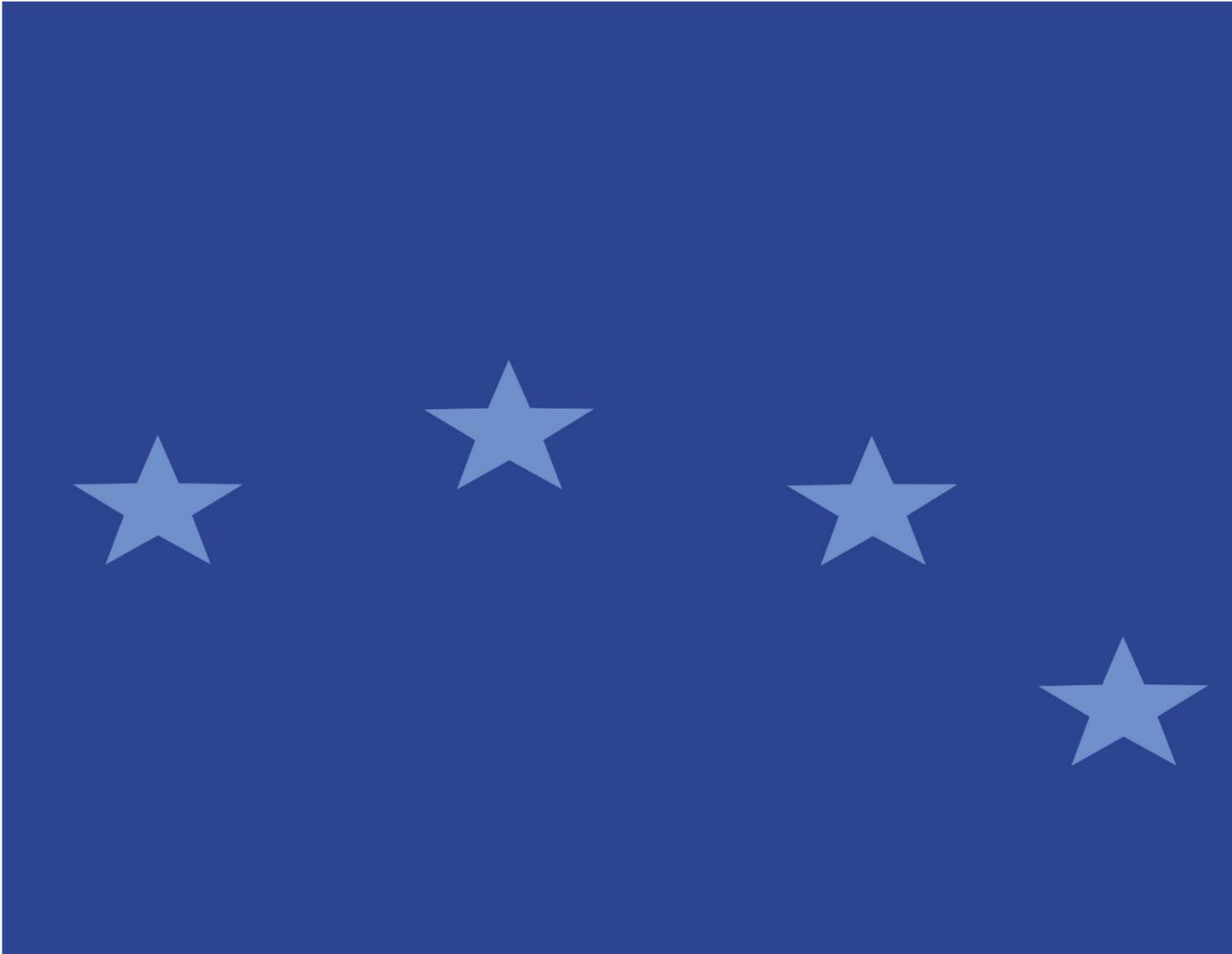# Reply form for the ESMA MAR Technical advice

II Specification of the indicators of market manipulation

Q1: **Do you agree that the proposed examples of practices and the indicators relating to these practices clarify the indicators of manipulative behaviours listed in Annex I of MAR?**

Yes, these examples clarify the indicators of manipulative behaviour in Annex I of MAR. We would recommend ESMA to investigate the practice of ping orders more carefully, however. We believe that the 'unusual concentration of transactions and/or orders' is an insufficient indication for the presence of ping orders. Instead, we recommend investigating not just the number of transactions and orders, but also the order types used. This may give a better indication of the likelihood of 'pinging' (in reference to par 13.a). We view ping orders as an emergent new form of potential market manipulation, particularly in the US where certain order types allow to identify the presence of hidden orders without the need to put capital at risk, which runs counter to the intention of hidden orders. While we do not think that this practice is prevalent in Europe yet, we recommend ESMA to develop a framework for this form of potential market manipulation as well.

Q3: Do you consider that the practice known as "Phishing[1]" should be included in the list of examples of practices set out in the draft technical advice?

We don't believe that phishing falls under the list of examples that are relevant for market manipulation.

Q4: Do you support the reference to OTC transactions in the context of cross product manipulation (i.e. where the same financial instrument is traded on a trading venue and OTC) and inter-trading venue manipulation (i.e. where a financial instrument traded on a trading venue is related to a different OTC financial instrument)?

Yes, we believe that this is an important area of potential market manipulation. It may also be a challenge to differentiate bona fide market activity (such as delta hedging towards options expiry, or cross-market arbitrage activity) from market manipulation. From this perspective, the inclusion of these references is useful.

---

[1] In this context, "phishing" should be understood as the attempt to acquire sensitive information, such as passwords or account details, by masquerading as a trustworthy entity in an electronic communication.

20 August 2014