

18 February 2016

Financial Conduct Authority  
Enforcement and Market Oversight Division  
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London, E14 5HS

**AFME-BBA Response to Consultation Paper FCA CP15/38  
(Provisions to delay disclosure of inside information  
within the FCA's Disclosure and Transparency Rules)**

Dear Ms Alonso

The Association for Financial Markets in Europe (AFME) and British Bankers Association (BBA) welcome the opportunity to comment on the FCA consultation paper entitled Provisions to delay disclosure of inside information within the FCA's Disclosure and Transparency Rules (CP15/38).

Yours sincerely

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## Consultation response

### **Provisions to delay disclosure of inside information within the FCA's Disclosure and Transparency Rules**

18 February 2016

The Association for Financial Markets in Europe (AFME) and British Bankers Association (BBA) welcome the opportunity to comment on **FCA CP15/38 Provisions to delay disclosure of inside information within the FCA's Disclosure and Transparency Rules**.

Information about the associations is included in an appendix.

#### **Q1: Do you agree that the proposed change to DTR2.5.5G, without issuing further guidance relating to 'legitimate interest', supports a properly functioning disclosure regime?**

We agree with the view presented in CP15/38 that the transparency regime for inside information, which balances the requirement for transparency with the issuer's ability to delay, has operated generally effectively. However we also recognize that the current framework may present challenges to issuers in certain circumstances where the balance may be tilted.

The current version of Section 2.5.5G of the Disclosure & Transparency Rules (DTR) sets out a stricter interpretation of what would be appropriate circumstances for delay of inside information by adding the FCA view that there are not any further legitimate interests for delay other than those in Section 2.5.3R. While the circumstances in Section 2.5.3R are a non-exhaustive list similar to what was included in the Market Abuse Directive, the FCA opinion in Section 2.5.5G introduces an element of inconsistency which may result in conflicting interpretations.

In our view, implementing the proposed change to Section 2.5.5G by removing this sentence will provide a sufficient level of clarity that will mitigate the concerns highlighted by stakeholders.

We note further, that the Committee of European Securities Regulators (CESR) which was the predecessor to the European Securities and Markets Authority (ESMA), issued guidance on legitimate interests in 2007, while ESMA, under Article 17(11) of the Market Abuse Regulation, is required to issue Guidelines to create a non-exhaustive list of issuers' legitimate interests. However, we would welcome the FCA consider additional guidance on the circumstances that would constitute a legitimate interest, should it determine that the ESMA Guidelines under Article 17(11) of MAR not provide sufficient clarity, or should the examples currently listed in Section 2.5.3R of the DTR be amended post the implementation of such Guidelines.

Finally, we suggest that the assertion made in the last paragraph of section 2.49 of CP15/38 stating that "an issuer does not gain any direct benefit from its security price staying at a specific level" is not necessarily always the case. There may be examples where having a settled price is important, such as where it is negotiating an acquisition which it plans to fund through an equity issue. Disclosing this information prematurely could lead to volatility in its share price and could have a detrimental impact on the possibility of proceeding with an equity issue. We would therefore request that the FCA make clear that this statement in 2.49 does not mean that it is, in the FCAs view, excluded from the principle stated in DTR 2.5.3.

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## **Appendix: About the Associations**

**AFME** represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia. AFME is registered on the EU Transparency Register, registration number 65110063986-76.

The **BBA** is the leading association for UK banking and financial services representing members on the full range of UK and international banking issues. It represents over 200 banking members active in the UK, which are headquartered in 50 countries and have operations in 180 countries worldwide. Eighty per cent of global systemically important banks are members of the BBA.

As the representative of the world's largest international banking cluster the BBA is the voice of UK banking. The BBA is registered on the EU Transparency Register, registration number 5897733662-75.