultation

191. In the CP, ESMA gathered views on three different elements: i) whether market participants agree that the inside information to be delayed may in some cases be assessed against more than one announcement; ii) on the draft list of other types of communication; and iii) on the draft list of situations where there is a contrast between the inside information to be delayed and the latest announcement or communication.

Assessment of the inside information against multiple announcement or communications

192. With respect to the assessment of the inside information against multiple announcements or communications, respondents expressed mixed views, with most respondents supporting ESMA's proposed approach. While agreeing, one respondent highlighted that this should be seen as a residual approach and should be applicable only where such an assessment is strictly necessary. Another respondent supported ESMA's view and suggested introducing a safe harbour clause specifying that the issuer can include in any of its public statements an explicit warning that the only relevant information which should be relied upon by the public to establish the issuer's position on the subject matter is the one contained therein.

193. A minority of respondents disagreed with ESMA's interpretation, considering that the Amending Regulation only refers to the latest announcement/communication and that this reading would depart from the revised Level 1 wording. They also stressed that such an approach would not give legal certainty to issuers as it would be unclear how far back they should go to find a clear announcement. One respondent also mentioned that this would conflict with the general aim to reduce the burden for issuers by requiring issuers to assess a multitude of announcements.

Other types of communications by the issuer

194. ESMA then gathered views on the list of other types of communication presented in Article 4 of the proposed delegated act in the CP, including whether the list would be sufficiently comprehensive or whether any other cases should be added.

195. The great majority of respondents focussed on specific points, such as the reference to '*person perceived as representing the issuer'* under points c), d) and h) of Article 4, where many respondents considered that such a broad wording would give rise to uncertainty as it is a subjective criterion which may be difficult to assess. Similarly, a number of respondents invited ESMA to clarify that '*regulatory filings by the issuer'* in point f) should only include those filings which are already public and not confidential. In addition, some respondents invited ESMA to revise point h) ('*any other communication capable of reaching the public and delivered by any person perceived as representing the issuer*') which in their view would bring legal uncertainty as that could encompass also documents which may not be intended for publication. Therefore, it was suggested to either remove that point or to only refer to 'communications reaching the public'.

196. Some respondents also made a few suggestions regarding point g) (*'written and oral communications in the context of the issuer's shareholders meetings'*), inviting ESMA to clarify that draft remuneration proposals that are usually shared with institutional investors in the context of pre-shareholder meeting dialogues do not qualify as inside information. Another respondent suggested that not all written or oral communications will be publicly available, and therefore the requirement should only cover communications to which the public has access. Similarly, another respondent suggested that only *confirmed* or *recorded* oral communication *during* the issuer's shareholders meetings should be relevant and suggested amending point g) accordingly.

197. Separately, a few other respondents made more general points: two stakeholders mentioned that the list should only include regulated information and information directed to investors as any other information should not be perceived as having the same status as the former ones. Separately, one respondent suggested establishing an expiry date (e.g. two years) after which information should no longer be regarded as reliable. The more detailed summary of the responses received to this question are presented in Annex II.

List of situations where there is a contrast

198. Lastly, ESMA invited market participants to provide views on the list of situations where there is a contrast between the inside information to be delayed and the latest announcement or communication as presented in Annex II of the proposed delegated act in the CP.

199. Generally, respondents expressed mixed views. On the one hand, some respondents agreed with the list and considered it sufficiently comprehensive, making however some general remarks, such as inviting ESMA to define a timeframe for the 'previously disclosed by the issuer' or to introduce a concept defining a 'materiality threshold' to provide issuers with more legal certainty.

200. On the other hand, an almost equal number of respondents considered that list is generally too vague, and that the very large scope might leave room for interpretation without providing the desired legal certainty.

201. Another general remark was that ESMA should clarify that the requirements to disclose inside information when there is a contrast with a previous announcement apply to one-off events and to final events in protracted processes, but not to the intermediate steps thereof. In other words, those respondents sought reassurance on the fact that the list does not contradict the new regime introduced by the Amending Regulation when it comes to protracted processes and invited ESMA to state this clearly in the Final Report. Relatedly, one respondent mentioned that ESMA should also clarify that the possibility to delay disclosure remains relevant for one-off events.

202. Beyond the more general observations, respondents also provided more precise feedback on the various examples provided in Annex II of the proposed delegated act.

While the detailed summary is presented in Annex II below, it is worth highlighting some of the points raised by these respondents:

203. Regarding example n.2[19], four respondents suggested that the obligation to report and publish ESG information is already provided for in a number of sectorial regulations and included in the sustainability report, which is subject to periodic publication. Therefore, it was suggested to remove this example. Similarly, three other respondents suggested to specify what counts as material change in this context, as the lack of concrete references may leave a very large scope for interpretation.

204. Regarding example n.3[20], two respondents raised concerns on a potential conflict for certain regulated institutions, including credit institutions. These respondents mentioned that based on sectorial legislation, credit institutions may be prohibited to disclose inside information, notably in case of financial difficulties. This example could therefore lead to cases where sectorial regulations applicable to these institutions would require them to defer publication of the inside information in question, while at the same time they would not be meeting the conditions for the delay under MAR.

205. Regarding example n.6[21], four respondents argued that the given example ('sale of a business line after significant investments in that same business line') is not suitable as not every investment in a business line is strategic and this should therefore be deleted.

206. Regarding example n.7[22], a few respondents suggested that this does add much compared to example n.6, as anything relevant under a business operation would already be covered under the previous item. These respondents also stated that this example might be too broad and too unspecific to serve as guidance.

207. Regarding example n.8[23], one respondent considered that this should be removed as it is formulated too broadly, while another respondent suggested focusing on fundamental elements of a contract/deal such as termination of a commercial partnership.

208. Regarding example n.9[24], the main concern expressed by respondents relates to draft remuneration proposals. These respondents fear that including compensation arrangements in the list of examples may hinder dialogues between issuers and shareholders and therefore invited ESMA to clarify that draft remuneration proposals

[19] Inside information regarding a material change to the environmental or social impact of a project or product previously publicly announced by the issuer (e.g. environmental targets which are likely not to be met)
[20] Inside information regarding the financial viability of an issuer where materially different information regarding its financial strength was publicly announced by the issuer (e.g. need for capital increase or extraordinary bonds issuance.
[21] Inside information regarding a material change in a business strategy previously publicly announced by the issuer (e.g. sale of a business line after significant investments in that same business line
[22] Inside information regarding a material change to a business operation previously publicly announced by the issuer (e.g. different target company of an acquisition.
[23] Inside information regarding a material change to a contract/deal or of its conditions previously publicly announced by the issuer (e.g. termination of a commercial partnership).
[24] Inside information regarding a material change in the previously publicly announced issuer's governance, including compensation arrangements, management structure and codes of conduct (e.g. decision to cancel a planned increase in the number of independent Board members).

shared with institutional investors in dialogues do not qualify as inside information. Separately, one respondent considered that this example is also formulated too broadly.

4.12.4 ESMA's assessment and final approach

209. ESMA took into account the feedback received in the context of the consultation and this section presents ESMA's considerations and ESMA's final approach.

Assessment of the inside information against multiple announcements or communications

210. Starting with the assessment of the inside information against multiple announcements or communications, ESMA acknowledges that the majority of respondents supported the proposal included in the CP. ESMA fully appreciates the intention of the Amending Regulation to reduce burden on issuers which, under the revised MAR framework, translates into a more limited assessment that only looks at the issuer's latest announcement/communication on the same matter to which the inside information refers.

211. To that extent, while ESMA considers that the reference to the multiple announcements or communications should be maintained, ESMA notes this should be understood as a residual approach which should be followed only in the limited cases, where it is necessary to look at multiple communications in order to get the full picture of the issuer's stance on the subject matter. In that light, ESMA recommends slightly amending Recital 15 of the proposed delegated act to clarify that this should apply in a limited number of circumstances.

212. As already explained in the CP, while some respondents highlighted that MAR only refers to the latest announcement or communication in a singular form, ESMA also notes that its interpretation appears coherent with Recital 70 of the Amending Regulation which refers to "previous public **statements** or other types of **communications** by the issuer".

213. Regarding the suggestion to require issuers to include a warning that the one just published is the latest relevant communication on a specific matter, ESMA appreciates the intention to provide legal certainty. At the same time, such an approach would depart from the objective of the revised MAR regime and would impose additional burden on issuers which would have to carry out such an assessment whenever publishing an announcement or communication.

Other types of communications by the issuer

214. Moving to the list of other types of communication presented by ESMA in the proposed delegated act included in the CP, ESMA acknowledges the views expressed by respondents regarding the reference to 'persons perceived as representing the issuer' in Article 4, point c), d) and h) and appreciates the ambiguity such wording may introduce. Therefore, ESMA agrees to amend Article 4 and refer to 'persons representing the issuer'. ESMA also deems it useful to clarify that persons representing the issuer should include

at least executive officers such as the CEO, CFO and CCO, the issuer's directors and authorised signatories as well as any other public or key person within the issuer.

215. With respect to the reference to 'regulatory filings by the issuer' under Article 4 point f) of the proposed delegated act, ESMA also acknowledges the views expressed by respondents and deems it sensible to amend Article 4 point f) as to only cover publicly available regulatory filings.

216. In relation to the reference to 'written and oral communications in the context of the issuer's shareholders meetings' under Article 4, point g), ESMA notes that the comments received focus on two different issues:

- Firstly, a few respondents invited ESMA to clarify draft remuneration proposals that are shared with institutional investors in the context of pre-stakeholders meetings' dialogues do not qualify as inside information. ESMA would like to emphasize that the assessment of whether information amounts to inside information should be carried out on a case-by-case basis following the conditions set out in Article 7 of MAR. It is also worth clarifying that the list in Article 4 of the proposed delegated act serves a different purpose, which is precisely to identify the types of communication that issuers would need to look at when assessing whether disclosure of inside information can be delayed;

- Secondly, regarding the other suggestions to amend the wording in Article 4, point g) of the proposed delegated act, ESMA considers that communications in the context of shareholders meetings are usually provided to a high number of individuals, making the information *de facto* public. However, to enhance clarity of the provision, ESMA would still see merit in clarifying this element and suggests amending point g) of the list as to only refer to publicly accessible communications delivered in the context of shareholders meetings.

217. With regard to the concerns raised by stakeholders on the reference to 'any other communication capable of reaching the public (..)' under Article 4 point h), ESMA would like to clarify that the primary intention of such a list is to capture any relevant communications coming from the issuer against which the inside information to be delayed should be compared to assess whether there is a contrast. Nevertheless, ESMA sees merit in the point raised by respondents regarding the far-reaching nature of this provision and therefore considers that it would be sensible to amend point h) to only refer to communications directed to the public. In ESMA's view, this would also reduce the burden for issuers which should not be required to assess each and every communication *capable* of reaching the public.

218. Lastly, ESMA also suggests merging points a) and b) of Article 4 of the proposed delegated act which should refer in a unique point to any communication or press release published by the issuer on media, social media and on the issuer's website.

219. Regarding the other suggestions made by respondents, ESMA disagrees that only regulated information and information directed to investors can generate or influence

market expectations and therefore recommends keeping the approach proposed in the CP, with the above-detailed amendments. Separately, on the suggestion to establishing an expiry date after which information should no longer be regarded as reliable, while ESMA appreciates the aim to increase legal certainty and reduce burden for issuers, this does not seem to be a viable solution considering that older communications might continue to be regarded as relevant by the public. However, it might be worth assessing whether the announcement was relevant for or made explicit reference to a specific time frame.

List of situations where there is a contrast

220. In relation to the feedback received on the list of situations where there is a contrast between the inside information to be delayed and the latest issuer's announcement or communication as presented in the CP, ESMA notes that some respondents considered that the large scope of the list might not provide issuers with the desired legal certainty.

221. ESMA would however like to emphasize that the inclusion of an example in the list does not imply that any information relating to such an example would by default classify as inside information and would therefore be subject to the MAR disclosure requirement. As already mentioned above, the assessment of whether an information amounts to inside information remains a case-by-case assessment which should be carried out in accordance with Article 7 of MAR and the inclusion in the list does not change anything in this respect.

222. As some participants also noted that the proposed list would leave very little room for delaying disclosure of inside information, ESMA would like to highlight that this must be assessed in conjunction with the broader changes introduced by the Amending Regulation to MAR. More precisely, as already noted in this Final Report, intermediate steps in a protracted process should no longer be subject to the disclosure requirement ahead of completion (except when the confidentiality of the information can no longer be ensured), and therefore the overall effect would be that issuers will be resorting to the mechanism of delay in a much more limited number of instances.

223. Relatedly, further to the feedback received from some respondents, the applicability of the delayed disclosure framework following the revision of MAR might also be worth clarifying. In particular, the regime remains applicable both for one-off events as well as for final steps of intermediate process, whenever the relevant conditions for delaying disclosure under MAR are met. On the contrary, under the revised MAR regime, intermediate steps of protracted process cannot benefit from the delay disclosure mechanism simply because they are not subject to the transparency requirements in the first place.

224. Regarding the more specific comments on the list of examples presented in the CP, it appears useful to address the various points included in the list separately.

225. With respect to example n.2 (Inside information regarding a material change to the environmental or social impact of a project or product previously publicly announced by

the issuer (e.g. environmental targets which are likely not to be met)), ESMA fully acknowledges that there is a comprehensive framework governing ESG information and reporting at EU level. However, information regarding environmental or social impact of a project or product may still amount to inside information when the relevant conditions are met and therefore be subject to the MAR transparency regime, including delayed disclosure. On that basis, ESMA does not consider it necessary to introduce any changes to example n.2.

226. ESMA appreciates the concerns expressed on example n.3 (Inside information regarding the financial viability of an issuer where materially different information regarding its financial strength was publicly announced by the issuer (e.g. need for capital increase or extraordinary bonds issuance)) regarding the potential conflict e.g. in case of credit institutions which, on the one hand, may be prohibited to disclose inside information in accordance with sectorial legislation, while, on the other hand, might not be allowed to delay disclosure under MAR. However, in the absence of specific legal references provided by respondents, ESMA does not have sufficient elements to assess the potential conflict between different legal provisions. At the same time, it is worth noting that, as explained in Section 4.6, in case of protracted processes requiring interactions with public authorities, disclosure should only take place when the formal decision of the authority' is notified to the issuer. In that light and also noting that the example would apply to a broader set of issuers other than credit institutions, ESMA concluded that this example remains relevant and should be kept in the list.

227. Regarding example n.6 (Inside information regarding a material change in a business strategy previously publicly announced by the issuer (e.g. sale of a business line after significant investments in that same business line)), a few respondents expressed concerns on the example provided by ESMA as not every investment in a business line is strategic. ESMA does not fully share this concern as, while the assessment remains on a case-by-case basis, in the case of previous communications regarding non-strategic or non-significant investments, the information on the sale of the business line would probably not constitute inside information in the first place. However, in light of the concerns expressed by respondents and to avoid uncertainty, ESMA suggests replacing such an example with 'decision to enter into a new geographical market segment'.

228. With respect to example n.7 (Inside information regarding a material change to a business operation previously publicly announced by the issuer (e.g. different target company of an acquisition)) ESMA understands that some respondents considered it to be too generic to serve as guidance. ESMA sees merit in the comment made and, in the spirit of simplification, suggests deleting it and to cover the cases initially envisaged under this example in example n.8. More precisely, material changes to 'business operations previously announced by the issuer' could be covered under material changes to '(..) deals previously announced by the issuer' and the specific example of the target company could also be added to example n.8.

229. On example n.8 (Inside information regarding a material change to a contract/deal or of its conditions previously publicly announced by the issuer (e.g. termination of a

commercial partnership)), the feedback received suggests that this should be removed as it is formulated too broadly while another respondent suggested focusing on fundamental elements of a contract/deal. In this context, while the reference to the material change already suggests that there should be a substantial difference between the inside information to be delayed and the previous announcement, ESMA agrees with revising the wording as to refer to 'fundamental elements of a contract or deal' previously announced by the issuer. Example n.8 would also be amended as explained in the previous paragraph.

230. Lastly, regarding example n.9 (Inside information regarding a material change in the previously publicly announced issuer's governance, including compensation arrangements, management structure and codes of conduct (e.g. decision to cancel a planned increase in the number of independent Board members)) as ESMA already explained, the inclusion of one situation in the list does not per se categorise an information as inside information. However, in light of the strong concerns expressed by respondents on the treatment of draft remuneration proposals, ESMA would nevertheless suggest removing from the list 'compensation arrangements' noting however that the list remains non-exhaustive and that situations of contrast may arise well beyond those indicated in the list. Separately, following a comment received, ESMA would also like to reiterate that only material changes, and not any changes, compared to previous communications should be relevant for the purpose of the list.

231. For all the other examples included in the list, ESMA does not see the need for any further adjustments also on the basis on the feedback and suggestions received during the public consultation.

4.13 Cross market order book

4.13.1 Background information

232. Article 25a of MAR introduces the CMOB System, a mechanism for exchanging order data to improve the detection of cross-border market abuse. It ensures that competent authorities can access relevant data, especially for instruments traded across Member States.

233. The mechanism targets trading venues with significant cross-border activity. Only authorities overseeing such markets are required to participate, though others may join voluntarily. Initially, it applies to shares, with full implementation within 18 months, and later expands to bonds and futures within 42 months.

234. The legal text defined participating venues using two thresholds: annual share turnover of EUR 100 billion or more per year in any of the last 4 years and cross-border activity above 50%. ESMA was tasked with providing technical advice on identifying these venues, analysing data up to 2024.

4.13.2 Proposal in the CP

235. The identification of trading venues under Article 25a of MAR relied on data from ESMA's FIRDS and FITRS, focusing on shares. The analysis included all trading venues reporting to ESMA and was conducted at the operating MIC level.

236. Cross-border activity was assessed based on the criteria set out in Article 25a (7) of MAR, using turnover data for shares where the authority of the Most Relevant Market in terms of Liquidity (MRMTL) differs from that of the trading venue.

237. The analysis in the CP covered the years 2021–2023, with 2024 data not available at the time of publication. The 2024 data has now been included in the assessment.

4.13.3 Feedback to the consultation

238. The feedback received on the proposed methodology was limited, with only three respondents expressing support for the methodology used. Two of these respondents, representing exchanges, provided additional comments regarding the requirements and their implementation.

239. They emphasized the importance of ensuring that the requirements lead to a harmonized format and do not result in duplicative obligations. Specifically, they highlighted the need for ESMA to clarify that the ITS being drafted will align with MiFIR Article 25 and RTS 24. This alignment would prevent duplicative arrangements and establish a common format and template set for RTS 24, addressing the current inconsistency where different NCAs request varying formats.

240. Additionally, the respondents suggested that trading venues already providing order data to their NCA under Article 25 MiFIR and RTS 24 should not be subject to additional reporting obligations under MAR.

241. Finally, they proposed that, instead of requiring individual entities to report separately to their respective NCAs, ESMA should establish a centralized reporting hub. This approach would allow NCAs to retrieve the necessary information directly from ESMA, thereby improving efficiency, reducing redundancy, and enhancing information exchange between entities and NCAs, as well as among NCAs themselves.

4.13.4 ESMA's assessment and final approach

242. Given the limited feedback received, with no objections to the proposed methodology, ESMA confirms its initial approach for identifying trading venues with a significant cross-border dimension falling within the scope of the new mechanism under Article 25(a) of MAR. More specifically, ESMA confirms that taking into account the years from 2021 to 2024, the trading venues that fall within the scope of the mechanism include two trading venues under the supervision of the Autorité des Marchés Financiers (AMF) in France and two venues under the supervision of the Autoriteit Financiële Markten (AFM) in the Netherlands. When submitting the technical advice to the European

Commission, ESMA will include the names of the identified trading venues, accompanied by granular data on cross-border volumes and ratios.

243. Regarding the comments raised by respondents, they are not directly related to the consulted methodology, however ESMA provides the following clarifications. Article 25a does not introduce any additional reporting requirement. Trading venues will continue maintaining order book records in accordance with the granularity and format prescribed by RTS 24. The Listing Act only introduces rules on how this existing data must be exchanged between NCAs.

244. Finally, with respect to the suggestion of further centralising the reporting, ESMA notes that it will be assessed in cooperation with the relevant NCAs.

5 Technical advice on SME growth markets

5.1 Background and Mandate

245. Article 33 of MiFID II introduced a new category of MTFs labelled SME GMs. The creation of SME GMs under MiFID II is intended to promote access to capital markets for SMEs and to facilitate the further development of specialist markets that aim to cater for the needs of small and medium-sized issuers.

246. Article 33(3) of MiFID II established the conditions which an MTF shall satisfy when applying to its NCA to be registered as an SME GM. The requirements in Article 33 of MiFID II were further specified in Articles 77 to 79 of CDR (EU) 2017/565[25][26].

247. The Amending Directive introduced focussed amendments to MiFID II, including the possibility for a segment of an MTF to register as SME GM. The amendments introduced by the Listing Act need to be further developed in Level 2 regulation. Namely, the European Commission is empowered to adopt delegated acts to further specify the requirements that an MTF, or a segment thereof, must comply with to operate an SME GM, as per Article 33 (3) and (3a) of MiFID II.

248. In this context, the European Commission sought ESMA's technical advice on how to ensure that these level 2 measures account for two aspects. Namely,

a. the need to maintain high levels of investor protection and confidence in SME GMs while minimising the administrative burdens for issuers on these markets;

b. that the de-registration as an SME GM or the refusal to be registered as such does not simply occur as a result of a temporary failure to comply with the requirements specified in Article 33 (3) and (3a) of MiFID II.

[25] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R0565
[26] Those included the criteria to be used by MTFs to (i) identify companies that qualify as SMEs for the purpose of the SME GM label and to (ii) register/deregister as an SME GM.``````

249. ESMA published in December 2024 a CP seeking views from stakeholders on proposed amendments of Articles 78 and 79 of CDR 2017/565 to fulfil the request for technical advice from the EU Commission. Additionally, the CP asked stakeholders' views on the proposed new Article 78a of CDR 2017/565 which is meant to specify the conditions in the amended Article 33(3)(a) of MiFID II.

250. This final report has been developed considering stakeholders' responses to the consultation. The next sections briefly describe the proposals presented in the CP, the feedback received from stakeholders and ESMA suggested way forward based on that feedback.

5.2 Article 78 of CDR 2017/565

251. Article 78 of CDR 2017/565 established the criteria which an MTF should fulfil to register as an SME GM, specifying further the requirements laid down in Article 33(3) of MiFID II.

5.2.1 Background information

Article 78(1) of CDR 2017/565

252. Article 78(1) of CDR 2017/565 specifies how to calculate the percentage of issuers that qualify as SMEs to meet the requirement in Article 33(a) of MiFID II that at least 50% of the issuers whose financial instruments are admitted to trading on the MTF are SMEs at the time when the MTF is registered as an SME GM and each calendar year after.

253. The requirements in Article 78(1) of CDR 2017/565 on the registration as SME GM additionally ensure that the refusal to be registered as an SME GM does not simply occur because of a temporary failure to comply with the requirements specified in Article 33(3) of MiFID II, as the calculation criteria is based on a full calendar year.

Article 78(2)(a) and (b) of CDR 2017/565

254. Article 78(2)(a) and (b) of CDR 2017/565 establish that (i) to be registered as an SME GM an MTF should have rules which provide for objective and transparent criteria for the initial and ongoing admission to trading of issuers on its venue and that (ii) the operating model of the MTF should be appropriate for its functions and to ensure the maintenance of fair and orderly trading.

Articles 78(2)(c), (d) and (f) of CDR 2017/565

255. Article 78(2)(c), (d) and (f) of CDR 2017/565 specify further the requirements in Article 33(3)(c) of MiFID II, which ensure that when an issuer is admitted to trading on an SME GM, there is sufficient information available to the public to enable investors to have an informed judgement regarding a potential investment in the financial instrument.

256. Article 78(2)(c) of CDR 2017/565 requires the MTF seeking registration as an SME GM to establish and apply rules that require issuers seeking admission to trading on the MTF to publish, in cases where Directive 2003/71/EC (hereafter 'Prospectus directive') does not apply, an appropriate admission document, drawn up under the responsibility of the issuer. This document should also clearly state whether or not it has been approved or reviewed and by whom.

257. Article 78(2)(d) of CDR 2017/565 requires the MTF to establish and apply rules defining the minimum content of the admission document under point (c).

258. Article 78(2)(f) of CDR 2017/565 requires that arrangements are made by the SME GM for the admission document to be subject to an appropriate review of its completeness, consistency and comprehensibility.

Article 78(2)(e) of CDR 2017/565

259. Article 78(2)(e) of CDR 2017/565 requires the issuer to state, in the admission document referred to under point 78(2)(c) of CDR 2017/565, whether or not, in its opinion, its working capital is sufficient for its present requirements or, if not, how it proposes to provide the additional working capital needed.

Article 78(2)(g) of CDR 2017/565

260. Article 33(3)(d) of MiFID II requires that there is appropriate ongoing periodic financial reporting by the issuer. This is further detailed in Article 78(2)(g) of CDR 2017/565, which requires the issuer whose securities are traded on the SME GM to publish annual reports within 6 months after the end of each financial year, and half year reports within 4 months after the end of the first 6 months of each financial year. An issuer that has no equity instruments traded on the MTF can be exempted to publish half-year reports.

Article 78(2)(h) and (i) of CDR 2017/565

261. Article 33(3)(d) of MiFID II requires appropriate ongoing periodic financial reporting by or on behalf of an issuer on the market. Article 78(2)(h) of CDR 2017/565 requires either the publication on the website of the MTF or the provision of the link to the page of the website of the issuers of certain documents, namely the prospectus, the admission documents, the financial reports and the information defined in Article 7(1) of MAR which is publicly disclosed by the issuer. Article 78(2)(i) of CDR 2017/565 laid down that those records should remain available for at least five years.

5.2.2 Proposal in the CP

Article 78(1) of CDR 2017/565

262. ESMA noted that the methodology in Article 78(1) of CDR 2017/565 appears suited for the calculation of the number of issuers qualifying as SMEs to meet the 50% criterion

set in Level 1. Additionally, considering the case of a segment of an MTF applying to register as an SME GM, the methodology did not appear to pose challenges.

263. ESMA did not propose any amendments to Article 78(1) of CDR 2017/565 regarding the calculation methodology.

Articles 78(2)(a) and (b) of CDR 2017/565

264. In the CP ESMA did not propose any amendment or further specification of the requirements in Articles 78(2)(a) and (b) of CDR 2017/565 regarding the criteria for the initial and ongoing admission to trading of issuers on the venue and for the operating model of the MTF.

265. It was deemed that the current provisions grant MTFs sufficient flexibility when establishing SME GMs, and no adaptation is needed for segments registering as SME GMs.

Articles 78(2)(c), (d) and (f) of CDR 2017/565

266. In the CP ESMA remarked that the requirements specified in Article 78(2)(c), (d) and (f) of CDR 2017/565 to ensure that when an issuer is admitted to trading on an SME GM there is sufficient information available to the public to enable investors to have an informed judgement regarding a potential investment in the financial instrument appear suitable. Hence, ESMA did not propose amendments. Furthermore, it was noted that no further adaptation appears necessary for the registration of a segment.

267. ESMA notes that the reference to Directive 2003/71/EC ('Prospectus Directive') should be removed to refer to Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a RM (hereafter 'Prospectus Regulation').

Article 78(2)(e) of CDR 2017/565

268. Considering Article 78(2)(e) of CDR 2017/565, ESMA proposed to align this requirement with the Prospectus Regulation and the new Growth Issuance prospects. Hence it was proposed to amend Article 78(2)(e) to specify that the statement regarding the working capital should be applicable only in case of share issuances and not in case of issuance of securities other than shares.

Article 78(2)(g) of CDR 2017/565

269. In the CP ESMA noted that it would be beneficial to amend Article 78(2)(g) of CDR 2017/565 requiring issuers to publish financial reports by including a requirement that such reports should be subject to audits. The amendment was proposed as this requirement can contribute to enhancing investors' confidence in SME GMs.

Article 78(2)(h) and (i) of CDR 2017/565

270. ESMA considered that the requirements in Article 78(2)(h) and (i) of CDR 2017/565 ensure immediate access to information, which is relevant to investors and for this reason, should not be amended. Therefore, no further adjustment was suggested.

5.2.3 Feedback to the consultation

Article 78(1) of CDR 2017/565

271. All the respondent agreed on the suitability of the methodology in Article 78(1) of CDR 2017/565 to assess if the SME GM meets the 50% criterion. Additionally, all the respondents also agreed that the requirements in Article 78(1) of CDR 2017/565 ensure that the refusal to be registered as an SME GM does not simply occur as a result of a temporary failure to comply with the requirements specified in Article 33(3) of MiFID II.

272. Several respondents remarked that in their view the threshold of 200 million Euro currently envisaged in MiFID II to qualify an SME is too low and outdated. Respondents suggested raising this threshold to include mid-caps in the SME definition. In their view a higher threshold would contribute to a strengthening of SME GM's ability to attract more companies, with the potential to increase liquidity on these markets.

273. One respondent proposed to increase to 60% the threshold of SME issuers that should be met for a market to qualify as an SME GM. In the view of the respondent this would contribute to the creation of more focussed markets.

Articles 78(2)(a) and (b) of CDR 2017/565

274. All respondents agreed that no amendment or further specification of the requirements in Articles 78(2)(a) and (b) of CDR 2017/565 is needed.

Articles 78(2)(c), (d) and (f) of CDR 2017/565

275. All respondents agreed that the requirements specified in Article 78(2)(c), (d) and (f) of CDR 2017/565 are suitable and no amendment is needed.

Article 78(2)(e) of CDR 2017/565

276. Most respondents agreed with the proposal to align the requirements in Article 78(2)(e) of CDR 2017/565 with the Prospectus Regulation and the new Growth Issuance prospectus by specifying that the statement on the working capital should be issued only in case of share issuances and not in case of issuance of securities other than shares.

277. Some respondents disagreed more in general with the requirement to include a working capital statement in the admission document. They stated that this requirement entails excessive costs and administrative burden (including auditor review, legal verification, and management assessment) while providing limited benefits for investors and potentially bringing a misleading indication of the issuer's overall financial health and long-term business prospects. They elaborated explaining that the working capital statement leads to confusion by focusing investors' attention on short-term liquidity

metrics rather than on long-term business prospects. They further noted that the requirement creates: (i) a lack of consistency with other financial reports standards as standard financial disclosures do not require a separate working capital report; and (ii) redundancy with existing disclosures as the key components of working capital are already presented in the balance sheet.

Article 78(2)(g) of CDR 2017/565

278. Most respondents agree with the proposal to amend Article 78(2)(g) of CDR 2017/565 requiring issuers to publish financial reports to include a requirement that such reports should be subject to audits. The respondents requested to clarify that the proposal applies only to annual financial reports and noted that several SME issuers currently request audits of their annual financial reports.

279. One respondent proposed to foster standardisation within an optional regime to avoid imposing further costs on SME GM issuers. More specifically, it was suggested to include provisions specifying the scope and subject matter of such an optional regime, to provide more legal certainty for issuers. Additionally, the respondent proposes to clarify that the definition of 'audit' should refer to the notion of "statutory audit" as defined in Directive 2006/43/EC, Article 2(1) and as implemented by the regime of the Member State to which the SME GM is subject.

Article 78(2)(h) and (i) of CDR 2017/565

280. Out of the five responses received, all stakeholders agreed not to modify article 78(2)(h) and (i) of CDR 2017/565.

5.2.4 ESMA's assessment and final approach

Article 78(1) of CDR 2017/565

281. Considering that all the respondents agreed with ESMA's proposal to maintain Article 78(1) in its current form, ESMA does not recommend any amendment to the requirements in Article 78(1) of CDR 2017/565.

282. ESMA also notes that several respondents remarked that in their view the threshold of 200 million Euro currently envisaged in MiFID II to qualify an SME is too low and outdated and suggest to the European Commission to consider the need for an amendment to increase the threshold.

Articles 78(2)(a) and (b) of CDR 2017/565

283. Considering the feedback from respondents, ESMA does not propose any amendment or further specification of the requirements in Articles 78(2)(a) and (b) of CDR 2017/565.

Articles 78(2)(c), (d) and (f) of CDR 2017/565

284. All respondents agreed that the requirements specified in Article 78(2)(c), (d) and (f) of CDR 2017/565 are suitable, hence ESMA proposes no amendment, except for the updating of the reference to the Prospectus Directive, which should now refer to the Prospectus Regulation.

Article 78(2)(e) of CDR 2017/565

285. Considering the feedback received from the consultation ESMA proposes to specify that the statement regarding the working capital required in Article 78(2)(e) of CDR 2017/565 should be applicable only in case of share issuances and not in case of issuance of securities other than shares.

286. ESMA considered the view expressed by some respondents that the working capital requirement entails costs and an administrative burden. Nevertheless, ESMA notes that, in line with what was discussed in the 2020 Report on SME GM, removing this requirement could have counterproductive effects on investments as the proposal could lead to weakened investor protection.

Article 78(2)(g) of CDR 2017/565

287. ESMA notes that the majority of respondents agreed with the proposal to amend Article 78(2)(g) of CDR 2017/565 requiring issuers to publish financial reports, by prescribing that such reports should be subject to audits. Hence, ESMA proposes to amend Article 78(2)(g) of CDR 2017/565 and to clarify that this proposal would apply only to annual financial reports.

288. Additionally, ESMA proposes to the EC to consider the merits of extending to SME GM the exemption currently included in Article 8(1)(b) of the Transparency Directive. Such provision concerns issuer exclusively of debt securities, the denomination per unit of which is at least EUR 100 000, and which are admitted to trading on a regulated market and exempts such issuers from publishing annual and semi-annual financial reports.

289. ESMA also suggests that the EC evaluates the merits of extending this exemption more generally to MTFs issuers.

Article 78(2)(h) and (i) of CDR 2017/565

290. Considering the full agreement with ESMA's proposal, ESMA confirms that no adjustment is made to Article 78(2)(h) and (i) of CDR 2017/565.

5.3 New Article 78a of CDR 2017/565

5.3.1 Background information

291. Article 33(3a) of MiFID II requires that for a segment of the MTF to be registered as 'SME growth market': (i) the segment should be clearly separated from the other market

segments operated by the MTF operator – Article 33(3a)(a) of MiFID II; (ii) the transactions made on the specific SME GM segment should be clearly distinguished from other market activity within the other segments of the MTF – Article 33(3a)(b) of MiFID II; and (iii) if requested by the NCA the MTF shall provide a comprehensive list of the instruments listed on the SME growth market segment and any further information – Article 33(3a)(c) of MiFID II.

5.3.2 Proposal in the CP

292. To specify further the three requirements set out in Article 33(3a) of MiFID II, ESMA proposed to add a new Article 78a to CDR 2017/565.

293. To meet the first and second requirement, ESMA proposed that the market identification code to be used to ensure clear separation of the MIC and its related transactions should be a segment MIC under ISO 20022. However, ESMA maintained the possibility for an SME GM to additionally assign internal dedicated codes to instruments or segments on top of the required standards, i.e. ISIN and ISO 20022 segment MIC.

294. With respect to the third requirement, ESMA noted that NCAs might request different information depending on the rationale of the request. Therefore, it was suggested that there is a minimum level of information that could be provided from the SME GM segment, namely, (i) the ISIN of the share and/or bond, (ii) the full name and (iii) the MIC of the SME GM segment. This standardised information should be considered as a minimum to be provided, whilst nothing prevents the MTF to enrich the data delivered with internal codes assigned to instruments or trading systems or any additional information considered to be relevant.

5.3.3 Feedback to the consultation

295. Out of the five replies received, all stakeholders agreed with ESMA's proposals. However, two considerations were made: (i) it was suggested specifying that the provision is limited to ISO 10383 (ii) it was suggested that the new Article 78a of CDR 2017/565 should make clear that it is sufficient for an SM GM segment to have a MIC code (or MIC codes - plural) that separates it from other MTF segments that do not have SM GM status.

5.3.4 ESMA's assessment and final approach

296. Considering that the feedback received is in line with ESMA's proposals, ESMA agrees in further refining the proposals as indicated by stakeholders. Therefore, it will be specified that the standard for the MIC is ISO 10383 as well as that it is sufficient for an SM GM segment to have a MIC code (or MIC codes - plural) that separates it from other MTF segments that do not have SM GM status. Instead, no refinements are made to the proposals with respect to the third requirement.

5.4 Article 79 of CDR 2017/565

5.4.1 Background information

297. Article 79 of CDR 2017/565 established the criteria for the deregistration of an SME GM both in case of the SME GM failing to comply with the 50% SME issuers criterion for three calendar years and with any of the further criteria in Article 33(3)(b) to (g) of MiFID II.

5.4.2 Proposal in the CP

298. Considering that the provisions for the deregistration of an SME GM are related to the SME GM in general and that deregistration does not occur due to a temporary failure, no adaptation seemed necessary for SME GMs being organised on a segment. Therefore, ESMA did not propose specific amendments to this article.

5.4.3 Feedback to the consultation

299. Out of the five replies received, all stakeholders agreed with ESMA that no specific amendment is necessary for Article 79 of CDR 2017/565 and that the requirements ensure that an SME GM is not deregistered due to a temporary failure.

5.4.4 ESMA's assessment and final approach

300. Considering the full support received, ESMA confirms that no amendments are made to Article 79 of CDR 2017/565.

6 Annexes

6.1 Annex I – Cost- benefit analysis

This section provides a cost-benefit analysis (CBA) of the technical advice concerning MAR and MiFID SME GM. Stakeholders were invited to provide input on the proposed measures through a public consultation and their responses are considered in this CBA.

With respect to MAR, the current baseline is the existing regime for disclosure of inside information. The technical advice seeks to clarify and simplify that regime, considering the new legal framework introduced by the Listing Act. The changes include the introduction of a non-exhaustive list of final events or final circumstances and the relevant moment for disclosure, and a list of examples where a delay in the disclosure of inside information cannot be activated as there is a contrast between the intended delayed inside information and the issuer's latest public announcement or other communication on the same matter which the inside information refers to. The adoption of such lists is expected to facilitate issuers' identification of the final event or circumstances to be disclosed in protracted process and the cases where delaying disclosure of inside information would not be possible. ESMA considers that the lists included in the proposed delegated act is likely to increase legal certainty, reduce compliance costs for issuers and promote more consistent supervisory practices across Member States.

The stakeholders identified for this CBA are issuers and NCAs.

Quantitative data on the effects of the technical advice on the stakeholders' compliance costs to comply with the disclosure obligations under MAR is not available. As a result, ESMA's cost benefit analysis remains qualitative in nature and aims at outlining any major effects.

As the technical advice's objective is the simplification of an already existing obligation, ESMA believes that the combined costs associated with the implementation of the proposed delegated act in the technical advice will be limited and fully compensated by the benefits arising from its application.

ESMA provides below an analysis of the relevant costs and benefits compared to the baseline, i.e. the current disclosure regime.

In respect to MiFID in this Final Report ESMA has proposed targeted changes to provisions in CDR 2017/565 regarding SME GMs. ESMA has undertaken a public consultation and has discussed the benefits and costs of each proposal in the body of this Final Report based on stakeholders' feedback. ESMA recommends referring to the sections discussing each proposal for the purpose of the analysis of costs and benefits.

Chapter I: Disclosure of inside information in a protracted process

Policy Objective	Clarify the scope and the timing of disclosure obligations under MAR in relation to protracted processes and reduce the legal uncertainty for issuers and market participants.

Technical Proposal	The delegated act introduces a non-exhaustive list of final events or final circumstances in protracted processes that trigger the disclosure obligations. It also specifies the moment when disclosure is expected.
Benefits	The proposed delegated act is expected to improve legal certainty and enhance consistency in the application of MAR across Member States. By identifying the final event for a wide range of protracted processes, issuers will receive guidance as to the moment when disclosure is to take place, therefore reducing the burden associated with carrying out their own assessment. while market participants will benefit from clearer expectations as to the time of disclosures. The list is also expected to reduce the reliance on the delay mechanism under Article 17(4) MAR, therefore reducing the burden for issuers connected to the assessment of the conditions therein contained. A clear list will also benefit regulators, as a cleared guidance for issuers may limit NCAs' regulatory intervention to ensure timely application of the obligation to publicly disclose inside information.
Costs to regulator	NCAs will continue to supervise compliance with MAR. Since no new supervisory mandates are introduced, and the clarifications provided in the delegated act are expected to streamline enforcement, ESMA does not anticipate any significant additional cost for regulators.
Compliance costs	Issuers may face one-off costs when adapting internal procedures to align with the new requirements, particularly in determining the relevant moment of disclosure for listed protracted processes. However, these costs are expected to be limited and outweighed by the benefits of regulatory certainty and the simplification of their assessments. For processes not covered by the list, issuers may need to perform additional assessments, but these are guided by the principles included in the delegated act, which should overall reduce the issuers' compliance costs.
Costs to other stakeholders	None identified.

Chapter II: Conditions to delay disclosure of inside information

Policy Objective	Clarifying the list of communications capable of generating or influencing market expectations and providing examples of cases where activating the delay mechanism should not be possible as that would be in contrast with the latest issuer's public announcement or communication.

Technical Proposal	The delegated act introduces a non-exhaustive list of examples where it is deemed that there is a contrast between the inside information that is intended to be delayed and the latest public announcement or communication by the issuer. In this context, the list refers to a number of situations where the inside information represents a material change to previous issuers' announcement of communication. The delegated act also introduces a list of the relevant type of communications by the issuer.
Benefits	While being non-exhaustive, the proposed delegated act is expected to assist issuers in the identification of cases where such a contrast may arise and therefore highlighting when delayed disclosure should not be possible. It should also be noted that following the amendments introduced in MAR by the Listing Act, issuers should now benefit from a more limited assessment and only consider the latest communication or announcement to which the inside information refers. While that is more stemming from the Listing Act, a clear guidance on the cases where delaying the disclosure should not be possible would also benefit regulators, by reducing their potential scrutiny over issuers' assessments.
Costs to regulator	Since no new or significantly different supervisory mandates are introduced, ESMA does not anticipate any relevant additional cost for regulators.
Compliance costs	Issuers may face one-off costs when adapting their internal procedures to align with the new requirements, particularly in assessing whether the inside information to be delayed represents a material change compared to the relevant previous announcement or communication. However, this assessment appears limited compared to the previous condition under MAR whereby issuers were required to assess that delay of disclosure would not be likely to mislead the public, and therefore ESMA does not anticipate any relevant additional compliance cost stemming from the delegated act. For the cases not covered by the list, issuers may need to perform case by case assessment but this should not entail significant additional costs for issuers.
Other costs	None identified.

6.2 Annex II – Summary of questions

Q1: Do you agree with the definition of protracted processes provided?

The majority of respondents agreed with the definition of protracted processes proposed considering it a useful clarification. At the same time, a few respondents expressed reservations about protracted processes having "pre-defined" objectives. They argued that objectives often evolve over time due to market, legal, or strategic developments, and that a rigid pre-definition of objectives may not reflect the reality of things.

Moreover, a few respondents recommended the definition to stress that the final circumstances or events are part of the process itself, and to further align the definition with the Recital 67 of the Amending Regulation. In particular, they pointed out that ESMA derives the definition of processes from the Recital 67 which describes one-off events as occurrences that "[do] not depend on the issuer" and asked to clarify whether ESMA requires the series of actions that need to be performed in a protracted process to, at least in part, depend on the issuer.

Some other respondents recommended including "decisions" alongside "actions or steps" in the definition to capture cases where key choices shape the process. Others suggested removing the requirement that steps "need to be performed," as some protracted processes may involve external factors beyond the issuer's direct control.

Q2: Do you agree with the identified categories of processes and general principles?

The majority of respondents agreed with ESMA's proposal in relation to the categories of processes identified.

Nevertheless, several respondents expressed their disagreement or concerns with paragraph 51 of the CP ("*disclosure is (…) required when there is a degree of certainty regarding the outcome of the process which is sufficient not to mislead investors with information which is still subject to changes*"). They considered that such general principle lacks clarity, risks delivering a more burdensome and complicated framework for issuers and mixes the definition of what should qualify as inside information in Article 7(2) MAR with the definition of final events/circumstances. Among these respondents, some pointed out that disclosure should only be triggered when the process has come to an end from the perspective of the issuer.

Few respondents also noted that many subcategories include scenarios that do not constitute inside information. Moreover, it was suggested to provide a shorter, principles-based list describing the principles that ESMA would like to capture.

The feedback from the consultation included many suggestions and requests for adjustments and clarifications regarding specific examples or categories of processes. Furthermore, explicit reassurance was asked on the fact that that MAR's framework regarding the definition of inside information and the possibility to delay disclosure will continue to apply, independently of the content of the proposed delegated act.

Q3: Do you agree that for protracted processes that are entirely internal to the issuer the moment of disclosure should be the moment when the corporate body having the decision power has taken the decision to commit to the outcome of the process?

Despite agreeing with the proposal, the majority of respondents disagreed with the role attributed to the management body for the identification of the final event/circumstances, arguing disclosure should occur only when all decision-making bodies involved (different from the shareholders general meeting) made their decision. Namely, respondents expressed the view that whenever the supervisory board needs to give the final approval to a decision of the management body, only such approval can constitute the final event/circumstance. Moreover, a respondent suggested adding that the decision of the internal corporate body different from the management body should be taken as soon as possible and without any undue delay.

To support this alternative approach, first, respondents argued that the initial proposal disregards the presence of the two-tier corporate governance system across the EU and the crucial role of the supervisory board in those systems. Second, they claimed that such an approach places issuers operating under a two-tier corporate governance system in a disadvantageous position, as they would need to rely on their ability to delay disclosure to ensure an orderly internal decision-making process. Third, respondents argued that ESMA's proposal risks creating confusion in the market and misleading investors, adversely affects the checks and balances of issuer's governance structure and creates undue pressure on the deliberation and decision-making process of the supervisory board. Finally, it was signalled that the proposal contradicts ESMA's MAR Guidelines on delay in the disclosure of inside information and interactions with prudential supervision.

In addition, few respondents signalled that the current proposal raises concerns on how to account for instances where the competent corporate body has delegated its final decision to another person or body, and suggested that only the decision of the delegated body should trigger disclosure.

Furthermore, with regard to capital increases, few respondents noted that the final event should be the final resolution of the board, after the existing shareholders or investors have expressed their commitment to finance the transaction and the relevant feasibility study has been completed.

Q4: Do you agree that in presence of a governance structure that foresees the approval of another body further to the management body's decision, the disclosure obligation should take place as soon as possible after the decision of the first body?

In line with responses to Q3, and contrary to ESMA's proposal, the majority of respondents argued that whenever the last competent corporate body as defined by law, bylaws or any internal rules (e.g., supervisory board or board of directors) needs to give its subsequent and final approval to a decision of a first body, disclosure should only take place after the final decision is taken. In other words, disclosure should be triggered only upon the approval of all decision-making bodies involved.

Nevertheless, respondents have clarified that disclosure should not wait for any decision or approval of the shareholders general meeting (i.e., disclosure should be prior to such event) as in that case, the confidentiality of the information cannot be maintained.

Q5: Do you agree that for protracted processes involving the issuer and another party different from a public authority, the moment of disclosure should be when the competent bodies/persons of all parties involved, having the decision power under national law or bylaws, have taken the decision to sign off to the agreement?

The majority of respondents indicated that the disclosure should occur only upon signature of the agreement between the issuer and any private party.

Various reasons were outlined in support of this alternative approach. First, respondents considered that ESMA's proposal undermines the objective of the Listing Act, as steps of the process leading to the signing are merely preparatory and do not constitute the pre-defined outcome of the process. Moreover, responses the proposal will made issuers reliant on their ability to delay disclosure. Second, the approach of the CP creates legal uncertainty and risks providing premature and misleading statement to the public if the other party does not sign the binding agreement in the end. Third, any prior disclosure may "jeopardize" the outcome of negotiations and that the alternative approach would be needed to protect the sensitive nature of negotiations prior to any formal singing. Fourth, respondents considered that this approach is difficult to implement as it will require close coordination of all the parties involved. Fifth, the proposal does not reflect market practice. Finally, the current approach risks delivering diverging interpretations across the EU as to when does the moment of a decision to sign off actually takes place.

In any case, few respondents clarified that disclosure should be triggered earlier than the signature, where a more formal decision process is required by law and entails the parties to legally commit to part of the agreement (i.e., main terms or alike) before signing the final agreement. Finally, one respondent suggested that ESMA could also envisage an obligation for issuers to ensure that the actual signing of the agreement is not unduly delayed.

Some respondents also reacted to the distinction between ordinary and extraordinary transactions for finding it "too vague" or because ordinary transactions do not constitute inside information.

Only a minority of respondents expressly agreed with the proposal.

Q6: Do you agree that for protracted processes that are driven by a public authority with the involvement of the issuer, the moment of disclosure should be when the issuer has received the final decision from the public authority, even where the issuer and the public authority previously exchanged preliminary information that may on its own amount to inside information?

The majority of respondents agreed with ESMA's proposal, considering that premature disclosure of preliminary exchanges could mislead investors and create unnecessary market speculation.

Some respondents, however requested some flexibility in the application of the rule.In particular, they indicated exceptions should be made to allow issuers to determine whether the decision received from a public authority is sufficiently material to constitute inside information and to allow for an earlier disclose to prevent uncertainty and rumours.

Few participants pointed out that administrative processes often involve multiple steps, including preliminary and appealable decisions. It was suggested that disclosure should not be required if a decision remains subject to appeal and does not immediately impact the issuer's business. Additional guidance was requested on interim decisions, lengthy procedures, and cases where regulatory decisions are made public before the issuer receives them.

Q7: Do you agree that for protracted processes that are triggered by the issuer and whose final outcome is decided by a public authority, two separate processes should be identified, and the moment of disclosure should occur upon completion of each of them as above outlined?

Some respondents agreed that disclosure should take place both at the submission of the application to the public authority and upon receipt of the final decision. In their view, this approach ensures transparency, providing investors with timely information on key regulatory developments.

However, many respondents opposed the proposal, arguing that disclosure at the point of submission to the public authority is premature and potentially misleading. These respondents emphasized that the mere submission of an application does not necessarily constitute inside information, as the outcome remains uncertain. It was also argued that each situation should be assessed on a case-by-case basis and that mandatory disclosure at an early stage could harm issuers' legitimate interests, particularly in sensitive cases like M&A transactions or patent filings. The same respondents additionally argued that the proposal deviates from market practice and introduces unnecessary complexity. Thus, they recommended treating the entire process as a single protracted process.

Q8: Do you agree that a hostile takeover can be considered a one-off event? Do you agree with the moment for disclosure identified for takeover processes?

The responses to this question were varied.

Some respondents disagreed with ESMA's proposal to distinguish between friendly and hostile takeovers, arguing that such a distinction lacks a clear legal basis and does not reflect the realities of takeover processes. They noted that a takeover bid initially perceived as hostile can later become friendly, and vice versa, making the proposed classification impractical.

Some respondents also emphasized that the existing regulatory framework under the Takeover Directive (Directive 2004/25/EC) already establishes comprehensive disclosure obligations, and that additional distinctions could create regulatory confusion and redundancy.

Only few respondents agreed with ESMA's proposal. These respondents argued that if prior to the bid negotiations occur, a hostile takeover should be considered a protracted process, and disclosure obligations should reflect the circumstances of each case.

There was also divergence regarding the proposed moment of disclosure. Some respondents suggested that the focus should not be on whether a bid is friendly or hostile but rather on when the issuer becomes aware of credible information regarding a potential takeover. Few respondents also pointed out that in some jurisdictions, an initial takeover bid announcement may be separate from the finalization of the bid terms, and that disclosure obligations should be carefully aligned with national takeover regulations.

Q9: Do you agree with the proposed approach in relation to financial reports, profit warnings, earnings surprises and forecasts? In particular, do you agree that profit warnings and earning surprises are to be considered as one-off events and as such should not be included in the list of protracted processes?

Many respondents agreed that the preparation of financial reports is a protracted process. They emphasized that financial reports are produced according to a predetermined schedule and that the final event should be the approval by the competent corporate body. Some respondents stressed the importance of maintaining earnings calendars as a tool for predictable disclosure, arguing that often earnings calendars are the backbone of orderly disclosure of regular financial information and are mandatory under relevant listing rules.

There was significant debate regarding the classification of profit warnings and earnings surprises as one-off events. Few respondents agreed that these events should be disclosed immediately once the relevant information is available, as they typically stem from a single realization rather than an ongoing process. However, many respondents argued that profit warnings and earnings surprises often emerge through a gradual process rather than a single event. They pointed out that these developments frequently are subject to an internal process of analysis/verification/acknowledgment/approval of the competent body after which disclosure should occur and there may therefore be a series of actions designed to confirm the information. In this context, requiring immediate disclosure could lead to premature or incomplete information reaching the market, potentially causing unnecessary volatility.

Many other respondents suggested refining the approach to clarify that the moment of disclosure should occur as soon as figures become sufficiently precise to indicate a material deviation from prior forecasts.

Two respondents required further clarifications on profit forecasts and "dividends". Being the first ones voluntary, they should be removed from ESMA's list. For the "dividends", it was proposed to place them in a category named "corporate actions" together with "postponement and cancellation of interest payment or redemption payments", as they are separate processes from the periodic financial information.

Q10: Do you agree with the proposed approach in relation to recovery and resolution protracted process?

The great majority of respondents agreed with ESMA's proposed approach.

Few of the supporting respondents highlighted that the approach aligns with existing provisions, particularly Article 28(1) of Commission Delegated Regulation 241/2014, which restricts announcements related to the redemption, reduction, and repurchase of own funds instruments before approval by the Prudential Competent Authority, on which ESMA provided guidance in 2022.

Few respondents asked whether issuers are obligated to disclose a recovery or resolution transaction in cases of leaks or market rumours, pursuant to Article 17(7) MAR, which mandates public disclosure if confidentiality can no longer be ensured.

The few respondents against the proposal indicated that recovery and resolution from the issuer's perspective are a series of one-off events, and that the resolution authority's decisions and announcements cannot always be kept confidential.

Q11: Do you consider the list of protracted processes sufficiently comprehensive? Do you agree with the proposed moment of disclosure? Would you add or remove any process?

Some respondents explicitly agree with ESMA's overall approach. However, they suggested deleting, adding or amending certain items of Annex I.

Some other respondents considered the list is too extensive or not useful for the market. In this sense, they proposed to reduce the list so that only "factual circumstances that typically constitute inside information" are listed or to have a shorter and more comprehensive list (for example, by merging different items).

Q12: Do you agree that the inside information to be delayed may in some cases be assessed against more than one announcement, whenever a clear conclusion about the issuer's position on the subject matter cannot be drawn exclusively on the basis of the very latest communication?

Respondents expressed mixed views. On the one hand, the majority of respondents agreed that inside information to be delayed may, in certain cases, be assessed against more than one announcement. While agreeing, some of these respondents invited ESMA to consider this as residual approach which should be applicable only where such an assessment is absolutely necessary.

On the other hand, some respondents disagreed with the ESMA interpretation for the following reasons as MAR only refers to the latest announcement/communication and this interpretation would not align with the revised Level 1 wording.

Q13: Do you agree with the list of communications presented in Article 4 of the draft delegated act? Do you consider it sufficiently comprehensive, or do you deem that any other cases should be added?

The great majority of respondents proposed some amendments to the following points: points c), d) and h) regarding the reference to person perceived as representing the issuer; point f) regarding the reference to regulatory filings by the issuer; point h) in relation to any other communication capable of reaching the public and delivered by any person perceived as representing the issuer; and point g) concerning written and oral communications in the context of the issuer's shareholders meetings.

Q14: Do you agree with the list of situations where there is a contrast between the inside information to be delayed and the latest announcement or communication as presented by ESMA in [Annex II] of the proposed Delegated Act (Annex IV of this CP)? Do you consider it sufficiently comprehensive, or do you deem that any other situations should be added?

Respondents expressed mixed views on the list of situations proposed by ESMA. Ten respondents agreed with the list and considered it sufficiently comprehensive whereas an almost equal number of respondents considered the list to be too vague, too broad and the very large scope might leave room for interpretation and does not provide legal certainty.

Then, more generally, four respondents invited ESMA to provide clarity on the fact that the requirements to disclose inside information when there is a contrast with a previous announcement apply to one-off events and to final events in protected process, but not to intermediate steps of protected process. In other words, those respondents sought reassurance on the fact that the list does not contradict the new regime introduced by the Listing Act when it comes to protected process. Those respondents invited ESMA to be clear on that in the Final Report. One respondent also mentioned that ESMA should be clear in the FR that the possibility to delay disclosure is also relevant for one-off events.

Respondents then made the more precise points on the actual examples presented by ESMA in the CP, notable on examples number 2, 3, 6, 7, 8 and 9.

Q15: Do you have any views on the methodology used to conduct the analysis?

The feedback received on this question was limited, with only three respondents expressing support for the methodology used. Two of these respondents, representing exchanges, provided additional comments regarding the requirements and their implementation. They emphasized the importance of ensuring that the requirements lead to a harmonized format and do not result in duplicative obligations. Specifically, they highlighted the need for ESMA to clarify that the Implementing Technical Standards (ITS) being drafted will align with MiFIR Article 25 and RTS 24. This alignment would prevent duplicative arrangements and establish a common format and template set for RTS 24, addressing the current inconsistency where different National Competent Authorities (NCAs) request varying formats. Additionally, the respondents suggested that trading venues already providing order data to their NCA under MiFIR Article 25 and RTS 24 should not be subject to additional reporting obligations under the Market Abuse Regulation (MAR)..Finally, they proposed that, instead of requiring individual

entities to report separately to their respective NCAs, ESMA should establish a centralized reporting hub. This approach would allow NCAs to retrieve the necessary information directly from ESMA, thereby improving efficiency, reducing redundancy, and enhancing information exchange between entities and NCAs, as well as among NCAs themselves.

Q16: Do you agree that the methodology of calculation in Article 78(1) of CDR 2017/565 to assess if the SME GM meets the 50% criterion is suitable? Please explain.

Several respondents remarked that in their view the threshold of 200 million currently envisaged in MiFID II to qualify an SME is too low and outdated. Respondents suggested raising this threshold to include mid-caps in the SME definition. In their view a higher threshold would contribute to a strengthening of SME GM's ability to attract more companies, with the potential to increase liquidity on these markets.

One respondent proposed to increase the threshold of SME issuers a market should met to qualify as an SME GM to 60%. In the view of the respondent this would contribute to the creation of more focussed markets.

Q17: Do you agree that the requirements in Article 78(1) of CDR 2017/565 ensure that the refusal to be registered as an SME GM does not simply occur as a result of a temporary failure to comply with the requirements specified in Article 33(3) of MiFID II? Please explain.

All the respondents agreed with the proposal.

Q18: Do you agree with the proposal not to specify further the requirements in Articles 78(2)(a) and 78(2)(b) of CDR 2017/565? Please elaborate.

All respondents agreed with the proposal

Q19: Do you agree with the proposal not to modify the requirements currently included in Articles 78(2)(c), (d) and (f) of CDR 2017/565? Please elaborate.

All respondents agreed with the proposal.

Q20: Do you agree with the proposal to align the requirement in Article 78(2)(e) of CDR 2017/565 with those of the Growth Issuance Prospectus by requiring a statement on the working capital only for share issuances? Please elaborate.

Five respondents agreed with the proposal.

Two respondents challenged more in general the inclusion of a working capital statement in the admission document as for the following reasons: (a) Lack of consistency with other financial reports; (b) Redundancy with existing disclosures ;(c) Costly and time-consuming preparation, particularly for SMEs;(d) Limited practical use for investors.

Q21: Do you agree with the proposal to include in Article 78(2)(g) of CDR 2017/565 the requirement that the financial reports published by SME GM issuers should be subject to audits?

The majority of respondents agreed with the proposal but request to clarify that the proposal applies only to annual financial reports. One respondent proposed to clarify that the definition of 'audit' should refer to the notion of "statutory audit" as defined in Directive 2006/43/EC, Article 2(1) and as implemented by the regime of the Member State to which the SME GM is subject.

Q22: Do you agree with the proposal not to modify Articles 78(2)(h) and (i) of CDR 2017/565? Please elaborate.

All respondents agreed not to modify article 78(2)(h) and (i) of CDR 2017/565.

Q23: Do you agree with the proposals to meet the first and the second requirements under Article 33(3a) (a) and (b)? Please explain.

All respondents agreed with ESMA's proposal. However, two considerations were made: (i) it was suggested specifying that the provision is limited to ISO 10383 (ii) it was suggested that the new Article 78a of CDR 2017/565 should make clear that it is sufficient for an SM GM segment to have a MIC code (or MIC codes - plural) that separates it from other MTF segments that do not have SM GM status.

Q24: Do you agree with the proposals to meet the third requirement under Article 33(3a) (c)? Please explain.

All respondents agreed with the proposal.

Q25: Do you agree that no specific amendments are required for Article 79? Please explain.

All respondents agreed with the proposal.

Q26: Do you agree that the requirements in Article 79 of CDR 2017/565 ensure that an SME GM is not deregistered due to a temporary failure to comply with the criteria an Article 33 of MiFID II?

All respondents agreed with the proposal.

6.3 Annex III – Proposed Delegated Act

COMMISSION DELEGATED REGULATION (EU) …/...

of XXX

supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council by establishing a non-exhaustive list of final events or final circumstances to be disclosed in a protracted process and of the relevant moment for disclosure, and of situations in which the inside information whose disclosure is intended to be delayed is in contrast with the latest public announcement or other type of communication by the issuer or emission allowance market participant

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 (1), and in particular Article 17 thereof

Whereas:

(1) Pursuant to Article 17(12) of Regulation (EU) No 596/2014, the Commission is empowered to adopt a delegated act establishing a non-exhaustive list of final events or final circumstances in protracted processes and, for each event or circumstance, the moment when it is deemed to have occurred and is to be disclosed pursuant to Article 17(1) of Regulation (EU) No 596/2014;

(2) The list should facilitate the issuer's identification of the moment when disclosure of the inside information is required in case of protracted processes pursuant to Article 17(1) of Regulation (EU) No 596/2014. For this purpose, the list of final events or circumstances and relevant moments of disclosure should be as extensive as possible, by including the most frequent processes the issuer is subject to. To this objective, by protracted process is meant a series of actions, steps, or decisions spread in time which need to be performed, at least in part by the issuer, in order to achieve an intended objective or result.

(3) The list of protracted processes should refer to processes and to the corresponding final events or circumstances in a generic way, in order to include more specific processes and accommodate Member States' specificities regarding the applicable regime. When using the list, issuers should consider the processes included in the list and the relevant moment for disclosure in light of all the relevant national provisions, including corporate and insolvency law, as well as rules governing judicial or administrative proceedings.

(4) The list should be read in light of all the relevant provisions of Regulation (EU) No 596/2014. This includes the obligation to disclose the information as soon as possible contained in the first paragraph of Article 17(1), the possibility to delay the disclosure pursuant to Article17(4) and the obligation to proceed with public disclosure as soon as possible when confidentiality can no longer be ensured, pursuant to Article 17(7) of the same Regulation.

(5) The list applies without prejudice to the issuer's assessment of whether or not a protracted process involves inside information and it should not be read as providing indication of when inside information may exist in such protracted process. Consequently, whenever the information relating to the final events or circumstances listed in this delegated act does not qualify as inside information pursuant to Article 7 of Regulation (EU) No 596/2014, the relevant final event or circumstance is not subject to the disclosure obligations pursuant to Article 17(1) of Regulation (EU) No 596/2014.

(6) Whenever public disclosure of inside information relating to a final event or circumstance would prejudice an issuer's legitimate interest, the issuer may delay the disclosure of the final event in accordance with Article 17(4) of Regulation (EU) No 596/2014, provided that all the other conditions therein contained are met.

(7) In case of a breach of confidentiality, for example in case of a rumour that is sufficiently accurate to indicate that the confidentiality of the information is no longer ensured, the issuer should disclose that inside information to the public as soon as possible, in accordance with Article 17(7) of Regulation (EU) No 596/2014.

(8) To account for issuers whose corporate governance structure foresees a two-tier board structure, whenever the moment of disclosure refers to a decision taken by the issuer, where the law, bylaws or statue require the approval of the supervisory board, it should be meant the moment when supervisory board has adopted the decision. Whenever the supervisory board is to endorse the decision of the management board, the issuers' internal decision-making process should foresee for the decision of the first to be taken as soon as possible to ensure a timely disclosure.

(9) Where the board of directors of the issuer has delegated any of its powers or functions to a committee or to an executive director (e.g. CEO), or when a committee or an executive director are entitled to commit for the issuer in accordance with the applicable corporate law, the reference to the decision taken by the governing body indicates the decision taken by those latter.

(10) The list of protracted processes includes some specific processes provided in

relation to credit institution's recovery and resolution. However, recovery and early interventions measures foreseen under the Directive 2014/59/EU (BRRD) may correspond to processes foreseen for all issuers regarding business strategy. In such case, credit institutions can refer to the part of the list regarding the general business strategy processes to identify when to disclose the relevant of the recovery or of the early intervention measure. The list also includes recovery and resolution processes for insurance and reinsurance undertakings under the Directive (EU) 2025/1 of the European Parliament and of the Council of 27 November 2024 establishing a framework for the recovery and resolution of insurance and reinsurance undertakings (IRRD).

(11) Given the non-exhaustive nature of the list, the identification of inside information in respect to final events or circumstances of protracted processes not listed in the present delegated act remains an issuer's case-by-case assessments. In those cases, the issuer remains responsible to identify the final event or the final circumstance and, for each event or circumstance, the moment when it is deemed to have occurred and is to be disclosed. The issuer is expected to be able to provide a justification regarding the identification of the final event or the final circumstance and the relevant moment of disclosure upon the request of the competent authority to demonstrate compliance with Article 17(1) of EU Regulation No 596/2014.

(12) This delegated act is without prejudice to the application of Directive (EU) 2004/25 of the European parliament and of the council of 21 April 2004 on takeover bids, and of any act adopted by Member States to ensure that a bid is made public in such a way as to ensure market integrity for the securities of the offeree company, of the offeror or of any other company affected by the bid, and to prevent the publication or dissemination of false or misleading information pursuant to Article 8 thereof.

(13) Pursuant to Article 17(12) of Regulation (EU) No 596/2014, the Commission is empowered to adopt a delegated act establishing a non-exhaustive list of situations in which the inside information that the issuer or the emission allowance market participant intends to delay is in contrast with the latest public announcement or other type of communication by the issuer or emission allowance market participant on the same matter to which the inside information refers. The list is intended to provide legal certainty to issuers which should use it for the purpose of assessing whether there is a contrast between the inside information that is intended to be delayed and the latest public announcement or other types of communication by the issuers. For the purpose of such an assessment, the issuer should only consider its latest announcement or communication on the subject matter with the exception of specific cases where in order to draw a clear conclusion about the message conveyed by the issuer to the public it is necessary to take into account also previous announcements.

(14) Announcements and other types of communication should encompass a broad spectrum of messages and signals conveyed to the public by the issuer and, for that purpose, this delegated act provides a comprehensive list of all types of communication that issuers should take into account in their assessment.

(15) While the list of situations where there is a contrast between the inside information and the latest public announcement or communication covers the most common cases where a contrast may materialize, this is intended to be non-exhaustive and therefore other situations non listed in this delegated act may give rise to a contrast. Consequently, for the cases non included in the list, issuers should conduct a case-by-case assessment.

HAS ADOPTED THIS REGULATION:

Article 1
Subject matter

This Regulation establishes, pursuant to Article 17(12) of Regulation (EU) No 596/2014, a non-exhaustive list of:

(a) final events or final circumstances in protracted processes and, for each event or circumstance, the moment when it is to be disclosed pursuant to paragraph 1 of Article 17 of Regulation (EU) No 596/2014;

(b) situations in which the inside information that the issuer or the emission allowance market participant intends to delay is in contrast with the latest public announcement or other type of communication by the issuer or emission allowance market participant on the same matter to which the inside information refers.

Article 2
Disclosure of inside information in protracted processes

For the purpose of paragraph 1 of Article 17 of Regulation (EU) No 596/2014, a non-exhaustive list of events or circumstances in a protracted process and of the moments when each of them is deemed to have occurred and is to be disclosed referred to in Article 17(12) of Regulation (EU) No 596/2014 is contained in Annex I.

Article 3
Delayed disclosure of inside information

For the purposes of applying paragraph 4, point (b), of Article 17 of Regulation (EU) No 596/2014, a non-exhaustive list of situations in which the inside information that the issuer or the emission allowance market participant intends to delay is in contrast with the latest public announcement or other type of communication by the issuer or emission allowance market

participant on the same matter to which the inside information refers, referred to in Article 17(12) of Regulation (EU) No 596/2014, is contained in Annex II.

Article 4
Types of communication by the issuer

For the purposes of the non-exhaustive list of situations in Annex II of this Regulation, the following types of communication by the issuer shall be deemed relevant:

a) any communication or press release published by the issuer, including via media, social media and on the issuer's website;

b) public interviews delivered by any person representing the issuer;

c) publicly accessible pre-close calls, roadshows and other public events, including webinars and podcasts, organized or authorized by the issuer, or to which any person representing the issuer takes part;

d) advertising and marketing campaigns made public by the issuer;

e) publicly accessible regulatory filings by the issuer;

f) publicly accessible communications delivered in the context of the issuer's shareholders meetings;

g) any other communication to the public delivered by any person representing the issuer.

Article 5
Entry into force and date of application

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.
This Regulation shall be binding in its entirety and directly applicable in all Member States

Done at Brussels,

The President

ANNEX I

Non exhaustive list of final circumstances or events and moment of disclosure of inside information in protracted processes

No	Protracted Process	Final circumstances or Events	Moment of disclosure
A	**Business Strategy**		
1	Agreements	Signing of the agreement	As soon as possible after the signing of the agreement or any other equivalent act with binding effects. In case of agreements to be previously approved by the shareholders before the signing, as soon as possible after the parties' governing bodies have taken the decision to propose the agreement to their respective shareholders, after the core conditions have been agreed upon.
2	Mergers	Approval of draft terms of the merger	As soon as possible after the governing bodies of the merging companies have approved the draft terms of merger[27].
3	Acquisition or disposal of relevant assets (including subsidiaries)	Signing of the asset purchase agreement	As soon as possible after the signing of the agreement or any other equivalent act with binding effects.

[27] For "draft terms of merger" see Article 91 of Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law.

4	Major corporate reorganisations	Decision on corporate reorganisation	As soon as possible after the issuer's governing body has taken the decision to proceed with a corporate reorganisation, whose core elements have been defined.
5	Voluntary termination of a material agreement	Decision to terminate a material agreement	In case of voluntarily termination of a material agreement by the issuer, as soon as possible after the issuer's governing body has taken the decision to terminate the agreement.
B	**Capital Structure, dividends and interest payments**		
6	Capital increase (Issuance of additional shares)	Decision to issue new capital instruments	As soon as possible after the issuer's governing body has taken the decision to issue new capital instruments and on the relevant core conditions.
7	Share buyback	Decision to purchase own share	As soon as possible after the issuer's governing body has taken the decision to carry out a buy back and on its core elements.
8	Conversion of instruments	Decision to convert instruments	As soon as possible after the issuer's governing body has decided on the conversion of the financial instruments and on its core elements.
9	Dividends	Decision to propose a distribution of dividends or change in the dividend policy to the shareholders	As soon as possible after the issuer's governing body has taken the decision to propose a dividend distribution or a change in the dividend policy to the shareholders'.

10	Postponement or cancellation of interest payments or redemptions payments	Decision to postpone or cancel interest or redemption payments	As soon as possible after the issuer's governing body has taken the decision to postpone or cancel the payments.
C	**Provision of financial Information**		
11	Financial reports or interim financial reports	Acknowledgement or approval of financial results	As soon as possible after the financial results have been acknowledged or approved by the issuer's governing body.
12	Forecasts	Acknowledgement or approval of the forecasts	As soon as possible after the forecasts have been acknowledged or approved by the issuer's governing body. . .
D	**Corporate Governance**		
13	Change of management [Appointment or removal of Members of the governing body or managers holding a key role for which the governing body's decision is needed]	Decision of the governing body	As soon as possible after the issuer's governing body has taken the decision to appoint/remove a member of the governing body or a manager holding a key role for which the governing body's decision is needed).

14	Significant amendments to Articles of Incorporations or by laws	Decision to make significant amendments to the issuer's articles of incorporation or by-laws	As soon as possible after the issuer's governing body has taken the decision to propose the amendments to the articles of incorporation or by-laws to the shareholders.
E	**Interventions by public authorities**		
15	Application for a licence or authorisation	Application for a licence or authorisation	As soon as possible after the issuer submitted the application to the relevant public authority.
16	Granting or withdrawal of licence or authorisation	Granting or withdrawal of licence or authorisation	As soon as possible after the issuer has received the formal notification granting or withdrawing a licence or an authorisation, even where further to an application for a licence or authorisation the issuer and the public authority previously exchanged preliminary information or draft decisions that may on its own amount to inside information.
17	Application for recognition of Intellectual Property rights	Application for recognition of intellectual property rights	As soon as possible after the issuer submitted the application to the public authority.
19	Recognition of Intellectual Property (IP) rights	Notification of recognition of IP rights	As soon as possible after the issuer has received the final notification of recognition/non recognition of IP rights, even where, further to an application for recognition of property rights the issuer and the public authority previously exchanged preliminary information or draft decisions that may on its own amount to inside information.

19	Application for a licence to commercialise a product	Application for authorisation to commercialise a product	As soon as possible after the issuer submitted the application to the public authority.
20	Obtaining the authorisation to commercialise a product	Authorisation on product commercialisation	As soon as possible after the issuer has received the formal notification granting an authorisation to commercialise the product, even where further to an application for a licence to commercialise a product the issuer and the public authority previously exchanged preliminary information or draft decisions that may on its own amount to inside information.
21	Medical/clinical trials for pharmaceutical products	Medical trials conclusions	As soon as possible after the issuers has concluded the medical trials.
22	Authorisation to commercialise medical/pharmaceutical products	Authorisation to commercialise medical/pharmaceutical products	As soon as possible after the issuer has received the decision from the authority (regardless whether it is an acceptance or a rejection), even where further to an application for an authorisation to commercialise a medical/pharmaceutical product, the issuer and the public authority previously exchanged preliminary information or draft decisions that may on its own amount to inside information.
23	Participation in a public procurement process	Award of contract	As soon as possible after the issuer has received the formal notification that the issuer has been awarded a contract, even where further to the participation to a public procurement process, the issuer and the public authority previously exchanged preliminary information or draft decisions that may on its own amount to inside information.
24	Pre-Insolvency/ restructuring proceedings	Formal decision to enter into (preliminary) insolvency proceedings	In case of proceedings supervised by a court, as soon as possible after the issuer's governing body has taken the final decision to file for pre-insolvency proceedings.

		or agreements with creditors	In case of proceedings not supervised by a court, as soon as possible after the issuer's governing body has signed an agreement with creditors or any other arrangements foreseen for the case of insolvency.
25	Insolvency	Insolvency declaration	As soon as possible after the issuer's governing body has taken the decision to file for insolvency.
F	**Credit institutions**		
26	Supervisory review and evaluation process (SREP)[28]	Formal decision of the Prudential Competent Authority	As soon as possible after the credit institution has received the final SREP decision from Prudential Competent Authority, even where the issuer and the Prudential Competent Authority previously exchanged preliminary information or draft decisions that may on its own amount to inside information.
27	Reduction of own funds[29]	Formal decision of the Prudential Competent	As soon as possible after the credit institution is notified that the reduction of funds has been authorised by the Prudential Competent Authority, even where the issuer and the Prudential Competent Authority previously exchanged

[28] SREP refers to supervisory activities performed in accordance with Basel Pillar 2 in conformity the Capital Requirements Directive (Directive (EU) No 2013/36/EU), the relevant Level 2 measures and the EBA Guidelines and Opinions. Namely, it refers to the procedure identified in Article 97 of Directive (EU) No 2013/36/EU conducted regularly by competent authorities to determine whether the arrangements, strategies, processes and mechanisms implemented by a credit institution to comply with EU capital requirements and the own funds and liquidity held by it ensure a sound management and coverage of the risks to which the institution is or might be exposed and the risks revealed by stress testing. The SREP also assesses the risk that an institution poses to the financial system.

[29] Article 77 of the Capital Requirements Regulation (Regulation (EU) No 575/2013) lays down the conditions for the reduction of own funds. Namely, it establishes that an institution shall require the prior permission of the competent authority to (a) reduce, redeem or repurchase Common Equity Tier 1 instruments issued by the institution in a manner that is permitted under applicable national law and/or to (b) effect the call, redemption, repayment or repurchase of Additional Tier 1 instruments or Tier 2 instruments as applicable, prior to the date of their contractual maturity.

		Authority to reduce own funds	preliminary information or draft decisions that may on its own amount to inside information.
28	Preparation for resolution action[30]	Decision of the resolution authority to take resolution action in accordance with Article 82(2) of the BRRD or Article 64(2) of the IRRD..	As soon as the Decision of the resolution authority is published pursuant to Article 83 BRRD or Article 65(3) IRRD
29	Normal insolvency proceedings in accordance with the applicable national law	Decision of the relevant authority in accordance with national law	As soon as the decision of the relevant authority has been notified to the institution in accordance with national law.
G	**Legal Proceedings and Sanctions**		
30	Administrative proceedings	Decision of competent authority	As soon as possible after the issuer is formally informed by the competent authority of its final decision following the investigation~~,~~ even where the issuer and the public authority previously exchanged preliminary information or draft decisions that may on its own amount to inside information (even if the decision is subject to appeal).
31	Precautionary measures within judicial proceeding (both as plaintiff or defendant)	Decision by authority or court.	As soon as possible after the issuer received the notification of the decision on the precautionary measure (even if the decision it is subject to appeal).

[30] This process includes as intermediary steps the assessment of whether an entity is failing or likely to fail, the write down or conversion of capital instruments and eligible liabilities (Article 59 BRRD or Article 35 IRRD) and any decision or action adopted by the competent authority or the resolution authority until the adoption of thedecision to take resolution action.

32	Judicial Proceedings	Decision by authority or court	As soon as possible after the issuer received the notification of the decision (even if the decision it is subject to appeal).
33	Proceedings for quantification of sanctions	Decision on sanction	As soon as possible after the issuer is informed of the decision on the sanction (even if the decision is subject to appeal).
34	Delisting	Decision of delisting	In case of voluntarily delisting, as soon as possible after the formal decision of the governing body has taken the final decision on the delisting. In case of decision by the competent authority or the stock exchange, upon the receipt of the notice of delisting, even where the issuer and the public authority or the stock exchange previously exchanged preliminary information or draft decisions that may on its own amount to inside information.

ANNEX II

Non exhaustive list of situations where it is deemed that there is a contrast between the inside information that the issuer intends to delay and the latest public announcement or other types of communication by the issuer on the same matter to which the inside information refers

Number	Example
1	Inside information regarding a material change to forecasted financial results or business objectives previously announced by the issuer (e.g. profit warnings or earnings surprises).
2	Inside information regarding a material change to the environmental or social impact of a project or product previously publicly announced by the issuer (e.g. environmental targets which are likely not to be met).
3	Inside information regarding the financial viability of an issuer where materially different information regarding its financial strength was publicly announced by the issuer (e.g. need for capital increase or extraordinary bonds issuance).
4	Inside information that the results or the deadlines of a product or a project in development will not be met where those results or the deadlines were publicly announced by the issuer.
5	Inside information regarding a material change to a capital structure operation previously publicly announced by the issuer (e.g. significant modification in the issuance of financial instruments).

6	Inside information regarding a material change in a business strategy previously publicly announced by the issuer (e.g. decision to enter a new geographical market segment).
7	Inside information regarding a material change to fundamental elements of a contract or deal previously publicly announced by the issuer (e.g. termination of a commercial partnership or different target company of an acquisition).
8	Inside information regarding a material change in the previously publicly announced issuer's governance, including management structure and codes of conduct (e.g. decision to cancel a planned increase in the number of independent Board members).

6.4 Annex IV - Summary of proposals for SME GM

The proposals presented in the FR are summarised below.

Article 78(1) of CDR 2017/565

ESMA does not recommend any amendment to the requirements in Article 78(1) of CDR 2017/565.

ESMA more generally recommends to the European Commission to consider the need for an amendment to increase the threshold for qualification as a 'small and medium-sized enterprise' in Article 4(1)(13) of MiFID II.

Articles 78(2)(a) and (b) of CDR 2017/565

ESMA does not propose any amendment or further specification of the requirements in Articles 78(2)(a) and (b) of CDR 2017/565.

Articles 78(2)(c), (d) and (f) of CDR 2017/565

ESMA does not propose any amendment or further specification of the requirements in Articles 78(2)(c), (d) and (f) of CDR 2017/565.

Article 78(2)(e) of CDR 2017/565

ESMA proposes specifying that the statement regarding the working capital required in Article 78(2)(e) of CDR 2017/565 should be applicable only in case of share issuances and not in case of issuance of securities other than shares.

Article 78(2)(g) of CDR 2017/565

ESMA proposes to the European Commission to consider an amendment of Article 78(2)(g) of CDR 2017/565 to mandate that annual financial reports published by SME GM issuers are subject to audit.

ESMA additionally proposes to the European Commission to consider the merits of extending to SME GM issuers (and more generally to issuers admitted to trading on MTFs) the exemption currently included in Article 8(1)(b) of the Transparency Directive.

Article 78(2)(h) and (i) of CDR 2017/565

ESMA does not propose any amendment or further specification of the requirements in Articles 78(2)(h) and (i) of CDR 2017/565.

Proposal for new Article 78a to CDR 2017/565

To specify further the three requirements set out in Article 33(3a) of MiFID II, ESMA proposes to add a new Article 78a to CDR 2017/565.

To meet the requirements in Article 33(3a)(a) and (b) ESMA proposes:

1. that the market identification code to be used to ensure clear separation of the MIC and its related transactions should be a segment MIC and that the standard for the MIC is ISO 10383;

2. that it is sufficient for an SME GM segment to have a MIC code (or MIC codes - plural) that differentiate it from other MTF segments that do not have SME GM status.

To meet the requirements in Article 33(3a)(c) ESMA proposes that as a minimum level of information the SME GM segment should be able to provide the NCA with (i) the ISIN of the share and/or bond, (ii) the full name of the share and/or bond and (iii) the MIC of the SME GM segment.

Article 79 of CDR 2017/565

ESMA does not propose any amendment or further specification of the requirements in Articles 79 of CDR 2017/565.