

INSIDERS LISTS

ESMA'S CONSULTATION ON DRAFT ITS

AMAFI's answer

AMAFI is the trade association representing financial markets' participants of the sell-side industry located in France. It has a wide and diverse membership of more than 170 global and local institutions notably investment firms, credit institutions, broker-dealers, exchanges and private banks. They operate in all market segments, such as equities, bonds and derivatives including commodities derivatives. AMAFI represents and supports its members at national, European and international levels, from the drafting of the legislation to its implementation. Through our work, we seek to promote a regulatory framework that enables the development of sound, efficient and competitive capital markets for the benefit of investors, businesses and the economy in general.

AMAFI welcomes the opportunity to respond to ESMA's Consultation on the Draft implementing technical standards on the extension of the use of the alleviated format of insider lists.

In a context where it has long advocated for such changes, the Association welcomes the fact that simplifications are now being considered regarding the provisions on insider lists, as the current framework results in burdensome administrative arrangements and intrusive collection of personal data.

However, we have a few comments, which are detailed hereafter.

Q1: DO YOU AGREE WITH THE PROPOSED APPROACH? PLEASE EXPLAIN.

AMAFI globally agrees with the proposed approach.

However, we have a comment on the requirement under templates 1 and 2 of Annex I and under Annex II to provide the "*National Identification Number or in the absence thereof, the date of birth*".

25.a. of section 3.2 "Analysis and proposal" of the Consultation Paper states that "*Issuers should include the insider's National Identification Number and only when this is not applicable, their date of birth*".

Because the National Identification Number is not consistently required across Member States and is in many cases difficult to obtain, the use of the date of birth should not be subject to the absence of such a number. The two options should be possible either way.

Therefore, the requirement under Annex I and II should be drafted as follows: “*National Identification Number or in the absence thereof, the date of birth*”.

Q2: DO YOU CONSIDER THE PERMANENT SECTION OF THE INSIDER LIST FOR ALL ISSUERS (AND SMEs GM ISSUERS IN THOSE MS THAT HAVE OPTED OUT OF THE SIMPLIFIED REGIME) CONTAINED IN ANNEX I USEFUL?

According to paragraph 2 of Article 1 and the second subparagraph of paragraph 2 of Article 2 of the draft ITS, we understand that template 2 of Annex I is intended for identifying permanent insiders defined as “*persons who... have access to all inside information at all time*”.

This applies both:

- under the general regime defined by Article 18.1 of MAR (Market Abuse Regulation) and
- under the SME GM Growth Markets issuers’ regime in Member States that have opted out of the simplified regime, defined in the second subparagraph of Article 18.6 of MAR.

However, we interpret the requirement under paragraph 1 of Article 2 of the draft ITS for the SME growth market issuers regime for Member States that have not opted out of the simplified regime as being more demanding, as it requires listing “***persons having regular access to inside information***”.

Therefore, we wonder whether this is intentional and recommend harmonising the content of the different insider lists as much as possible. For clarity, AMAFI suggests harmonising the level 2 requirements for all three regimes and requiring the listing of the “*persons who... have access to all inside information at all time*”.

