

AMAFI-FBF GUIDE
SYSTEMS TO PREVENT
MARKET ABUSE

PREAMBLE 2

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PREAMBLE

Investment services providers (ISPs¹) must report to the AMF, in accordance with the conditions set out by Regulation (EU) No 596/2014 of 16 April 2014 on market abuse (MAR) and its delegated regulations, any transaction if they have reason to suspect that it may constitute insider dealing or market manipulation or attempted insider dealing or market manipulation. Within this framework, MAR establishes the principle that ISPs shall set up and maintain "*effective arrangements, systems and procedures to detect and report suspicious orders and transactions*" (MAR, Art. 16.2).

In 2005, when the reporting obligation was first introduced by the now-repealed Market Abuse Directive², AMAFI and the FBF spearheaded a cross-market initiative on the conditions for applying these procedures, with a view to providing guidance to their members. This work, which was carried out by a Group made up of compliance officers, legal specialists and trading desk staff, led to the publication in the same year of the "AMAFI-FBF Guide to implementing procedures for reporting suspicions of market abuse", which has now been renamed the "AMAFI – FBF Guide systems to prevent market abuse .

Part one of this Guide reviews the internal procedures that ISPs must have to meet their obligation to monitor, detect, analyse and report suspicious orders and transactions. Part two provides a typology of cases that may constitute market abuse, plus a list of indicators and signals to help in identifying and analysing detected transactions.

The internal procedures, typology, indicators and signals described in this Guide should be adapted to suit the size, organisation and activities of each individual ISP.

The AMAFI-FBF Guide is amended to reflect changes in the legislative and regulatory framework, applicable case law, market techniques and practices, and experience gained. Accordingly, it has been updated several times already, first in January 2009, then in April 2012 and April 2015.

This version is the fourth update of the Guide and seeks in particular to capture changes introduced by:

- Regulation EU 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 (hereafter MAR);
- Commission Delegated Regulation (EU) 2016/957 of 9 March 2016 supplementing MAR with regard to regulatory technical standards for the appropriate arrangements, systems and procedures as well as notification templates to be used for preventing, detecting and reporting abusive practices or suspicious orders or transactions, published on 17 June 2016 (hereafter DR STOR).

¹ AMAFI understands ISPs to mean investment services providers other than asset management companies.

² Directive 2003/6/EC of the European Parliament and of the Council.

- Commission Delegated Regulation (EU) 2016/522 of 17 December 2015 supplementing MAR as regards an exemption for certain third countries public bodies and central banks, the indicators of market manipulation, the disclosure thresholds, the competent authority for notifications of delays, the permission for trading during closed periods and types of notifiable managers' transactions, published on 5 April 2016 (hereafter DR Indicators);
- Commission Delegated Regulation (EU) 2016/958 of 9 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the technical arrangements for objective presentation of investment recommendations or other information recommending or suggesting an investment strategy and for disclosure of particular interests or indications of conflicts of interest (hereafter DR Investment Recommendations).

INTRODUCTION

To promote maximum efficiency in up-the-chain reporting of transactions that could potentially constitute market abuse or attempted market abuse, the various obligations imposed under the regulations are detailed below.

The obligation to set up a specific organisation is contained in Article 16.2 of MAR, which states that "*any person professionally arranging or executing transactions shall establish and maintain effective arrangements, systems and procedures to detect and report suspicious orders and transactions*".

The branches of foreign companies established in France are subject to these requirements, just like French institutions, and are therefore similarly required to report suspicious orders or transactions that they have identified to the AMF (*MAR, Art. 16.3*).

Firm-level supervision dovetails with that performed by the AMF through its market surveillance system, which handles large volumes of orders and transactions. Complementing the AMF's large-scale processing activities, individual monitoring allows ISPs to calibrate alerts to reflect the nature of their activity and to harness data available only at their own level through their interactions with clients, whether these be clients or counterparties dealing on own account (identity, instructions given, trading habits, approach taken to submit orders, and so on). This monitoring covers executed transactions as well as orders, including any related cancellation or change, whether they are executed on or outside a trading venue (*MAR, Art. 16.2*).

To give a clearer idea of the obligations arising from the abovementioned Article 16 of MAR, this Guide proposes to detail them in order, so as to provide a full description of the internal system used by ISPs to prevent market abuse (I). The goals of this system are first to monitor and detect market abuse (A), and second to analyse orders and transactions that could potentially constitute market abuse (B). If the analysis reveals that orders or transactions could potentially constitute market abuse or attempted market abuse, the ISP must report them to the AMF (C). In order to meet MAR obligations, the ISP must set up appropriate internal procedures (D). To facilitate the detection of transactions that could potentially constitute market manipulation or insider dealing, the Guide then provides a typology of transactions that could potentially constitute market abuse along with a list of indicators and signals (II).

This Guide uses the following definitions:

- ✓ "*Investment Services Providers (ISPs)*": Institutions subject to the obligation to report to the AMF any transaction if they have reason to suspect that it may constitute insider dealing or price manipulation or attempted insider dealing or price manipulation.
- ✓ "*Market abuse*": insider dealing, market manipulation and attempted insider dealing and market manipulation. Note that "transaction" means transactions, orders (placed, modified, cancelled, whether executed or not) as well as any other activity and behaviour more generally.
- ✓ "*STOR*" (*Suspicious Transaction and Order Report*): a report on a suspicious transaction or order that could constitute market abuse.

I. INTERNAL SYSTEM USED BY ISPs TO PREVENT MARKET ABUSE

Part one of this Guide describes the internal system used by IPS to prevent market abuse. The goals of this system are to monitor and detect potential market abuse (A), and then to analyse orders and transactions that could potentially constitute market abuse (B). If the analysis reveals that orders or transactions could potentially constitute market abuse or attempted market abuse, the ISP must report them to the AMF (C). The system should be rounded out with a number of internal procedures (D).

A. MONITORING AND DETECTING POTENTIAL MARKET ABUSE

The internal system to prevent market abuse comprises several stages, including monitoring, detection, analysis and reporting. Each ISP is responsible for identifying the people within its organisation who are in charge of executing each stage, based on its size and activity.

A.1. STAFF TRAINING

Prevention of market abuse is supported by training for staff members who play an important role in market abuse monitoring systems. Through their knowledge of clients and the markets, these employees are well placed to detect unusual transactions and to report them.

Staff requiring training under the regulations include:

- staff involved in processing orders and transactions³,
- staff specifically involved in monitoring, detecting and identifying market abuse⁴ (DR STOR, Art. 4.1).

ISPs shall organise and provide effective and comprehensive training on a regular basis to staff requiring training (DR STOR, Art. 4.1).

The Compliance function shall ensure that training content is appropriate and proportionate in relation to the scale, size and nature of the business. Furthermore, the content of staff training should take account of the exposure of such employees to market abuse issues.

Training content shall be updated whenever necessary and at the very least whenever there is a legislative or regulatory amendment with the potential to materially impact the ISP's business.

Records of attendance or other documentation giving evidence that staff training has been provided shall be kept by the ISP.

A.2. ESTABLISHMENT OF A SYSTEM TO MONITOR AND DETECT TRANSACTIONS THAT COULD POTENTIALLY CONSTITUTE MARKET ABUSE

ISPs shall establish and maintain arrangements, systems and procedures to ensure effective and constant monitoring of orders, transactions and practices that could constitute insider dealing, market manipulation or attempted market abuse.

³ Typically front office staff, although financial analysts should also receive training in market abuse issues.

⁴ Typically control and compliance team members who look after market abuse issues. It would also be appropriate to train any other employees identified as being exposed to market abuse issues, such as people who are in charge of responding to AMF requests to provide information on transactions, for example.

The monitoring and detection system shall encompass monitoring by specially trained employees⁵ and, where applicable, a detection system comprising an automated tool.

Regardless what system is put in place, it shall "*ensure an appropriate level of human analysis*" (DR STOR, Art. 3.4). With this in mind, the monitoring system cannot be based solely on the use of an automated tool. The ISP's organisation must ensure adequate human involvement and draw on the experience and care of all employees who are involved in processing orders and transactions to ensure that the overall system is effective and consistent with the firm's business and clientele.

The means of detection implemented shall be appropriate and proportionate in relation to the volume of transactions processed, the nature of the ISP's business and clientele, the ISP's organisation and the types of financial instruments concerned (DR STOR, Art. 2.5 a).

The means of detection implemented shall:

- allow for the analysis of every transaction executed and every order placed, modified, cancelled or rejected in the systems of trading venues and outside such venues; and
- produce alerts – for example by means of an automated tool – when one such transaction or order could potentially constitute a case of market abuse (DR STOR, Art.3.1)⁶.

The monitoring system shall cover the full range of the ISP's activities (DR STOR, Art.3.1).

If the monitoring system comprises an automated tool, the tool's settings shall be appropriate to the firm's activity, including:

- the kind of clients served by the ISP (retail, professional, eligible counterparties);
- the nature of the ISP's activities;
- the types of financial instruments processed by ISP;
- the liquidity of the financial instruments processed by the ISP; and
- volumes handled by the ISP (DR STOR, Art. 2.5 a).

The parameters of the system shall make it possible to regulate the number of alerts generated with regard to the firm's activity and risks and the human resources assigned to processing them.

⁵ See above A1.

⁶ On this point, see part II below.

A.3. REPORTING ALERTS UP THE CHAIN

Staff involved in processing orders and transactions shall be made aware of and trained in market abuse issues and should be able to detect transactions that could constitute market abuse and to inform the teams in charge of analysing suspicious transactions. Employees shall be subject to a general "best efforts" obligation to monitor transactions and must be made aware of this through training.

Accordingly, any detected transaction that could potentially constitute market abuse must be promptly reported to the teams in charge of analysing suspicious transactions. For this reason, staff involved in processing orders and transactions must submit factual and objective information: they are not responsible for performing their own analysis, i.e. they do not need to conduct an investigation or prepare a formal report.

Staff involved in processing orders and transactions within the ISP are required to report information up the chain to the teams in charge of analysing suspicious transactions.

B. ANALYSING SUSPICIOUS ORDERS OR TRANSACTIONS

ISPs must appoint examiners who are responsible for examining the suspicious transactions sent to them either by automated monitoring systems or through alerts reported up the chain by staff involved in processing orders and transactions (*see A3 above*). Examiners must ensure that any suspicious transaction reports drawn up are relevant and that reports are not filed "systematically" without pre-screening.

Examiners shall therefore assemble and review all the various pieces of information held by the ISP on the specific transaction. They shall make their assessment based on a range of evidence. In general, it will not be sufficient to consider a single indicator taken in isolation.

In the case of insider dealing, they may in particular consider the case by looking at past transactions by a specific client as well as KYC information about that client. When applicable, any links between the payer and a listed company (e.g. employee, senior manager) should be given careful consideration⁷.

In cases of market manipulation, examiners may analyse orders associated with the detected case, submission procedures, modifications or cancellations, dates and historical data on the client's activity over a sufficient period.

Once the case has been reviewed, examiners shall come to an independent decision about whether to make a report to the AMF⁸ or to file the case. Within the framework of firm-specific procedures, a committee may, for example, be set up in order to assist in this decision-making.

Based on the information gathered, the examiners may decide not to report the case to the AMF if, once the analysis is completed, the suspicion can be dismissed. They shall set down a formal record of the reasons that informed their decision to report or not report the case to the AMF. Whatever the case may be, all suspicious transaction reports, whether sent to the AMF or not, as well as the information used to detect the transactions, must be kept by the ISP for five years (*see D.3 below*).

⁷ See AMF, Enforcement Committee, 5 May 2011, published on 14 June 2011 (*SAN-2011-10*).

⁸ If applicable, a report may also be made to TRACFIN under anti-money laundering and terrorist financing obligations (*MFC, Art. L. 561-15*). Such a report shall require a prior analysis by the people concerned.

C. REPORTING SUSPICIOUS TRANSACTIONS TO THE AMF

Once the decision has been taken, based on the information gathered, to report suspicious transactions to the AMF, this report must be drafted and submitted in accordance with the procedures laid down in the regulations.

C.1. DRAFTING STORs

Examiners, who may be different from the persons responsible for drafting and submitting suspicious transaction reports, shall set down a formal record of the reasons informing their decision to report or not report the case to the AMF.

The layout and content of the suspicious transaction report must comply with strict formal requirements⁹. In particular, the report must include a description of the suspicious transaction, identification of the person or persons for whom the transaction was performed and reasons leading the ISP to make the report.

As regards the identity of the person whose orders or transactions are reported, note that the "national identification number"¹⁰ field is optional until MiFIR comes into effect¹¹.

Reports must be submitted using the electronic means specified by the competent authority (DR STOR, Art. 8.1). The AMF has asked for reports to be submitted using SESTERCE, which is a secure exchange system that meets MAR's submission requirements.

C.2. SUBMITTING STORs

STORs must be submitted to the AMF "without delay" (MAR Art. 16.2 and DR STOR, Art. 6.1).

However, this obligation shall apply only once examination of the case is completed, that is, once those responsible for performing the analysis have been able to properly document the case in order to formally record the reasons informing their decision to report or file the case. That being said, "*the practice of delaying the submission of a report in order to incorporate further suspicious orders or transactions is irreconcilable with the obligation to act without delay, where a reasonable suspicion has already been formed*" (DR STOR, recital 10).

The ISP shall submit to the AMF any relevant additional information which it becomes aware of after the STOR has been originally submitted, and shall provide any information or document requested by the AMF (DR STOR, Art. 6.3). It is possible to "*report STORs in relation to transactions and orders which occurred in the past, where suspicion has arisen in the light of subsequent events or information*"¹².

⁹ A STOR template based on the one provided by the AMF is provided in Annex 4 of this guide.

¹⁰ The national identification number is defined in accordance with Article 6 of the draft MiFID delegated regulation (RTS 22). In accordance with Article 26.3 of MiFIR, it is used to identify the client on whose behalf the ISP has executed the transaction.

¹¹ The definition of the national identification number includes the wording "where applicable" and "where applicable in the concerned Member States" (DR STOR, Annex). The AMF has confirmed that a national identification number is not obligatory at this stage.

¹² "*There might be circumstances when a reasonable suspicion of insider dealing, market manipulation or attempted insider dealing or market manipulation is formed some time after the suspected activity occurred, due to subsequent events or available information. This should not be a reason for not reporting the suspected activity to the competent authority. In order to demonstrate compliance with the reporting requirements in those specific circumstances, the person submitting the report should be able to justify the time discrepancy between the occurrence of the suspected activity and the formation of the reasonable suspicion of insider dealing, market manipulation or attempted insider*"

In such cases, the ISP shall explain in the STOR the delay between the suspected breach and the submission of the STOR according to the specific circumstances of the case (*DR STOR, Art. 6.2*).

In the case of transactions that may turn out after the fact to constitute actual or attempted insider dealing or price manipulation and that the ISP has failed to detect and/or report, the firm may not be held liable unless it has not established an effective monitoring, analysis and detection system.

C.3. REPORTING IN GOOD FAITH

Suspicious transaction reports shall be made in good faith.

No legal proceedings may be taken on the grounds of a breach of professional secrecy against anyone who makes a suspicious transaction report in good faith to the AMF (*MFC, Art. L. 621-17-7*).

Similarly, no action on civil liability may be brought against anyone who makes a suspicious transaction report in good faith to the AMF. By the same token, a person who reports a potential case of market abuse within the internal organisation shall not be held liable solely for transmitting this information¹³. A person making a report in good faith shall be released of all liability regarding the report made: no criminal proceedings for insider dealing, price rigging or *recef* (possession or handling of stolen goods or a similar offence), and no administrative sanction proceedings may be brought against that person for facts associated with insider dealing or price rigging.

dealing or market manipulation" (DR STOR, recital 11).

¹³ See Article L. 621-17-7 of the Monetary and Financial Code, which releases from all liability the senior managers and employees of ISPs that report suspicious transactions in good faith.

D. INTERNAL PROCEDURES

The internal organisation put in place to prevent market abuse shall make it possible to ensure sound governance of the system for ISPs belonging to a group, delegating to an outside provider or acting within a chain of intermediaries, as the case may be (D.1). The system must guarantee the principle of confidentiality for STORs (D.2). Provision must also be made to ensure that data are adequately retained (D.3). Finally, the system needs to be reviewed on a regular basis (D.4).

D.1. GOVERNANCE

An ISP shall have the right, by a written agreement, to delegate to a legal person forming part of the same group the performance of the functions of monitoring, detection and identification of orders and transactions that could constitute market abuse. The person delegating those functions shall remain fully responsible for discharging all of its obligations under MAR and shall ensure the arrangement is clearly documented and the tasks and responsibilities are assigned and agreed, including the duration of the delegation (*DR STOR, Art. 3.6*).

Groups may put in place an organisation making it possible to centralise with one entity from the group the detection of suspicious transactions and suspicious transaction reporting for all of the group's entities. However, each group entity shall remain responsible for meeting the STOR obligation with regard to its transactions and must therefore ensure that the system set up at group level makes it possible to perform detection that is at least equivalent to what the entity would have had to establish at its own level and with the same level of granularity, notably by taking account of all of the information at the entity's disposal¹⁴.

Firms established in France which form part of a financial group "shall be required [...] to send [...] the information required to organise detection of insider dealing or price manipulation" to other firms in the same group (*MFC, Art. L. 511-34*).

An ISP may also, by written agreement, delegate the performance of data analysis, including order and transaction data, and the generation of alerts necessary for such person to conduct monitoring, detection and identification of orders and transactions that could constitute market abuse to a third party ("sub-contractor"). However, any ISP that delegates these functions shall remain fully responsible for discharging all of its obligations under MAR and comply with the following conditions:

- the ISP shall retain the expertise and resources necessary for evaluating the quality of the services provided and the organisational adequacy of the sub-contractors, for supervising the delegated services and for the management of the risks associated with the delegation of those functions on an ongoing basis; and
- the ISP shall have direct access to all the relevant information regarding the data analysis and the generation of alerts.

Moreover, the written agreement shall contain the description of the rights and obligations of the ISP delegating the functions and those of the sub-contractor. It shall also set out the grounds that allow the ISP to terminate such agreement (*DR STOR, Art. 3.7*).

¹⁴ See AMF administrative settlement agreements of 15 January 2015, 16 January 2015 and 19 January 2015, published on 10 April 2015 (*TRA-2015-06*).

Each ISP in a chain of intermediaries must establish a system to monitor, detect and identify market abuse, on the basis of its own activity, knowledge of transactions, and, where applicable, knowledge of its clients. Accordingly, ISPs that exclusively perform the service of RTO may not consider themselves to be exempt on the grounds that the market member already has a system in place to prevent market abuse.

D.2. CONFIDENTIALITY

The up-the-chain reporting system described above (*see A.3 above*) must make it possible to meet confidentiality requirements. The system may, for example, work by centralising information flows about transactions that could constitute market manipulation or insider dealing with the persons in charge of analysing suspicious transactions. A centralised organisation of this kind makes it possible to reduce the number of people with access to the information, so mitigating the risk of divulging confidential information.

Furthermore, the confidential nature of the information being reviewed (such as client information) means that this information must be handled by a person or persons bound by a confidentiality obligation (*DR STOR, Art. 3.8 subpar.2*).

The ISP and any employee who is aware of the report shall not divulge to the persons, clients or parties associated with the persons on behalf of whom the reported transactions were carried out, the existence of the report or any information concerning its outcome (*MFC, Art. L. 621-17-5*).

Information gathered in the context of a suspicious transaction report must not be divulged or used for any other purpose than identifying market abuse. In this context, the AMF shall seek to deal primarily with the person within the reporting entity who is clearly identified on the suspicious transaction report form, in order to preserve the requisite confidentiality.

To recall, firms established in France which form part of a financial group "*shall be required [...] to send [...] the information required to organise detection of insider dealing or price manipulation*" to other firms in the same group (*MFC, Art. L. 511-34*).

By way of an exception to the principle of confidentiality, where transactions covered by the report come under the jurisdiction of the competent authority of another Member State of the European Community or party to the European Economic Area Agreement, the AMF shall send the report to said authority without delay, along with any additional information provided by the reporting entity at said authority's request (*MFC, Art. L.621-17-6*).

D.3. DATA RETENTION

ISPs shall retain all data concerning transactions involving suspected market abuse for five years, whether or not these resulted in a STOR being sent to the AMF. Information that was used to detect these transactions and case analysis files must also be archived. Analyses of transactions identified as potentially suspicious but that were not notified because the suspicions turned out to be unfounded must be retained, and the ISP must record the reasons why these transactions went unreported.

Internal procedures to prevent market abuse shall be clearly documented in writing, including any changes or updates to them. The information contained in this documentation shall be maintained for a period of five years (*DR STOR, Art. 2.5 c*).

D.4. AUDIT

Arrangements, systems and procedures to prevent market abuse shall be regularly assessed, at least through an annually conducted audit and internal review, and updated when necessary (DR STOR, Art. 2.5 b).

The procedure in force within the ISP must also provide for periodic reporting on the system to senior management.

II. TYPOLOGY OF SUSPICIOUS TRANSACTIONS AND INDICATORS

To help ISPs meet their MAR obligations, the Guide proposes a typology of suspicious transactions¹⁵, which is designed to facilitate the detection of transactions that could potentially constitute market manipulation or insider dealing (A). This typology is accompanied by indicators and signals (B) to assist in detecting and analysing the cases contained in the typology.

The obligation to have a typology of suspicious transactions is laid down by Article 16.2 of MAR, which requires ISPs to establish and maintain "*effective arrangements, systems and procedures to detect and report suspicious orders and transactions*".

A. GENERAL TYPOLOGY OF CASES THAT COULD POTENTIALLY CONSTITUTE PRICE MANIPULATION AND INSIDER DEALING

Using this general typology, each ISP must adapt its detection system to reflect the cases of market manipulation and insider dealing that it could potentially encounter.

Source: This typology is based on the cases of potential market manipulation and insider dealing defined by MAR and its Delegated Regulation on Indicators ("DR Indicators").

For the sake of clarity, cases are grouped according to whether they could potentially constitute market manipulation (A.1), which includes price manipulation and dissemination of false or misleading information, or insider dealing¹⁶ (A.2).

Some transactions are exceptionally authorised under certain conditions and do not have to be reported to the AMF if these conditions are met. These exceptions and accepted market practices are also recalled below (A.3).

¹⁵ The obligation to prevent and detect market abuse covers insider dealing, market manipulation and attempted insider dealing and market manipulation (*MAR, Art. 16*). Note that the term "transaction" means transactions and orders (even unexecuted orders) as well as any other activity and "behaviour" more generally (*MAR, Art. 12*). "*The arrangements, systems and procedures [...] shall allow for the analysis, individually and comparatively, of each and every transaction executed and order placed, modified, cancelled or rejected in the systems of the trading venue and, in the case of persons professionally arranging or executing transactions, also outside a trading venue*" (*DR STOR, Art. 3.1.a*). An order means "*each and every order, including each and every quote, irrespective of whether its purpose is initial submission, modification, update or cancellation of an order and irrespective of its type*" (*DR STOR, Art. 1.d*).

¹⁶ MAR does not provide dedicated indicators to detect insider dealing. However, AMAFI is proposing a list of indicators that may help in detecting these transactions (*see p. 31 below*).

Definitions

The terms *Product*, *Physical Contract* and *Commodity Derivative* shall have the following meanings:

- The term *Product* shall mean a "financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances" (MAR, Art. 12).
- The term *Physical Contract* shall mean a spot commodity contract, i.e. a contract for the supply of a commodity traded on a spot market which is promptly delivered when the transaction is settled, and a contract for the supply of a commodity that is not a financial instrument, including a physically settled forward contract (MAR, Art. 3.1(15)).
- The term *Commodity Derivative* shall mean a commodity derivative as defined by MiFIR¹⁷ (MAR, Art. 3.1(24)).

A.1. MARKET MANIPULATION

Market manipulation and attempted market manipulation is prohibited under Article 15 of MAR.

- **Price manipulation**
- **Definition**

Market manipulation shall comprise:

1- Any transaction, order or behaviour that:

- Gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a Product (MAR, Art. 12.1. a (i)),
- Secures, or is likely to secure, the price of one or several Products at an abnormal or artificial level (MAR, Art. 12.1. a (ii)).

2- Any transaction, order, activity or behaviour that affects or is likely to affect the price of one or several Products, which employs a fictitious device or any other form of deception or contrivance (MAR, Art. 12.1. b).

3- The conduct by a person, or persons acting in collaboration, to secure a dominant position over the supply of or demand for a Product which has, or is likely to have, the effect of fixing, directly or indirectly, purchase or sale prices or creates, or is likely to create, other unfair trading conditions (MAR, Art. 12.2. a).

4- The buying or selling of financial instruments, at the opening or closing of the market, which has or is likely to have the effect of misleading investors (MAR, Art. 12.2. b).

¹⁷ 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.

➤ **Price manipulation typology**

Cases of cross-product and inter-venue manipulation do not constitute market abuse as such but are possible methods for committing market abuse. Accordingly, the Guide will indicate for each of the cases covered by the typology below whether it is particularly likely to occur in an inter-venue or cross-product form.

• **Inter-trading venues manipulation**¹⁸. "*Undertaking trading or entering orders to trade in one trading venue or outside a trading venue (including entering indications of interest) with a view to improperly influencing the price of the same [Product] in another trading venue or outside a trading venue*" (DR Indicators, Annex II, SI, 2.c and 5.b).

• **Cross-product manipulation**. "*Undertaking trading or entering orders to trade in one trading venue or outside a trading venue (including entering indications of interest) with a view to improperly influencing the price of another [Product] in another or in the same trading venue or outside a trading venue*" (DR Indicators, Annex II, SI, 2.d and 5.c).

Cases of price manipulation included in the following typology apply to all financial instruments that come within the scope of MAR. Some cases include clarifying guidance (identified by the word "**GUIDANCE**").

• **Trading at a reference time**. "*Buying or selling of a [Product], deliberately, at the reference time of the trading session (e.g. opening, closing, settlement, fixing) in an effort to increase, to decrease or to maintain the reference price (e.g. opening price, closing price, settlement price) at a specific level*" (DR Indicators, Annex II, SI, 5.d).

GUIDANCE: This type of case may be encountered in both inter-trading venue and cross-product forms.

• **Placing orders with no intention of executing them**¹⁹. "*Entering of orders which are withdrawn before execution, thus having the effect, or which are likely to have the effect, of giving a misleading impression that there is demand for or supply of a [Product]*" (DR Indicators, Annex II, SI, 6.a).

GUIDANCE: This type of case may be encountered in inter-trading venue and cross-product forms.

• **Colluding in the after market of an Initial Public Offer**²⁰. "*Buying of positions, also by colluding parties, of a [Product], on the secondary market, after the allocation in the primary market in order to post the price to an artificial level and generate interest from other investors*" (DR Indicators, Annex II, SI, 1.a).

GUIDANCE: This case is related to the concept of creating a floor or ceiling in the price pattern.

It is not a relevant case for commodities.

• **Abusive squeeze**²¹. "*Taking advantage of the significant influence of a dominant position over the supply of, or demand for, or delivery mechanisms for a [Product], in order to materially distort, or likely to distort, the prices at which other parties have to deliver, take delivery or defer delivery in order to satisfy their obligations*" (DR Indicators, Annex II, SI, 2.b).

GUIDANCE: This case might apply, for example, to a situation where the aim is to fraudulently squeeze the lending market in a given security or take advantage of numerous short selling positions.

¹⁸ See AMF, Enforcement Committee, 5 July 2016, published on 6 July 2016 (SAN-2016-10) and AMF, Enforcement Committee, 4 December 2015, published on 8 December 2015 (SAN-2015-20).

¹⁹ French and UK regulators have punished this type of behaviour (See AMF, Enforcement Committee, 12 May 2011, Decision Notice, 6 May 2011).

²⁰ As defined by Article 411-1 of the MFC.

²¹ See AMF, Enforcement Committee, 4 December 2015 (SAN-2015-20) cited above and AMF, Enforcement Committee, 8 October 2015, published on 12 October 2015 (SAN-2015-17).

• **Creation of a floor - ceiling in the price pattern.** "Transactions or orders to trade carried out in such a way that obstacles are created to the [Product], with prices falling below, or rising above a certain level, mainly in order to avoid negative consequences deriving from changes in the price of the [Product]" (DR Indicators, Annex II, SI, 1.b).

GUIDANCE: These types of transactions or orders are to be distinguished from transactions conducted as part of a buy-back programme or stabilisation measures (see A.3 below).

This type of case may be encountered in inter-venue and cross-product forms.

• **Advancing the bid.** "Entering orders to trade which increase the bid (or decrease the offer) for a [Product], in order to increase (or decrease) its price" (DR Indicators, Annex II, SI, 6.d).

GUIDANCE: This type of case may be encountered in inter-venue and cross-product forms.

It is not relevant to physical commodity contracts where there is no centralised order book.

• **Painting the tape.** "Entering into orders to trade or engaging in a transaction or series of transactions which are shown on a public display facility to give the impression of activity or price movement in a [Product]" (DR Indicators, Annex II, SI, 3.b).

GUIDANCE: This type of case is not relevant to physical commodity contracts because volumes are not published.

• **Wash trade - Improper matched order.** Transactions carried out at or nearly at the same time, with very similar quantity and similar price, where there is no change in beneficial interests in the Product or market risk or where beneficial interest or market risk is transferred between parties who are acting in concert or collusion. These particularly include transactions or orders to trade which modify, or are likely to modify, the valuation of a position while not decreasing/increasing the size of the position (DR Indicators, Annex II, SI, 3.a, and c).

GUIDANCE: This case combines two similar cases described in the legislation, i.e. the practices generally known as "wash trades"²² and "improper matched orders"²³.

²² "Entering into arrangements for the sale or purchase of a financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances, where there is no change in beneficial interests or market risk or where beneficial interest or market risk is transferred between parties who are acting in concert or collusion — usually known as 'wash trades'" (DR Indicators, Annex II, SI, 3.a).

²³ "Transactions carried out as a result of the entering of buy and sell orders to trade at or nearly at the same time, with very similar quantity and similar price, by the same party or different but colluding parties — usually known as 'improper matched orders'" (DR Indicators, Annex II, SI, 3.c).

- **Give a false impression to the market via electronic tools**²⁴. "The placing of orders to a trading venue, including any cancellation or modification thereof, by any available means of trading, including by electronic means, such as algorithmic and high-frequency trading strategies [...] by creating or being likely to create a false or misleading signal about the supply of, or demand for, or price of, a financial instrument, in particular by entering orders to initiate or exacerbate a trend" (*MAR, Art. 12.2. c (i)(ii)(iii)*).

GUIDANCE: This type of case may be encountered in inter-venue and cross-product forms.

- **Concealing ownership - Parking.** "Transaction or series of transactions designed to conceal the ownership of a Product via the breach of disclosure requirements through the holding of the Product in the name of a colluding party or parties. The disclosures are misleading in respect of the true underlying holding of the [Product]" (*DR Indicators, Annex II. Sl. 3.d*).

GUIDANCE: The obligations referred to here include disclosures of short positions and major shareholding disclosures.

As regards commodities, the obligations that this type of approach seeks to circumvent may include those pertaining to position limits as set down by Articles L. 420-11 to L.420-15 of the Monetary and Financial Code²⁵.

- **Pump & dump / Trash & cash.** "Taking of a long or short position in a [Product] and then undertaking further buying or selling activity and/or disseminating [misleading positive or negative] information about the financial instrument or product with a view to increasing [or] decreasing the price of the [Product], by the attraction of other buyers [or] sellers. When the price is at an artificial high [or low] level, the [...] position held is sold out" (*DR Indicators, Annex II. Sl. 4.c and 4.d*).

GUIDANCE: This example combines two similar cases provided for in the legislation: "pump and dump"²⁶ and "trash and cash"²⁷, which are based on the same mechanisms, with the former applying to long positions and the latter to short positions²⁸.

This type of case may be encountered in an inter-venue form.

- **Phishing.** "Executing orders to trade, or a series of orders to trade, in order to uncover orders of other participants, and then entering an order to trade to take advantage of the information obtained" (*DR Indicators, Annex II. Sl. 1.d*).

GUIDANCE: This case is particularly relevant if the ISP uses automated trading tools as defined in AMF Position No 2012-03.

²⁴ See AMF, Enforcement Committee, 8 July 2016, published on 12 July 2016 (*SAN-2016-11*) and AMF, Enforcement Committee, 4 December 2015 (*SAN-2015-20*) cited above.

²⁵ These articles were introduced into the MFC by Executive Order 2016-827, which transposed MiFID 2 provisions into French law. They will come into force when the executive order becomes effective on 3 January 2018.

²⁶ "Taking of a long position in a financial instrument, related spot commodity contract, or an auctioned product based on emission allowances and then undertaking further buying activity and/or disseminating misleading positive information about the financial instrument or product with a view to increasing the price of the financial instrument, related spot commodity contract, or an auctioned product based on emission allowances, by the attraction of other buyers. When the price is at an artificial high level, the long position held is sold out — usually known as 'pump and dump'" (*DR Indicators, Annex II. Sl.4.c*).

²⁷ "Taking of a short position in a financial instrument, related spot commodity contract, or an auctioned product based on emission allowances and then undertaking further selling activity and/or disseminating misleading negative information about the financial instrument or product with a view to decreasing the price of the financial instrument, related spot commodity contract, or an auctioned product based on emission allowances, by the attraction of other sellers. When the price has fallen, the position held is closed — usually known as 'trash and cash'" (*DR Indicators, Annex II. Sl.4.d*).

²⁸ See AMF, Enforcement Committee, 13 November 2008, published on 20 April 2009 (*SAN-2009-15*).

- **Quote stuffing.** *"Entering large number of orders to trade and/or cancellations and/or updates to orders to trade so as to create uncertainty for other participants, slowing down their process and/or to camouflage their own strategy" (DR Indicators, Annex II. SI. 4.e).*

GUIDANCE: This case is particularly relevant if the ISP uses automated trading tools as defined in AMF Position No 2012-03.

- **Momentum ignition.** *"Entering orders to trade or a series of orders to trade, or executing transactions or series of transactions, likely to start or exacerbate a trend and to encourage other participants to accelerate or extend the trend in order to create an opportunity to close out or open a position at a favourable price. This practice may also be illustrated by the high ratio of cancelled orders (e.g. order to trade ratio) which may be combined with a ratio on volume (e.g. number of financial instruments per order)" (DR Indicators, Annex II. SI. 4.f).*

GUIDANCE: On trading venues, the high ratio of cancelled orders may be calculated on the basis of the order to trade ratio as defined by MiFID2²⁹. Also, the ratio on volume should be defined by taking account of the volume traded in the market and the liquidity of the security.

This case is particularly relevant if the ISP uses automated trading tools as defined in AMF Position No 2012-03.

This type of case may be encountered in inter-venue and cross-product forms.

- **Layering - spoofing**³⁰. *"Submitting multiple or large orders to trade often away from the touch on one side of the order book in order to execute a trade on the other side of the order book. Once the trade has taken place, the orders with no intention to be executed shall be removed" (DR Indicators, Annex II. SI. 5.e).*

GUIDANCE: This case is particularly relevant if the ISP uses automated trading tools as defined in AMF Position No 2012-03. That being said, the AMF has already punished the practice in connection with the placement of manual orders³¹.

This type of case may be encountered in an inter-venue form.

- **Excessive bid-offer spreads**³². *"Moving the bid-offer spread to and/or maintaining it at artificial levels, by abusing of market power³³" (DR Indicators, Annex II. SI. 6.c).*

GUIDANCE: Market power refers to persons with significant influence on the market. This influence will be greater when the bid-offer spread is naturally wide because the securities in question are illiquid.

The resulting gap must not be automatically deemed excessive insofar as it may be inherent to the activities of market making or liquidity provision.

- **Smoking.** *"Posting orders to trade, to attract other market participants employing traditional trading techniques ('slow traders'), that are then rapidly revised onto less generous terms, hoping to execute profitably against the incoming flow of 'slow traders' orders to trade" (DR Indicators, Annex II. SI. 6.j).*

GUIDANCE: This case is unsuited to activities that do not use automated trading tools.

²⁹ See Article 48.6 of MiFID2 and Article 3 of Commission Delegated Regulation (EU) 2017/566 of 18.5.2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards for the ratio of unexecuted orders to transactions in order to prevent disorderly trading conditions.

³⁰ See AMF, Enforcement Committee, 8 October 2015 (*SAN-2015-17*) cited above.

³¹ See AMF, Enforcement Committee, 1 October 2014, published on 2 October (*SAN-2014-17*).

³² See AMF, Enforcement Committee, 5 July 2016 (*SAN-2016-10*) cited above.

³³ While the French version of the legislation translates to "power of the market", the English version uses the term "market power". The English version shall be considered to be the correct reading.

• **Fixing the closing price of an emission allowance at an abnormal or artificial level by trading on the secondary market.** "*The buying or selling on the secondary market of emission allowances or related derivatives prior to the auction held pursuant to Regulation (EU) No 1031/2010 with the effect of fixing the auction clearing price for the auctioned products at an abnormal or artificial level or misleading bidders bidding in the auctions*" (MAR, Art. 12.2.e).

• **Unlawful transfer of funds.** Purchase transactions involving a *Product*, mainly on an illiquid market, having the effect of successively moving the price and making it possible, via transactions between two parties, to artificially create capital gains or losses for one or other of the parties.

GUIDANCE: This case is not taken from MAR (or MAD). However, it is relevant, notably when it comes to detecting laundering activities, including those involving commodities.

➤ **Dissemination of false or misleading information**

➤ **Definition**

The following shall constitute dissemination of false or misleading information:

1- The action of:

- Disseminating information by any means, which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a *Product*, or secures, is likely to secure, the price of one or several *Products* at an abnormal or artificial level (MAR, Art. 12.1(c)).
- Disseminating rumours through the media or by any other means, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading (MAR, Art. 12.1(c)).
- Transmitting false or misleading information or providing false or misleading inputs in relation to a benchmark where the person who made the transmission or provided the input knew or ought to have known that it was false or misleading. Any other behaviour which manipulates the calculation of a benchmark (MAR, Art. 12.1(d)).

Comments are provided below to clarify some of the cases described in the following detailed typology (identified by the word "**GUIDANCE**").

➤ **Dissemination of false or misleading information typology (MAR, Art. 12.1.b)**

• **Deception or contrivance via the dissemination of false or misleading information.** "*Whether orders to trade given or transactions undertaken by persons are preceded or followed by dissemination of false or misleading information by the same persons or by persons linked to them*" (MAR, Annex I-B. a).

• **Deception or contrivance via erroneous or biased investment recommendations.** "Whether orders to trade are given or transactions are undertaken by persons before or after the same persons or persons linked to them produce or disseminate investment recommendations which are erroneous, biased, or demonstrably influenced by material interest" (MAR, Annex I-B. b).

"Entering into a transaction, placing an order to trade or any other activity or behaviour which affects or is likely to affect the price of one or several [Products], which employs a fictitious device or any other form of deception or contrivance" (MAR, Art. 12.1.b).

• **Dissemination of false or misleading market information through the media.** "Dissemination of false or misleading market information through the media, including the internet, or by any other means, which results or is likely to result in the moving of the price of a [Product], in a direction favourable to the position held or to a transaction planned by the person or persons interested in the dissemination of the information" (DR Indicators, Annex II. SII. 1.a)³⁴.

• **Front running investment recommendations.** "Entering orders to trade or transactions before or shortly after the market participant or persons publicly known as linked to that market participant produce or disseminate contrary research or investment recommendations that are made publicly available"³⁵ (DR Indicators, Annex II. SII. 2.a).

• **Disrupting trading systems**³⁶. "The placing of orders to a trading venue, including any cancellation or modification thereof, by any available means of trading, including by electronic means, such as algorithmic and high-frequency trading strategies, and which has one of the effects referred to [...]:

- disrupting or delaying the functioning of the trading system of the trading venue or being likely to do so (MAR, Art. 12.2. c (i)).
- making it more difficult for other persons to identify genuine orders on the trading system of the trading venue or being likely to do so, including by entering orders which result in the overloading or destabilisation of the order book; or (MAR, Art. 12.2. c (ii)).
- creating or being likely to create a false or misleading signal about the supply of, or demand for, or price of, a financial instrument, in particular by entering orders to initiate or exacerbate a trend (MAR, Art. 12.2. c (iii))".

• **Voicing an opinion about a financial instrument without having disclosed a conflict of interest.**

"The taking advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about a [Product] (or indirectly about its issuer) while having previously taken positions on that [Product] and profiting subsequently from the impact of the opinions voiced on the price of that Product, without having simultaneously disclosed that conflict of interest to the public in a proper and effective way" (MAR, Art. 12.2. d).

GUIDANCE: If this case applies to an investment recommendation³⁷ as defined by MAR then the conflict of interest must be disclosed in a proper and effective manner (DR Investment Recommendations, Art. 6).

• **Opening a position and closing such position immediately after publication.** "Opening a position in a [Product] and closing such position immediately after having publicly disclosed and having put emphasis on the long holding period of the investment" (DR Indicators, Annex II. SII. 1.b).

GUIDANCE: This case refers, for example, to a situation where an entity uses its reputation to promote a Product by emphasising the fact that it has itself opened a position in the product. Once the promotion is complete, the entity closes its position without disclosing this.

³⁴ See AMF, Enforcement Committee, 28 June 2016, published on 29 June 2016 (SAN-2016-09).

³⁵ See AMF, Enforcement Committee, 29 May 2017, published on 1 June 2017 (SAN-2017-05).

³⁶ See AMF, Enforcement Committee, 8 July 2016 (SAN-2016-11), cited above.

³⁷ See Annex 1 of this guide, Art. 3(35), MAR.

A.2. INSIDER DEALING

Insider dealing and the unlawful disclosure of inside information are prohibited by Article 14 of MAR, which states that "a person shall not:

- engage or attempt to engage in insider dealing;
- recommend that another person engage in insider dealing or induce another person to engage in insider dealing; or
- unlawfully disclose inside information."

➤ Definition

Insider dealing means the following (MAR, Art. 8):

- A person uses inside information by acquiring or disposing of, or attempting to acquire or dispose of, for its own account or for the account of a third party, directly or indirectly, financial instruments to which that information relates (MAR, Art. 8.1).
- The use of inside information by cancelling or amending an order concerning a financial instrument to which the information relates where the order was placed before the person concerned possessed the inside information, shall also be considered to be insider dealing (MAR, Art. 8.1).
- Recommending that another person engage in insider dealing, or inducing another person to engage in insider dealing, arises where the person possesses inside information and recommends, on the basis of that information:
 - o that another person acquire or dispose of financial instruments to which that information relates, or induces that person to make such an acquisition or disposal, or
 - o that another person cancel or amend an order concerning a financial instrument to which that information relates, or induces that person to make such a cancellation or amendment (MAR, Art. 8.2).
- Unlawful disclosure of inside information to any other person, except where the disclosure is made in the normal exercise of an employment, a profession or duties (MAR, Art. 10).
- The onward disclosure of recommendations or inducements based on inside information amounts to unlawful disclosure of inside information where the person disclosing the recommendation or inducement knows or ought to know that it was based on inside information (MAR, Art. 10).

An important effect of these rules is that merely holding inside information does not characterise insider dealing. In other words, insider dealing does not arise when a person holds inside information but when the person uses such information or induces another person or makes a recommendation to another person to enter into transactions to which that information relates.

Inside information is defined as "*information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments*" (MAR, Art. 7.1. a).

For persons charged with the execution of orders concerning financial instruments, it also means information conveyed by a client and relating to the client's pending orders in financial instruments, which is of a precise nature, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments (*MAR, Art. 7.1. d*).

In relation to auctions of emission allowances or other auctioned Products based thereon that are held pursuant to Regulation (EU) No 1031/2010, the use of inside information shall also comprise submitting, modifying or withdrawing a bid by a person for its own account or for the account of a third party by means of commercial contracts or financial instruments to which these instruments or commercial contracts are linked (*MAR, Art.8.1*).

In relation to commodity derivatives, "*information of a precise nature, which has not been made public*" means information which is reasonably expected to be disclosed or is required to be disclosed in accordance with legal or regulatory provisions, market rules, contract, practice or custom, on the relevant markets (*MAR, Art. 7.1. b*).

ESMA has issued guidelines³⁸ that provide an indicative and non-exhaustive list of information that qualifies as information "*which is reasonably expected to be disclosed or is required to be disclosed [...]*".³⁹

Insider dealing typology

A typology of cases of insider dealing has not previously been compiled. This Guide proposes a number of indicators to assist in detecting potential cases of insider dealing (*see B below*).

³⁸ Guidelines on MAR – 30 September 2016, (*ESMA/2016/1412*).

³⁹ In its guidelines, ESMA provides clarification for this concept based on the accessibility of the information, the official nature of the communication and the exclusion of rumours or speculative statements.

A.3. FRAMEWORK OF EXEMPTIONS

An exemption is provided for certain market practices, which are authorised under specific conditions and do not therefore have to be the subject of suspicious transaction reporting to the AMF.

BUY-BACK PROGRAMMES AND STABILISATION MEASURES

Buy-back programmes and stabilisation measures that comply with the provisions of Article 5 of MAR and the DR on buy-back and stabilisation programmes⁴⁰ are exempt from the prohibitions on insider dealing and market manipulation in Articles 14 and 15 of MAR.

To recap, the buy-back programmes receiving an exemption under Article 5 of MAR are transactions in own shares, conducted in the name of the issuer and with a view to meeting one of the three goals mentioned in Article 5, namely to reduce the capital of the issuer, to enable the issuer to meet obligations arising from debt financial instruments that are exchangeable into equity instruments, or to meet obligations arising from share option programmes, or other allocations of shares, to employees or senior managers. In addition to complying with conditions relating to disclosure, volume and price, programmes must also observe black-out periods.

Stabilisation measures, meanwhile, are transactions undertaken in the context of a significant distribution of securities exclusively for supporting the market price of those securities for a predetermined period of time, due to a selling pressure in such securities. Measures must also comply with conditions relating to disclosure, duration, volume and price.

Accordingly, buy-back transactions and stabilisation measures that meet the stipulated conditions do not have to be the subject of suspicious transaction reporting to the AMF.

ACCEPTED MARKET PRACTICES (AMPs)

MAR prohibits any transaction, order or behaviour that "*gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument, a related spot commodity contract or an auctioned product based on emission allowances*", or "*secures, or is likely to secure, the price of one or several financial instruments, a related spot commodity contract or an auctioned product based on emission allowances at an abnormal or artificial level*" (MAR, Art. 12.1. a).

This prohibition does not apply if the person in question establishes "*that such transaction, order or behaviour have been carried out for legitimate reasons, and conform with an accepted market practice* [as established in accordance with the provisions of Article 13 of MAR and Delegated Regulation No 2016/908]".

⁴⁰ Commission Delegated Regulation (EU) 2016/1052 of 8 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the conditions applicable to buy-back programmes and stabilisation measures.

Operating within the framework of an AMP⁴¹ thus allows the person in question to be covered by a presumption that may be rebutted, since the competent authority can always demonstrate that transactions constituting market abuse were in fact concealed by being carried out under an AMP.

As at the publication date of this Guide, the AMF recognises just one AMP for the French market.

This is AMP No 2011-07 on liquidity contracts that comply with the AMAFI code of conduct for liquidity contracts⁴². This AMP, which covers equities, was notified to ESMA, which issued no opinion as to its MAR compatibility. The practice therefore currently remains unchanged. However, discussions are underway with the regulator that could lead to some adjustments.

TRADING PLANS⁴³

Transactions by senior managers in the shares of their company, where that company is listed, fall under the framework established by MAR and particularly Article 19 on transactions by persons discharging managerial responsibilities. To avoid being subject to the provisions on insider dealing, some senior managers used to entrust the management of their securities to an independent agent under trading plans, which, subject to compliance with certain conditions established by the AMF, were covered until 3 July 2016 by a rebuttable presumption that insider dealing had not been committed. However, because of MAR's entry into force, this presumption has been removed for plans concluded or renewed on or after 3 July 2016 by the senior managers of listed companies⁴⁴.

AMAFI is working to establish a standard trading plan contract in order to provide a framework for this practice within the new environment created by MAR.

⁴¹ The establishment by a competent authority of an AMP within its national territory shall entail, in order to benefit from the exemption provided for by Article 13 of MAR, the obligation for that authority to comply with a prior procedure. This procedure is detailed in Article 13 of MAR and in the delegated regulation on AMPs. It includes providing notification to ESMA, which shall issue an opinion on the compatibility of the practice with the criteria laid down by MAR and the abovementioned delegated regulation. This opinion is not binding on the competent authority, which may establish an AMP contrary to ESMA's opinion provided it publishes a notice setting out in full its reasons for doing so. The maintenance of AMPs established before 2 July 2014 shall be subject to the same requirements. AMPs must be reviewed every two years.

⁴² Noting that the Acceptance Decision of 21 March 2011 followed two previous acceptance decisions concerning the AMP on liquidity contracts, dated 22 March 2005 and 1 October 2008. The two other AMPs that existed prior to the entry into force of MAR were however phased out by the AMF on 3 July 2016. They concerned bond liquidity contracts and the purchase of own shares for later use as consideration in mergers or acquisitions (*see AMF news release of 1 July 2016 "European Market Abuse Regulation (MAR) – the AMF supports participants"* (in French).

⁴³ Also known as programmed trading mandates.

⁴⁴ See AMF news release of 1 July 2016 cited above.

B. INDICATORS

In addition to the general typology provided above, and in order to further assist ISPs in their detection efforts, several lists of potential indicators of price manipulation are proposed below.

Although the indicators described below shall not constitute an exhaustive list or be deemed in themselves to constitute market manipulation (*MAR, Annex I-A*), they nevertheless provide some general avenues for consideration⁴⁵.

If they are to be effective, these indicators must be chosen and compiled having regard to the firm's activity (notably if it performs market making or liquidity provision services), as well as to specific market conditions such as maturity, number of participants and trading practices. The value and nature of the financial instrument in question also need to be taken into account. Some transactions may thus turn out to be lawful or not based on a review of a range of elements⁴⁶.

Among the elements to be taken into account for this purpose, AMAFI has identified in the regulations a number of signals that it believes to be particularly relevant to analysing certain cases of market abuse.

Source: The proposed list of indicators was drawn up based on those contained in MAR and DR Indicators.

Some of the indicators and signals described below include clarifying guidance from AMAFI (identified by the word "**GUIDANCE**").

LIST OF POTENTIAL INDICATORS OF INSIDER DEALING OR PRICE MANIPULATION

For the indicators described below:

- *Product* shall mean a financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances.
- *Underlying* shall mean an underlying financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances.

⁴⁵ To give an example, the AMF's Enforcement Committee considered, in a decision dated 14 March 2014 and published on 17 March 2014 (*SAN-2014-01*), that swift position reversals by a company did not constitute market manipulation, because they were attributable to the operating approach of the company, which sought to take advantage of the order book's structure. In this situation, furthermore, the reversal of positions was not the sole reason for the purchase orders placed by the company, whose intention was indeed to acquire the requested securities.

⁴⁶ Specifically, ISPs must take into account factors such as the illiquidity or liquidity of the market or security, atypical market conditions (volatility and liquidity) or specific conditions (maturity of options, rollover of index positions at maturity, index composition changes requiring index-tracking portfolios to be rebalanced, pre-hedging of OTC structured products) and behaviour linked to certain strategies or activities.

A "significant price change", for example, could be assessed with reference to the average change in the market (sector index or representative security) or volatility over a given period (noting that changes in interest rates are not the same as for equities, large caps, small caps, and so on).

Similarly, to assess a significant proportion of daily volume, it is necessary to start by looking at normal trading conditions, so that the substantial volumes used to roll over index arbitrage positions at index due dates are not considered to be abnormal.

➤ **Potential indicators of price manipulation**

AMAFI considers that the following indicators may be integrated at an early stage of the monitoring system used to generate alerts in potential cases of market abuse. These alerts may potentially be analysed using signals (*see below*). AMAFI reiterates, however, that it is up to each ISP to decide which indicators to include in its monitoring system, based on the nature of its activity and its internal organisation.

<p>[▶ 1] Unusual concentration of transactions and/or orders to trade in relation to a <i>Product</i> or to one or several clients.</p>	<p><i>"Unusual concentration of transactions and/or orders to trade, whether generally, or by only one person using one or different accounts, or by a limited number of persons" (DR Indicators, Annex II. Sl. 1.a(i)).</i></p>
<p>[▶ 2] Unusual repetition of a transaction over a certain period of time.</p>	<p><i>"The extent to which orders to trade given or transactions undertaken are concentrated within a short time span in the trading session and lead to a price change which is subsequently reversed" (MAR, Annex I-A(e)).</i></p>
<p>[▶ 3] Orders/transactions represent a significant proportion of the daily volume of transactions in the relevant <i>Product</i> and lead to a significant change in its price.</p>	<p><i>"Unusual repetition of a transaction among a small number of parties over a certain period of time" (DR Indicators, Annex II. Sl. 3.a(i)).</i></p> <p><i>"The extent to which orders to trade given or transactions undertaken represent a significant proportion of the daily volume of transactions in the relevant [Product], in particular when those activities lead to a significant change in [...] prices" (MAR, Annex I-A(a)).</i></p>

<p>[▶4] Ping orders.</p>	<p>"Entering small orders to trade in order to ascertain the level of hidden orders and particularly to assess what is resting on a dark platform"⁴⁷ (<i>DR Indicators, Annex II. Sl. 1.c</i>).</p> <p>GUIDANCE: This indicator is particularly relevant if the ISP uses automated trading tools as defined in AMF Position No 2012-03.</p>
<p>[▶5] Significant change in the price of a <i>Product</i> or its <i>Underlying</i> owing to orders or transactions by persons with significant buying or selling positions⁴⁸.</p>	<p>"The extent to which orders to trade given or transactions undertaken by persons with a significant buying or selling position in a [Product] lead to significant changes in the price of that [Product]" (<i>MAR, Annex I-A(b)</i>).</p> <p>GUIDANCE: This indicator assumes knowledge of the significant position.</p>
<p>[▶6] Orders likely to have an influence on the price by increasing demand or decreasing the bid.</p>	<p>"Orders to trade inserted with such a price that they increase the bid or decrease the offer, and have the effect, or are likely to have the effect, of increasing or decreasing the price of a related financial instrument" (<i>DR Indicators, Annex II. Sl. 6.a(i)</i>).</p>
<p>[▶7] Best-price orders placed and then withdrawn before execution, especially on <i>Products</i> that are illiquid or priced at the fixing⁴⁹.</p>	<p>"The extent to which orders to trade given change the representation of the best bid or offer prices in a [Product], or more generally the representation of the order book available to market participants, and are removed before they are executed" (<i>MAR, Annex I-A(f)</i>).</p>
<p>[▶8] Position reversals in a short period, potentially associated with price changes⁵⁰.</p>	<p>"The extent to which orders to trade given or transactions undertaken or orders cancelled include position reversals in a short period and represent a significant proportion of the daily volume of transactions in the relevant financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances, and might be associated with significant changes in the price of a [Product]" (<i>MAR, Annex I-A(d)</i>).</p>

⁴⁷ Dark platforms are also referred to as "dark pools".

⁴⁸ See AMF, Enforcement Committee, 8 October 2015 (*SAN-2015-17*), cited above.

⁴⁹ See AMF, Enforcement Committee, 8 July 2016 (*SAN-2016-11*), cited above and AMF, Enforcement Committee, 8 October 2015 (*SAN-2015-17*), cited above.

⁵⁰ See AMF, Enforcement Committee, 8 October 2015 (*SAN-2015-17*), cited above.

<p>[▶9] Transactions leading to no change in beneficial ownership of a <i>Product</i> or intended to modify the valuation of a position without changing its size, e.g. wash trades.</p>	<p>"Transactions or orders to trade with no other apparent justification than to increase the price of or to increase the volume of trading, namely near to a reference point during the trading day, for instance at the opening or near the close" (<u>DR Indicators, Annex II S1 1.a(ii)</u>).</p> <p>"Transactions or orders to trade which modify, or are likely to modify, the valuation of a position while not decreasing/increasing the size of the position" (<u>DR Indicators, Annex II S1 3.a(ii)</u>).</p> <p>GUIDANCE: These are to be distinguished from transactions carried out for tax reasons in jurisdictions which authorise them⁵¹. They should similarly be distinguished from transactions carried out under a liquidity contract (see A.3 above).</p>
<p>[▶10] Transactions undertaken at or near to a reference point during the trading day, for instance at the opening or near the close, at the fixing or when margin requirements are calculated, and which have a significant impact (volume, price), particularly with regard to their size.</p>	<p>"Transactions which have the effect of, or are likely to have the effect of, modifying the settlement price of a [Product], when this price is used as a reference or determinant namely in the calculation of margin requirements" (<u>DR Indicators, Annex II. Sl. 1.b (v)</u>).</p> <p>"The extent to which orders to trade are given or transactions are undertaken at or around a specific time when reference prices, settlement prices and valuations are calculated and lead to price changes which have an effect on such prices and valuations" (<u>MAR, Annex I-A(g)</u>).</p> <p>"Transactions carried out or submission of orders to trade, namely near to a reference point during the trading day, which, because of their size in relation to the market, shall clearly have a significant impact on the supply of or demand for or the price or value" (<u>DR Indicators, Annex II. Sl. 5.d(iii)</u>).</p> <p>"Transactions or orders to trade with no other apparent justification than to increase/decrease the price or to increase the volume of trading, namely near to a reference point during the trading day — e.g. at the opening or near the close" (<u>DR Indicators, Annex II. Sl. 5.d(iv)</u>).</p>

⁵¹ See AMF Position on wash trades carried out for tax reasons (AMF Monthly Review – No. 16 – July/August 2005).

<p>[▶ 11] Entering orders representing significant volumes before the price is determined and then cancelling these orders before the order book is frozen in order to manipulate the theoretical opening price.</p>	<p>"Entering orders representing significant volumes in the central order book of the trading system a few minutes before the price determination phase of the auction and cancelling these orders a few seconds before the order book is frozen for computing the auction price so that the theoretical opening price might look higher/lower than it otherwise would do" (<u>DR Indicators, Annex II. SI. 5.d(i)</u>).</p>
<p>[▶ 12] Transactions whose purpose appears to be to impact the price of a <i>Product</i> shortly before an event impacting a related <i>Product</i>.</p>	<p>"Transactions or orders to trade which have the effect, or are likely to have the effect, of increasing or decreasing or maintaining the price during the days preceding the issue, optional redemption or expiry of a related derivative or convertible" (<u>DR Indicators, Annex II. SI. 1.b(i)</u>).</p>
<p>[▶ 13] Transactions whose purpose appears to be to impact the price of the <i>Underlying</i> of a <i>derivative Product</i> relative to its strike price at expiration date.</p>	<p>"Transactions or orders to trade which have the effect of, or are likely to have the effect of, maintaining the price of an underlying financial instrument, related spot commodity contract, or an auctioned product based on emission allowances, below or above a strike price or other element used to determine the pay-out (e.g. barrier) of a related derivative at expiration date" (<u>DR Indicators, Annex II. SI. 1.b(iii)</u>).</p> <p>"Transactions on any trading venue which have the effect of, or are likely to have the effect of, modifying the price of the underlying financial instrument, related spot commodity contract, or an auctioned product based on emission allowances, so that it surpasses or does not reach the strike price or other element used to determine the pay-out (e.g. barrier) of a related derivative at expiration date" (<u>DR Indicators, Annex II. SI. 1.b(iv)</u>).</p>

➤ Signals for analysing alerts generated by the monitoring system

AMAFI considers that the signals provided below constitute elements that are useful when analysing alerts: they may make it possible to confirm or dismiss a suspicion and thus help to determine whether to submit a STOR. AMAFI reiterates, however, that it is up to each ISP to decide which signals to include in its system for analysing alerts, based on the nature of its activity and its internal organisation.

<p>[▶ 14] Spread between bid and offer prices is a determining factor for another transaction.</p>	<p>"Execution of a transaction, changing the bid-offer prices, when the spread between the bid and offer prices is a factor in the determination of the price of any other transaction whether or not on the same trading venue" (<i>DR Indicators, Annex II Sl. 2.c(i)</i>).</p> <p>GUIDANCE: This signal may be useful when analysing cases of 'excessive bid-offer spreads'.</p>
<p>[▶ 15] Orders / transactions likely to have an effect on a weighted average price.</p>	<p>"Transactions or orders to trade which have the effect of, or are likely to have the effect of increasing or decreasing the weighted average price of the day or of a period during the trading session" (<i>DR Indicators, Annex II. Sl. 1.b(ii)</i>).</p>
<p>[▶ 16] Orders / transactions likely to set a price when the liquidity or the depth of the order book is not sufficient for this.</p>	<p>"Transactions or orders to trade which have the effect of, or are likely to have the effect of setting a market price when the liquidity or the depth of the order book is not sufficient to fix a price within the session" (<i>DR Indicators, Annex II. Sl. 3.c(i)</i>).</p> <p>GUIDANCE: This signal can be used to detect cases of 'improper matched orders'</p>
<p>[▶ 17] Orders / transactions making it possible to bypass the market's trading safeguards.</p>	<p>"Transactions or orders to trade which have the effect of, or are likely to have the effect of bypassing the trading safeguards of the market (e.g. price limits, volume limits, bid/offer spread parameters, etc.)" (<i>DR Indicators, Annex II. Sl. 6.c(i)</i>).</p> <p>GUIDANCE: This signal can be used to detect cases of 'excessive bid-offer spreads'</p>
<p>[▶ 18] Dissemination of a position before or shortly after an unusual price movement.</p>	<p>"Dissemination of news through the media related to the increasing (or decreasing) of a qualified holding before or shortly after an unusual movement of the price of a financial instrument" (<i>DR Indicators, Annex II. Sl. 1.c(i)</i>).</p>

➤ Signals used to analyse alerts about commodity-related financial instruments

The signals listed below are particularly relevant when analysing alerts about commodity-related products. However, they are suitable for use only by ISPs that engage in activities relating to the transportation or storage of physical commodities.

<p>[▶ 19] Movement or storage of physical commodities which might create a misleading impression as to the state of the market.</p>	<p><i>"Movement or storage of physical commodities, which might create a misleading impression as to the supply of, or demand for, or price or value of, a commodity or the deliverable into a financial instrument or a related spot commodity contract" (DR Indicators, Annex II. SI. 1.f).</i></p>
<p>[▶ 20] Entering into arrangements relating to a commodity contract that lead to an abnormal or artificial price.</p>	<p><i>"Movement of an empty cargo ship, which might create a false or misleading impression as to the supply of, or the demand for, or the price or value of a commodity or the deliverable into a financial instrument or a related spot commodity contract" (DR Indicators, Annex II. SI. 1.g).</i></p> <p><i>"Entering into arrangements in order to distort costs associated with a commodity contract, such as insurance or freight, with the effect of fixing the settlement price of a financial instrument or a related spot commodity contract at an abnormal or artificial price" (DR Indicators, Annex II. SI. 7.f).</i></p>

➤ **Potential indicators of insider dealing**

MAR does not provide a list of dedicated indicators to detect insider dealing. AMAFI has however compiled the following list⁵², which may help in this regard.

<p>[▶ 1] Unusual concentration of transactions in relation to a Product or clients.</p>	<p>"Unusual concentration of transactions and/or orders to trade, whether generally, or by only one person using one or different accounts, or by a limited number of persons" (<u>DR Indicators, Annex II. Sl. 1.a(i)</u>).</p> <p>"The extent to which orders to trade given or transactions undertaken are concentrated within a short time span in the trading session and lead to a price change which is subsequently reversed" (<u>MAR, Annex I-A(e)</u>).</p>
<p>[▶ 2] Unusual repetition of a transaction over a certain period of time.</p>	<p>"Unusual repetition of a transaction among a small number of parties over a certain period of time" (<u>DR Indicators, Annex II. Sl. 3.a(i)</u>).</p>
<p>[▶ 3] Unusual trading before public announcements.</p>	<p>Unusual or significant trading before public announcements and likely to impact prices⁵³.</p>
<p>[▶ 4] Unexpected orders.</p>	<p>The client opens an account and immediately places a significant or unexpected order to trade in a particular security (especially if the client is insistent that the order is carried out very urgently or must be conducted before a particular time)⁵⁴.</p>
<p>[▶ 5] Immediate execution requested.</p>	<p>The client requests immediate execution of an order regardless of the price at which the order would be executed⁵⁵.</p>

⁵² Some of the potential indicators of insider dealing listed below are taken from recommendations made by CESR pursuant to the Market Abuse Directive of 28 January 2003 (2003/6/CE). These indicators are still deemed to be appropriate, even if they were not maintained in the new regime introduced by MAR as at the time of writing of this guide.

⁵³ "e) Unusual trading in the shares of a company before the announcement of price sensitive information relating to the company; transactions resulting in sudden and unusual changes in the volume of orders and shares prices before public announcements regarding the security in question" (CESR/04-505, § 5.9, e).

⁵⁴ "a) The client opens an account and immediately gives an order to conduct a significant transaction in a particular security – especially if the client is insistent that the order is carried out very urgently or must be conducted before a particular time specified by the client" (CESR/04-505, § 5.9, a).

⁵⁵ "c) The client specifically requests immediate execution of an order regardless of the price at which the order would be executed (this indicator pre-supposes more than the simple placing of a 'market order' by the client)" (CESR/04-505, § 5.9, c).

<p>[▶6] Significant change in investment type.</p>	<p>A significant change in the type of investment or profile of the investor (type of security, amount invested, duration of holding)⁵⁶.</p>
<p>[▶7] Trading by persons associated with the issuer.</p>	<p>Significant trading on behalf of major shareholders or other persons with links to the issuer before the announcement of important corporate events⁵⁷. GUIDANCE: Significant trading on behalf of clients with known links to the issuer is also a potential indicator of insider dealing.</p>
<p>[▶8] Client interference in portfolio management</p>	<p>Interference by a client in transactions being managed for him within the framework of a trading plan (where portfolio management allows for this possibility).</p>



⁵⁶ "b) The client's requested transaction or investment behaviour is significantly out of character with the client's previous investment behaviour (e.g. type of security; amount invested; size of order; duration of holding) [...] One case reported by a CESR member involved a client wanting to sell his whole portfolio and immediately invest the proceeds in the securities of a specific company. Others have involved a client who had previously invested only in mutual funds suddenly requesting the purchase of the securities of a single company or a client who had previously only invested in 'blue chip' stocks who made a sudden switch into illiquid securities. In a further case a 'buy and hold' client suddenly conducted a purchase and then sale of a particular security just before the announcement of inside information and the sale directly after the announcement" (CESR/04-505, § 5.9, b).

⁵⁷ "d) Significant trading by major shareholders or other insiders before the announcement of important corporate events" (CESR/04-505, § 5.9, d).

ANNEXES

Annex 1: MAR excerpts

Article 3 – Definitions

1. For the purposes of this Regulation, the following definitions apply:

1) 'financial instrument' means a financial instrument as defined in point (15) of Article 4(1) of Directive 2014/65/EU;

[...]

14) 'commodity' means a commodity as defined in point (1) of Article 2 of Commission Regulation (EC) No 1287/2006 (19);

15) 'spot commodity contract' means a contract for the supply of a commodity traded on a spot market which is promptly delivered when the transaction is settled, and a contract for the supply of a commodity that is not a financial instrument, including a physically settled forward contract;

16) 'spot market' means a commodity market in which commodities are sold for cash and promptly delivered when the transaction is settled, and other non-financial markets, such as forward markets for commodities;

[...]

19) 'emission allowance' means emission allowance as described in point (11) of Section C of Annex I to Directive 2014/65/EU;

[...]

35) 'investment recommendations' means information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public.

Article 7 - Inside information

1. For the purposes of this Regulation, inside information shall comprise the following types of information:

- a) information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments;
- b) in relation to commodity derivatives, information of a precise nature, which has not been made public, relating, directly or indirectly to one or more such derivatives or relating directly to the related spot commodity contract, and which, if it were made public, would be likely to have a significant effect on the prices of such derivatives or related spot commodity contracts, and where this is information which is reasonably expected to be disclosed or is required to be disclosed in accordance with legal or regulatory provisions at the Union or national level, market rules, contract, practice or custom, on the relevant commodity derivatives markets or spot markets;
- c) in relation to emission allowances or auctioned products based thereon, information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more such instruments, and which, if it were made public, would be likely to have a significant effect on the prices of such instruments or on the prices of related derivative financial instruments;
- d) for persons charged with the execution of orders concerning financial instruments, it also means information conveyed by a client and relating to the client's pending orders in financial instruments, which is of a precise nature, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments, the price of related spot commodity contracts, or on the price of related derivative financial instruments.

2. For the purposes of paragraph 1, information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or which may reasonably be expected to come into existence, or an event which has occurred or which may reasonably be expected to occur, where it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the financial instruments or the related derivative financial instrument, the related spot commodity contracts, or the auctioned products based on the emission allowances. In this respect in the case of a protracted process that is intended to bring about, or that results in, particular circumstances or a particular event, those future circumstances or that future event, and also the intermediate steps of that process which are connected with bringing about or resulting in those future circumstances or that future event, may be deemed to be precise information.

3. An intermediate step in a protracted process shall be deemed to be inside information if, by itself, it satisfies the criteria of inside information as referred to in this Article.

4. For the purposes of paragraph 1, information which, if it were made public, would be likely to have a significant effect on the prices of financial instruments, derivative financial instruments, related spot commodity contracts, or auctioned products based on emission allowances shall mean information a reasonable investor would be likely to use as part of the basis of his or her investment decisions. In the case of participants in the emission allowance market with aggregate emissions or rated thermal input at or below the threshold set in accordance with the second subparagraph of Article 17(2), information about their physical operations shall be deemed not to have a significant effect on the price of emission allowances, of auctioned products based thereon, or of derivative financial instruments.

[...]

Article 8 - Insider dealing

1. For the purposes of this Regulation, insider dealing arises where a person possesses inside information and uses that information by acquiring or disposing of, for its own account or for the account of a third party, directly or indirectly, financial instruments to which that information relates. The use of inside information by cancelling or amending an order concerning a financial instrument to which the information relates where the order was placed before the person concerned possessed the inside information, shall also be considered to be insider dealing. In relation to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (EU) No 1031/2010, the use of inside information shall also comprise submitting, modifying or withdrawing a bid by a person for its own account or for the account of a third party.
2. For the purposes of this Regulation, recommending that another person engage in insider dealing, or inducing another person to engage in insider dealing, arises where the person possesses inside information and:
 - a) recommends, on the basis of that information, that another person acquire or dispose of financial instruments to which that information relates, or induces that person to make such an acquisition or disposal, or
 - b) recommends, on the basis of that information, that another person cancel or amend an order concerning a financial instrument to which that information relates, or induces that person to make such a cancellation or amendment.
3. The use of the recommendations or inducements referred to in paragraph 2 amounts to insider dealing within the meaning of this Article where the person using the recommendation or inducement knows or ought to know that it is based upon inside information.
4. This Article applies to any person who possesses inside information as a result of:
 - a) being a member of the administrative, management or supervisory bodies of the issuer or emission allowance market participant;
 - b) having a holding in the capital of the issuer or emission allowance market participant;
 - c) having access to the information through the exercise of an employment, profession or duties; or
 - d) being involved in criminal activities.

This Article also applies to any person who possesses inside information under circumstances other than those referred to in the first subparagraph where that person knows or ought to know that it is inside information.

5. Where the person is a legal person, this Article shall also apply, in accordance with national law, to the natural persons who participate in the decision to carry out the acquisition, disposal, cancellation or amendment of an order for the account of the legal person concerned.

Article 10 - Unlawful disclosure of inside information

1. For the purposes of this Regulation, unlawful disclosure of inside information arises where a person possesses inside information and discloses that information to any other person, except where the disclosure is made in the normal exercise of an employment, a profession or duties.

This paragraph applies to any natural or legal person in the situations or circumstances referred to in Article 8(4).

2. For the purposes of this Regulation the onward disclosure of recommendations or inducements referred to in Article 8(2) amounts to unlawful disclosure of inside information under this Article where the person disclosing the recommendation or inducement knows or ought to know that it was based on inside information.

Article 12 - Market manipulation

1. For the purposes of this Regulation, market manipulation shall comprise the following activities:
 - a) entering into a transaction, placing an order to trade or any other behaviour which:
 - i. gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument, a related spot commodity contract or an auctioned product based on emission allowances; or
 - ii. secures, or is likely to secure, the price of one or several financial instruments, a related spot commodity contract or an auctioned product based on emission allowances at an abnormal or artificial level;unless the person entering into a transaction, placing an order to trade or engaging in any other behaviour establishes that such transaction, order or behaviour have been carried out for legitimate reasons, and conform with an accepted market practice as established in accordance with Article 13;

- b) entering into a transaction, placing an order to trade or any other activity or behaviour which affects or is likely to affect the price of one or several financial instruments, a related spot commodity contract or an auctioned product based on emission allowances, which employs a fictitious device or any other form of deception or contrivance;
 - c) disseminating information through the media, including the internet, or by any other means, which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument, a related spot commodity contract or an auctioned product based on emission allowances or securities, or is likely to secure, the price of one or several financial instruments, a related spot commodity contract or an auctioned product based on emission allowances at an abnormal or artificial level, including the dissemination of rumours, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading;
 - d) transmitting false or misleading information or providing false or misleading inputs in relation to a benchmark where the person who made the transmission or provided the input knew or ought to have known that it was false or misleading, or any other behaviour which manipulates the calculation of a benchmark.
2. The following behaviour shall, inter alia, be considered as market manipulation:
- a) the conduct by a person, or persons acting in collaboration, to secure a dominant position over the supply of or demand for a financial instrument, related spot commodity contracts or auctioned products based on emission allowances which has, or is likely to have, the effect of fixing, directly or indirectly, purchase or sale prices or creates, or is likely to create, other unfair trading conditions;
 - b) the buying or selling of financial instruments, at the opening or closing of the market, which has or is likely to have the effect of misleading investors acting on the basis of the prices displayed, including the opening or closing prices;
 - c) the placing of orders to a trading venue, including any cancellation or modification thereof, by any available means of trading, including by electronic means, such as algorithmic and high-frequency trading strategies, and which has one of the effects referred to in paragraph 1(a) or (b), by:
 - i. disrupting or delaying the functioning of the trading system of the trading venue or being likely to do so;
 - ii. making it more difficult for other persons to identify genuine orders on the trading system of the trading venue or being likely to do so, including by entering orders which result in the overloading or destabilisation of the order book; or
 - iii. creating or being likely to create a false or misleading signal about the supply of, or demand for, or price of, a financial instrument, in particular by entering orders to initiate or exacerbate a trend;
 - d) the taking advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about a financial instrument, related spot commodity contract or an auctioned product based on emission allowances (or indirectly about its issuer) while having previously taken positions on that financial instrument, a related spot commodity contract or an auctioned product based on emission allowances and profiting subsequently from the impact of the opinions voiced on the price of that instrument, related spot commodity contract or an auctioned product based on emission allowances, without having simultaneously disclosed that conflict of interest to the public in a proper and effective way;
 - e) the buying or selling on the secondary market of emission allowances or related derivatives prior to the auction held pursuant to Regulation (EU) No 1031/2010 with the effect of fixing the auction clearing price for the auctioned products at an abnormal or artificial level or misleading bidders bidding in the auctions.

For the purposes of applying paragraph 1(a) and (b), and without prejudice to the forms of behaviour set out in paragraph 2, Annex I defines non-exhaustive indicators relating to the employment of a fictitious device or any other form of deception or contrivance, and non-exhaustive indicators related to false or misleading signals and to price securing.

3. Where the person referred to in this Article is a legal person, this Article shall also apply, in accordance with national law, to the natural persons who participate in the decision to carry out activities for the account of the legal person concerned.

[...]

Article 14 – Prohibition of insider dealing and of unlawful disclosure of inside information

A person shall not:

- a) engage or attempt to engage in insider dealing;
- b) recommend that another person engage in insider dealing or induce another person to engage in insider dealing; or
- c) unlawfully disclose inside information.

Article 15 – Prohibition of market manipulation

A person shall not engage in or attempt to engage in market manipulation.

Article 16 - Prevention and detection of market abuse

1. Market operators and investment firms that operate a trading venue shall establish and maintain effective arrangements, systems and procedures aimed at preventing and detecting insider dealing, market manipulation and attempted insider dealing and market manipulation, in accordance with Articles 31 and 54 of Directive 2014/65/EU.

A person referred to in the first subparagraph shall report orders and transactions, including any cancellation or modification thereof, that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation to the competent authority of the trading venue without delay.

2. Any person professionally arranging or executing transactions shall establish and maintain effective arrangements, systems and procedures to detect and report suspicious orders and transactions. Where such a person has a reasonable suspicion that an order or transaction in any financial instrument, whether placed or executed on or outside a trading venue, could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation, the person shall notify the competent authority as referred to in paragraph 3 without delay.
3. Without prejudice to Article 22, persons professionally arranging or executing transactions shall be subject to the rules of notification of the Member State in which they are registered or have their head office, or, in the case of a branch, the Member State where the branch is situated. The notification shall be addressed to the competent authority of that Member State.
4. The competent authorities as referred to in paragraph 3 receiving the notification of suspicious orders and transactions shall transmit such information immediately to the competent authorities of the trading venues concerned.

[...]

ANNEX I: MAR

A. Indicators of manipulative behaviour relating to false or misleading signals and to price securing

For the purposes of applying point (a) of Article 12(1) of this Regulation, and without prejudice to the forms of behaviour set out in paragraph 2 of that Article, the following non-exhaustive indicators, which shall not necessarily be deemed, in themselves, to constitute market manipulation, shall be taken into account when transactions or orders to trade are examined by market participants and competent authorities:

- a) the extent to which orders to trade given or transactions undertaken represent a significant proportion of the daily volume of transactions in the relevant financial instrument, related spot commodity contract, or auctioned product based on emission allowances, in particular when those activities lead to a significant change in their prices;
- b) the extent to which orders to trade given or transactions undertaken by persons with a significant buying or selling position in a financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances, lead to significant changes in the price of that financial instrument, related spot commodity contract, or auctioned product based on emission allowances;
- c) whether transactions undertaken lead to no change in beneficial ownership of a financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances;
- d) the extent to which orders to trade given or transactions undertaken or orders cancelled include position reversals in a short period and represent a significant proportion of the daily volume of transactions in the relevant financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances, and might be associated with significant changes in the price of a financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances;
- e) the extent to which orders to trade given or transactions undertaken are concentrated within a short time span in the trading session and lead to a price change which is subsequently reversed;
- f) the extent to which orders to trade given change the representation of the best bid or offer prices in a financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances, or more generally the representation of the order book available to market participants, and are removed before they are executed; and
- g) the extent to which orders to trade are given or transactions are undertaken at or around a specific time when reference prices, settlement prices and valuations are calculated and lead to price changes which have an effect on such prices and valuations.

B. Indicators of manipulative behaviour relating to the employment of a fictitious device or any other form of deception or contrivance

For the purposes of applying point (b) of Article 12(1) of this Regulation, and without prejudice to the forms of behaviour set out in paragraph 2 of that Article thereof, the following non-exhaustive indicators, which shall not necessarily be deemed, in themselves, to constitute market manipulation, shall be taken into account where transactions or orders to trade are examined by market participants and competent authorities:

- a) whether orders to trade given or transactions undertaken by persons are preceded or followed by dissemination of false or misleading information by the same persons or by persons linked to them; and
- b) whether orders to trade are given or transactions are undertaken by persons before or after the same persons or persons linked to them produce or disseminate investment recommendations which are erroneous, biased, or demonstrably influenced by material interest.

[...]

Annex 2: Excerpts from the Delegated Regulation on indicators of market manipulation

[...]

Article 4 Indicators of manipulative behaviour

1. In relation to indicators of manipulative behaviour relating to false or misleading signals and to price securing referred to in Section A of Annex I to Regulation (EU) No 596/2014, the practices set out in Indicators A(a) to A(g) of Annex I to Regulation (EU) No 596/2014 are laid down in Section 1 of Annex II to this Regulation.
2. In relation to indicators of manipulative behaviour relating to the employment of a fictitious device or any other form of deception or contrivance referred to in Section B of Annex I to Regulation (EU) No 596/2014, the practices set out in Indicators B(a) and (b) of Annex I to Regulation (EU) No 596/2014 are laid down in Section 2 of Annex II to this Regulation.

[...]

Annex II Indicators of manipulative behaviour

SECTION 1- INDICATORS OF MANIPULATIVE BEHAVIOUR RELATING TO FALSE OR MISLEADING SIGNALS AND TO PRICE SECURING (SECTION A OF ANNEX I TO REGULATION (EU) No 596/2014)

1. Practices specifying Indicator A(a) of Annex I to Regulation (EU) No 596/2014:
 - a) Buying of positions, also by colluding parties, of a financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances, on the secondary market, after the allocation in the primary market in order to post the price to an artificial level and generate interest from other investors — usually known, for example in the equity context, as colluding in the after-market of an Initial Public Offer (IPO) where colluding parties are involved. This practice may also be illustrated by the following additional indicators of market manipulation: | (i) | unusual concentration of transactions and/or orders to trade, whether generally, or by only one person using one or different accounts, or by a limited number of persons; | (ii) | transactions or orders to trade with no other apparent justification than to increase the price of or to increase the volume of trading, namely near to a reference point during the trading day, for instance at the opening or near the close;
 - b) Transactions or orders to trade carried out in such a way that obstacles are created to the financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances, with prices falling below, or rising above a certain level, mainly in order to avoid negative consequences deriving from changes in the price of the financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances — usually known as 'creation of a floor, or a ceiling in the price pattern'. This practice may also be illustrated by the following additional indicators of market manipulation:
 - i. transactions or orders to trade which have the effect, or are likely to have the effect, of increasing or decreasing or maintaining the price during the days preceding the issue, optional redemption or expiry of a related derivative or convertible;
 - ii. transactions or orders to trade which have the effect of, or are likely to have the effect of increasing or decreasing the weighted average price of the day or of a period during the trading session;
 - iii. transactions or orders to trade which have the effect of, or are likely to have the effect of, maintaining the price of an underlying financial instrument, related spot commodity contract, or an auctioned product based on emission allowances, below or above a strike price or other element used to determine the pay-out (e.g. barrier) of a related derivative at expiration date;
 - iv. transactions on any trading venue which have the effect of, or are likely to have the effect of, modifying the price of the underlying financial instrument, related spot commodity contract, or an auctioned product based on emission allowances, so that it surpasses or does not reach the strike price or other element used to determine the pay-out (e.g. barrier) of a related derivative at expiration date;
 - v. transactions which have the effect of, or are likely to have the effect of, modifying the settlement price of a financial instrument, related spot commodity contract, or an auctioned product based on emission allowances, when this price is used as a reference or determinant namely in the calculation of margin requirements;
 - c) Entering small orders to trade in order to ascertain the level of hidden orders and particularly to assess what is resting on a dark platform — usually known as 'ping orders';
 - d) Executing orders to trade, or a series of orders to trade, in order to uncover orders of other participants, and then entering an order to trade to take advantage of the information obtained — usually known as 'phishing'.

2. Practices specifying Indicator A(b) of Annex I of Regulation (EU) No 596/2014:
 - a) The practice set out in Point 1(a) of this Section, usually known, for example in the equity context, as colluding in the after-market of an Initial Public Offer where colluding parties are involved;
 - b) Taking advantage of the significant influence of a dominant position over the supply of, or demand for, or delivery mechanisms for a financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances, in order to materially distort, or likely to distort, the prices at which other parties have to deliver, take delivery or defer delivery in order to satisfy their obligations — usually known as ‘abusive squeeze’;
 - c) Undertaking trading or entering orders to trade in one trading venue or outside a trading venue (including entering indications of interest) with a view to improperly influencing the price of the same financial instrument in another trading venue or outside a trading venue, related spot commodity contract, or an auctioned product based on emission allowances — usually known as ‘inter-trading venues manipulation’ (trading on one trading venue or outside a trading venue to improperly position the price of a financial instrument in another trading venue or outside a trading venue). This practice may also be illustrated by the following additional indicators of market manipulation:
 - i. execution of a transaction, changing the bid-offer prices, when the spread between the bid and offer prices is a factor in the determination of the price of any other transaction whether or not on the same trading venue;
 - ii. the indicators set out in Point 1(b)(i), (b)(iii), (b)(iv) and (b)(v) of this Section;
 - d) Undertaking trading or entering orders to trade in one trading venue or outside a trading venue (including entering indications of interest) with a view to improperly influencing the price of a related financial instrument in another or in the same trading venue or outside a trading venue, related spot commodity contract, or a related auctioned product based on emission allowances — usually known as ‘cross-product manipulation’ (trading on a financial instrument to improperly position the price of a related financial instrument in another or in the same trading venue or outside a trading venue). This practice may also be illustrated by the additional indicators of market manipulation referred to in Point 1(b)(i), (b)(iii), (b)(iv) and (b)(v), and Point 2(c)(i) of this Section.
3. Practices specifying Indicator A(c) of Annex I of Regulation (EU) No 596/2014:
 - a) Entering into arrangements for the sale or purchase of a financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances, where there is no change in beneficial interests or market risk or where beneficial interest or market risk is transferred between parties who are acting in concert or collusion — usually known as ‘wash trades’. This practice may also be illustrated by the following additional indicators of market manipulation:
 - i. unusual repetition of a transaction among a small number of parties over a certain period of time;
 - ii. transactions or orders to trade which modify, or are likely to modify, the valuation of a position while not decreasing/increasing the size of the position;
 - iii. the indicator set out in Point 1(a)(i) of this Section.
 - b) Entering into orders to trade or engaging in a transaction or series of transactions which are shown on a public display facility to give the impression of activity or price movement in a financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances — usually known as ‘painting the tape’. This practice may also be illustrated by the indicators set out in Point 1(a)(i) and Point 3(a)(i) of this Section.
 - c) Transactions carried out as a result of the entering of buy and sell orders to trade at or nearly at the same time, with very similar quantity and similar price, by the same party or different but colluding parties — usually known as ‘improper matched orders’. This practice may also be illustrated by the following additional indicators of market manipulation:
 - i. transactions or orders to trade which have the effect of, or are likely to have the effect of setting a market price when the liquidity or the depth of the order book is not sufficient to fix a price within the session;
 - ii. the indicators set out in Points 1(a)(i), 3(a)(i) and 3(a)(ii) of this Section.
 - d) Transaction or series of transactions designed to conceal the ownership of a financial instrument, related spot commodity contract, or an auctioned product based on emission allowances via the breach of disclosure requirements through the holding of the financial instrument, related spot commodity contract, or an auctioned product based on emission allowances in the name of a colluding party or parties. The disclosures are misleading in respect of the true underlying holding of the financial instrument, related spot commodity contract, or an auctioned product based on emission allowances — usually known as ‘concealing ownership’. This practice may also be illustrated by the indicator described in Point 3(a)(i) of this Section.
4. Practices specifying Indicator A(d) of Annex I of Regulation (EU) No 596/2014:
 - a) The practice set out in Point 3(b) of this Section, usually known as ‘painting the tape’;
 - b) The practice set out in Point 3(c) of this Section, usually known as ‘improper matched orders’;
 - c) Taking of a long position in a financial instrument, related spot commodity contract, or an auctioned product based on emission allowances and then undertaking further buying activity and/or disseminating misleading positive information about the financial instrument, related spot commodity contract, or an auctioned product based on emission allowances with a view to increasing the price of the financial instrument, related spot commodity contract, or an auctioned product based on emission allowances, by the attraction of other buyers. When the price is at an artificial high level, the long position held is sold out — usually known as ‘pump and dump’;

- d) Taking of a short position in a financial instrument, related spot commodity contract, or an auctioned product based on emission allowances and then undertaking further selling activity and/or disseminating misleading negative information about the financial instrument, related spot commodity contract, or an auctioned product based on emission allowances with a view to decreasing the price of the financial instrument, related spot commodity contract, or an auctioned product based on emission allowances, by the attraction of other sellers. When the price has fallen, the position held is closed — usually known as ‘trash and cash’;
 - e) Entering large number of orders to trade and/or cancellations and/or updates to orders to trade so as to create uncertainty for other participants, slowing down their process and/or to camouflage their own strategy — usually known as ‘quote stuffing’;
 - f) Entering orders to trade or a series of orders to trade, or executing transactions or series of transactions, likely to start or exacerbate a trend and to encourage other participants to accelerate or extend the trend in order to create an opportunity to close out or open a position at a favourable price — usually known as momentum ignition. This practice may also be illustrated by the high ratio of cancelled orders (e.g. order to trade ratio) which may be combined with a ratio on volume (e.g. number of financial instruments per order).
5. Practices specifying Indicator A(e) of Annex I of Regulation (EU) No 596/2014:
- a) The practice set out in Point 1(b) of this Section, usually known as ‘creation of a floor, or a ceiling in the price pattern’;
 - b) The practice set out in Point 2(c) of this Section, usually known as ‘inter-trading venues manipulation’ (trading on one trading venue or outside a trading venue to improperly position the price of a financial instrument in another trading venue or outside a trading venue);
 - c) The practice set out in Point 2(d) of this Section, usually known as ‘cross-product manipulation’ (trading on a financial instrument to improperly position the price of a related financial instrument in another or in the same trading venue or outside a trading venue);
 - d) Buying or selling of a financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances, deliberately, at the reference time of the trading session (e.g. opening, closing, settlement) in an effort to increase, to decrease or to maintain the reference price (e.g. opening price, closing price, settlement price) at a specific level — usually known as ‘marking the close’. This practice may also be illustrated by the following additional indicators of market manipulation:
 - i. entering orders representing significant volumes in the central order book of the trading system a few minutes before the price determination phase of the auction and cancelling these orders a few seconds before the order book is frozen for computing the auction price so that the theoretical opening price might look higher/lower than it otherwise would do;
 - ii. the indicators set out in Point 1(b)(i), (b)(iii), (b)(iv) and (b)(v) of this Section;
 - iii. transactions carried out or submission of orders to trade, namely near to a reference point during the trading day, which, because of their size in relation to the market, shall clearly have a significant impact on the supply of or demand for or the price or value;
 - iv. transactions or orders to trade with no other apparent justification than to increase/decrease the price or to increase the volume of trading, namely near to a reference point during the trading day — e.g. at the opening or near the close;
 - e) Submitting multiple or large orders to trade often away from the touch on one side of the order book in order to execute a trade on the other side of the order book. Once the trade has taken place, the orders with no intention to be executed shall be removed — usually known as layering and spoofing. This practice may also be illustrated by the indicator set out in Point 4(f)(i);
 - f) The practice set out in Point 4(e) of this Section, usually known as ‘quote stuffing’;
 - g) The practice set out in Point 4(f) of this Section, usually known as ‘momentum ignition’.
6. Practices specifying Indicator A(f) of Annex I of Regulation (EU) No 596/2014:
- a) Entering of orders which are withdrawn before execution, thus having the effect, or which are likely to have the effect, of giving a misleading impression that there is demand for or supply of a financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances at that price — usually known as ‘placing orders with no intention of executing them’. This practice may also be illustrated by the following additional indicators of market manipulation:
 - i. orders to trade inserted with such a price that they increase the bid or decrease the offer, and have the effect, or are likely to have the effect, of increasing or decreasing the price of a related financial instrument;
 - ii. the indicator set out in Point 4(f)(i) of this Section.
 - b) The practice set out in Point 1(b) of this Section, usually known as ‘creation of a floor, or a ceiling, in the price pattern’;
 - c) Moving the bid-offer spread to and/or maintaining it at artificial levels, by abusing of market power, usually known as excessive bid-offer spreads. This practice may also be illustrated by the following additional indicators of market manipulation:
 - i. transactions or orders to trade which have the effect of, or are likely to have the effect of bypassing the trading safeguards of the market (e.g. price limits, volume limits, bid/offer spread parameters, etc.);
 - ii. the indicator set out in Point 2(c)(i) of this Section.
 - d) Entering orders to trade which increase the bid (or decrease the offer) for a financial instrument, related spot commodity contract, or an auctioned product based on emission allowances, in order to increase (or decrease) its price — usually known as ‘advancing the bid’. This practice may also be illustrated by the indicator set out in Point 6(a)(i) of this Section;
 - e) The practice set out in Point 2(c) of this Section, usually known as ‘inter-trading venues manipulation’ (trading on one trading venue or outside a trading venue to improperly position the price of a financial instrument in another trading venue or outside a trading venue);

- f) The practice set out in Point 2(d) of this Section, usually known as 'cross-product manipulation' (trading on a financial instrument to improperly position the price of a related financial instrument in another or in the same trading venue or outside a trading venue);
 - g) The practice set out in Point 5(e) of this Section, usually known as 'layering' and 'spoofing';
 - h) The practice set out in Point 4(e) of this Section, usually known as 'quote stuffing';
 - i) The practice set out in Point 4(f) of this Section, usually known as 'momentum ignition';
 - j) Posting orders to trade, to attract other market participants employing traditional trading techniques ('slow traders'), that are then rapidly revised onto less generous terms, hoping to execute profitably against the incoming flow of 'slow traders' orders to trade, usually known as 'smoking'.
7. Practices specifying Indicator A(g) of Annex I of Regulation (EU) No 596/2014:
- a) The practice set out in Point 5(d) of this Section, usually known as 'marking the close';
 - b) The practice set out in Point 1(a) of this Section, usually known, for example in the equity context, as 'colluding in the after-market of an Initial Public Offer where colluding parties are involved';
 - c) The practice set out in Point 1(b) of this Section, usually known as 'creation of a floor, or a ceiling' in the price pattern;
 - d) The practice set out in Point 2(c) of this Section, usually known as 'inter-trading venues manipulation' (trading on one trading venue or outside a trading venue to improperly position the price of a financial instrument in another trading venue or outside a trading venue);
 - e) The practice set out in Point 2(d) of this Section, usually known as 'cross-product manipulation' (trading on a financial instrument to improperly position the price of a related financial instrument in another or in the same trading venue or outside a trading venue);
 - f) Entering into arrangements in order to distort costs associated with a commodity contract, such as insurance or freight, with the effect of fixing the settlement price of a financial instrument or a related spot commodity contract at an abnormal or artificial price.
8. The practice set out in Point 2(c) of this Section and also referred to in Points 5(c), 6(e) and 7(d) of this Section is relevant in the context of the scope of Regulation (EU) No 596/2014 concerning cross-venue manipulation.
9. The practice set out in Point 2(d) of this Section and also referred to in Points 5(c), 6(f) and 7(e) of this Section is relevant in the context of the scope of Regulation (EU) No 596/2014 concerning cross-venue manipulation, taking into account that the price or value of a financial instrument may depend on or may have an effect on the price or value of another financial instrument or spot commodity contract.

SECTION 2 INDICATORS OF MANIPULATIVE BEHAVIOUR RELATING TO THE EMPLOYMENT OF A FICTITIOUS DEVICE OR ANY OTHER FORM OF DECEPTION OR CONTRIVANCE (SECTION B OF ANNEX I OF REGULATION (EU) No 596/2014)

1. Practices specifying Indicator B(a) of Annex I of Regulation (EU) No 596/2014:
- a) Dissemination of false or misleading market information through the media, including the internet, or by any other means, which results or is likely to result in the moving of the price of a financial instrument, related spot commodity contract, or an auctioned product based on emission allowances, in a direction favourable to the position held or to a transaction planned by the person or persons interested in the dissemination of the information;
 - b) Opening a position in a financial instrument, related spot commodity contract, or an auctioned product based on emission allowances and closing such position immediately after having publicly disclosed and having put emphasis on the long holding period of the investment — usually known as 'opening a position and closing it immediately after its public disclosure';
 - c) The practice set out in Point 4(c) of Section 1, usually known as 'pump and dump'. This practice may also be illustrated by the following additional indicators of market manipulation:
 - i. dissemination of news through the media related to the increasing (or decreasing) of a qualified holding before or shortly after an unusual movement of the price of a financial instrument;
 - ii. the indicator set out in Point 5(d)(i) of Section 1;
 - d) The practice set out in Point 4(d) of Section 1, usually known as 'trash and cash'. This practice may also be illustrated by the indicators set out in Point 5(d)(i) of Section 1 and Point 1(c)(i) of this Section;
 - e) The practice set out in Point 3(d) of Section 1, usually known as 'concealing ownership';
 - f) Movement or storage of physical commodities, which might create a misleading impression as to the supply of, or demand for, or price or value of, a commodity or the deliverable into a financial instrument or a related spot commodity contract;
 - g) Movement of an empty cargo ship, which might create a false or misleading impression as to the supply of, or the demand for, or the price or value of a commodity or the deliverable into a financial instrument or a related spot commodity contract
2. Practices specifying Indicator B(b) of Annex I of Regulation (EU) No 596/2014:
- a) The practice set out in Point 1(a) of this Section. This practice may also be illustrated by entering orders to trade or transactions before or shortly after the market participant or persons publicly known as linked to that market participant produce or disseminate contrary research or investment recommendations that are made publicly available.
 - b) The practice set out in Point 4(c) of Section 1, usually known as 'pump and dump'. This practice may also be illustrated by the indicator set out in Point 2(a)(i) of this Section.
 - c) The practice set out in Point 3(d) of Section 1, usually known as 'trash and cash'. This practice may also be illustrated by the indicator set out in Point 2(a)(i) of this Section.

Annex 3: Delegated Regulation on STORs

Article 1 - Definitions

For the purposes of this Regulation, the following definitions shall apply:

- a) 'suspicious transaction and order report' (STOR) means the report on suspicious orders and transactions, including any cancellation or modification thereof, that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation to be made pursuant to Article 16(1) and (2) of Regulation (EU) No 596/2014;
- b) 'electronic means' are means of electronic equipment for the processing (including digital compression), storage and transmission of data, employing wires, radio, optical technologies, or any other electromagnetic means;
- c) 'group' means a group as defined in Article 2(11) of Directive 2013/34/EU of the European Parliament and of the Council 58;
- d) 'order' means each and every order, including each and every quote, irrespective of whether its purpose is initial submission, modification, update or cancellation of an order and irrespective of its type.

Article 2 - General requirements

1. Persons professionally arranging or executing transactions shall establish and maintain arrangements, systems and procedures that ensure:
 - a) effective and ongoing monitoring, for the purposes of detecting and identifying orders and transactions that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation, of all orders received and transmitted and all transactions executed;
 - b) the transmission of STORs to competent authorities in accordance with the requirements set out in this Regulation and using the template set out in the Annex.
2. The obligations referred to in paragraph 1 shall apply to orders and transactions relating to any financial instrument and shall apply irrespective of:
 - a) the capacity in which the order is placed or the transaction is executed;
 - b) the types of clients concerned;
 - c) whether the orders were placed or transactions executed on or outside a trading venue.
3. Market operators and investment firms operating a trading venue shall establish and maintain arrangements, systems and procedures that ensure:
 - a) effective and ongoing monitoring, for the purposes of preventing, detecting and identifying insider dealing, market manipulation and attempted insider dealing and market manipulation, of all orders received and all transactions executed;
 - b) the transmission of STORs to competent authorities in accordance with the requirements set out in this Regulation and using the template set out in the Annex.
4. The obligations referred to in paragraph 3 shall apply to orders and transactions relating to any financial instrument and shall apply irrespective of:
 - a) the capacity in which the order is placed or the transaction is executed;
 - b) the types of clients concerned.
5. Persons professionally arranging or executing transactions, market operators and investment firms operating a trading venue shall ensure that the arrangements, systems and procedures referred to in paragraphs 1 and 3:
 - a) are appropriate and proportionate in relation to the scale, size and nature of their business activity;
 - b) are regularly assessed, at least through an annually conducted audit and internal review, and updated when necessary;
 - c) are clearly documented in writing, including any changes or updates to them, for the purposes of complying with this Regulation, and that the documented information is maintained for a period of five years.The persons referred to in the first subparagraph shall, upon request, provide the competent authority with the information referred to in point (b) and (c) of that subparagraph.

Article 3 - Prevention, monitoring and detection

1. The arrangements, systems and procedures referred to in Article 2(1) and (3) shall:
 - a) allow for the analysis, individually and comparatively, of each and every transaction executed and order placed, modified, cancelled or rejected in the systems of the trading venue and, in the case of persons professionally arranging or executing transactions, also outside a trading venue;
 - b) produce alerts indicating activities requiring further analysis for the purposes of detecting potential insider dealing or market manipulation or attempted insider dealing or market manipulation;
 - c) cover the full range of trading activities undertaken by the persons concerned.

⁵⁸Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

2. Persons professionally executing or arranging transactions and market operators and investment firms operating trading venues shall, upon request, provide the competent authority with the information to demonstrate the appropriateness and proportionality of their systems in relation to the scale, size and nature of their business activity, including the information on the level of automation put in place in such systems.
3. Market operators and investment firms operating trading venues shall, to a degree which is appropriate and proportionate in relation to the scale, size and nature of their business activity, employ software systems and have in place procedures which assist the prevention and detection of insider dealing, market manipulation or attempted insider dealing or market manipulation.
The systems and procedures referred to in the first subparagraph shall include software capable of deferred automated reading, replaying and analysis of order book data, and such software shall have sufficient capacity to operate in an algorithmic trading environment.
4. Persons professionally arranging or executing transactions and market operators and investment firms operating a trading venue shall put in place and maintain arrangements and procedures that ensure an appropriate level of human analysis in the monitoring, detection and identification of transactions and orders that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation.
5. Market operators and investment firms operating a trading venue shall put in place and maintain arrangements and procedures that ensure an appropriate level of human analysis also in the prevention of insider dealing, market manipulation or attempted insider dealing or market manipulation.
6. A person professionally arranging or executing transactions shall have the right, by a written agreement, to delegate to a legal person forming part of the same group the performance of the functions of monitoring, detection and identification of orders and transactions that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation. The person delegating those functions shall remain fully responsible for discharging all of its obligations under this Regulation and Article 16 of Regulation (EU) No 596/2014 and shall ensure the arrangement is clearly documented and the tasks and responsibilities are assigned and agreed, including the duration of the delegation.
7. A person professionally arranging or executing transactions may, by written agreement, delegate the performance of data analysis, including order and transaction data, and the generation of alerts necessary for such person to conduct monitoring, detection and identification of orders and transactions that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation to a third party ('provider'). The person delegating those functions shall remain fully responsible for discharging all of its obligations under this Regulation and Article 16 of Regulation (EU) No 596/2014 and shall comply at all times with the following conditions:
 - a) it shall retain the expertise and resources necessary for evaluating the quality of the services provided and the organisational adequacy of the providers, for supervising the delegated services and for the management of the risks associated with the delegation of those functions on an ongoing basis;
 - b) it shall have direct access to all the relevant information regarding the data analysis and the generation of alerts.
The written agreement shall contain the description of the rights and obligations of the person delegating the functions referred to in the first subparagraph and those of the provider. It shall also set out the grounds that allow the person delegating the functions to terminate such agreement.
8. As part of the arrangements and procedures referred to in Article 2(1) and (3), persons professionally arranging or executing transactions and market operators and investment firms operating a trading venue shall maintain for a period of five years the information documenting the analysis carried out with regard to orders and transactions that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation which have been examined and the reasons for submitting or not submitting a STOR. That information shall be provided to the competent authority upon request.
The persons referred to in the first subparagraph shall ensure that the arrangements and procedures referred to in Article 2(1) and (3) guarantee and maintain the confidentiality of the information referred to in the first subparagraph.

Article 4 - Training

1. Persons professionally arranging or executing transactions and market operators and investment firms operating a trading venue shall organise and provide effective and comprehensive training to the staff involved in the monitoring, detection and identification of orders and transactions that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation, including the staff involved in the processing of orders and transactions. Such training shall take place on a regular basis and shall be appropriate and proportionate in relation to the scale, size and nature of the business.
2. Market operators and investment firms operating a trading venue shall in addition provide the training referred to in paragraph 1 to staff involved in the prevention of insider dealing, market manipulation or attempted insider dealing or market manipulation.

Article 5 - Reporting obligations

1. Persons professionally arranging or executing transactions and market operators and investment firms operating a trading venue shall establish and maintain effective arrangements, systems and procedures that enable them to assess, for the

purpose of submitting a STOR, whether an order or transaction could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation. Those arrangements, systems and procedures shall take due account of the elements constituting the actual or attempted insider dealing or market manipulation under Articles 8 and 12 of Regulation (EU) No 596/2014 and of the non-exhaustive indicators of market manipulation referred to in Annex I to that Regulation, as further specified in the Commission Delegated Regulation (EU) 2016/522.

2. All persons referred to in paragraph 1 and involved in the processing of the same order or transaction shall be responsible for assessing whether to submit a STOR.
3. Persons referred to in paragraph 1 shall ensure that information submitted as part of a STOR is based on facts and analysis, taking into account all information available to them.
4. Persons referred to in paragraph 1 shall have in place procedures to ensure that the person in respect of which the STOR was submitted and anyone who is not required to know about the submission of a STOR by virtue of their function or position within the reporting person, is not informed of the fact that a STOR has been or will or is intended to be submitted to the competent authority.
5. The persons referred to in paragraph 1 shall complete the STOR without informing the person in respect of which the STOR was submitted, or anyone who is not required to know, that a STOR will be submitted, including through requests of information relating to the person in respect of which the STOR was submitted in order to complete certain fields.

Article 6 - Timing of STORs

1. Persons professionally arranging or executing transactions and market operators and investment firms operating a trading venue shall ensure that they have in place effective arrangements, systems and procedures for the submission of a STOR without delay, in accordance with Article 16(1) and (2) of Regulation (EU) No 596/2014, once reasonable suspicion of actual or attempted insider dealing or market manipulation is formed.
2. The arrangements, systems and procedures referred to in paragraph 1 shall entail the possibility to report STORs in relation to transactions and orders which occurred in the past, where suspicion has arisen in the light of subsequent events or information.
In such cases, the person professionally arranging or executing transactions and the market operator and investment firm operating a trading venue shall explain in the STOR to the competent authority the delay between the suspected breach and the submission of the STOR according to the specific circumstances of the case.
3. Persons professionally arranging or executing transactions and market operators and investment firms operating a trading venue shall submit to the competent authority any relevant additional information which they become aware of after the STOR has been originally submitted, and shall provide any information or document requested by the competent authority.

Article 7 - Content of STORs

1. Persons professionally arranging or executing transactions and market operators and investment firms operating a trading venue shall submit a STOR using the template set out in the Annex.
2. The persons referred to in paragraph 1 submitting the STOR shall complete the information fields relevant to the reported orders or transactions in a clear and accurate manner. The STOR shall contain at the least the following information:
 - a) identification of the person submitting the STOR and, in the case of persons professionally arranging or executing transactions, also the capacity in which the person submitting the STOR operates, in particular when dealing on own account or executing orders on behalf of third parties;
 - b) description of the order or transaction, including:
 - i. the type of order and the type of trading, in particular block trades, and where the activity occurred;
 - ii. price and volume;
 - c) reasons for which the order or transaction is suspected to constitute insider dealing, market manipulation or an attempted insider dealing or market manipulation;
 - d) means of identifying any person involved in the order or transaction that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation, including the person who placed or executed the order and the person on whose behalf the order has been placed or executed;
 - e) any other information and supporting documents which may be deemed relevant for the competent authority for the purposes of detecting, investigating and enforcing insider dealing, market manipulation and attempted insider dealing and market manipulation

Article 8 - Means of transmission

1. Persons professionally arranging or executing transactions and market operators and investment firms operating a trading venue shall submit a STOR, including any supporting documents or attachments, to the competent authority referred to in Article 16(1) and (3) of Regulation (EU) No 596/2014 using the electronic means specified by that competent authority.

2. Competent authorities shall publish on their website the electronic means referred to in paragraph 1. Those electronic means shall ensure that completeness, integrity and confidentiality of the information are maintained during the transmission.

Annex 4: AMF template for suspicious transaction and order reporting (STOR)⁵⁹

SECTION 1 — IDENTITY OF ENTITY/PERSON SUBMITTING THE STOR		
Persons professionally arranging or executing transactions/Market operators and investment firms that operate a trading venue — Specify in each case:		
Identity of the person submitting the STOR	Surname(s):	
	First name(s):	
	Position:	
	Tel.:	
	Email address:	
Name and address of the reporting entity	Name of the reporting entity:	
	Legal form (e.g. public limited company):	
	LEI code ⁶⁰ :	
	Street number:	Street:
	Postal code:	City:
	Country:	
	Information about the reporting entity	Acting capacity of entity: Executing orders on behalf of clients
<i>If different please specify:</i>		
Type of trading activity: Arbitrage		
<i>If different please specify:</i>		
Type of instrument usually traded (if available): All		
Relationship with the person in respect of which the STOR is submitted (e.g. employee, client, shareholder):		
Contact for additional request for information		Contact details for person to be contacted if different from the person submitting the STOR :
	Surname(s):	First name(s):
	Position:	
	Tel.:	Email address:

⁵⁹ Please send in PDF format to the AMF market surveillance division using the SESTERCE system (<http://www.amf-france.org/Formulaires-et-declarations/Responsables-de-la-conformite/Operations-suspectes.html>).

⁶⁰ In accordance with ISO 17442, where applicable

SECTION 2 — TRANSACTION/ORDER				
If the STOR concerns listed financial instruments, please complete the following table				
Type of financial instrument	No listed instrument <i>If other.</i>	No listed instrument <i>If other.</i>	No listed instrument <i>If other</i>	
As far as possible, please provide the following information in the table below for each order or transaction:				
Description of the order or transaction:	Order reference number			
	Date and time when order arrived			
	Date and time when order was sent to the market			
	Quantity of financial instruments requested			
	Direction requested			
	Type of order (e.g. market order, limit order)			
	Status	Status	Status	Status
	Date(s) of alteration/cancellation/execution			
	Time(s) of alteration/cancellation/execution			
	Nature of the alteration (e.g. change in price or			
	Quantity executed			
	Execution price			

	Transaction reference number			
	Name(s) and code(s) of the market where the order was executed ⁶¹			
	Name(s) and code(s) of the country of the market where the order was executed ⁶²			
<p><i>NB If the STOR concerns a larger number of financial instruments and/or multiple orders, please append an Excel file containing all the information or use the following template file "<u>Request concerning orders</u>" and tick the following box</i></p>				

SECTION 3 — DESCRIPTION OF THE NATURE OF SUSPICION					
Nature of the suspicion	Specify the type of breach by ticking the relevant box or boxes:				
	<table border="1"> <tr> <td>Insider dealing</td> <td>Market manipulation</td> </tr> <tr> <td>Failure to report</td> <td>Other <i>If other, please specify</i></td> </tr> </table>	Insider dealing	Market manipulation	Failure to report	Other <i>If other, please specify</i>
	Insider dealing	Market manipulation			
Failure to report	Other <i>If other, please specify</i>				
Reasons for the suspicion	<p>As non-exhaustive guiding criteria, the description may include:</p> <ul style="list-style-type: none"> - For insider dealing, indicate the information to which the STOR refers, its impact on price(s), direct or indirect links between the reported person and the issuer. - For market manipulation, indicate the impact or impacts on the price(s) of the affected financial instrument(s), the arrangements whereby orders are submitted/amended/cancelled. - Trading habits - Source of the alert (alert system, employee reporting) 				

⁶¹ Please give the MIC code (ISO 10383) if available. If applicable, put Xoff.

⁶² If available

SECTION 4 — IDENTITY OF THE SUSPECTED PERSON	
Identity of the suspected person	<p><u>Natural person:</u> Surname(s): First name(s): Date of birth: National Identification Number: CONCAT code (for French clients)⁶³:</p> <p><u>Legal entity:</u> Name: Legal form (where applicable): LEI⁶⁴ code (where applicable)</p>
Adress	<p>Street number: street Postal code: City Country:</p>
Account number(s)	<p>Account number: Any Powers of Attorney: Yes No</p>
Relationship with the issuer concerned	Where known

SECTION 5 — ADDITIONAL INFORMATION
Background or any other information considered by the reporting entity relevant to the report :

SECTION 6 — DOCUMENTATION ATTACHED
List the supporting attachments and material provided with this STOR: - - -

⁶³ See Article 6 of MiFIR RTS 22.

⁶⁴ See list of LEIs of French and international companies on the STOR page of the AMF website.

Annex 5: Sanctions

Administrative sanctions (MFC, Article L. 621-15 III)

	For the ISP	For individuals acting under the authority or on behalf of the ISP	For any other person ⁶⁵
Disciplinary sanctions	Warning Reprimand Temporary or permanent ban on providing some or all of the services previously provided	Warning Reprimand Temporary suspension or withdrawal of professional licence Temporary ban on dealing on own account Temporary or permanent ban on conducting some or all of the business activities	Non-applicable
Maximum fine	EUR 100,000,000 or ten times the amount of any profit Under certain circumstances ⁶⁶ , the fine may be increased to 15% of the total annual revenues of the sanctioned person	EUR 15,000,000 or ten times the amount of any profit made	EUR 100,000,000 or ten times the amount of any profit made Under certain circumstances, the fine may be increased to 15% of the total annual revenues of the sanctioned person

N.B.1: A fine may be imposed either instead of, or in addition to, a disciplinary sanction.

N.B.2: The fine may be increased by up to 10% to pay for assistance to injured parties.

⁶⁵ Persons or entities who commit market abuse other than persons supervised by the AMF (*MFC, Art. L. 621-15 III c*).

⁶⁶ This provision is in place to punish breaches of MAR obligations and other specified obligations.

Criminal sanctions

Any attempt to commit the offences described below will receive the same sanctions as an actual offence.

Furthermore "Legal entities declared criminally liable within the meaning of Article 121-2 of the Criminal Code for the offences indicated in Articles L. 465-1 to L. 465-3-3 of this code [MFC] shall incur, in addition to the fine provided for in Article 131-38 of the Criminal Code, the penalties stipulated in Article 131-39 of that same Code. The fine may be increased to 15% of total annual revenues [...] The procedures set out in Article 131-38 of the said code shall apply solely to the fine expressed in absolute value terms. [...] When they are committed as part of an organised group, the offences indicated in Articles L. 465-1 to L. 465-3-3 of this code shall incur a term of ten years' imprisonment and a fine of EUR 100 million, which may be increased to ten times the amount of any profit earned from the offence" (MFC, L. 465-3-5).

	Offence	Imprisonment (maximum)	Fines (maximum)
Article L. 465-1 of the MFC			
Use of inside information by carrying out or cancelling transactions for the person's own benefit or that of a third party	"The use [by any person] ⁶⁷ of inside information by carrying out, for himself or another party, either directly or indirectly, one or more transactions or by cancelling or changing one or more orders placed by that person before he held inside information, concerning financial instruments issued by the issuer or financial instruments concerned by the inside information".	5 years	EUR 100,000,000 "The fine may be increased to a figure representing up to ten times the amount of any profit realised and shall never be less than the amount of said profit". Under certain circumstances, the fine may be increased to 15% of the total annual revenues of the sanctioned person

⁶⁷ The persons in question include: "the chief executive officer, the chairman, a member of the management board, the manager, a member of the board of directors or the supervisory board of an issuer concerned by inside information or a person performing an equivalent function, a person holding inside information about an issuer in which he holds a stake, a person holding inside information in connection with his profession or duties or owing to his involvement in committing a crime or offence, or any other person knowingly holding inside information" (MFC, Art. L. 465-1).

Article L. 465-2 of the MFC			
<p>Recommending, using or sharing a recommendation on a transaction in the knowledge that it is based on inside information</p>	<ul style="list-style-type: none"> - "conduct consisting in [...] recommending the execution of one or more transactions in financial instruments to which the inside information relates or inducing such transactions to be carried out on the basis of this inside information [...] - conduct by any person consisting in acting on a recommendation or inducement [...] in the knowledge that it is based on inside information. - conduct by any person consisting in sharing a recommendation or inducement [...] in the knowledge that it is based on inside information. 	<p>5 years</p>	<p>EUR 100,000,000</p> <p>"The fine may be increased to a figure representing up to ten times the amount of any profit realised and shall never be less than the amount of said profit".</p> <p>Under certain circumstances, the fine may be increased to 15% of the total annual revenues of the sanctioned person</p>
Article L. 465-3 of the MFC			
<p>Sharing of inside information</p>	<p>- "conduct by a person who knowingly holds inside information [...] consisting in sharing said information with a third party, unless he can prove that this communication is done in the normal exercise of his profession or duties, including as part of a market sounding".</p>	<p>5 years</p>	<p>EUR 100,000,000</p> <p>"The fine may be increased to a figure representing up to ten times the amount of any profit realised and shall never be less than the amount of said profit".</p> <p>Under certain circumstances, the fine may be increased to 15% of the total annual revenues of the sanctioned person</p>

Article L. 465-3-1 of the MFC			
<p>Carrying out a transaction or behaving in a way that gives or is likely to give a false or misleading signal about the price of a financial instrument</p>	<p>- "conduct by any person consisting in carrying out a transaction, placing an order or behaving in a way that gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument or that secures, or is likely to secure, the price of a financial instrument at an abnormal or artificial level⁶⁸[...] - conduct by any person consisting in carrying out a transaction, placing an order or behaving in a way that that affects the price of a financial instrument, which employs a fictitious device or any other form of deception or contrivance".</p>	<p>5 years</p>	<p>EUR 100,000,000</p> <p>"The fine may be increased to a figure representing up to ten times the amount of any profit realised and shall never be less than the amount of said profit".</p> <p>Under certain circumstances, the fine may be increased to 15% of the total annual revenues of the sanctioned person</p>
Article L. 465-3-2 of the MFC			
<p>Disseminating by any means false or misleading information that could influence the price of a financial instrument</p>	<p>- "conduct by any person consisting in disseminating by any means information that gives false or misleading signals as to the situation or prospects of an issuer or as to the supply of, demand for, or price of, a financial instrument or that secures, or is likely to secure, the price of a financial instrument at an abnormal or artificial level".</p>	<p>5 years</p>	<p>EUR 100,000,000</p> <p>"The fine may be increased to a figure representing up to ten times the amount of any profit realised and shall never be less than the amount of said profit".</p> <p>Under certain circumstances, the fine may be increased to 15% of the total annual revenues of the sanctioned person</p>

⁶⁸ Except in cases where the transaction or behaviour has legitimate grounds and complies with an accepted market practice.

Article L. 465-3-3 of the MFC			
<p>Any other behaviour which causes the calculation of a benchmark to be manipulated</p>	<p>- "conduct by any person consisting in: 1° providing or submitting false or misleading data or information used to calculate a benchmark⁶⁹ or information that is likely to distort the price of a financial instrument or an asset to which such a benchmark is linked; 2° adopting any other behaviour which causes the calculation of such a benchmark to be manipulated".</p>	<p>5 years</p>	<p>EUR 100,000,000</p> <p>"The fine may be increased to a figure representing up to ten times the amount of any profit realised and shall never be less than the amount of said profit".</p> <p>Under certain circumstances, the fine may be increased to 15% of the total annual revenues of the sanctioned person</p>

⁶⁹ "Benchmark means any rate, index or figure made available to the public or published that is periodically or regularly determined by the application of a formula to, or on the basis of the value of one or more underlying assets or prices, including estimated prices, actual or estimated interest rates or other values, or surveys, and by reference to which the amount payable under a financial instrument or the value of a financial instrument is determined" (MFC, Art. L. 465.3-3).

Annex 6: Examples of cases in which STORs need or do not need to be submitted, based on discussions with the AMF

PRICE MANIPULATION

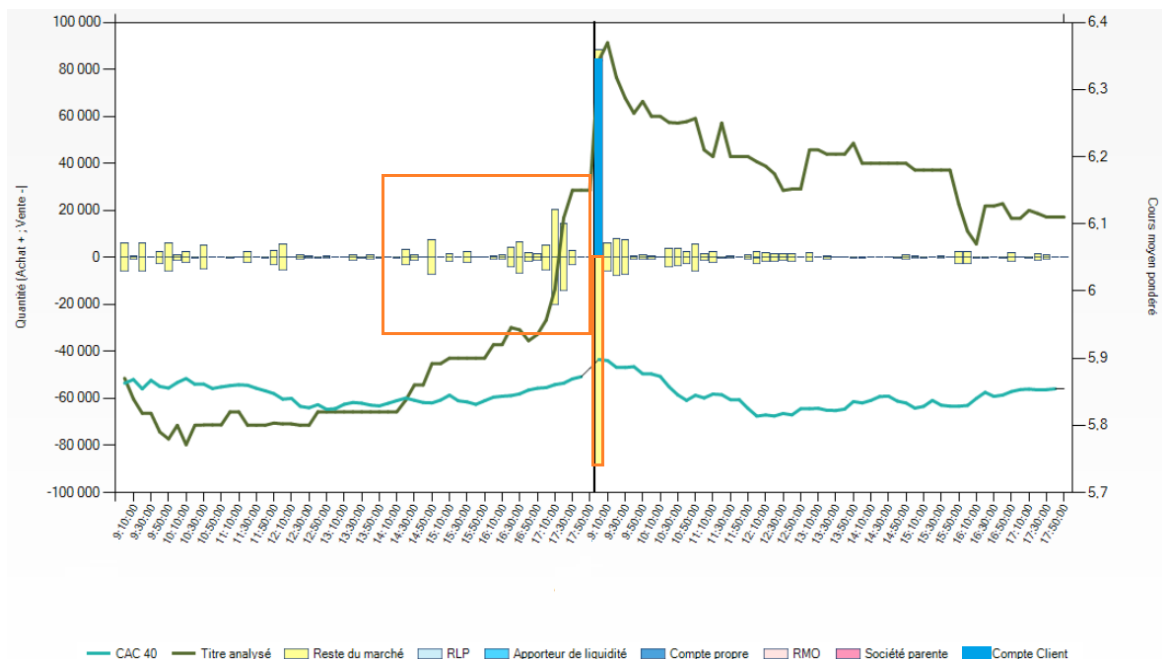
Case where a STOR should be submitted

For the last three months, Mr CD, Chairman and CEO of a small listed company, has been placing small sell orders every day at the end of the trading session so that the price ends the day at a session-long low. A takeover bid by Mr CD, with a price based on the closing price over the last three months, is announced. The very close link between the client and the company as well as the motive for manipulation mean that a STOR should be submitted.

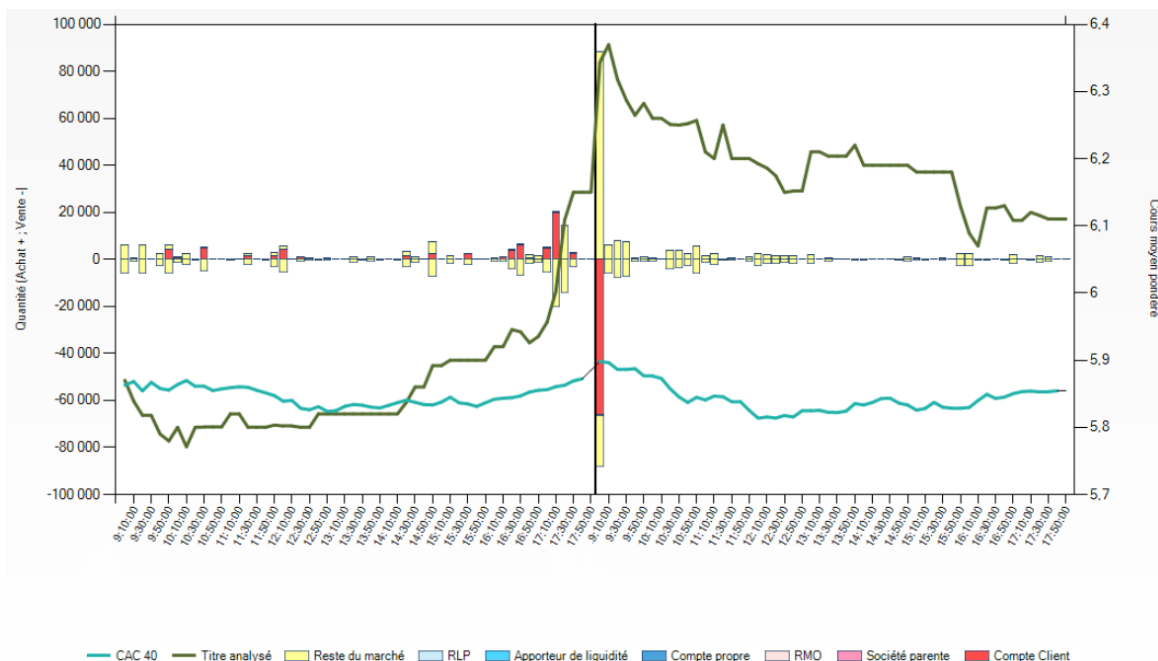
Ms TY wants to borrow a large sum of money from her bank. As collateral, she puts up her stockmarket portfolio, which is essentially made up of very illiquid securities. Meanwhile, she repeatedly places with the same bank small buy orders for her securities at the close in an effort to artificially raise their prices. Even if the changes resulting from Ms TY's orders may be small, the existence of a "motive" means that a STOR should be submitted.

Illustration

a) Increase in the price of a security in connection with a large purchase on day N+1. Unusual activity the day before is decorrelated from the benchmark



b) An analysis reveals that the red client bought aggressively on day N and took advantage of buying interest on day N+1 to unwind positions.



Case where a STOR does not need to be submitted

Ms XY places small orders in a CAC 40 security during the fixing at each market close. The lack of an impact on price movements means that a STOR does not need to be submitted.

INSIDER DEALING

Case where a STOR should be submitted

Mr X opens a securities account and on the same day buys a large number of securities in a single company. The amount of the purchase appears to correspond to the recent sale of his primary residence. Three days later, the company announces that it has signed a major contract. The securities gain 7% following this announcement. Mr X sells out his entire position and makes a large profit. The speed of the client's actions and the considerable risk incurred mean that a STOR should be submitted.

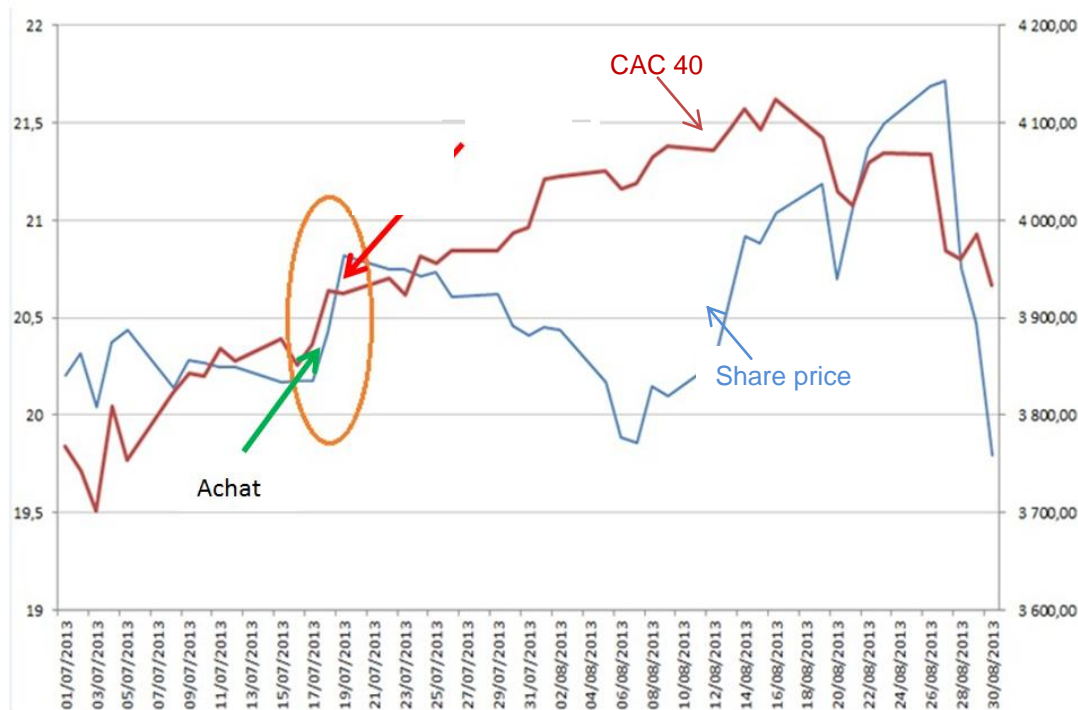
Management fund Y buys shares in a company over a period of several months at an average price of EUR 42. The fund disposes of its entire position in one session at a price of EUR 40. The day after the sale, the company announces a profit warning, which causes its share price to fall by 15%. The overall result is a loss (sale price < purchase price) but the disposals are still suspicious in that they enabled the fund to avoid losing more. It may still be appropriate to file a STOR, even if the trade makes a loss.

Mr Z has an equity savings plan that is spread across many different investments. He is largely inactive, only making two or three transactions a year on his account. One day, he calls his adviser and asks him to urgently buy CFDs in a particular mid-cap company. Six trading sessions later, the underlying securities put on 12% following the announcement that the firm has signed several large contracts. The speed of the client's actions and the unusual nature of the transactions mean that a STOR should be submitted.

Case where a STOR does not need to be submitted

Management fund Y buys 45% of the position of a listed company in a single session. The company's shares gain 4% the next day. The increase is attributable to overall market growth. There is no particular news concerning the company.

The lack of a trigger event means that a STOR does not need to be submitted.



Ms AB buys shares in a company at which her son works. A year later, the company is the target of a takeover with a premium of 8%. The long period of time between the purchase and the announcement means that a STOR does not need to be submitted.

