ESB GROUP

MARKET ABUSE POLICY

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This document sets out ESB Group's policy for meeting obligations under market abuse laws. The policy has been prepared for internal ESB compliance and guidance purposes and should not be considered as legal advice or a complete statement of the law. Application of the market abuse laws to matters arising within ESB Group must be considered on a case by case basis in conjunction with Group Compliance and Group Legal.

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PART 1: INTRODUCTION AND GOVERNANCE

Introduction

Market abuse laws ensure transparency in the marketplace and prohibit abusive behaviours which could cause harm to investors and/or undermine or distort competition. Market abuse and related laws place certain obligations and restrictions on companies and individuals in relation to financial instruments (e.g., listed securities, emission allowances) and wholesale energy products (together referred to in this Policy as **relevant products**). It is appropriate that a Market Abuse Policy ("the Policy") is provided to support compliance with these obligations.

Purpose of the Policy

The purpose of this document is to (i) set out ESB's policy on compliance with market abuse laws; (ii) to summarise the key rules under market abuse laws; and (iii) to provide practical guidance on how ESB staff can comply with market abuse laws in their roles and how they can assist ESB to meet its market abuse obligations.

As at the date of this policy, ESB, its subsidiaries and personnel are subject to market abuse laws by virtue of ESB Group companies being issuers of debt securities and market participants in energy and emission allowances markets.

Related Policies

This Policy should be read in conjunction with other relevant ESB policies including: the Trading Bidding Framework Document, the Code of Ethics (Our Code), the Whistleblowing & Protected Disclosures Policy, the Anti-Bribery, Corruption & Fraud Policy , the Competition Law Compliance Manual and various ICT policies.

Which companies/individuals does this Policy apply to?

This policy applies to ESB and all of its subsidiaries (**ESB Group**) and to all Board Members, Executive Directors and staff (including employees and contractors) of ESB Group (together referred to as **ESB Personnel** in this Policy)[1]. Whilst the Policy applies to all, the Policy is likely to be of particular relevance to ESB Personnel working in the businesses which are exposed to regulated trading markets and/or are deemed more likely to come into possession of inside information (from time to time):

- Energy Trading and related activities;
- Group Finance, including Group Treasury;

[1] Note that NIE Networks has its own market abuse policy, which is based on the same principles as the ESB Group policy and which applies to NIE Networks and its subsidiaries.

- Central Group Functions such as Strategy and Regulation and Corporate Communications & Public Affairs;
- Enterprise Services (in particular, Financial Operations);
- ESB Networks regulation and finance teams

Joint Ventures to which ESB is a party may also have obligations in their own right, independent of ESB's obligations, depending on the nature of their activities. The manner in which this is managed will depend on the specific governance arrangements for the relevant joint venture and this should be factored into the governance arrangements on the establishment of joint ventures. In some cases, ESB may take on a reporting role on behalf of the joint venture under the contractual arrangements.

Group Compliance Role

This policy and the procedures underpinning it are administered by Group Compliance. Group Compliance have put in place various processes and procedures which are necessary for the operation of the Policy, including the arrangements for the Disclosure Committee (see below) and the establishment of ESB Dealing Guidelines and Code (see below).

Group Compliance will be responsible for the provision of training and raising awareness of this Policy.

Market Abuse Awareness Champion

Financial Controllers in each Directorate will act as a 'Market Abuse Awareness Champion' for the purposes of this policy. The role of the Market Abuse Awareness Champion will include:

- raising awareness of the Policy and promoting understanding of the Policy with staff within their Directorate, to ensure that relevant staff understand the requirements on the Policy and the associated compliance procedures;
- acting as a point of contact for staff within their Directorate and Group Compliance in relation to market abuse matters if required, noting that staff are also entitled to raise potential market abuse matters directly to Group Compliance or Group Legal if they prefer (noting there is also the option of the Confidential Helpline (see further Statement of Policy below) ;
- flagging the existence of any potential inside information to Group Compliance and/or the Disclosure Committee to help ensure that any disclosure obligations (as further detailed in Section 8 below) arising are met;
- referring any concerns about compliance with this policy to Group Compliance.

Briefing Requirement

Staff in the roles, areas and functions to which this Policy is of particular relevance (see above) must be briefed annually on the requirements of this Policy. Group Compliance/Group Legal can provide assistance if required. The annual briefing to directors of ESB subsidiary companies on their duties and obligations as directors which is arranged by the Secretariat will include a summary of the requirements of this policy.

Approval processes for energy traders will include specific training on relevant market abuse laws/regulations.

Terms used in this Policy

This policy aims to outline the core concepts and obligations associated with market abuse laws using direct, plain language to the extent possible. Where specific terms are used frequently in the policy, they are capitalised, and definitions are included in the Glossary to assist with interpretation (see **Appendix 1**).

Support and Guidance

This policy is part of a broader framework of governance and oversight arrangements for market abuse. These include:

- Summary of disclosure and related obligations arising from issuance of notes issued under ESB's Euro Medium Term Note Programme to trading on the Irish Stock Exchange;
- ESB Trading Market Abuse Procedures;
- ESB Dealing Procedures Manual.

Group Compliance and Group Legal are also available to provide support and guidance in understanding applicable obligations under the market abuse laws

PART 2: STATEMENT OF POLICY

We maintain trust with our investors, counterparties, the public and regulators by respecting market abuse laws. This means we do not buy or sell relevant products based on **non-public information,** which is likely to significantly affect the price of those products (inside information), and we maintain the highest standards of compliance in our trading activities. In our work, we may sometimes become aware of material, non-public information about ESB or our traded instruments/products. Trading based on this information, or otherwise trading in a manner that is likely to give false signals to the market not only breaks trust with our investors, counterparties and the public, and damages regulatory relationships, but is also illegal.

Note that the term 'inside information' has a very specific meaning under market abuse laws and is set out in more detail in Part 4 of this Policy.

(i) ESB Personnel **must not** engage in any activity (for ESB Group or otherwise), which breaches market abuse laws. This includes:

Insider dealing

- ESB Personnel may not
  - trade on the basis of inside information,
  - recommend any other person to trade on inside information
  - disclose inside information to any other person (unless permitted by law).

Market manipulation

- ESB Personnel may not engage in market behaviour which gives or is likely to give false or misleading signals to the market, i.e., about the level of supply or demand for relevant products, or which is intended to secure an artificial price for relevant products;

(ii) ESB Personnel must ensure that the existence or anticipated existence of information which may be inside information is flagged up within ESB in accordance with the procedures set out in this Policy;

(iii) ESB Personnel must take steps and precautions to ensure that confidential and commercially sensitive information relating to ESB is protected;

(iv) Certain personnel in managerial roles must comply with the ESB Dealing Code in respect of any proposed dealings for their own benefit (or for third parties) in ESB securities and in emission allowances;

(v) ESB Personnel must report any suspected breaches of this Policy to the Market Abuse Awareness Champion in their Directorate or to Group Compliance / Group Legal. Alternatively reports of wrongdoing can be made to the confidential and independent ESB helpline – see details in Part 8 (Compliance and Enforcement)

A summary of the key principles of the market abuse laws which underpin the Statement of Policy is set out below.

PART 3: MARKET ABUSE LAWS

Overview of the Market Abuse Laws

The principal pieces of legislation providing for rules in relation to market abuse that are relevant to ESB Group, both as an issuer of debt securities or other financial instruments and also a market participant in energy trading and emission allowances trading markets, are[2]:

(i) Regulation (EU) No. 596/2014 on market abuse (**MAR**); and

(ii) Regulation (EU) No. 1227/2011 of 25 October 2011 on wholesale energy market integrity and transparency (**REMIT**).

Whilst these Regulations have direct effect under Irish law, the regimes are augmented through various related pieces of implementing legislation in Ireland, in addition to Central Bank Rules (which apply to instruments within the scope of MAR). For the purposes of this Policy, these Regulations and implementing legislation are collectively referred to as **market abuse laws**.

Scope of the Market Abuse Laws

MAR has a broad scope and applies to issuers of financial instruments that are admitted to trading on regulated markets, such as the Irish Stock Exchange, and certain other categories of trading platforms (i.e. Multilateral Trading Facilities (MTF's) and Organised Trading Facilities (OTFs), and to issuers of financial instrument such as credit default swaps and contracts for difference (CfDs) which are linked to the foregoing. MAR also applies to market participants trading in Emission allowances.

REMIT applies to market participants trading in Wholesale Energy Products, including contracts for the supply or transport of electricity and gas , and derivatives relating to the production, delivery, trading or transportation of electricity or natural gas.

The requirements of each of MAR and REMIT are broadly similar (in terms of the prohibitions on insider dealing and market manipulation), but there are certain important distinctions between the two regimes. The scope of application of each of MAR and REMIT, including the potential overlap of obligations under these Regulations can be a complex matter, and when in doubt, advice should be sought from Group Legal.

[2] Both MAR (*EC 2022/0411(COD)*) ("MAR II") and REMIT (*EP Report A9-0261/2023*) ("REMIT II") are undergoing amendments and proposed legislation is currently with European Commission and Parliament. Amending legislation is expected to issue Q4 2023 or early Q1 2024.

PART 4: INSIDE INFORMATION/INFORMATION GOVERNANCE

Inside Information and Insider Dealing

Market abuse laws prohibit insider dealing, i.e. trading or inducing others to trade on the basis of inside information and/or unlawful disclosure of inside information.

What is Inside Information?

In general terms under market abuse laws, **inside information** comprises information which:

(i) is of a **precise nature** i.e. an event which has occurred or may reasonably be expected to occur;

(ii) is **not publicly available** i.e. is not contained in public records or is otherwise not generally available to the public;

(iii) relates, directly or indirectly, to an **Issuer or market participant** or to one or more **relevant products**; and

(iv) would, if publicly available, be **likely to have a significant (non-trivial) effect on the price** of relevant products.

All elements of the definition of inside information set out above must be met for information to be categorised as inside information.

What could constitute inside information in ESB?

Whether or not information is inside information for the purposes of market abuse laws **requires assessment on a case by case basis**. However, the following is an indicative list of matters which may arise in the course of ESB's business and which may potentially involve inside information (where all elements of the definition of inside information set out above are met):

Examples of matters which may affect the price of securities/financial instruments:

- a proposed transaction involving existing ESB debt securities (e.g., buyback of issued bonds)
- a proposed change to credit ratings;
- any information/event which it is believed could lead to a material change in financial position of ESB or the ESB Group;
- a proposed significant/material asset disposal or acquisition programme;
- significant regulatory price control decisions.

Examples of matters which may affect the price of Wholesale Energy Products / emission allowances:

- Information in relation to capacity, use, outages, or closure of ESB power plant or infrastructure

Emission Allowances

For emission allowances, information relating to *physical operations* of plants can be inside information (and associated disclosure obligations apply) where at a Group level certain thresholds are exceeded.[3] At the time of this Policy, it is expected that ESB Group exceeds the relevant thresholds and information about physical operations could therefore potentially be inside information where it is likely to impact on the price of emission allowances.

Prohibition on Insider Dealing

The market abuse laws provide that a person (being a company or individual) who possesses inside information **must not**:

(a) **use, directly or indirectly, that information to acquire or dispose** of relevant products to which that information relates, whether for that person's own account or for the account of a third party (e.g. buying or selling on behalf of ESB, a subsidiary or a third party); or

(b) **recommend or induce another person**, on the basis of inside information, to acquire or dispose of relevant products to which that information relates; or

(c) **disclose inside information to any other person** unless such disclosure is made in the normal course of the exercise of the first-mentioned person's employment, profession or duties.

So, for example:

- **If ESB were aware of an imminent drop in its credit rating, it may not disclose this selectively to an investor or potential investor, or advise them to dispose of ESB debt securities;**
- **If an ESB employee became aware of information about ESB's future plans for carbon plants which would be likely to impact on the price of emission allowances, they could not trade in emission allowances on the basis of that information either on their own behalf, or for ESB;**

[3] Emission of carbon dioxide equivalent to 6m tonnes per annum or rated thermal input of 2,430MW per *Article 5 of Commission Delegated Regulation (EU) 2016/522*

- **If ESB were aware of an imminent plant closure which was not yet public knowledge, it could not use this information to trade on the forward electricity market.**

CASE 1

Declan Service (Open Orphan plc) (Ireland) – Insider Dealing

Declan Service was charged with two counts of engaging in insider dealing on 18 and 22 May 2022, contrary Regulations 5(1) and (4) of MAR and section 1368 Companies Act 2014 after the Central Bank of Ireland reported suspicious transactions involving shares in Open Orphan plc (now hVIVO plc), a pharmaceutical company listed on the AIM stock market in London. An investigation was conducted by Garda National Economic Crime Bureau (GNECB) with the assistance of the Central Bank. He faces a fine of up to €10,000,000 and/or a prison sentence of up to 10 years. His sentencing date has been scheduled for 20 December 2023.

CASE 2

Engie SA (France) – Insider Dealing

The French National Regulatory Authority issued a fine of €80,000 to Engie SA for breaching the prohibition of insider trading under Article 3 of REMIT. It was found that on 23 January 2017 in the context of unavailability of two of Engie SA gas fired power plants that a member of the Dispatch team communicated to a member of the Trading team, inside information on the extension of unavailability and that the Trading team used that information to enter into five transactions on two hourly products on EPEX Spot's French intraday market.

Disclosure and Reporting Obligations for Inside Information

The following is a summary of the legal requirements with regard to disclosure of Inside Information. It should be noted that ESB has put in place specific procedures to manage the disclosure of inside information which are summarised further below.

The market abuse laws require, subject to some exceptions described below, issuers and market participants to inform the public ***as soon as possible*** of inside information. Where the disclosure obligation applies, inside information must be publicly disclosed in a manner enabling the public's fast access to, and complete, correct and timely assessment of the information.

Inside information disclosure requirements under MAR are normally satisfied by public disclosure through a Regulatory Information System (RIS) such as the Irish Stock Exchange (ISE). For example, ESB issued information about its acquisition of NIE Networks via the ISE.

Inside information disclosure requirements under REMIT is satisfied through publication to central platforms for disclosure known as inside information portals (IIP), e.g., Nordpool, Elexon BRMS in the UK or the European Energy Exchange.

Is there any basis to delay disclosure?[4]

Market abuse laws provide that the disclosure of inside information may be delayed in circumstances where immediate disclosure is likely to prejudice the Issuer/market participant's legitimate interests. This might include, for example, where disclosure would prejudice the outcome of ongoing negotiations in a significant transaction. The exception for delayed disclosure may only be relied upon provided that specific conditions are also met. The decision to delay disclosure must be considered on a case-by-case basis.

It is not permitted to trade on the relevant inside information during a period of delayed disclosure.

If a decision is taken to delay disclosure of inside information, then this must be reported to the relevant competent authorities and strict processes and procedures must be followed in this regard.

The decision as to whether inside information exists and whether disclosure can be legitimately delayed in any circumstances should not be taken by individual staff members; these are matters for the ESB Disclosure Committee / ESB Trading (where covered by the ESB Trading procedures) as appropriate.

See further commentary below on dealing with the risk of media leaks.

CASE 1

Elering (Estonia) – Failure of Disclose

The Estonian Competition Authority issued a fine of €10,000 to Elering (Estonian TSO) in 2015 for Elering's failure to disclose maintenance works on the 650MW Estlink 2 subsea electricity cable that links Estonia with Finland to the market in a timely manner, in breach of its disclosure obligations under Article 4 of REMIT. According to the regulator, Elering did not inform the market in "sufficient time" of the maintenance works, which would disrupt supply for a longer period than initially expected.

[4] Under draft revised MAR there are proposed changes to the delayed disclosure process, including the conditions to be met and when to notify the NCA.

CASE 2

TEEGF (France) – Non-timely Disclosure

The French National Regulatory Authority issued a fine of €80,000 to TotalEnergies Electricity et Gaz France (TEEGF) on 27 July 2023 for breach of Article 4 of REMIT. TEEGF failed to justify the 7 instances between 01 January 2019 and 31 December 2020 where it disclosed inside information relating to outages of its electricity generation facilities more than one, two and three hours later.

ESB Disclosure Procedures

- In order to best ensure compliance with market abuse laws, ESB Personnel must flag the existence or anticipated existence of any information which may potentially be, or become, inside information to the Market Abuse Awareness Champion in their relevant business unit (or directly to Group Compliance or Group Legal).
- The Market Abuse Awareness Champion should immediately report any suspected or anticipated inside information to the Group Head of Legal or the Group Compliance Manager.
- An initial assessment of the information is carried out by Group Compliance and Group Legal. If it is considered that inside information may be in existence, the Disclosure Committee will be convened.
- The Disclosure Committee comprises the Executive Director, Group Finance & Commercial, Manager Group Risk & Compliance; Group Head of Legal (as advisor) and the Company Secretary (as Secretary). Additional Executive Director(s) or Senior Managers may be asked to join the Disclosure Committee for consideration of any issue that is relevant to their business unit.
- The functions of the Disclosure Committee include assessing whether, in any circumstances, inside information has come into being and whether disclosure is required or if there are legitimate grounds to delay disclosure.
- Where inside information is identified by the Disclosure Committee as requiring disclosure, ESB, through Group Compliance or the relevant business unit, arranges disclosure of the inside information as appropriate to meet the disclosure obligations.

- ESB's procedures to ensure compliance with the disclosure requirements, including the exceptions in relation to Delayed Disclosure and Selective Disclosure described above, are summarised in **Appendix 2.**

- **Note that inside information disclosure requirements arising in the context of the activities of the ESB Trading unit (e.g. trading in Wholesale Energy Products, Emission Allowances) shall be handled in accordance with ESB Trading's specific procedures applicable from time to time. The ESB Trading procedures will provide that certain disclosure matters be referred to the Disclosure Committee in certain circumstances.**

While Inside Information exists, can it be disclosed to any person outside of ESB?

In general, inside information may not be disclosed to any person until it is made public in accordance with the applicable procedures. Under MAR there is a limited exception for 'selective disclosure' to certain categories of persons who need access to the information in order to perform their functions, where such disclosure can be justified. This would include, for example, advisors, persons with whom a commercial, financial or investment transaction is being negotiated (i.e. vendor/prospective underwriter), credit rating agencies, representatives of trade unions, government authorities, regulatory bodies or shareholders and their representatives e.g. the Department of the Environment, Climate and Communications (DECC) or New Era.

Selective disclosure is only permitted if it can be *ensured* that the confidentiality of the information will be maintained, i.e. by ensuring the proposed recipient is under a legally binding duty of confidentiality. Generally, this can be ensured either by entering into a non-disclosure agreement (NDA), or where the proposed recipient is under a statutory duty of confidentiality, **and** informing the person that the information is inside information and should be treated as confidential.

In the case of REMIT, information may be disclosed in the course of a person's 'normal employment' provided that the person receiving the information is under a duty of confidentiality (either as a matter of contract – e.g. NDA - or by law). The application of this exception would need to be considered on a case-by-case basis.

CASE

Sir Christopher Gent (UK)[5] – unlawful disclosure of inside information

The FCA on 05 August 2022 issued a fine of £80,000 to Sir Christopher Gent ("CG") for unlawful disclosure of inside information contrary to Article 10(1) of EU MAR on or about 10 October

[5] Although UK no longer EU, this breach was considered under EU MAR prior to Brexit

2018 relating to ConvaTec Group Plc. CG was non-executive Chairman at the time and contacted two major shareholders to disclose to them that on 15 October 2018 ConvaTec expected to disclose revised revenue guidance and announce that the CEO was retiring. FCA found that the information was of a precise nature, was not public and was likely to have significant effect on price and the prior disclosures to the shareholder was not necessary for CG to perform his proper functions nor was it a proportionate way for him to discharge his duties as Chairman.

Communications to the Public, Speculation and Media

The disclosure obligations arising under market abuse laws must be considered at all times in relation to any communications planned to be issued publicly by ESB relating to significant developments relating to ESB's business, transactions, changes to company strategy, etc. due to the potential for any such communications to include inside information. Depending on the circumstances, the premature release of information may be misleading, in which case it should be avoided.

As regards media coverage and leaks, the below bullet points summarise a combination of rules of the Central Bank Rules and ESMA guidance, which apply to financial instruments within the scope of MAR. Whilst these rules/guidance do not expressly apply under REMIT, they reflect best practice terms of ensuring compliance. In summary terms they provide as follows:

- ***Reasonable Care in Relation to Any Announcement***

  ESB is required to exercise all reasonable care to ensure that any communication or announcement made by or on behalf of the company does not contain false, misleading or deceptive information and does not omit any material information which would cause such communication or announcement to be false, misleading or deceptive.

- ***Dealing with Media Speculation or Market Rumour***

  Where there is media speculation or market rumour regarding ESB or its issued debt securities/instruments, an assessment must be made as to whether a disclosure obligation arises.

  There is no obligation to respond to rumours which are without substance. However, in circumstances where inside information has arisen or is likely to materialise (e.g. once a proposed transaction reaches a particular stage) and ESB believes that the information is likely to leak before the full facts of the matter can be confirmed, then ESB should issue an

interim announcement setting out as much detail as possible and explaining why further detail cannot be provided at that stage.

Equally, after it becomes apparent there has been a leak of any 'inside information', then there is then an immediate obligation to disclose the information through the appropriate channels to the market, i.e. when it is clear that confidentiality has been compromised, it is no longer acceptable to stay silent or make no comment.

Any proposal to make any public announcements on significant matters or respond to media speculation or market rumour relating to matters which may involve inside information should be discussed in advance with Group Compliance and Group Legal to ensure that ESB is at all times complying with applicable market abuse laws.

Insider Lists

MAR obliges Issuers and persons acting on their behalf or on their account to maintain a list of all staff and persons who otherwise perform tasks for the Issuer who have access to inside information (such as advisers, accountants and credit rating agencies who receive inside information under the selective disclosure regime described above). As this arises only under MAR, it would relate to information that may affect ESB issued debt securities, emission allowances, or other financial instruments within the scope of MAR.

REMIT does not expressly require the maintenance of an insider list but, does still require a framework to be in place for the assessment of inside information and whether a list of insiders is necessary in particular circumstances. Due to potential overlap of REMIT and MAR for certain types of financial contract, it is important to consider on a case-by-case basis whether the obligation to put in place an insider list arises.

ESB's approach to insider lists is set out below.

ESB Insider List

- If, in any circumstances, the existence of inside information is confirmed by the Disclosure Committee, ESB Group Compliance is responsible for putting in place and maintaining lists of persons who are in possession of inside information in relation to ESB.
- If the Disclosure Committee concludes that inside information is likely to materialise but, for example, the relevant matter is not yet sufficiently precise, a 'confidential list' may be put in place at an early stage.

- ESB Personnel may be contacted by a representative of Group Compliance from time to time to obtain their details for inclusion on ESB's insider list. All personal information obtained for insider lists is processed in accordance with relevant data protection obligations.
- Persons who act on ESB's behalf and who may have access to ESB inside information (e.g. advisers/corporate communications agencies), are obliged to maintain their own list of insiders who have access to inside information relating to ESB. Group Legal and Group Compliance should be consulted on putting appropriate contractual protections/assurances in place with such persons.
- Any parties to whom inside information is disclosed ***in the performance of their functions*** (i.e. government departments, regulators) are not generally considered to be acting on ESB's behalf or account, and are not therefore required to maintain an insider lists relating to inside information regarding ESB but it is still important to ensure they are subject to a contractual or statutory obligation of confidentiality and are made aware that they are receiving inside information.

Confidentiality

In order to assist with ensuring compliance with market abuse laws, ESB Personnel should take certain steps and precautions in relation to the management of confidential and commercially sensitive information relating to ESB (**Confidential Information**), which could amount to inside information.

Tips on how to protect Confidential Information in ESB

- Limit access to key financial and other material company information, such as significant proposed transactions, to personnel who require the information for the purposes of conducting their duties, on a strict 'need to know' basis;
- Ensure that the sharing of Confidential Information with third parties i.e. consultants/advisors is governed by appropriate non-disclosure agreements6;
- Keep all documents containing Confidential Information in a secure location;
- Avoid working with documents containing Confidential Information in public spaces;

[6] For assistance and advice in relation to non-disclosure agreements please contact Group Legal.

- Comply with IT Security Policy in using PCs, laptops and other devices to ensure prevention of unauthorised access to Confidential Information;

- Do not discuss Confidential Information relating to ESB with relatives or social acquaintances.

PART 5: DETECTION AND REPORTING OF SUSPICIOUS TRADES

Suspicious Transaction Reporting ("STOR")

Certain additional requirements with regard to detection and reporting of suspicious activity apply for persons professionally arranging and/or executing transactions. These obligations differ under MAR and REMIT.

Under MAR, these requirements apply to any person professionally arranging or executing transactions (known as a **PPAET**). According to ESMA guidance, this term would include any entity operating a trading function on its own account. As such, ESB operates on the basis that this applies to ESB's trading activities insofar as they relate to financial instruments/emission allowances covered by MAR.

A PPAET is required to identify and report transactions where there is a suspicion of actual or attempted insider dealing or market manipulation. Accordingly, Group Compliance and relevant business units manage detection and reporting of any suspicious transactions which may arise in order to meet these obligations.

The Central Bank of Ireland on 12 July 2021 issued a "Dear CEO" letter setting out its' expectations in respect of compliance with the MAR trade surveillance and reporting obligations[7].

Under REMIT, 'persons professionally arranging transactions" (PPAT) also have additional requirements with regard to detection and reporting of suspicious activity. The definition of PPAT is generally understood to only capture persons arranging transactions for third parties, e.g., market operator and/or broker platforms such as EPEX Spot. As at the date of this Policy, ESB is not considered a PPAT under REMIT, and this will be kept under review. Although there is currently no mandatory requirement under REMIT for an ordinary market participant to report suspicious transactions, it is actively encouraged by ACER and national regulatory authorities.[8]

[7] Dear CEO Letter - MAR requirements to trade surveillance and reporting of suspected market abuse (centralbank.ie)

[8] Note under draft REMIT II the proposal is for REMIT market participant who is also a MAR PPAET to have mandatory STOR obligations regarding REMIT WEP.

Detection and Reporting Suspicious Trades

- ESB has systems in place to monitor suspicious trading activity;
- ESB will also monitor other parties trading activities where it has an obligation to do so;
- Suspicious transactions will be investigated and reported to the relevant regulator;
- ESB will respond in full to requests from market monitors (PPATs) or Regulators to explain or provide justification for trading activities;
- ESB has in place policies and procedures for the investigation of suspicious trading activities.

Algorithmic Trading

Algorithmic and High-frequency trading strategies are behaviours that can be considered market manipulation. Where a particular business uses Algorithmic trading then, the systems and risk controls should be resilient and have sufficient capacity and be subject to appropriate trading thresholds and limits. Business continuity arrangements should be put in place to deal with any failure of its trading systems and ensure that the systems are fully tested and properly monitored to ensure that they comply with the relevant market abuse laws.

Presently ESB Group does not engage in High-frequency trading because of the implications for its status as a non-investment firm under MiFID II.

PART 6: MARKET MANIPULATION

Prohibition on Market Manipulation

Market abuse laws prohibit engagement, or attempted engagement in market manipulation, which in simple terms is trading behaviour which is likely to mislead the market.

The prohibition precludes any behaviour that either gives or is likely to give false or misleading signals as to the supply or demand of/for a relevant product, or which secures, or is likely to secure, the price of any relevant product at an abnormal or artificial level.

In this regard, 'market behaviour' includes:

- entering into a transaction, placing an order to trade or any other behaviour;
- entering into transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance; or
- dissemination of information through the media, including the internet, or by any other means

CASE

Eneco Energy Trading – misleading signals ("fat finger"/typing error)

On 07 March 2022, Eneco Energy Trading (EET) made a typing error in a market order on the wholesale market for natural gas and failed to communicate about this error. The EET trader added an extra 0 to the price of an offer which resulted in 500MWh of natural gas being offered on the balancing market at €2,450 per MWh, whereas it should have been €245. As a result, the Dutch transmission system operator, GTS, paid ten times too much. Although EET discovered the typing error straight away, it failed to take any action, e.g., to notify other market participants that too high a price was offered due to a typing error. As EET did not take any action, other market participants offered the natural gas at similarly high prices during a subsequent balancing action and EET then also offered natural gas at high prices resulting in EET benefitting of these high pieces in two balancing actions. EET were fined €2.4million by ACM, the Dutch NRA, as disgorgement for profits made as a result of an erroneous order placed on the wholesale gas market.

This fine has contributed to the growing guidance by NRAs that market participants should take preventative measures and to have procedures in place for correcting errors and for eliminating incorrect or misleading signals to the market. A "fat finger" error should not only be deleted and reported to the venue, but also will often constitute "Inside Information" and must be therefore disclosed.

The prohibition against market manipulation is applicable to ESB in respect of all relevant products (e.g. ESB issued debt securities, emission allowances, financial instruments issued by ESB which are within the scope of MAR, and Wholesale Energy Products).

Examples of Market Manipulation

Examples of market manipulation include:

- **Misleading trades,** e.g.
  - 'Wash trades': the practice of entering into arrangements for the sale and purchase of a relevant product where there is no real change in beneficial interests or market risk;
  - Placing orders with no intention of executing them (i.e. to give a false impression of demand or supply); or
  - 'Capacity hoarding': this practice in the energy market involves the acquisition of all or part of the available transmission capacity without using it or without using it effectively.

- **Price positioning,** e.g.
  - 'Marking the close': deliberately buying or selling relevant products at the close of the market in an effort to alter the closing price of the product;
  - 'Abusive Squeeze': where a party with significant influence over the supply of, or demand for, a Relevant Product exploits a decisive position to distort price at which others have to deliver, take delivery or defer delivery of the product in order to satisfy their obligations or
  - 'Physical withholding': where a market participant in a Wholesale Energy Product decides not to offer all the available production, storage or transportation capacity with the intention of shifting the market price to higher levels, e.g. not offering a plant whose marginal cost is lower than the spot price.

- **Fictitious devices/deception** e.g.
  - 'Scalping': disseminating false or misleading market information through the media (i.e. with the intention of moving the price of a wholesale energy product in the favour of the manipulator), or
  - 'Pump and dump': taking a long position in a Relevant Product and then undertaking further buying activity and/or disseminating misleading positive information with a view to increasing the price of the product. The manipulator then sells out at the inflated price.

This list is not intended to be exhaustive. Both ESMA and ACER have published extensive guidance on, and examples of, market manipulation. See link in Part 9.

CASE

Engergi Danmark (Denmark) – Capacity Hoarding

In December 2018 it was reported that the Danish Energy Regulatory Authority fined Energi Danmark A/S approximately €100,000 in respect of breaches (ten separate instances) of the prohibition on market manipulations set out in Article 5 of REMIT. The Danish authorities also confiscated the revenue obtained through the relevant transactions. Energi Danmark had hoarded capacity on the electricity interconnectors by trading with itself, excluding third party traders.

PART 7: MANAGERS TRANSACTIONS

Notification of Manager's Transactions & Dealing Restrictions

MAR requires persons who discharge managerial responsibilities (**PDMRs**) and persons closely associated with them e.g. spouses and relatives (**PCAs**), to report to the relevant issuer/market participant (e.g. ESB) and to the Central Bank of Ireland details of transactions carried out on their own account, or on the account of a third party, in relation to the securities of the issuer and in relation to emission allowances above a specified threshold - the relevant threshold(s) can be found on the Central Bank of Ireland website (Notification of Managers Transactions | Central Bank of Ireland). Please refer to Appendix 1 for definitions of the terms used in this Section.

In ESB, this would apply, for example, to an ESB manager investing or trading in ESB debt securities, or in emission allowances on their own account (for their own benefit), or for a third party (i.e. when not acting for ESB Group).

It might be noted that these provisions are not relevant to participation in the ESOP as that ESB shares are not traded on a regulated market or relevant platform and therefore are not within the scope of MAR or REMIT.

MAR also provides for **dealing restrictions** on PDMRs and certain other employees who have or may have access to inside information relating to ESB, meaning that they cannot trade in ESB debt securities, or in emission allowances either when inside information is in existence, or during certain periods typically referred to as **closed periods**.

Particular 'closed periods' arise from the end of the financial year up to preliminary announcement of ESB's annual results/ publication of ESB's annual report or up to release of ESB's half yearly financial report.

Exception for Notifications

It should be noted that there are exceptions to the above requirements for PDMRs. For example, where they participate in collective investment undertakings (e.g. where a manager invests funds on behalf of a group of investors in accordance with a defined policy), and portfolio investment funds, which might for example include certain pension schemes. Investment in such instruments will not be caught by the above reporting requirements or dealing restrictions where at the time of investing the relevant ESB securities/emission allowances do not exceed 20% of the total exposure of the collective investment/portfolio, or the PDMR did not know, and had no reason to believe that the exposure to ESB securities/emission allowances exceeded that amount.

Equally, where a PDMR is participating in a collective investment undertaking, there is no obligation to report/restriction the subsequent dealings of that fund where it is managed by an investment manager with full discretion to invest on behalf of the participants.

If on the other hand, an investment manager is directly investing in a portfolio of interests on an individual basis on behalf of the PDMR, then reporting obligations may arise, so this should be discussed with the investment manager.

ESB Dealing Code

ESB has put in place a Dealing Code which sets out ESB's procedures for dealing with the above requirements. The ESB Dealing Code should be read in conjunction with this policy.

Dealing Restrictions & Notification Obligations in ESB

- ESB maintains a Dealing Code which sets out the Dealing Restrictions and/or Notification Obligations and how they apply to relevant ESB Personnel and their spouses/relatives.
- Group Compliance will from time to time notify any persons who are considered to be PDMRs and will advise them of their obligations under the Dealing Code. Group Compliance can provide clarification or further information in relation to Dealing Code and the related processes as required.

PART 8: COMPLIANCE AND ENFORCEMENT

Regulation and Enforcement

The Central Bank of Ireland (**CBI**) and the Commission for Regulation of Utilities (**CRU**) are the authorities responsible for enforcement of MAR and REMIT respectively in Ireland. As part of its administrative and enforcement role in relation to market abuse, the CBI maintains (binding) Market Abuse Rules and issues guidance on the market abuse framework.

The Office of Gas and Electricity Markets (**Ofgem**) and the Financial Conduct Authority (**FCA**) are the authorities responsible for enforcement of UK equivalent of REMIT and MAR. Both Ofgem and FCA also maintain guidance on the market abuse framework and how they implement and enforce the requirements in the UK.

At EU level, ESMA (the European Securities and Markets Authority) has powers under EU legislation to establish supervisory standards and practices for compliance with MAR, and ESMA has investigative and enforcement powers. ACER (the Agency for the Cooperation of Energy Regulators) has been charged with powers to issue guidance and technical standards and with certain enforcement powers under REMIT. Both ESMA and ACER maintain technical standards and guidance in relation to the MAR and REMIT frameworks.

See Part 9 for links to the technical standards guidelines, Q&A and other relevant resources of competent authorities referred to above.

Where there are overlapping obligations under both MAR and REMIT, it is a matter for the relevant national regulatory authorities to coordinate on any enforcement action taken.

Investigation/Breach of Market Abuse Laws

The above named regulators with responsibility for enforcement have extensive powers to investigate suspected breaches of market abuse laws, including the power to search premises and seize documents which may be conducted through an unannounced 'dawn raid'.

The penalties for breach of market abuse laws can be severe and could result in fines at an individual or company level, and/or imprisonment. If a company is found guilty of an offence under the market abuse laws and it is proven that the offence has been committed with the consent, connivance or approval of (or to have been attributable to the wilful neglect on the part of) any director, manager, secretary or other officer of the company (or a person who was purporting to act in such capacity) that person can be found guilty of a criminal offence. It is also a significant reputational issue for any company found to be in breach.

Breach of ESB Policy

In the event of a breach of market abuse laws in ESB

- ESB takes its obligations under market abuse laws very seriously. Breaches of this Policy or associated codes/policies may result in disciplinary action, which could result in termination of employment.
- Suspected breaches of this Policy should be reported immediately to the Market Abuse Awareness Champion in your area or to Group Compliance or Group Legal.
- If you feel that you cannot report to management, you should contact the independent and confidential ESB Safecall helpline at 1800812 740 (within Ireland), UK 0800 915 1571, other jurisdictions: www.safecall.co.uk/freephone or webmail www.safecall.co.uk/clients/esb..

PART 9: FURTHER INFORMATION AND GUIDANCE

The summary of obligations set out in this Policy is not intended to be a complete note of all relevant market abuse obligations applying to ESB Personnel. If you have any queries regarding the content of this Policy or any related codes, policies or guidance, please contact Group Compliance or Group Legal for assistance.

The following technical standards, guidelines and Q&A are referred to in the Policy:

- European Securities and Markets Authority (ESMA) Technical Standards and Guidelines available at https://www.esma.europa.eu/convergence/guidelines-and-technical-standards and Questions and Answers regarding the implementation of the Market Abuse Regulation available at https://www.esma.europa.eu/press-news/esma-news/esma-updates-qa-mar

- Agency for the Co-Operation of Energy Regulators (ACER) Guidance on REMIT available at https://www.acer.europa.eu/remit/about-remit/remit-guidance.

- Central Bank of Ireland (CBI) Market Abuse Rules, Guidance on Market Abuse Regulatory Framework and Q&A available at https://www.centralbank.ie/regulation/industry-market-sectors/securities-markets/market-abuse-regulation/regulatory-requirements-guidance

- The Office of Gas and Electricity Markets (Ofgem) – information on REMIT available at https://www.ofgem.gov.uk/electricity/wholesale-market/european-market/remit.

- Financial Conduct Authority (FCA) – information on Market Abuse Regulations website at https://www.fca.org.uk/markets/market-abuse/regulation.

APPENDIX 1 - Glossary

The definitions contained in this Glossary are presented for guidance purposes only, to assist with interpretation of the Policy and should not be considered to constitute complete legal definitions in respect of the context in which they are used within the Policy.

Algorithmic trading	means trading where a computer algorithm automatically determines individual parameters of order such as whether to initiate the order, the timing, price or quantity of the order or how to manage the order after its submission, with limited or no human intervention, and does not include any system that is only used for the purpose of routing orders to one or more trading venues or for the processing of orders involving no determination of any trading parameters or for the confirmation of orders or the post-trade processing of executed transactions. (Source: MiFID II)
Emission allowances:	emission allowances consisting of any units recognised for compliance with the requirements of Directive 2003/87/EC (Emissions Trading Scheme). (Source: MiFID II)
Emission Allowance Market Participant:	means any person who enters into transactions, including the placing of orders to trade, in emission allowances, auctioned products based thereon, or derivatives thereof and who does not benefit from an exemption under Article 17(2) of MAR (Source: MAR)
Financial instrument:	futures, swaps, forwards, derivatives and Contracts for Difference and other instruments more particularly defined in Section C Annex 1 of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (MiFID II). (Source: MAR)
High-frequency algo trading	means an algorithmic trading technique characterised by (a) infrastructure intended to minimise network and other types of latencies, including at least one of the following facilities for algorithmic order entry: co-location, proximity hosting or high-speed direct electronic access; (b) system-determination of order initiation, generation, routing or execution without human intervention for individual trades or orders; and (c) high message intraday rates which constitute orders, quotes or cancellations. (Source: MiFID II).
Issuer:	means a legal entity governed by private or public law, which issues or proposes to issue financial instruments, the Issuer being, in case of depository receipts representing financial instruments, the Issuer of the financial instrument represented (Source: MAR)
Multilateral Trading Facility:	a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling

	interests in financial instruments – in the system and in accordance with non-discretionary rules. (Source: MiFID II)
Organised Trading Facility:	a multilateral system which is not a regulated market or an MTF and in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system; (Source: MiFID II)
PCA	person closely associated – means: (a) A spouse, or a partner considered to be equivalent to a spouse in accordance with national law; (b) A dependent child, in accordance with national law; (c) A relative who has shared the same household for at least one year on the date of the transaction concerned; or (d) A legal person, trust or partnership, the managerial responsibilities of which are discharged by a person discharging managerial responsibilities or by a person referred to in point (a), (b) or (c), or which is directly or indirectly controlled by such a person, or which is set up for the benefit of such a person, or the economic interests of which are substantially equivalent to those of such a person. (Source: MAR)
PDMR	person discharging managerial responsibilities – means a person within an issuer, an emission allowance participant or another entity referred to in Article 19(10) of MAR, who is: **(a)** A member of the administrative, management or supervisory body of that entity; or **(b)** A senior executive who is not a member of the bodies referred to in point (a), who has regular access to inside information relating directly or indirectly to that entity and power to take managerial decision affecting the future developments and business prospects of that entity; (Source: MAR)
Regulated Market:	a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly. (Source: MiFID II)
Securities:	means: (i) shares and other securities equivalent to shares; (ii) bonds and other forms of securitised debt; or (iii) securitised debt convertible or exchangeable into shares or into other securities equivalent to shares. (Source: MAR)

Wholesale Energy Product[9]: means the following contracts and derivatives, irrespective of where and how they are traded:

1. Contracts for the supply of electricity or natural gas where delivery is in the European Union;
2. Derivatives relating to electricity or natural gas produced, traded or delivered in the European Union;
3. Contracts relating to the transportation of electricity or natural gas in the European Union.

Contracts for the supply and distribution of electricity or natural gas for the use of final customers are not wholesale energy products. However contracts for the supply and distribution of electricity or natural gas to final customers with a consumption capacity greater than 600GWh per year shall be treated as wholesale energy product. (Source: REMIT)

[9] Proposals to amend under REMIT II to include, inter alia, LNG, electricity & gas storage and where electricity and gas may result in delivery in the Union as a result of single day-ahead and intraday coupling.

APPENDIX 2- Disclosure Procedures Flowchart