

Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) 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 (Text with EEA relevance)

CHAPTER 3

DISCLOSURE REQUIREMENTS

Article 17

Public disclosure of inside information

1 An issuer shall inform the public as soon as possible of inside information which directly concerns that issuer.

The issuer shall ensure that the inside information is made public in a manner which enables fast access and complete, correct and timely assessment of the information by the public and, where applicable, in the officially appointed mechanism referred to in Article 21 of Directive 2004/109/EC of the European Parliament and the Council⁽¹⁾. The issuer shall not combine the disclosure of inside information to the public with the marketing of its activities. The issuer shall post and maintain on its website for a period of at least five years, all inside information it is required to disclose publicly.

This Article shall apply to issuers who have requested or approved admission of their financial instruments to trading on a regulated market in a Member State or, in the case of instruments only traded on an MTF or on an OTF, issuers who have approved trading of their financial instruments on an MTF or an OTF or have requested admission to trading of their financial instruments on an MTF in a Member State.

2 An emission allowance market participant shall publicly, effectively and in a timely manner disclose inside information concerning emission allowances which it holds in respect of its business, including aviation activities as specified in Annex I to Directive 2003/87/EC or installations within the meaning of Article 3(e) of that Directive which the participant concerned, or its parent undertaking or related undertaking, owns or controls or for the operational matters of which the participant, or its parent undertaking or related undertaking, is responsible, in whole or in part. With regard to installations, such disclosure shall include information relevant to the capacity and utilisation of installations, including planned or unplanned unavailability of such installations.

The first subparagraph shall not apply to a participant in the emission allowance market where the installations or aviation activities that it owns, controls or is responsible for, in the preceding year have had emissions not exceeding a minimum threshold of carbon dioxide equivalent and, where they carry out combustion activities, have had a rated thermal input not exceeding a minimum threshold.

The Commission shall be empowered to adopt delegated acts in accordance with Article 35 establishing a minimum threshold of carbon dioxide equivalent and a minimum threshold of rated thermal input for the purposes of the application of the exemption provided for in the second subparagraph of this paragraph.

3 The Commission shall be empowered to adopt delegated acts in accordance with Article 35 specifying the competent authority for the notifications of paragraphs 4 and 5 of this Article.

4 An issuer or an emission allowance market participant, may, on its own responsibility, delay disclosure to the public of inside information provided that all of the following conditions are met:

- a immediate disclosure is likely to prejudice the legitimate interests of the issuer or emission allowance market participant;
- b delay of disclosure is not likely to mislead the public;
- c the issuer or emission allowance market participant is able to ensure the confidentiality of that information.

In the case of a protracted process that occurs in stages and that is intended to bring about, or that results in, a particular circumstance or a particular event, an issuer or an emission allowance market participant may on its own responsibility delay the public disclosure of inside information relating to this process, subject to points (a), (b) and (c) of the first subparagraph.

Where an issuer or emission allowance market participant has delayed the disclosure of inside information under this paragraph, it shall inform the competent authority specified under paragraph 3 that disclosure of the information was delayed and shall provide a written explanation of how the conditions set out in this paragraph were met, immediately after the information is disclosed to the public. Alternatively, Member States may provide that a record of such an explanation is to be provided only upon the request of the competent authority specified under paragraph 3.

5 In order to preserve the stability of the financial system, an issuer that is a credit institution or a financial institution, may, on its own responsibility, delay the public disclosure of inside information, including information which is related to a temporary liquidity problem and, in particular, the need to receive temporary liquidity assistance from a central bank or lender of last resort, provided that all of the following conditions are met:

- a the disclosure of the inside information entails a risk of undermining the financial stability of the issuer and of the financial system;
- b it is in the public interest to delay the disclosure;
- c the confidentiality of that information can be ensured; and
- d the competent authority specified under paragraph 3 has consented to the delay on the basis that the conditions in points (a), (b) and (c) are met.

6 For the purposes of points (a) to (d) of paragraph 5, an issuer shall notify the competent authority specified under paragraph 3 of its intention to delay the disclosure of the inside information and provide evidence that the conditions set out in points (a), (b) and (c) of paragraph 5 are met. The competent authority specified under paragraph 3 shall consult, as appropriate, the national central bank or the macro-prudential authority, where instituted, or, alternatively, the following authorities:

- a where the issuer is a credit institution or an investment firm the authority designated in accordance with Article 133(1) of Directive 2013/36/EU of the European Parliament and of the Council⁽²⁾;
- b in cases other than those referred to in point (a), any other national authority responsible for the supervision of the issuer.

The competent authority specified under paragraph 3 shall ensure that disclosure of the inside information is delayed only for a period as is necessary in the public interest.

The competent authority specified under paragraph 3 shall evaluate at least on a weekly basis whether the conditions set out in points (a), (b) and (c) of paragraph 5 are still met.

If the competent authority specified under paragraph 3 does not consent to the delay of disclosure of the inside information, the issuer shall disclose the inside information immediately.

This paragraph shall apply to cases where the issuer does not decide to delay the disclosure of inside information in accordance with paragraph 4.

Reference in this paragraph to the competent authority specified under paragraph 3 is without prejudice to the ability of the competent authority to exercise its functions in any of the ways referred to in Article 23(1).

7 Where disclosure of inside information has been delayed in accordance with paragraph 4 or 5 and the confidentiality of that inside information is no longer ensured, the issuer or the emission allowance market participant shall disclose that inside information to the public as soon as possible.

This paragraph includes situations where a rumour explicitly relates to inside information the disclosure of which has been delayed in accordance with paragraph 4 or 5, where that rumour is sufficiently accurate to indicate that the confidentiality of that information is no longer ensured.

8 Where an issuer or an emission allowance market participant, or a person acting on their behalf or for their account, discloses any inside information to any third party in the normal course of the exercise of an employment, profession or duties as referred to in Article 10(1), they must make complete and effective public disclosure of that information, simultaneously in the case of an intentional disclosure, and promptly in the case of a non-intentional disclosure. This paragraph shall not apply if the person receiving the information owes a duty of confidentiality, regardless of whether such duty is based on a law, on regulations, on articles of association, or on a contract.

9 Inside information relating to issuers whose financial instruments are admitted to trading on an SME growth market, may be posted on the trading venue's website instead of on the website of the issuer where the trading venue chooses to provide this facility for issuers on that market.

10 In order to ensure uniform conditions of application of this Article, ESMA shall develop draft implementing technical standards to determine:

- a the technical means for appropriate public disclosure of inside information as referred to in paragraphs 1, 2, 8 and 9; and
- b the technical means for delaying the public disclosure of inside information as referred to in paragraphs 4 and 5.

ESMA shall submit those draft implementing technical standards to the Commission by 3 July 2016.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

11 ESMA shall issue guidelines to establish a non-exhaustive indicative list of the legitimate interests of issuers, as referred to in point (a) of paragraph 4, and of situations in which delay of disclosure of inside information is likely to mislead the public as referred to in point (b) of paragraph 4.

Article 18

Insider lists

- 1 Issuers or any person acting on their behalf or on their account, shall:
 - a draw up a list of all persons who have access to inside information and who are working for them under a contract of employment, or otherwise performing tasks through which they have access to inside information, such as advisers, accountants or credit rating agencies (insider list);
 - b promptly update the insider list in accordance with paragraph 4; and
 - c provide the insider list to the competent authority as soon as possible upon its request.

2 Issuers or any person acting on their behalf or on their account, shall take all reasonable steps to ensure that any person on the insider list acknowledges in writing the legal and regulatory duties entailed and is aware of the sanctions applicable to insider dealing and unlawful disclosure of inside information.

Where another person acting on behalf or on the account of the issuer assumes the task of drawing up and updating the insider list, the issuer remains fully responsible for complying with this Article. The issuer shall always retain a right of access to the insider list.

- 3 The insider list shall include at least:
 - a the identity of any person having access to inside information;
 - b the reason for including that person in the insider list;
 - c the date and time at which that person obtained access to inside information; and
 - d the date on which the insider list was drawn up.
- 4 Issuers or any person acting on their behalf or on their account shall update the insider list promptly, including the date of the update, in the following circumstances:
 - a where there is a change in the reason for including a person already on the insider list;
 - b where there is a new person who has access to inside information and needs, therefore, to be added to the insider list; and
 - c where a person ceases to have access to inside information.

Each update shall specify the date and time when the change triggering the update occurred.

5 Issuers or any person acting on their behalf or on their account shall retain the insider list for a period of at least five years after it is drawn up or updated.

- 6 Issuers whose financial instruments are admitted to trading on an SME growth market shall be exempt from drawing up an insider list, provided that the following conditions are met:
 - a the issuer takes all reasonable steps to ensure that any person with access to inside information acknowledges the legal and regulatory duties entailed and is aware of the sanctions applicable to insider dealing and unlawful disclosure of inside information; and
 - b the issuer is able to provide the competent authority, upon request, with an insider list.

7 This Article shall apply to issuers who have requested or approved admission of their financial instruments to trading on a regulated market in a Member State or, in the case of an instrument only traded on an MTF or an OTF, have approved trading of their financial

instruments on an MTF or an OTF or have requested admission to trading of their financial instruments on an MTF in a Member State.

- 8 Paragraphs 1 to 5 of this Article shall also apply to:
- a emission allowance market participants in relation to inside information concerning emission allowances that arises in relation to the physical operations of that emission allowance market participant;
 - b any auction platform, auctioneer and auction monitor in relation to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (EU) No 1031/2010.

9 In order to ensure uniform conditions of application of this Article, ESMA shall develop draft implementing technical standards to determine the precise format of insider lists and the format for updating insider lists referred to in this Article.

ESMA shall submit those draft implementing technical standards to the Commission by 3 July 2016.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 19

Managers' transactions

1 Persons discharging managerial responsibilities, as well as persons closely associated with them, shall notify the issuer or the emission allowance market participant and the competent authority referred to in the second subparagraph of paragraph 2:

- a in respect of issuers, of every transaction conducted on their own account relating to the shares or debt instruments of that issuer or to derivatives or other financial instruments linked thereto;
- b in respect of emission allowance market participants, of every transaction conducted on their own account relating to emission allowances, to auction products based thereon or to derivatives relating thereto.

Such notifications shall be made promptly and no later than three business days after the date of the transaction.

The first subparagraph applies once the total amount of transactions has reached the threshold set out in paragraph 8 or 9, as applicable, within a calendar year.

2 For the purposes of paragraph 1, and without prejudice to the right of Member States to provide for notification obligations other than those referred to in this Article, all transactions conducted on the own account of the persons referred to in paragraph 1, shall be notified by those persons to the competent authorities.

The rules applicable to notifications, with which persons referred to in paragraph 1 must comply, shall be those of the Member State where the issuer or emission allowance market participant is registered. Notifications shall be made within three working days of the transaction date to the competent authority of that Member State. Where the issuer is not registered in a Member State, the notification shall be made to the competent authority of the home Member State in accordance with point (i) of Article 2(1) of

Directive 2004/109/EC or, in the absence thereof, to the competent authority of the trading venue.

3 The issuer or emission allowance market participant shall ensure that the information that is notified in accordance with paragraph 1 is made public promptly and no later than three business days after the transaction in a manner which enables fast access to this information on a non-discriminatory basis in accordance with the implementing technical standards referred to in point (a) of Article 17(10).

The issuer or emission allowance market participant shall use such media as may reasonably be relied upon for the effective dissemination of information to the public throughout the Union, and, where applicable, it shall use the officially appointed mechanism referred to in Article 21 of Directive 2004/109/EC.

Alternatively, national law may provide that a competent authority may itself make public the information.

4 This Article shall apply to issuers who:

- a have requested or approved admission of their financial instruments to trading on a regulated market; or
- b in the case of an instrument only traded on an MTF or an OTF, have approved trading of their financial instruments on an MTF or an OTF or have requested admission to trading of their financial instruments on an MTF.

5 Issuers and emission allowance market participants shall notify the person discharging managerial responsibilities of their obligations under this Article in writing. Issuers and emission allowance market participants shall draw up a list of all persons discharging managerial responsibilities and persons closely associated with them.

Persons discharging managerial responsibilities shall notify the persons closely associated with them of their obligations under this Article in writing and shall keep a copy of this notification.

6 A notification of transactions referred to in paragraph 1 shall contain the following information:

- a the name of the person;
- b the reason for the notification;
- c the name of the relevant issuer or emission allowance market participant;
- d a description and the identifier of the financial instrument;
- e the nature of the transaction(s) (e.g. acquisition or disposal), indicating whether it is linked to the exercise of share option programmes or to the specific examples set out in paragraph 7;
- f the date and place of the transaction(s); and
- g the price and volume of the transaction(s). In the case of a pledge whose terms provide for its value to change, this should be disclosed together with its value at the date of the pledge.

7 For the purposes of paragraph 1, transactions that must be notified shall also include:

- a the pledging or lending of financial instruments by or on behalf of a person discharging managerial responsibilities or a person closely associated with such a person, as referred to in paragraph 1;
- b transactions undertaken by persons professionally arranging or executing transactions or by another person on behalf of a person discharging managerial responsibilities or a

- person closely associated with such a person, as referred to in paragraph 1, including where discretion is exercised;
- c transactions made under a life insurance policy, defined in accordance with Directive 2009/138/EC of the European Parliament and of the Council⁽³⁾, where:
- (i) the policyholder is a person discharging managerial responsibilities or a person closely associated with such a person, as referred to in paragraph 1,
 - (ii) the investment risk is borne by the policyholder, and
 - (iii) the policyholder has the power or discretion to make investment decisions regarding specific instruments in that life insurance policy or to execute transactions regarding specific instruments for that life insurance policy.

For the purposes of point (a), a pledge, or a similar security interest, of financial instruments in connection with the depositing of the financial instruments in a custody account does not need to be notified, unless and until such time that such pledge or other security interest is designated to secure a specific credit facility.

Insofar as a policyholder of an insurance contract is required to notify transactions according to this paragraph, an obligation to notify is not incumbent on the insurance company.

8 Paragraph 1 shall apply to any subsequent transaction once a total amount of EUR 5 000 has been reached within a calendar year. The threshold of EUR 5 000 shall be calculated by adding without netting all transactions referred to in paragraph 1.

9 A competent authority may decide to increase the threshold set out in paragraph 8 to EUR 20 000 and shall inform ESMA of its decision and the justification for its decision, with specific reference to market conditions, to adopt the higher threshold prior to its application. ESMA shall publish on its website the list of thresholds that apply in accordance with this Article and the justifications provided by competent authorities for such thresholds.

10 This Article shall also apply to transactions by persons discharging managerial responsibilities within any auction platform, auctioneer and auction monitor involved in the auctions held under Regulation (EU) No 1031/2010 and to persons closely associated with such persons in so far as their transactions involve emission allowances, derivatives thereof or auctioned products based thereon. Those persons shall notify their transactions to the auction platforms, auctioneers and auction monitor, as applicable, and to the competent authority where the auction platform, auctioneer or auction monitor, as applicable, is registered. The information that is so notified shall be made public by the auction platforms, auctioneers, auction monitor or competent authority in accordance with paragraph 3.

11 Without prejudice to Articles 14 and 15, a person discharging managerial responsibilities within an issuer shall not conduct any transactions on its own account or for the account of a third party, directly or indirectly, relating to the shares or debt instruments of the issuer or to derivatives or other financial instruments linked to them during a closed period of 30 calendar days before the announcement of an interim financial report or a year-end report which the issuer is obliged to make public according to:

- a the rules of the trading venue where the issuer's shares are admitted to trading; or
- b national law.

12 Without prejudice to Articles 14 and 15, an issuer may allow a person discharging managerial responsibilities within it to trade on its own account or for the account of a third party during a closed period as referred to in paragraph 11 either:

- a on a case-by-case basis due to the existence of exceptional circumstances, such as severe financial difficulty, which require the immediate sale of shares; or
- b due to the characteristics of the trading involved for transactions made under, or related to, an employee share or saving scheme, qualification or entitlement of shares, or transactions where the beneficial interest in the relevant security does not change.

13 The Commission shall be empowered to adopt delegated acts in accordance with Article 35 specifying the circumstances under which trading during a closed period may be permitted by the issuer, as referred to in paragraph 12, including the circumstances that would be considered as exceptional and the types of transaction that would justify the permission for trading.

14 The Commission shall be empowered to adopt delegated acts in accordance with Article 35, specifying types of transactions that would trigger the requirement referred to in paragraph 1.

15 In order to ensure uniform application of paragraph 1, ESMA shall develop draft implementing technical standards concerning the format and template in which the information referred to in paragraph 1 is to be notified and made public.

ESMA shall submit those draft implementing technical standards to the Commission by 3 July 2015.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 20

Investment recommendations and statistics

1 Persons who produce or disseminate investment recommendations or other information recommending or suggesting an investment strategy shall take reasonable care to ensure that such information is objectively presented, and to disclose their interests or indicate conflicts of interest concerning the financial instruments to which that information relates.

2 Public institutions disseminating statistics or forecasts liable to have a significant effect on financial markets shall disseminate them in an objective and transparent way.

3 In order to ensure consistent harmonisation of this Article, ESMA shall develop draft regulatory technical standards to determine the technical arrangements for the categories of person referred to in paragraph 1, 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.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

The technical arrangements laid down in the regulatory technical standards referred to in paragraph 3 shall not apply to journalists who are subject to equivalent appropriate regulation in a Member State, including equivalent appropriate self-regulation, provided

that such regulation achieves similar effects as those technical arrangements. Member State shall notify the text of that equivalent appropriate regulation to the Commission.

Article 21

Disclosure or dissemination of information in the media

For the purposes of Article 10, Article 12(1)(c) and Article 20, where information is disclosed or disseminated and where recommendations are produced or disseminated for the purpose of journalism or other form of expression in the media, such disclosure or dissemination of information shall be assessed taking into account the rules governing the freedom of the press and freedom of expression in other media and the rules or codes governing the journalist profession, unless:

- (a) the persons concerned, or persons closely associated with them, derive, directly or indirectly, an advantage or profits from the disclosure or the dissemination of the information in question; or
- (b) the disclosure or the dissemination is made with the intention of misleading the market as to the supply of, demand for, or price of financial instruments.

Status: This is the original version (as it was originally adopted).

- (1) Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).
- (2) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).
- (3) Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).