

Paris, October 9th, 2020

Revision of the EU Market Abuse Regulation (MAR) - The Possible Inclusion of Spot FX

On September 23rd, 2020, the European Securities and Markets Authorities (ESMA) published their final report on the MAR revision, which will 'feed into' the European Commission's review of MAR and will assist legislative amendments to MAR. The Report is the first in-depth review of the functioning of MAR since its implementation in 2016. The European Commission must now, as part of the general review, decide if Spot FX should be covered by MAR.

The ESMA report on MAR has been scrutinised by three of the ACI FMA's Committees and Working Groups: The Committee for Professionalism, the Foreign Exchange Committee, and the Regulatory Working Group.

The ACI FMA welcomes ESMA's balanced report and adjudication of the feedback received from the industry regarding the potential inclusion of Spot FX contracts within the scope of MAR. In relation to Spot FX contracts, ESMA, while noting that there might be a regulatory gap in the area of Spot FX, due to the absence of regulatory coverage in the EU with respect to misconduct carried out in those markets, together with the fact that the voluntary FX Global Code is not enforceable, concluded that it is necessary to perform further analysis. This analysis is needed particularly in regards to setting up an EU regulatory regime for market abuse of Spot FX contracts once the revision of the FX Global Code has been finalised (anticipated in 2021).

However, the involvement of Central Banks, which extensively contributed to the definition of the principles in the FX Global Code, as well as of the NCAs (National Competent Authorities) should be "ensured" in the definition of a regulatory regime for Spot FX contracts in the EU.

The ACI FMA values and supports the FX Global Code and the continuing effort made by Central Banks and Market Participants to review, improve and extend the reach, usage of, and compliance with the FX Global Code within the global FX Market. Since the FX Global Code is truly global, as is the FX Market, ACI FMA would advocate that any extension to the scope of the MAR to include Spot FX contracts would require precise alignment to the FX Global Code. In our view, the alignment with the FX Global Code is essential, as the territorial scope of MAR will also apply to non-EU entities under certain specific circumstances.

Furthermore, inclusion within MAR's scope may require amendment of MiFID II / MiFIR with the ensuing complications, disruptions, and challenges to market participants systems and controls in order to achieve regulatory compliance.

ACI FMA's Committees and Working Groups are currently reviewing in detail the ESMA MAR report and will work with the regulators to determine the best workable solution for Market Participants in the FX Market.

ACI FMA's members are longstanding proponents and influencers of ethical conduct and good market practices to financial markets professionals.

Kim Winding Larsen
ACI FMA President Delegate

Background Information

On November 2019 and following cooperation among the three ACI FMA Committees and Working Groups, the ACI FMA submitted a response to the ESMA Consultation Paper on the provisions of the Market Abuse Regulation (MAR, effective from July 3rd, 2016) for the European Union (EU). In this Consultation, ESMA sought feedback regarding the possible inclusion of Spot FX contracts within the scope of MAR and this was the focus of the ACI FMA's response.

Please find the summary of our response on <https://acifma.com/news/update-aci-fma-feedback-market-abuse-regulation-mar>

The Consultation also covered several MAR considerations regarding, for example, PDMR (Person Discharging Managerial Responsibilities) threshold and product appropriateness, reporting obligations for BBPs (Buy-Back Programmes), the effectiveness of reporting disclosure delays for insider information, market soundings, the potential for insider trading and market manipulation sanctions (cross border), restricted/insider lists, etc.