

Current Version	Updated Listing Act Version
<p>02014R0596 — EN — 01.01.2021 — 002.001</p> <p><b>This text is meant purely as a documentation tool and has no legal effect. The Union's institutions do not assume any liability for its contents. The authentic versions of the relevant acts, including their preambles, are those published in the Official Journal of the European Union and available in EUR-Lex. Those official texts are directly accessible through the links embedded in this document</b></p>	<p><b><u>9 February 2023</u></b></p> <p>Amendments by the General Secretariat of the Council (in <b>red</b>) to the Commission proposal for a</p> <p><b>REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL (in <b>green</b>)</b></p>
<p>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) (OJL 173 12.6.2014, p. 1)</p> <p>(Source: <a href="#">Market Abuse Regulation</a>)</p>	<p>AMENDING REGULATION (EU) No 596/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014 to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises (Text with EEA relevance)</p> <p>(Source: <a href="#">Amendments to the proposal</a> <a href="#">Proposal for a regulation</a>)</p>
<p><b>CHAPTER 1</b></p> <p><b>GENERAL PROVISIONS</b></p> <p><i>Article 1</i></p> <p><b>Subject matter</b></p> <p>This Regulation establishes a common regulatory framework on insider dealing, the unlawful disclosure of inside information and market manipulation (market abuse) as well as measures to prevent market abuse to ensure the integrity of financial markets in the Union and to enhance investor protection and confidence in those markets.</p>	

## Article 2

### Scope

1. This Regulation applies to the following:
  - (a) financial instruments admitted to trading on a regulated market or for which a request for admission to trading on a regulated market has been made;
  - (b) financial instruments traded on an MTF, admitted to trading on an MTF or for which a request for admission to trading on an MTF has been made;
  - (c) financial instruments traded on an OTF;
  - (d) financial instruments not covered by point (a), (b) or (c), the price or value of which depends on or has an effect on the price or value of a financial instrument referred to in those points, including, but not limited to, credit default swaps and contracts for difference.

This Regulation also applies to behaviour or transactions, including bids, relating to the auctioning on an auction platform authorised as a regulated market of emission allowances or other auctioned products based thereon, including when auctioned products are not financial instruments, pursuant to Regulation (EU) No 1031/2010. Without prejudice to any specific provisions referring to bids submitted in the context of an auction, any requirements and prohibitions in this Regulation referring to orders to trade shall apply to such bids.

2. Articles 12 and 15 also apply to:
  - (a) spot commodity contracts, which are not wholesale energy products, where the transaction, order or behaviour has or is likely or intended to have an effect on the price or value of a financial instrument referred to in paragraph 1;
  - (b) types of financial instruments, including derivative contracts or derivative instruments for the transfer of credit risk, where the transaction, order, bid or behaviour has or is likely to have an effect on the price or value of a spot commodity contract where the price or value depends on the price or value of those financial instruments; and
  - (c) behaviour in relation to benchmarks.
3. This Regulation applies to any transaction, order or behaviour concerning any financial instrument as referred to in paragraphs 1 and 2, irrespective of whether or not such transaction, order or behaviour takes place on a trading venue.
4. The prohibitions and requirements in this Regulation shall apply to actions and omissions, in the Union and in a third country, concerning the instruments referred to in paragraphs 1 and 2.

## Article 3

### Definitions

1. For the purposes of this Regulation, the following definitions apply:
  - (1) 'financial instrument' means a financial instrument as defined in point (15) of Article 4(1) of Directive 2014/65/EU;
  - (2) 'investment firm' means an investment firm as defined in point (1) of Article 4(1) of Directive 2014/65/EU;
  - (3) 'credit institution' means a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council (<sup>1</sup>);
  - (4) 'financial institution' means a financial institution as defined in point (26) of Article 4(1) of Regulation (EU) No 575/2013;
  - (5) 'market operator' means a market operator as defined in point (18) of Article 4(1) of Directive 2014/65/EU;
  - (6) 'regulated market' means a regulated market as defined in point (21) of Article 4(1) of Directive 2014/65/EU;
  - (7) 'multilateral trading facility' or 'MTF' means a multilateral system as defined in point (22) of Article 4(1) of Directive 2014/65/EU;
  - (8) 'organised trading facility' or 'OTF' means a system or facility in the Union as defined in point (23) of Article 4(1) of Directive 2014/65/EU;
  - (9) 'accepted market practice' means a specific market practice that is accepted by a competent authority in accordance with Article 13;
  - (10) 'trading venue' means a trading venue as defined in point (24) of Article 4(1) of Directive 2014/65/EU;
  - (11) 'SME growth market' means SME growth market as defined in point (12) of Article 4(1) of Directive 2014/65/EU;
  - (12) 'competent authority' means an authority designated in accordance with Article 22, unless otherwise specified in this Regulation;
  - (13) 'person' means a natural or legal person;
  - (14) 'commodity' means a commodity as defined in point (1) of Article 2 of Commission Regulation (EC) No 1287/2006 (<sup>2</sup>);
  - (15) 'spot commodity contract' means a contract for the supply of a commodity traded on a spot market which is promptly delivered when the transaction is settled, and a contract for the supply of a commodity that is not a financial instrument, including a physically settled forward contract;
  - (16) 'spot market' means a commodity market in which commodities are sold for cash and promptly delivered when the transaction is settled, and other non-financial markets, such as forward markets for commodities;

(17) ‘buy-back programme’ means trading in own shares in accordance with Articles 21 to 27 of Directive 2012/30/EU of the European Parliament and of the Council (³);

(18) ‘algorithmic trading’ means algorithmic trading as defined in point (39) of Article 4(1) of Directive 2014/65/EU;

(19) ‘emission allowance’ means emission allowance as described in point (11) of Section C of Annex I to Directive 2014/65/EU;

(20) ‘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 pursuant to the second subparagraph of Article 17(2);

(21) ‘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;

(22) ‘wholesale energy product’ means wholesale energy product as defined in point (4) of Article 2 of Regulation (EU) No 1227/2011;

(23) ‘national regulatory authority’ means national regulatory authority as defined in point (10) of Article 2 of Regulation (EU) No 1227/2011;

(24) ‘commodity derivatives’ means commodity derivatives as defined in point (30) of Article 2(1) of Regulation (EU) No 600/2014 of the European Parliament and of the Council (⁴);

(25) ‘person discharging managerial responsibilities’ means a person within an issuer, an emission allowance market participant or another entity referred to in Article 19(10), 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 decisions affecting the future developments and business prospects of that entity;

(26) ‘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;

(27) ‘data traffic records’ means records of traffic data as defined in point (b) of the second paragraph of Article 2 of Directive 2002/58/EC of the European Parliament and the Council (5);

(28) ‘person professionally arranging or executing transactions’ means a person professionally engaged in the reception and transmission of orders for, or in the execution of transactions in, financial instruments;

(29) ‘benchmark’ means any rate, index or figure, made available to the public or published that is periodically or regularly determined by the application of a formula to, or on the basis of the value of one or more underlying assets or prices, including estimated prices, actual or estimated interest rates or other values, or surveys, and by reference to which the amount payable under a financial instrument or the value of a financial instrument is determined;

(30) ‘market maker’ means a market maker as defined in point (7) of Article 4(1) of Directive 2014/65/EU;

(31) ‘stake-building’ means an acquisition of securities in a company which does not trigger a legal or regulatory obligation to make an announcement of a takeover bid in relation to that company;

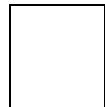
(32) ‘disclosing market participant’ means a person who falls into any of the categories set out in points (a) to (d) of Article 11(1) or of Article 11(2), and discloses information in the course of a market sounding;

(33) ‘high-frequency trading’ means high-frequency algorithmic trading technique as defined in point (40) of Article 4(1) of Directive 2014/65/EU;

(34) ‘information recommending or suggesting an investment strategy’ means information:

- (i) produced by an independent analyst, an investment firm, a credit institution, any other person whose main business is to produce investment recommendations or a natural person working for them under a contract of employment or otherwise, which, directly or indirectly, expresses a particular investment proposal in respect of a financial instrument or an issuer; or
- (ii) produced by persons other than those referred to in point (i), which directly proposes a particular investment decision in respect of a financial instrument;

(35) ‘investment recommendations’ means information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public.



(35a) ‘systematic internaliser’ means a systematic internaliser as defined in Article 4(1), point (20), of Directive 2014/65/EU.

2. For the purposes of Article 5, the following definitions apply:

(a) ‘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.

(b) ‘associated instruments’ means the following financial instruments, including those which are not admitted to trading or traded on a trading venue, or for which a request for admission to trading on a trading venue has not been made:

- (i) contracts or rights to subscribe for, acquire or dispose of securities;
- (ii) financial derivatives of securities;
- (iii) where the securities are convertible or exchangeable debt instruments, the securities into which such convertible or exchangeable debt instruments may be converted or exchanged;
- (iv) instruments which are issued or guaranteed by the issuer or guarantor of the securities and whose market price is likely to materially influence the price of the securities, or vice versa;
- (v) where the securities are securities equivalent to shares, the shares represented by those securities and any other securities equivalent to those shares;

(c) ‘significant distribution’ means an initial or secondary offer of securities that is distinct from ordinary trading both in terms of the amount in value of the securities to be offered and the selling method to be employed;

(d) ‘stabilisation’ means a purchase or offer to purchase securities, or a transaction in associated instruments equivalent thereto, which is undertaken by a credit institution or an investment firm in the context of a significant distribution of such securities exclusively for supporting the market price of those securities for a predetermined period of time, due to a selling pressure in such securities.

#### *Article 4*

#### **Notifications and list of financial instruments**

1. Market operators of regulated markets and investment firms and market operators operating an MTF or an OTF shall, without delay, notify the competent authority of the trading venue of any financial instrument for which a request for admission to trading on their trading venue is made, which is admitted to trading, or which is traded for the first time.

They shall also notify the competent authority of the trading venue when a financial instrument ceases to be traded or to be admitted to trading, unless the date on which the financial instrument ceases to be traded or to be admitted to trading is known and was referred to in the notification made in accordance with the first subparagraph.

Notifications referred to in this paragraph shall include, as appropriate, the names and identifiers of the financial instruments concerned, and the date and time of the request for admission to trading, admission to trading, and the date and time of the first trade.

Market operators and investment firms shall also transmit to the competent authority of the trading venue the information set out in the third subparagraph with regard to financial instruments that were the subject of a request for admission to trading or that were admitted to trading before 2 July 2014, and that are still admitted to trading or traded on that date.

2. Competent authorities of the trading venue shall transmit notifications that they receive pursuant to paragraph 1 to ESMA without delay. ESMA shall publish those notifications on its website in the form of a list immediately on receipt. ESMA shall update that list immediately on receipt of a notification by a competent authority of the trading venue. The list shall not limit the scope of this Regulation.

3. The list shall contain the following information:

- (a) the names and identifiers of financial instruments which are the subject of a request for admission to trading, admitted to trading or traded for the first time, on regulated markets, MTFs and OTFs;
- (b) the dates and times of the requests for admission to trading, of the admissions to trading, or of the first trades;
- (c) details of the trading venues on which the financial instruments are the subject of a request for admission to trading, admitted to trading or traded for the first time; and
- (d) the date and time at which the financial instruments cease to be traded or to be admitted to trading.

4. In order to ensure consistent harmonisation of this Article, ESMA shall develop draft regulatory technical standards to lay down:

- (a) the content of the notifications referred to in paragraph 1; and
- (b) the manner and conditions of the compilation, publication and maintenance of the list referred to in paragraph 3.

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 of the European Parliament and of the Council <sup>(6)</sup>.

5. In order to ensure uniform conditions of application of this Article, ESMA shall develop draft implementing technical standards to lay down the timing, format and template of the submission of notifications under paragraphs 1 and 2.

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 5*

**Exemption for buy-back programmes and stabilisation**

1. The prohibitions in Articles 14 and 15 of this Regulation do not apply to trading in own shares in buy-back programmes where:
  - (a) the full details of the programme are disclosed prior to the start of trading;
  - (b) trades are reported as being part of the buy-back programme to the competent authority of the trading venue in accordance with paragraph 3 and subsequently disclosed to the public;   (b) trades are reported as being part of the buy-back programme to the competent authority of the trading venue in accordance with paragraph 3 and subsequently disclosed to the public **in an aggregated form**;
  - (c) adequate limits with regard to price and volume are complied with; and
  - (d) it is carried out in accordance with the objectives referred to in paragraph 2 and the conditions set out in this Article and in the regulatory technical standards referred to in paragraph 6.
2. In order to benefit from the exemption provided for in paragraph 1, a buy-back programme shall have as its sole purpose:
  - (a) to reduce the capital of an issuer;
  - (b) to meet obligations arising from debt financial instruments that are exchangeable into equity instruments; or
  - (c) to meet obligations arising from share option programmes, or other allocations of shares, to employees or to members of the administrative, management or supervisory bodies of the issuer or of an associate company.
3. In order to benefit from the exemption provided for in paragraph 1, the issuer shall report to the competent authority of the trading venue on which the shares have been admitted to trading or are traded each transaction relating to the buy-back programme, including the information specified in Article 25(1) and (2) and Article 26(1), (2) and (3) of Regulation (EU) No 600/2014.   3. In order to benefit from the exemption **provided for** laid down in paragraph 1, the issuer shall report **all transactions relating to the buy-back programme** to the competent authority of the **most relevant market in terms of liquidity** as referred to ~~trading venue on which the shares have been admitted to trading or are traded each transaction relating to the buy-back programme, including the information specified~~ in Article 265(1) and (2) and Article 26(1), (2) and (3) of Regulation (EU) No 600/2014. The receiving competent authority shall, upon request, forward the information

[redacted] to the competent authorities of the trading venue on which the shares have been admitted to trading and are traded.

4. The prohibitions in Articles 14 and 15 of this Regulation do not apply to trading in securities or associated instruments for the stabilisation of securities where:

- (a) stabilisation is carried out for a limited period;
- (b) relevant information about the stabilisation is disclosed and notified to the competent authority of the trading venue in accordance with paragraph 5;
- (c) adequate limits with regard to price are complied with; and
- (d) such trading complies with the conditions for stabilisation laid down in the regulatory technical standards referred to in paragraph 6.

5. Without prejudice to Article 23(1), the details of all stabilisation transactions shall be notified by issuers, offerors, or entities undertaking the stabilisation, whether or not they act on behalf of such persons, to the competent authority of the trading venue no later than the end of the seventh daily market session following the date of execution of such transactions.

6. In order to ensure consistent harmonisation of this Article, ESMA shall develop draft regulatory technical standards to specify the conditions that buy-back programmes and stabilisation measures referred to in paragraphs 1 and 4 must meet, including conditions for trading, restrictions regarding time and volume, disclosure and reporting obligations, and price conditions.

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.

## *Article 6*

### **Exemption for monetary and public debt management activities and climate policy activities**

1. This Regulation does not apply to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy by:

- (a) a Member State;
- (b) the members of the ESCB;
- (c) a ministry, agency or special purpose vehicle of one or several Member States, or by a person acting on its behalf;
- (d) in the case of a Member State that is a federal state, a member making up the federation.

2. This Regulation does not apply to transactions, orders or behaviour carried out by the Commission or any other officially designated body or by any person acting on its behalf, in pursuit of public debt management policy.

This Regulation does not apply to such transactions, orders or behaviour carried out by:

- (a) the Union;
- (b) a special purpose vehicle of one or several Member States;
- (c) the European Investment Bank;
- (d) the European Financial Stability Facility;
- (e) the European Stability Mechanism;
- (f) an international financial institution established by two or more Member States which has the purpose to mobilise funding and provide financial assistance to the benefit of its members that are experiencing or threatened by severe financing problems.

3. This Regulation does not apply to the activity of a Member State, the Commission or any other officially designated body, or of any person acting on their behalf, which concerns emission allowances and which is undertaken in pursuit of the Union's climate policy in accordance with Directive 2003/87/EC.

4. This Regulation does not apply to the activities of a Member State, the Commission or any other officially designated body, or of any person acting on their behalf, that are undertaken in pursuit of the Union's Common Agricultural Policy or of the Union's Common Fisheries Policy in accordance with acts adopted or with international agreements concluded under the TFEU.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 35 to extend the exemption referred to in paragraph 1 to certain public bodies and central banks of third countries.

To that end, the Commission shall, by 3 January 2016, prepare and present to the European Parliament and to the Council a report assessing the international treatment of public bodies charged with, or intervening in, public debt management and of central banks in third countries.

The report shall include a comparative analysis of the treatment of those bodies and central banks within the legal framework of third countries, and the risk management standards applicable to the transactions entered into by those bodies and central banks in those jurisdictions. If the report concludes, in particular in regard to the comparative analysis, that the exemption of the monetary responsibilities of those third-country central banks from the obligations and prohibitions of this Regulation is necessary the Commission shall extend the exemption referred to in paragraph 1 also to the central banks of those third countries.

6. The Commission shall also be empowered to adopt delegated acts in accordance with Article 35 to extend the exemption set out in paragraph 3 to certain designated public bodies of third countries that have entered into an agreement with the Union pursuant to Article 25 of Directive 2003/87/EC.

7. This Article shall not apply to persons working under a contract of employment or otherwise for the entities referred to in this Article where those persons

carry out transactions or orders, or engage in behaviour, directly or indirectly, on their own account.

## CHAPTER 2

### INSIDE INFORMATION, INSIDER DEALING, UNLAWFUL DISCLOSURE OF INSIDE INFORMATION AND MARKET MANIPULATION

#### Article 7

##### Inside information

1. For the purposes of this Regulation, inside information shall comprise the following types of information:
  - (a) information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments;
  - (b) in relation to commodity derivatives, information of a precise nature, which has not been made public, relating, directly or indirectly to one or more such derivatives or relating directly to the related spot commodity contract, and which, if it were made public, would be likely to have a significant effect on the prices of such derivatives or related spot commodity contracts, and where this is information which is reasonably expected to be disclosed or is required to be disclosed in accordance with legal or regulatory provisions at the Union or national level, market rules, contract, practice or custom, on the relevant commodity derivatives markets or spot markets;
  - (c) in relation to emission allowances or auctioned products based thereon, information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more such instruments, and which, if it were made public, would be likely to have a significant effect on the prices of such instruments or on the prices of related derivative financial instruments;
  - (d) for persons charged with the execution of orders concerning financial instruments, it also means information conveyed by a client and relating to the client's pending orders in financial instruments, which is of a precise nature, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments, the price of related spot commodity contracts, or on the price of related derivative financial instruments.

(d) ~~for persons charged with the execution of orders concerning financial instruments, it also means~~ information conveyed by a client or by other persons acting on the client's behalf or information known by virtue of management of a proprietary account or of a managed fund and relating to ~~the client's~~ pending orders in financial instruments, which is of a precise nature, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments, the price of related spot commodity contracts, or on the price of related derivative financial instruments.

2. For the purposes of paragraph 1, information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or which may reasonably be expected to come into existence, or an event which has occurred or which may reasonably be expected to occur, where it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the financial instruments or the related derivative financial instrument, the related spot commodity contracts, or the auctioned products based on the emission allowances. In this respect in the case of a protracted process that is intended to bring about, or that results in, particular circumstances or a particular event, those future circumstances or that future event, and also the intermediate steps of that process which are connected with bringing about or resulting in those future circumstances or that future event, may be deemed to be precise information.

3. An intermediate step in a protracted process shall be deemed to be inside information if, by itself, it satisfies the criteria of inside information as referred to in this Article.

4. For the purposes of paragraph 1, information which, if it were made public, would be likely to have a significant effect on the prices of financial instruments, derivative financial instruments, related spot commodity contracts, or auctioned products based on emission allowances shall mean information a reasonable investor would be likely to use as part of the basis of his or her investment decisions.

In the case of participants in the emission allowance market with aggregate emissions or rated thermal input at or below the threshold set in accordance with the second subparagraph of Article 17(2), information about their physical operations shall be deemed not to have a significant effect on the price of emission allowances, of auctioned products based thereon, or of derivative financial instruments.

5. ESMA shall issue guidelines to establish a non-exhaustive indicative list of information which is reasonably expected or is required to be disclosed in accordance with legal or regulatory provisions in Union or national law, market rules, contract, practice or custom, on the relevant commodity derivatives markets or spot markets as referred to in point (b) of paragraph 1. ESMA shall duly take into account specificities of those markets.

#### *Article 8*

#### **Insider dealing**

1. For the purposes of this Regulation, insider dealing arises where a person possesses inside information and uses that information by acquiring or disposing of, for its own account or for the account of a third party, directly or indirectly, financial instruments to which that information relates. The use of inside information by cancelling or amending an order concerning a financial instrument to which the information relates where the order was placed before the person concerned possessed the inside information, shall also be considered to be insider dealing. In relation to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (EU) No 1031/2010, the use of inside information shall also comprise submitting, modifying or withdrawing a bid by a person for its own account or for the account of a third party.

2. For the purposes of this Regulation, recommending that another person engage in insider dealing, or inducing another person to engage in insider dealing, arises where the person possesses inside information and:

(a) recommends, on the basis of that information, that another person acquire or dispose of financial instruments to which that information relates, or induces that person to make such an acquisition or disposal, or

(b) recommends, on the basis of that information, that another person cancel or amend an order concerning a financial instrument to which that information relates, or induces that person to make such a cancellation or amendment.

3. The use of the recommendations or inducements referred to in paragraph 2 amounts to insider dealing within the meaning of this Article where the person using the recommendation or inducement knows or ought to know that it is based upon inside information.

4. This Article applies to any person who possesses inside information as a result of:

- (a) being a member of the administrative, management or supervisory bodies of the issuer or emission allowance market participant;
- (b) having a holding in the capital of the issuer or emission allowance market participant;
- (c) having access to the information through the exercise of an employment, profession or duties; or
- (d) being involved in criminal activities.

This Article also applies to any person who possesses inside information under circumstances other than those referred to in the first subparagraph where that person knows or ought to know that it is inside information.

5. Where the person is a legal person, this Article shall also apply, in accordance with national law, to the natural persons who participate in the decision to carry out the acquisition, disposal, cancellation or amendment of an order for the account of the legal person concerned.

#### *Article 9*

#### **Legitimate behaviour**

1. For the purposes of Articles 8 and 14, it shall not be deemed from the mere fact that a legal person is or has been in possession of inside information that that person has used that information and has thus engaged in insider dealing on the basis of an acquisition or disposal, where that legal person:

- (a) has established, implemented and maintained adequate and effective internal arrangements and procedures that effectively ensure that neither the natural person who made the decision on its behalf to acquire or dispose of financial instruments to which the information relates, nor another natural person who may have had an influence on that decision, was in possession of the inside information; and
- (b) has not encouraged, made a recommendation to, induced or otherwise influenced the natural person who, on behalf of the legal person, acquired or disposed of financial instruments to which the information relates.

2. For the purposes of Articles 8 and 14, it shall not be deemed from the mere fact that a person is in possession of inside information that that person has used that information and has thus engaged in insider dealing on the basis of an acquisition or disposal where that person:

- (a) for the financial instrument to which that information relates, is a market maker or a person authorised to act as a counterparty, and the acquisition or disposal of financial instruments to which that information relates is made legitimately in the normal course of the exercise of its function as a market maker or as a counterparty for that financial instrument; or
- (b) is authorised to execute orders on behalf of third parties, and the acquisition or disposal of financial instruments to which the order relates, is made to carry out such an order legitimately in the normal course of the exercise of that person's employment, profession or duties.

3. For the purposes of Articles 8 and 14, it shall not be deemed from the mere fact that a person is in possession of inside information that that person has used that information and has thus engaged in insider dealing on the basis of an acquisition or disposal where that person conducts a transaction to acquire or dispose of financial instruments and that transaction is carried out in the discharge of an obligation that has become due in good faith and not to circumvent the prohibition against insider dealing and:

- (a) that obligation results from an order placed or an agreement concluded before the person concerned possessed inside information; or
- (b) that transaction is carried out to satisfy a legal or regulatory obligation that arose, before the person concerned possessed inside information.

4. For the purposes of Article 8 and 14, it shall not be deemed from the mere fact that a person is in possession of inside information that that person has used that information and has thus engaged in insider dealing, where such person has obtained that inside information in the conduct of a public takeover or merger with a company and uses that inside information solely for the purpose of proceeding with that merger or public takeover, provided that at the point of approval of the merger or acceptance of the offer by the shareholders of that company, any inside information has been made public or has otherwise ceased to constitute inside information.

This paragraph shall not apply to stake-building.

5. For the purposes of Articles 8 and 14, the mere fact that a person uses its own knowledge that it has decided to acquire or dispose of financial instruments in the acquisition or disposal of those financial instruments shall not of itself constitute use of inside information.

6. Notwithstanding paragraphs 1 to 5 of this Article, an infringement of the prohibition of insider dealing set out in Article 14 may still be deemed to have occurred if the competent authority establishes that there was an illegitimate reason for the orders to trade, transactions or behaviours concerned.

## Article 10

### Unlawful disclosure of inside information

1. For the purposes of this Regulation, unlawful disclosure of inside information arises where a person possesses inside information and discloses that information to any other person, except where the disclosure is made in the normal exercise of an employment, a profession or duties.

This paragraph applies to any natural or legal person in the situations or circumstances referred to in Article 8(4).

2. For the purposes of this Regulation the onward disclosure of recommendations or inducements referred to in Article 8(2) amounts to unlawful disclosure of inside information under this Article where the person disclosing the recommendation or inducement knows or ought to know that it was based on inside information.

## Article 11

### Market soundings

1. A market sounding comprises the communication of information, prior to the announcement of a transaction, in order to gauge the interest of potential investors in a possible transaction and the conditions relating to it such as its potential size or pricing, to one or more potential investors by:

- (a) an issuer;
- (b) a secondary offeror of a financial instrument, in such quantity or value that the transaction is distinct from ordinary trading and involves a selling method based on the prior assessment of potential interest from potential investors;
- (c) an emission allowance market participant; or
- (d) a third party acting on behalf or on the account of a person referred to in point (a), (b) or (c).

1a. Where an offer of securities is addressed solely to qualified investors as defined in point (e) of Article 2 of Regulation (EU) 2017/1129 of the European Parliament and of the Council <sup>(7)</sup>, communication of information to those qualified investors for the purposes of negotiating the contractual terms and conditions of their participation in an issuance of bonds by an issuer that has financial instruments admitted to trading on a trading venue, or by any person acting on its behalf or on its account, shall not constitute a market sounding. Such communication shall be deemed to be made in the normal exercise of a person's employment, profession or duties as provided for in Article 10(1) of this Regulation, and therefore shall not constitute unlawful disclosure of inside information. That issuer or any person acting on its behalf or on its account shall ensure that the qualified investors receiving the information are aware of, and acknowledge in writing,

the legal and regulatory duties entailed and are aware of the sanctions applicable to insider dealing and unlawful disclosure of inside information.

2. Without prejudice to Article 23(3), disclosure of inside information by a person intending to make a takeover bid for the securities of a company or a merger with a company to parties entitled to the securities, shall also constitute a market sounding, provided that:

- (a) the information is necessary to enable the parties entitled to the securities to form an opinion on their willingness to offer their securities: and
- (b) the willingness of parties entitled to the securities to offer their securities is reasonably required for the decision to make the takeover bid or merger.

3. A disclosing market participant shall, prior to conducting a market sounding, specifically consider whether the market sounding will involve the disclosure of inside information. The disclosing market participant shall make a written record of its conclusion and the reasons therefor. It shall provide such written records to the competent authority upon request. This obligation shall apply to each disclosure of information throughout the course of the market sounding. The disclosing market participant shall update the written records referred to in this paragraph accordingly.

4. For the purposes of Article 10(1), disclosure of inside information made in the course of a market sounding shall be deemed to be made in the normal exercise of a person's employment, profession or duties where the disclosing market participant complies with paragraphs 3 and 5 of this Article.

4. ~~For the purposes of Article 10(1), disclosure of inside information made in the course of a market sounding In case of compliance with the conditions set out in points, a) to f) of this first subparagraph, the disclosing market participant~~ shall be deemed ~~to have disclosed inside information in the course of a market sounding in the normal exercise of a person's employment, profession or duties for the purposes of Article 10(1) to be made in the normal exercise of a person's employment, profession or duties where the disclosing market participant complies with paragraphs 3 and 5 of this Article.~~

- (a) having obtained the consent of the person receiving the market sounding to receive inside information;
- (b) having informed the person receiving the market sounding that he is prohibited from using that information, or attempting to use that information, by acquiring or disposing of, for his own account or for the account of a third party, directly or indirectly, financial instruments relating to that information;
- (c) having informed the person receiving the market sounding that he is prohibited from using that information, or attempting to use that information, by cancelling or amending an order which has already been

5. For the purposes of paragraph 4, the disclosing market participant shall, before making the disclosure:

- (a) obtain the consent of the person receiving the market sounding to receive inside information;
- (b) inform the person receiving the market sounding that he is prohibited from using that information, or attempting to use that information, by acquiring or disposing of, for his own account or for the account of a third party, directly or indirectly, financial instruments relating to that information;
- (c) inform the person receiving the market sounding that he is prohibited from using that information, or attempting to use that information, by cancelling or amending an order which has already been placed concerning a financial instrument to which the information relates; and
- (d) inform the person receiving the market sounding that by agreeing to receive the information he is obliged to keep the information confidential.

The disclosing market participant shall make and maintain a record of all information given to the person receiving the market sounding, including

placed concerning a financial instrument to which the information relates;

- (d) having informed the person receiving the market sounding that by agreeing to receive the information he is obliged to keep the information confidential;
- (e) having made and maintained a record of all information given to the person receiving the market sounding, including the information given in accordance with points (a) to (d), and the identity of the potential investors to whom the information has been disclosed, including but not limited to the legal and natural persons acting on behalf of the potential investor, and the date and time of each disclosure;
- (f) having provided that record to the competent authority upon request.

~~5. For the purposes of paragraph 4, the disclosing market participant shall, before making the disclosure:~~

- ~~(a) obtain the consent of the person receiving the market sounding to receive inside information;~~
- ~~(b) inform the person receiving the market sounding that he is prohibited from using that information, or attempting to use that information, by acquiring or disposing of, for his own account or for the account of a third party, directly or indirectly, financial instruments relating to that information;~~
- ~~(c) inform the person receiving the market sounding that he is prohibited from using that information, or attempting to use that information, by cancelling or amending an order which has already been placed concerning a financial instrument to which the information relates; and~~
- ~~(d) inform the person receiving the market sounding that by agreeing to receive the information he is obliged to keep the information confidential.~~

~~The disclosing market participant shall make and maintain a record of all information given to the person receiving the market sounding, including~~

the information given in accordance with points (a) to (d) of the first subparagraph, and the identity of the potential investors to whom the information has been disclosed, including but not limited to the legal and natural persons acting on behalf of the potential investor, and the date and time of each disclosure. The disclosing market participant shall provide that record to the competent authority upon request.

6. Where information that has been disclosed in the course of a market sounding ceases to be inside information according to the assessment of the disclosing market participant, the disclosing market participant shall inform the recipient accordingly, as soon as possible.

The disclosing market participant shall maintain a record of the information given in accordance with this paragraph and shall provide it to the competent authority upon request.

7. Notwithstanding the provisions of this Article, the person receiving the market sounding shall assess for itself whether it is in possession of inside information or when it ceases to be in possession of inside information.

8. The disclosing market participant shall keep the records referred to in this Article for a period of at least five years.

9. In order to ensure consistent harmonisation of this Article, ESMA shall develop draft regulatory technical standards to determine appropriate arrangements, procedures and record keeping requirements for persons to comply with the requirements laid down in paragraphs 4, 5, 6 and 8.

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.

10. In order to ensure uniform conditions of application of this Article, ESMA shall develop draft implementing technical standards to specify the systems and notification templates to be used by persons to comply with the requirements established by paragraphs 4, 5, 6 and 8 of this Article, particularly the precise format of the records referred to in paragraphs 4 to 8 and the technical means for appropriate communication of the information referred to in paragraph 6 to the person

~~the information given in accordance with points (a) to (d) of the first subparagraph, and the identity of the potential investors to whom the information has been disclosed, including but not limited to the legal and natural persons acting on behalf of the potential investor, and the date and time of each disclosure. The disclosing market participant shall provide that record to the competent authority upon request.~~

6. Where information that has been disclosed in the course of a market sounding ceases to be inside information according to the assessment of the disclosing market participant, the disclosing market participant shall inform the recipient accordingly, as soon as possible. ~~This obligation shall not apply in cases where the information has been announced publicly otherwise.~~

7. Notwithstanding ~~the provisions of~~ this Article, the person receiving the market sounding shall assess for ~~him- or it-~~himself whether ~~it is in he or she possesses~~ ion of inside information ~~or when it ceases to be in possession of inside information.~~

receiving the market sounding.

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.

11. ESMA shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010, addressed to persons receiving market soundings, regarding:

- (a) the factors that such persons are to take into account when information is disclosed to them as part of a market sounding in order for them to assess whether the information amounts to inside information;
- (b) the steps that such persons are to take if inside information has been disclosed to them in order to comply with Articles 8 and 10 of this Regulation; and
- (c) the records that such persons are to maintain in order to demonstrate that they have complied with Articles 8 and 10 of this Regulation.

## *Article 12*

### **Market manipulation**

1. For the purposes of this Regulation, market manipulation shall comprise the following activities:

- (a) entering into a transaction, placing an order to trade or any other behaviour which:
  - (i) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument, a related spot commodity contract or an auctioned product based on emission allowances; or
  - (ii) secures, or is likely to secure, the price of one or several financial instruments, a related spot commodity contract or an auctioned product based on emission allowances at an abnormal or artificial level;

unless the person entering into a transaction, placing an order to trade or engaging in any other behaviour establishes that such transaction, order or behaviour have been carried out for legitimate reasons, and conform with an accepted market practice as established in accordance with Article 13;

- (b) entering into a transaction, placing an order to trade or any other activity or behaviour which affects or is likely to affect the price of one or several financial instruments, a related spot commodity contract or an auctioned product based on emission allowances, which employs a fictitious device or any other form of deception or contrivance;
- (c) disseminating information through the media, including the internet, or by any other means, which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument, a related spot commodity contract or an auctioned product based on emission allowances or secures, or is likely to secure, the price of one or several financial instruments, a related spot commodity contract or an auctioned product based on emission

allowances at an abnormal or artificial level, including the dissemination of rumours, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading;

(d) transmitting false or misleading information or providing false or misleading inputs in relation to a benchmark where the person who made the transmission or provided the input knew or ought to have known that it was false or misleading, or any other behaviour which manipulates the calculation of a benchmark.

2. The following behaviour shall, *inter alia*, be considered as market manipulation:

(a) the conduct by a person, or persons acting in collaboration, to secure a dominant position over the supply of or demand for a financial instrument, related spot commodity contracts or auctioned products based on emission allowances which has, or is likely to have, the effect of fixing, directly or indirectly, purchase or sale prices or creates, or is likely to create, other unfair trading conditions;

(b) the buying or selling of financial instruments, at the opening or closing of the market, which has or is likely to have the effect of misleading investors acting on the basis of the prices displayed, including the opening or closing prices;

(c) the placing of orders to a trading venue, including any cancellation or modification thereof, by any available means of trading, including by electronic means, such as algorithmic and high- frequency trading strategies, and which has one of the effects referred to in paragraph 1(a) or (b), by:

(i) disrupting or delaying the functioning of the trading system of the trading venue or being likely to do so;

(ii) making it more difficult for other persons to identify genuine orders on the trading system of the trading venue or being likely to do so, including by entering orders which result in the overloading or destabilisation of the order book; or

(iii) creating or being likely to create a false or misleading signal about the supply of, or demand for, or price of, a financial instrument, in particular by entering orders to initiate or exacerbate a trend;

(d) the taking advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about a financial instrument, related spot commodity contract or an auctioned product based on emission allowances (or indirectly about its issuer) while having previously taken positions on that financial instrument, a related spot commodity contract or an auctioned product based on emission allowances and profiting subsequently from the impact of the opinions voiced on the price of that instrument, related spot commodity contract or an auctioned product based on emission allowances, without having simultaneously disclosed that conflict of interest to the public in a proper and effective way;

(e) the buying or selling on the secondary market of emission allowances or related derivatives prior to the auction held pursuant to Regulation (EU) No 1031/2010 with the effect of fixing the auction clearing price for the auctioned products at an abnormal or artificial level or misleading bidders bidding in the auctions.

3. For the purposes of applying paragraph 1(a) and (b), and without prejudice to the forms of behaviour set out in paragraph 2, Annex I defines non-exhaustive indicators relating to the employment of a fictitious device or any other form of deception or contrivance, and non-exhaustive indicators related to false or misleading signals and to price securing.

4. Where the person referred to in this Article is a legal person, this Article shall also apply, in accordance with national law, to the natural persons who participate in the decision to carry out activities for the account of the legal person concerned.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 35 specifying the indicators laid down in Annex I, in order to clarify their elements and to take into account technical developments on financial markets.

### *Article 13*

#### **Accepted market practices**

1. The prohibition in Article 15 shall not apply to the activities referred to in Article 12(l)(a), provided that the person entering into a transaction, placing an order to trade or engaging in any other behaviour establishes that such transaction, order or behaviour have been carried out for legitimate reasons, and conform with an accepted market practice as established in accordance with this Article.

2. A competent authority may establish an accepted market practice, taking into account the following criteria:

- (a) whether the market practice provides for a substantial level of transparency to the market;
- (b) whether the market practice ensures a high degree of safeguards to the operation of market forces and the proper interplay of the forces of supply and demand;
- (c) whether the market practice has a positive impact on market liquidity and efficiency;
- (d) whether the market practice takes into account the trading mechanism of the relevant market and enables market participants to react properly and in a timely manner to the new market situation created by that practice;
- (e) whether the market practice does not create risks for the integrity of, directly or indirectly, related markets, whether regulated or not, in the relevant financial instrument within the Union;
- (f) the outcome of any investigation of the relevant market practice by any competent authority or by another authority, in particular whether the relevant market practice infringed rules or regulations designed to prevent market abuse, or codes of conduct, irrespective of whether it concerns the relevant market or directly or indirectly related markets within the Union; and
- (g) the structural characteristics of the relevant market, *inter alia*, whether it is regulated or not, the types of financial instruments traded and the type of market participants, including the extent of retail-investor participation in the relevant market.

A market practice that has been established by a competent authority as an accepted market practice in a particular market shall not be considered to be applicable to other markets unless the competent authorities of those other markets have accepted that practice pursuant to this Article.

3. Before establishing an accepted market practice in accordance with paragraph 2, the competent authority shall notify ESMA and the other competent authorities of its intention to establish an accepted market practice and shall provide the details of that assessment made in accordance with the criteria laid down in paragraph 2. Such a notification shall be made at least three months before the accepted market practice is intended to take effect.

4. Within two months following receipt of the notification, ESMA shall issue an opinion to the notifying competent authority assessing the compatibility of the accepted market practice with paragraph 2 and with the regulatory technical standards adopted pursuant to paragraph 7. ESMA shall also assess whether the establishment of the accepted market practice would not threaten the market confidence in the Union's financial market. The opinion shall be published on ESMA's website.

5. Where a competent authority establishes an accepted market practice contrary to the opinion of ESMA issued in accordance with paragraph 4, it shall publish on its website within 24 hours of establishing the accepted market practice a notice setting out in full its reasons for doing so, including why the accepted market practice does not threaten market confidence.

6. Where a competent authority considers that another competent authority has established an accepted market practice that does not meet the criteria set out in paragraph 2, ESMA shall assist the authorities concerned in reaching an agreement in accordance with its powers under Article 19 of Regulation (EU) No 1095/2010.

If the competent authorities concerned fail to reach an agreement, ESMA may take a decision in accordance with Article 19(3) of Regulation (EU) No 1095/2010.

7. In order to ensure consistent harmonisation of this Article, ESMA shall develop draft regulatory technical standards specifying the criteria, the procedure and the requirements for establishing an accepted market practice under paragraphs 2, 3 and 4, and the requirements for maintaining it, terminating it, or modifying the conditions for its acceptance.

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.

8. Competent authorities shall review regularly, and at least every two years, the accepted market practices that they have established, in particular by taking into account significant changes to the relevant market environment, such as changes to trading rules or to market infrastructures, with a view to deciding whether to maintain it, to terminate it, or to modify the conditions for its acceptance.

9. ESMA shall publish on its website a list of accepted market practices and in which Member States they are applicable.

10. ESMA shall monitor the application of accepted market practices and shall submit an annual report to the Commission on how they are applied in the markets concerned.

11. Competent authorities shall notify accepted market practices that they have established before 2 July 2014 to ESMA within three months of the entry into force of the regulatory technical standards referred to in paragraph 7.

The accepted market practices referred to in the first subparagraph of this paragraph shall continue to apply in the Member State concerned until the competent authority has made a decision regarding the continuation of that practice following ESMA's opinion under paragraph 4.

12. Without prejudice to accepted market practices as established in accordance with paragraphs 1 to 11 of this Article, an issuer of financial instruments admitted to trading on an SME growth market may enter into a liquidity contract for its shares where all of the following conditions are met:

(a) the terms and conditions of the liquidity contract comply with the criteria set out in paragraph 2 of this Article and in Commission Delegated Regulation (EU) 2016/908<sup>(8)</sup>;

(b) the liquidity contract is drawn up in accordance with the Union template referred to in paragraph 13 of this Article;

(c) the liquidity provider is duly authorised by the competent authority in accordance with Directive 2014/65/EU and is registered as a market member with the market operator or the investment firm operating the SME growth market;

(d) the market operator or the investment firm operating the SME growth market acknowledges in writing to the issuer that it has received a copy of the liquidity contract and agrees to that contract's terms and conditions.



(d) the market operator or the investment firm operating the SME growth market acknowledges in writing to the issuer that it has received a copy of the liquidity contract and agrees to that contract's terms and conditions.

The issuer referred to in the first subparagraph of this paragraph shall be able to demonstrate at any time that the conditions under which the contract was concluded are met on an ongoing basis. That issuer and the market operator or the investment firm operating the SME growth market shall provide the relevant competent authorities with a copy of the liquidity contract upon their request.

13. ESMA shall develop draft regulatory technical standards to draw up a contractual template to be used for the purposes of entering into a liquidity contract in accordance with paragraph 12, in order to ensure compliance with the criteria set out in paragraph 2, including as regards transparency to the market and performance of the liquidity provision.

ESMA shall submit those draft regulatory technical standards to the Commission by 1 September 2020.

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

## **Prohibition of insider dealing and of unlawful disclosure of inside information**

A person shall not:

- (a) engage or attempt to engage in insider dealing;
- (b) recommend that another person engage in insider dealing or induce another person to engage in insider dealing; or
- (c) unlawfully disclose inside information.

*Article 15*

## **Prohibition of market manipulation**

A person shall not engage in or attempt to engage in market manipulation.

*Article 16*

## **Prevention and detection of market abuse**

1. Market operators and investment firms that operate a trading venue shall establish and maintain effective arrangements, systems and procedures aimed at preventing and detecting insider dealing, market manipulation and attempted insider dealing and market manipulation, in accordance with Articles 31 and 54 of Directive 2014/65/EU.

A person referred to in the first subparagraph shall report orders and transactions, including any cancellation or modification thereof, that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation to the competent authority of the trading venue without delay.

2. Any person professionally arranging or executing transactions shall establish and maintain effective arrangements, systems and procedures to detect and report suspicious orders and transactions. Where such a person has a reasonable suspicion that an order or transaction in any financial instrument, whether placed or executed on or outside a trading venue, could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation, the person shall notify the competent authority as referred to in paragraph 3 without delay.

3. Without prejudice to Article 22, persons professionally arranging or executing transactions shall be subject to the rules of notification of the Member State in which they are registered or have their head office, or, in the case of a branch, the Member State where the branch is situated. The notification shall be addressed to the competent authority of that Member State.

4. The competent authorities as referred to in paragraph 3 receiving the notification of suspicious orders and transactions shall transmit such information immediately to the competent authorities of the trading venues concerned.

5. In order to ensure consistent harmonisation of this Article, ESMA shall develop draft regulatory technical standards to determine:

- (a) appropriate arrangements, systems and procedures for persons to comply with the requirements established in paragraphs 1 and 2; and
- (b) the notification templates to be used by persons to comply with the requirements established in paragraphs 1 and 2.

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

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.

## 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.

1. An issuer shall inform the public as soon as possible of inside information which directly concerns that issuer. **That requirement shall not apply to inside information related to intermediate steps in a protracted process as referred to in Article 7(2) and (3) where those steps are connected with bringing about particular circumstances or an event. In a protracted process, only the final circumstances or event shall be disclosed as soon as possible after they have occurred.**

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 (9). 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.

**1a.** An issuer shall ensure the confidentiality of the information which meets the criteria of inside information set out in Article 7 until that information is disclosed pursuant to paragraph 1.

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.

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.

By way of derogation from the third subparagraph of this paragraph, an issuer whose financial instruments are admitted to trading only on an SME growth market shall provide a written explanation to the competent authority specified under paragraph 3 only upon request. As long as the issuer is able to justify its decision to delay, the issuer shall not be required to keep a record of that explanation.

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

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.

By way of derogation from the third subparagraph of this paragraph, an issuer whose financial instruments are admitted to trading only on an SME growth market shall provide a written explanation to the competent authority specified under paragraph 3 only upon request. As long as the issuer is able to justify its decision to delay, the issuer shall not be required to keep a record of that explanation.

4b. Non-disclosure by an issuer of inside information related to intermediate steps in protracted processes, according to paragraph 1, is not subject to the requirements provided for in paragraph 4.

5. In order to preserve the stability of the financial system, a An issuer that is a credit institution or a financial institution or an issuer that is a parent undertaking of such an 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:

(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 <sup>(10)</sup>;

(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.

7. Where disclosure of inside information has been delayed in accordance with paragraph 4 or 5, or when inside information relating to intermediate steps in a protracted process has not been disclosed in accordance with article 17(1), 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, or to inside information related to intermediate steps in a protracted process that has not been disclosed in accordance with

paragraph 1, 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.

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.~~

12. The Commission shall be empowered to adopt a delegated act to set out and review, where necessary a non-exhaustive list:

(a) of final events in protracted processes and, for each event, the moment when it is deemed to have occurred and shall be disclosed pursuant to paragraph 1 of this Article;

(b) of situations in which the inside information that the issuer or the emission allowance market participant intends to delay is in contrast with

the latest public announcement or other type of communication by the issuer or the emission allowance market participant on the same matter to which the inside information refers to, as referred to in point (b), subparagraph 1, paragraph 4 of this Article.

## Article 18

### Insider lists

1. Issuers and any person acting on their behalf or on their account, shall each:
  - (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 and 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 is requested by the issuer to draw up and update the issuer's insider list, the issuer shall remain fully responsible for complying with this Article. The issuer shall always retain a right of access to the insider list that the other person is drawing up.

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 and any person acting on their behalf or on their account shall each update their 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 and any person acting on their behalf or on their account shall each retain their 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 entitled to include in their insider lists only those persons who, due to the nature of their function or position within the issuer, have regular access to inside information.

By way of derogation from the first subparagraph of this paragraph and where justified by specific national market integrity concerns, Member States may require issuers whose financial instruments are admitted to trading on an SME growth market to include in their insider lists all persons referred to in point (a) of paragraph 1. Those lists shall comprise information specified in the format determined by ESMA pursuant to the fourth subparagraph of this paragraph.

By way of derogation from the first subparagraph of this paragraph and where justified by specific national market integrity concerns, Member States may require issuers whose financial instruments are admitted to trading on an SME growth market to include in their insider lists all persons referred to in point (a) of paragraph 1. ~~Those lists shall comprise information specified in the format determined by ESMA pursuant to the fourth subparagraph of this paragraph.~~

The insider lists referred to in the first and second subparagraphs of this paragraph shall be provided to the competent authority as soon as possible upon its request.

ESMA shall develop draft implementing technical standards to determine the precise format of the insider lists referred to in the second subparagraph of this paragraph. The format of the insider lists shall be proportionate and represent a lighter administrative burden compared to the format of insider lists referred to in paragraph 9.

ESMA shall submit those draft implementing technical standards to the Commission by 1 September 2020.

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

~~ESMA shall develop draft implementing technical standards to determine the precise format of the insider lists referred to in the second subparagraph of this paragraph. The format of the insider lists shall be proportionate and represent a lighter administrative burden compared to the format of insider lists referred to in paragraph 9.~~

~~ESMA shall submit those draft implementing technical standards to the Commission by 1 September 2020.~~

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

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.

9. ~~In order to ensure uniform conditions of application of this Article, ESMA shall review the ~~develop draft~~ implementing technical standards on the alleviated ~~to determine the precise~~ format of the insider lists for issuers admitted to trading on SME growth markets to extend the use of such ~~and the~~ format for updating to all insider lists referred to in paragraphs 1 ~~and 6, first and second subparagraphs~~ this Article.~~

~~ESMA shall submit those draft implementing technical standards to the Commission [by 9 months after the application/entering into force of this Regulation].~~

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; 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.

1a. The notification obligation referred to in paragraph 1 shall not apply to transactions in financial instruments linked to shares or to debt instruments of the issuer referred to in that paragraph where at the time of the transaction any of the following conditions is met:

- (a) the financial instrument is a unit or share in a collective investment undertaking in which the exposure to the issuer's shares or debt instruments does not exceed 20 % of the assets held by the collective investment undertaking;
- (b) the financial instrument provides exposure to a portfolio of assets in which the exposure to the issuer's shares or debt instruments does not exceed 20 % of the portfolio's assets;
- (c) the financial instrument is a unit or share in a collective investment undertaking or provides exposure to a portfolio of assets and the person discharging managerial responsibilities or person closely associated with such a person does not know, and could not know, the investment composition or exposure of such collective investment undertaking or portfolio of assets in relation to the issuer's shares or debt instruments, and furthermore there is no reason for that person to believe that the issuer's shares or debt instruments exceed the thresholds in point (a) or (b).

If information regarding the investment composition of the collective investment undertaking or exposure to the portfolio of assets is available, then the person discharging managerial responsibility or person closely associated with such a person shall make all reasonable efforts to avail themselves of that information.

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 make public the information contained in a notification referred to in paragraph 1 within two business days of receipt of such a notification.

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 <sup>(11)</sup>, 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.

For the purposes of point (b), transactions executed in shares or debt instruments of an issuer or derivatives or other financial instruments linked thereto by managers of a collective investment undertaking in which the person discharging managerial responsibilities or a person closely associated with them has invested do not need to be notified where the manager of the collective investment undertaking operates with full discretion, which excludes the manager receiving any instructions or suggestions on portfolio composition directly or indirectly from investors in that collective investment undertaking.

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

8. Paragraph 1 shall apply to any subsequent transaction once a total amount of EUR 205 000 has been reached within a calendar year. The threshold of EUR 205 000 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 2050 000 or decrease it to EUR 10 000 and shall inform ESMA of its decision and the justification for its decision, with specific reference to market conditions, to adopt the higher or lower 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.

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.

12. Without prejudice to Articles 14 and 15, an issuer may allow a person discharging managerial responsibilities within it to trade or to make transactions 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 financial instruments other than shares; or
- (b) due to the characteristics of the trading involved for transactions made under, or related to, an employee share or saving scheme and employees' schemes concerning financial instruments other than shares, qualification or entitlement of shares and qualifications or entitlements of financial instruments other than shares, or transactions where the beneficial interest in the relevant security does not change;

12a. Without prejudice to Articles 14 and 15, an issuer shall allow a person discharging managerial responsibilities within it to trade or to make transactions on its own account or for the account of a third party during a closed period as referred to in paragraph 11, in case of transactions or trade activities that do not relate to active investment decisions undertaken by the person discharging managerial responsibilities, or that result exclusively from external factors or actions of third parties, or are transactions or trade

activities, including the exercise of derivatives, based on predetermined terms.

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(l)(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.

#### **CHAPTER 4**

##### **ESMA AND COMPETENT AUTHORITIES**

#### *Article 22*

##### **Competent authorities**

Without prejudice to the competences of the judicial authorities, each Member State shall designate a single administrative competent authority for the purpose of this Regulation. Member States shall inform the Commission, ESMA and the other competent authorities of other Member States accordingly. The competent authority shall ensure that the provisions of this Regulation are applied on its territory, regarding all actions carried out on its territory, and actions carried out abroad relating to instruments admitted to trading on a regulated market, for which a request for admission to trading on such market has been made, auctioned on an auction platform or which are traded on an MTF or an OTF or for which a request for admission to trading has been made on an MTF operating within its territory.

#### *Article 23*

##### **Powers of competent authorities**

1. Competent authorities shall exercise their functions and powers in any of the following ways:
  - (a) directly;

(b) in collaboration with other authorities or with the market undertakings;

(c) under their responsibility by delegation to such authorities or to market undertakings;

(d) by application to the competent judicial authorities.

2. In order to fulfil their duties under this Regulation, competent authorities shall have, in accordance with national law, at least the following supervisory and investigatory powers:

(a) to access any document and data in any form, and to receive or take a copy thereof;

(b) to require or demand information from any person, including those who are successively involved in the transmission of orders or conduct of the operations concerned, as well as their principals, and if necessary, to summon and question any such person with a view to obtain information;

(c) in relation to commodity derivatives, to request information from market participants on related spot markets according to standardised formats, obtain reports on transactions, and have direct access to traders' systems;

(d) to carry out on-site inspections and investigations at sites other than at the private residences of natural persons;

(e) subject to the second subparagraph, to enter the premises of natural and legal persons in order to seize documents and data in any form where a reasonable suspicion exists that documents or data relating to the subject matter of the inspection or investigation may be relevant to prove a case of insider dealing or market manipulation infringing this Regulation;

(f) to refer matters for criminal investigation;

(g) to require existing recordings of telephone conversations, electronic communications or data traffic records held by investment firms, credit institutions or financial institutions;

(g) to require existing recordings of telephone conversations, electronic communications or data traffic records held by investment firms, credit institutions or financial institutions **as well as benchmark administrators or supervised contributors;**

(h) to require, insofar as permitted by national law, existing data traffic records held by a telecommunications operator, where there is a reasonable suspicion of an infringement and where such records may be relevant to the investigation of an infringement of point (a) or (b) of Article 14 or Article 15;

(i) to request the freezing or sequestration of assets, or both;

(j) to suspend trading of the financial instrument concerned;

(k) to require the temporary cessation of any practice that the competent authority considers contrary to this Regulation;

(l) to impose a temporary prohibition on the exercise of professional activity; and

(m) to take all necessary measures to ensure that the public is correctly informed, *inter alia*, by correcting false or misleading disclosed information, including by requiring an issuer or other person who has published or disseminated false or misleading information to publish a corrective statement.

Where in accordance with national law prior authorisation to enter premises of natural and legal persons referred to in point (e) of the first subparagraph is needed from the judicial authority of the Member State concerned, the power as referred to in that point shall be used only after having obtained such prior authorisation.

3. Member States shall ensure that appropriate measures are in place so that competent authorities have all the supervisory and investigatory powers that are necessary to fulfil their duties.

This Regulation is without prejudice to laws, regulations and administrative provisions adopted in relation to takeover bids, merger transactions and other transactions affecting the ownership or control of companies regulated by the supervisory authorities appointed by Member States pursuant to Article 4 of Directive 2004/25/EC that impose requirements in addition to the requirements of this Regulation.

4. A person making information available to the competent authority in accordance with this Regulation shall not be considered to be infringing any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not involve the person notifying in liability of any kind related to such notification.

#### *Article 24*

##### **Cooperation with ESMA**

1. The competent authorities shall cooperate with ESMA for the purposes of this Regulation, in accordance with Regulation (EU) No 1095/2010.
2. The competent authorities shall, without delay, provide ESMA with all information necessary to carry out its duties, in accordance with Article 35 of Regulation (EU) No 1095/2010.
3. In order to ensure uniform conditions of application of this Article, ESMA shall develop draft implementing technical standards to determine the procedures and forms for exchange of information as referred to in paragraph 2.

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 25*

##### **Obligation to cooperate**

1. Competent authorities shall cooperate with each other and with ESMA where necessary for the purposes of this Regulation, unless one of the exceptions in paragraph 2 applies. Competent authorities shall render assistance to competent authorities of other Member States and ESMA. In particular, they shall exchange information without undue delay and cooperate in investigation, supervision and enforcement activities.

The obligation to cooperate and assist laid down in the first subparagraph shall also apply as regards the Commission in relation to the exchange of information relating to commodities which are agricultural products listed in Annex I to the TFEU.

The competent authorities and ESMA shall cooperate in accordance with Regulation (EU) No 1095/2010, in particular Article 35 thereof.

Where Member States have chosen, in accordance with Article 30(1), second subparagraph, to lay down criminal sanctions for infringements of the provisions of this Regulation referred to in that Article, they shall ensure that appropriate measures are in place so that competent authorities have all the necessary powers to liaise with judicial authorities within their jurisdiction to receive specific information related to criminal investigations or proceedings commenced for possible infringements of this Regulation and provide the same to other competent authorities and ESMA to fulfil their obligation to cooperate with each other and ESMA for the purposes of this Regulation.

1a. ESMA shall, at the request of at least one competent authority, facilitate and coordinate the cooperation and exchange of information between competent authorities and regulatory authorities in other Member States and third countries. When justified by the character of the case, and at the request of the competent authority, ESMA shall contribute to the investigation of the case by the competent authority.

2. A competent authority may refuse to act on a request for information or a request to cooperate with an investigation only in the following exceptional circumstances, namely where:

- (a) communication of relevant information could adversely affect the security of the Member State addressed, in particular the fight against terrorism and other serious crimes;
- (b) complying with the request is likely adversely to affect its own investigation, enforcement activities or, where applicable, a criminal investigation;
- (c) judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the Member State addressed; or
- (d) a final judgment has already been delivered in relation to such persons for the same actions in the Member State addressed.

3. Competent authorities and ESMA shall cooperate with the Agency for the Cooperation of Energy Regulators (ACER), established under Regulation (EC) No 713/2009 of the European Parliament and of the Council <sup>(12)</sup>, and the national regulatory authorities of the Member States to ensure that a coordinated

approach is taken to the enforcement of the relevant rules where transactions, orders to trade or other actions or behaviours relate to one or more financial instruments to which this Regulation applies and also to one or more wholesale energy products to which Article 3,4 and 5 of Regulation (EU) No 1227/2011 apply. Competent authorities shall consider the specific characteristics of the definitions of Article 2 of Regulation (EU) No 1227/2011 and the provisions of Article 3, 4 and 5 of Regulation (EU) No 1227/2011 when they apply Articles 7, 8 and 12 of this Regulation to financial instruments related to wholesale energy products.

4. Competent authorities shall, on request, immediately supply any information required for the purpose referred to in paragraph 1.

5. Where a competent authority is convinced that acts contrary to the provisions of this Regulation are being, or have been, carried out on the territory of another Member State or that acts are affecting financial instruments traded on a trading venue situated in another Member State, it shall give notice of that fact in as specific a manner as possible to the competent authority of the other Member State and to ESMA and, in relation to wholesale energy products, to ACER. The competent authorities of the various Member States involved shall consult each other and ESMA and, in relation to wholesale energy products, ACER, on the appropriate action to take and inform each other of significant interim developments. They shall coordinate their action, in order to avoid possible duplication and overlap when applying administrative sanctions and other administrative measures to those cross-border cases in accordance with Articles 30 and 31, and shall assist each other in the enforcement of their decisions.

6. The competent authority of one Member State may request assistance from the competent authority of another Member State with regard to on-site inspections or investigations.

A requesting competent authority may inform ESMA of any request referred to in the first subparagraph. In the case of an investigation or an inspection with cross-border effect, ESMA shall, if requested to do so by one of the competent authorities, coordinate the investigation or inspection.

Where a competent authority receives a request from a competent authority of another Member State to carry out an on-site inspection or an investigation, it may do any of the following:

- (a) carry out the on-site inspection or investigation itself;
- (b) allow the competent authority which submitted the request to participate in an on-site inspection or investigation;
- (c) allow the competent authority which submitted the request to carry out the on-site inspection or investigation itself;
- (d) appoint auditors or experts to carry out the on-site inspection or investigation;
- (e) share specific tasks related to supervisory activities with the other competent authorities.

Competent authorities may also cooperate with competent authorities of other Member States with respect to facilitating the recovery of pecuniary sanctions.

7. Without prejudice to Article 258 TFEU, a competent authority whose request for information or assistance in accordance with paragraphs 1,3,4 and 5 is not acted upon within a reasonable time or whose request for information or assistance is rejected may refer that rejection or absence of action within a reasonable timeframe to ESMA.

In those situations, ESMA may act in accordance with Article 19 of Regulation (EU) No 1095/2010, without prejudice to the possibility of ESMA acting in accordance with Article 17 of Regulation (EU) No 1095/2010.

8. Competent authorities shall cooperate and exchange information with relevant national and third- country regulatory authorities responsible for the related spot markets where they have reasonable grounds to suspect that acts, which constitute insider dealing, unlawful disclosure of information or market manipulation infringing this Regulation, are being, or have been, carried out. Such cooperation shall ensure a consolidated overview of the financial and spot markets, and shall detect and impose sanctions for cross-market and cross-border market abuses.

In relation to emission allowances, the cooperation and exchange of information provided for under the first subparagraph shall also be ensured with:

- (a) the auction monitor, with regard to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (EU) No 1031/2010; and
- (b) competent authorities, registry administrators, including the Central Administrator, and other public bodies charged with the supervision of compliance under Directive 2003/87/EC.

ESMA shall perform a facilitation and coordination role in relation to the cooperation and exchange of information between competent authorities and regulatory authorities in other Member States and third countries. Competent authorities shall, where possible, conclude cooperation arrangements with third-country regulatory authorities responsible for the related spot markets in accordance with Article 26.

9. In order to ensure uniform conditions of application of this Article, ESMA shall develop draft implementing technical standards to determine the procedures and forms for exchange of information and assistance as 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 25a*

**Mechanism to exchange order data**

- 1. Competent authorities supervising trading venues with a significant cross-border dimension shall, by [18] months from the date of entry into

force of this Regulation], set up a mechanism to permit ongoing and timely exchange of order data on the financial instruments referred to in paragraph 2 point (a) and collected from those trading venues in accordance with Article 25 of Regulation (EU) No 600/2014 with respect to the financial instruments traded in such market. Competent authorities may delegate the set-up of the mechanism to ESMA.

Where a competent authority submits a request for data under paragraph 2, the requested competent authority shall request that data from the relevant trading venue in a timely manner and not later than four working days from the date of the request. The requested data shall be made available to the competent authority that submitted the first request as soon as possible and no later than the deadline determined in paragraph 4 point (c).

The ongoing and timely exchange of order data on the financial instruments referred to in paragraph 2 point (b) and point (c) shall be made operational through this mechanism by [42 months from the date of entry into force of this Regulation].

1b. The relevant trading venue shall establish and maintain appropriate arrangements, systems and procedures to permit ongoing and timely exchange of order data by 18 months from the date of entry into force of this Regulation.

1c. The request for ongoing data from a competent authority may be submitted for a specific set of financial instruments.

2. A competent authority may obtain order data originating from a trading venue that has a significant cross-border dimension when that competent authority is the competent authority of the most relevant market referred to in Article 26 of Regulation (EU) No 600/2014 and this data could be relevant for the supervisory activities of this authority for the following financial instruments:

(a) shares;

- (b) bonds;
- (c) futures.

3. A Member State may decide that its competent authority participates in the mechanism set up pursuant to paragraph 1 even if none of the trading venues under the supervision of such competent authority has a significant cross-border dimension. Such decision shall be communicated to ESMA which shall make it public on its website.

When a Member State makes a decision in accordance with the first subparagraph, that Member State and its competent authority shall comply with the provisions of this Article.

4. ESMA shall develop draft implementing technical standards

(a) to specify the appropriate mechanism for the exchange of order data. In particular, the implementing technical standards shall lay down the operational arrangements to ensure the swift transmission of information between competent authorities,

(b) to determine appropriate arrangements, systems and procedures for trading venues to comply with the requirement in paragraph 1, third subparagraph, and

(c) to determine the format and the deadline for providing without delay the requested data in paragraph 1, third subparagraph.

ESMA shall submit those draft implementing technical standards to the Commission by [9 months after the entering into force of this Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

5. The Commission shall adopt delegated acts in accordance with Article 35 to establish a list of designated trading venues that have a significant cross-border dimension in the supervision of market abuse, by taking into account for each class of financial instruments at least all the following:

- (a) the trading volume on the trading venue; and
- (b) the trading volume on that trading venue in financial instruments for which the competent authority of the most relevant market referred to in Article 26 of Regulation (EU) No 600/2014 differs from the competent authority of the trading venue.

With regard to shares, the criterion referred to in the first subparagraph, of point (a), shall be measured as turnover in shares aggregated at the level of the trading venue, and shall not be below EUR 100 billion per year in any of the last 4 years. The criterion referred to in the first subparagraph, of point (b), shall be defined as the ratio between the turnover in shares for which the competent authority of the most relevant market referred to in Article 26 of Regulation (EU) No 600/2014 is different from the competent authority of the trading venue and the total turnover in all shares traded on that venue in a year. This ratio shall not be below 50 percent.

5a. By [36 months after the date of entry into force of this Regulation], ESMA shall submit a report to the Commission on the functioning of the mechanism.

That report shall cover at least the following:

- (a) a description of technical challenges faced by the trading venues, competent authorities, and ESMA during the implementation of the mechanism for shares;
- (b) the costs incurred by competent authorities and ESMA in the set-up of the mechanism for shares.

(c) the functioning of the thresholds referred to in the last subparagraph of paragraph 5 of this Article.

The report shall include a cost-benefit analysis linked to the future development of the mechanism with regards to the inclusion in the scope of possible relevant financial instruments, including those referred to in points (b) and (c) of paragraph 2. The report shall also include recommendations on the extension of the scope to the financial instruments referred to in paragraph 2, taking into account the added value, technical challenges and expected costs.

6. The Commission shall adopt delegated acts in accordance with Article 35 to amend paragraph 2 and 5 by updating the list of designated trading venues with a significant cross-border dimension and financial instruments, and amend the second subparagraph of paragraph 1 to postpone the extension of the mechanism to bonds and futures, taking into account the report mentioned in paragraph 5a, the developments in financial markets and the capacity of competent authorities to process the data on those financial instruments.

#### *Article 25b*

#### **Collaboration platforms**

1. ESMA may at the request of one or more competent authorities, in the case of serious concerns about market integrity or the orderly functioning of markets, set up and coordinate a collaboration platform.

2. Without prejudice to Article 35 of Regulation (EU) No 1095/2010, at the request of ESMA, the relevant competent authorities shall provide all necessary information in a timely manner.

Where two or more competent authorities of a collaboration platform disagree about the procedure or content of an action to be taken, or inaction, ESMA may, at the request of any relevant competent authority, assist the

competent authorities in reaching an agreement in accordance with Article 19(1) first subparagraph of Regulation (EU) No 1095/2010.

ESMA may also, at the request of one or more competent authorities, coordinate on-site inspections. The competent authority of the home Member State as well as other relevant competent authorities of the collaboration platform may invite ESMA to participate in such on-site inspections.

ESMA may also, at the request of one or more competent authorities, set up a collaboration platform jointly with ACER and the public bodies monitoring wholesale commodity markets where the concerns about market integrity and the orderly functioning of markets affect both financial and spot markets.

## *Article 26*

### **Cooperation with third countries**

1. The competent authorities of Member States shall, where necessary, conclude cooperation arrangements with supervisory authorities of third countries concerning the exchange of information with supervisory authorities in third countries and the enforcement of obligations arising under this Regulation in third countries. Those cooperation arrangements shall ensure at least an efficient exchange of information that allows the competent authorities to carry out their duties under this Regulation.

A competent authority shall inform ESMA and the other competent authorities where it proposes to enter into such an arrangement.

2. ESMA shall, where possible, facilitate and coordinate the development of cooperation arrangements between the competent authorities and the relevant supervisory authorities of third countries.

In order to ensure consistent harmonisation of this Article, ESMA shall develop draft regulatory technical standards containing a template document for cooperation arrangements that are to be used by competent authorities of Member States where possible.

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 second subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

ESMA shall also, where possible, facilitate and coordinate the exchange between competent authorities of information obtained from supervisory authorities of third countries that may be relevant to the taking of measures under Articles 30 and 31.

3. The competent authorities shall conclude cooperation arrangements on exchange of information with the supervisory authorities of third countries only where the information disclosed is subject to guarantees of professional secrecy which are at least equivalent to those set out in Article 27. Such exchange of information must be intended for the performance of the tasks of those competent authorities.

#### *Article 27*

##### **Professional secrecy**

1. Any confidential information received, exchanged or transmitted pursuant to this Regulation shall be subject to the conditions of professional secrecy laid down in paragraphs 2 and 3.
2. All the information exchanged between the competent authorities under this Regulation that concerns business or operational conditions and other economic or personal affairs shall be considered to be confidential and shall be subject to the requirements of professional secrecy, except where the competent authority states at the time of communication that such information may be disclosed or such disclosure is necessary for legal proceedings.
3. The obligation of professional secrecy applies to all persons who work or who have worked for the competent authority or for any authority or market undertaking to whom the competent authority has delegated its powers, including auditors and experts contracted by the competent authority.

Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of provisions laid down by Union or national law.

#### *Article 28*

##### **Data protection**

With regard to the processing of personal data within the framework of this Regulation, competent authorities shall carry out their tasks for the purposes of this Regulation in accordance with the national laws, regulations or administrative provisions transposing Directive 95/46/EC. With regard to the processing of personal data by ESMA within the framework of this Regulation, ESMA shall comply with the provisions of Regulation (EC) No 45/2001.

Personal data shall be retained for a maximum period of five years.

#### *Article 28*

##### **Data protection**

~~With regard to the processing of personal data within the framework of this Regulation, competent authorities shall carry out their tasks for the purposes of this Regulation in accordance with the national laws, regulations or administrative provisions transposing Directive 95/46/EC. With regard to the processing of personal data by ESMA within the framework of this Regulation, ESMA shall comply with the provisions of Regulation (EC) No 45/2001.~~

~~Personal data shall be retained for a maximum period of five years.~~

## Article 29

### Disclosure of personal data to third countries

1. The competent authority of a Member State may transfer personal data to a third country provided the requirements of Directive 95/46/EC are fulfilled and only on a case-by-case basis. The competent authority shall ensure that the transfer is necessary for the purpose of this Regulation and that the third country does not transfer the data to another third country unless it is given express written authorisation and complies with the conditions specified by the competent authority of the Member State.

2. The competent authority of a Member State shall only disclose personal data received from a competent authority of another Member State to a supervisory authority of a third country where the competent authority of the Member State concerned has obtained express agreement from the competent authority which transmitted the data and, where applicable, the data is disclosed solely for the purposes for which that competent authority gave its agreement.

3. Where a cooperation agreement provides for the exchange of personal data, it shall comply with the national laws, regulations or administrative provisions transposing Directive 95/46/EC.

1. ~~The~~eCompetent authorities of a Member State may transfer personal data to a third country provided the requirements of Regulation (EU) 2016/679 of the European Parliament and of the Council\*~~Directive 95/46/EC~~ are fulfilled and only on a case-by-case basis. ~~The~~eCompetent authorities shall ensure that ~~the~~ such a transfer is necessary for the purpose of this Regulation and that the third country does not transfer the data to another third country unless it is given express written authorisation and complies with the conditions specified by the competent authority of the Member State.

(\*) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

The~~e~~Competent authorities of a Member State shall only disclose personal data received from a competent authority of another Member State to a supervisory authority of a third country where the competent authority of the Member State concerned has obtained express agreement from the competent authority which transmitted the data and, where applicable, provided that the data ~~is~~ are disclosed solely for the purposes for which that competent authority gave its agreement.

~~3. Where a cooperation agreement provides for the exchange of personal data, it shall comply with the national laws, regulations or administrative provisions transposing Directive 95/46/EC.~~

## CHAPTER 5

### ADMINISTRATIVE MEASURES AND SANCTIONS

## Article 30

## Administrative sanctions and other administrative measures

1. Without prejudice to any criminal sanctions and without prejudice to the supervisory powers of competent authorities under Article 23, Member States shall, in accordance with national law, provide for competent authorities to have the power to take appropriate administrative sanctions and other administrative measures in relation to at least the following infringements:

- (a) infringements of Articles 14 and 15, Article 16(1) and (2), Article 17(1), (2), (4) and (5), and (8), Article 18(1) to (6), Article 19(1), (2), (3), (5), (6), (7) and (11) and Article 20(1); and
- (b) failure to cooperate or to comply with an investigation, with an inspection or with a request as referred to in Article 23(2).

Member States may decide not to lay down rules for administrative sanctions as referred to in the first subparagraph where the infringements referred to in point (a) or point (b) of that subparagraph are already subject to criminal sanctions in their national law by 3 July 2016. Where they so decide, Member States shall notify, in detail, to the Commission and to ESMA, the relevant parts of their criminal law.

By 3 July 2016, Member States shall notify, in detail, the rules referred to in the first and second subparagraph to the Commission and to ESMA. They shall notify the Commission and ESMA without delay of any subsequent amendments thereto.

2. Member States shall, in accordance with national law, ensure that competent authorities have the power to impose at least the following administrative sanctions and to take at least the following administrative measures in the event of the infringements referred to in point (a) of the first subparagraph of paragraph 1:

- (a) an order requiring the person responsible for the infringement to cease the conduct and to desist from a repetition of that conduct;
- (b) the disgorgement of the profits gained or losses avoided due to the infringement insofar as they can be determined;
- (c) a public warning which indicates the person responsible for the infringement and the nature of the infringement;
- (d) withdrawal or suspension of the authorisation of an investment firm;
- (e) a temporary ban of a person discharging managerial responsibilities within an investment firm or any other natural person, who is held responsible for the infringement, from exercising management functions in investment firms; (e) a temporary ban of a person discharging managerial responsibilities within an investment firm or any other natural person, who is held responsible for the infringement, from exercising management functions in investment firms **as well as benchmark administrators or supervised contributors**;
- (f) in the event of repeated infringements of Article 14 or 15, a permanent ban of any person discharging managerial responsibilities within an investment firm or any other natural person who is held responsible for (f) in the event of repeated infringements of Article 14 or 15, a **permanent ban of at least ten years** of any person discharging managerial

the infringement, from exercising management functions in investment firms;

(g) a temporary ban of a person discharging managerial responsibilities within an investment firm or another natural person who is held responsible for the infringement, from dealing on own account;

(h) maximum administrative pecuniary sanctions of at least three times the amount of the profits gained or losses avoided because of the infringement, where those can be determined;

(i) in respect of a natural person, maximum administrative pecuniary sanctions of at least:

(i) for infringements of Articles 14 and 15, EUR 5 000 000 or in the Member States whose currency is not the euro, the corresponding value in the national currency on 2 July 2014;

(ii) for infringements of Articles 16 and 17, EUR 1 000 000 or in the Member States whose currency is not the euro, the corresponding value in the national currency on 2 July 2014; and

(iii) for infringements of Articles 18, 19 and 20, EUR 500 000 or in the Member States whose currency is not the euro, the corresponding value in the national currency on 2 July 2014; and

(j) in respect of legal persons, maximum administrative pecuniary sanctions of at least:

(i) for infringements of Articles 14 and 15, EUR 15 000 000 or 15 % of the total annual turnover of the legal person according to the last available accounts approved by the management body, or in the Member States whose currency is not the euro, the corresponding value in the national currency on 2 July 2014;

(ii) for infringements of Articles 16 and 17, EUR 2 500 000 or 2 % of its total annual turnover according to the last available accounts approved by the management body, or in the Member States whose currency is not the euro, the corresponding value in the national currency on 2 July 2014; and

responsibilities within an investment firm or any other natural person who is held responsible for the infringement, from exercising management functions in investment firms **as well as benchmark administrators or supervised contributors**;

(g) a temporary ban of a person discharging managerial responsibilities within an investment firm or another natural person who is held responsible for the infringement, from dealing on own account **as well as benchmark administrators or supervised contributors**;

(h) maximum administrative pecuniary sanctions of at least three times the amount of the profits gained or losses avoided because of the infringement, where those can be determined;

(i) in respect of a natural person, maximum administrative pecuniary sanctions of at least:

(i) for infringements of Articles 14 and 15, **EUR 15 000 000 or** 15 % of the total annual turnover of the legal person according to the last available accounts approved by the management body **or EUR 15 000 000** or in the Member States whose currency is not the euro, the corresponding value in the national currency on 2 July 2014;

(ii) for infringements of Articles 16 and 17, **EUR 2 500 000 or** 2 % of its total annual turnover according to the last available accounts approved by the management body, **or EUR 2 500 000** or in the Member States whose

(iii) for infringements of Articles 18, 19 and 20, EUR 1 000 000 or in the Member States whose currency is not the euro, the corresponding value in the national currency on 2 July 2014.

currency is not the euro, the corresponding value in the national currency on 2 July 2014;~~and~~

(iii) for infringements of ~~Articles 18, 19 and 20, EUR 1 000 000~~ Article 17, 2 % of its total annual turnover according to the last available accounts approved by the management body. Where competent authorities deem that the amount for the administrative sanction based on the total annual turnover would be disproportionately low with respect to the circumstances referred to in Article 31(1), points (a), (b), (d), (e), (f), (g) and (h), Member States shall ensure that such authorities may impose administrative sanctions of at least EUR 2 500 000. Where the legal person is an SME, Member States may ensure that such authorities may alternatively impose administrative sanctions of at least EUR 1 000 000, or in the Member States whose currency is not the euro, the corresponding values in the national currency on 2 July 2014;

(iv) for infringements of Articles 18 and 19, 0,8 % of its total annual turnover according to the last available accounts approved by the management body. Where competent authorities deem that the amount for the administrative sanction based on the total annual turnover would be disproportionately low with respect to the circumstances referred to in Article 31(1), points (a), (b), (d), (e), (f), (g) and (h), Member States shall ensure that such authorities may impose administrative sanctions of at least EUR 1 000 000. Where the legal person is an SME, Member States may ensure that such authorities may alternatively impose administrative sanctions of at least EUR 400 000, or in the Member States whose currency is not the euro, the corresponding values in the national currency on 2 July 2014;

(v) for infringements of Article 20, 0,8 % of its total annual turnover according to the last available accounts approved by the management body, or EUR 1 000 000 or in the Member States whose currency is not the euro, the corresponding values in the national currency on 2 July 2014.

References to the competent authority in this paragraph are without prejudice to the ability of the competent authority to exercise its functions in any ways referred to in Article 23(1).

For the purposes of points (j)(i) and (ii) of the first subparagraph, where the legal person is a parent undertaking or a subsidiary undertaking which is required to prepare consolidated financial accounts pursuant to Directive 2013/34/EU<sup>(13)</sup>, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant accounting directives - Council Directive 86/635/EEC<sup>(14)</sup> for banks and Council Directive 91/674/EEC<sup>(15)</sup> for insurance companies - according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

3. Member States may provide that competent authorities have powers in addition to those referred to in paragraph 2 and may provide for higher levels of sanctions than those established in that paragraph.

For the purposes of points (j)<sup>(i)</sup> and <sup>(ii)</sup> of the first subparagraph, where the legal person is a parent undertaking or a subsidiary undertaking which is required to prepare consolidated financial accounts pursuant to Directive 2013/34/EU<sup>(13)</sup>, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant accounting directives - Council Directive 86/635/EEC<sup>(14)</sup> for banks and Council Directive 91/674/EEC<sup>(15)</sup> for insurance companies - according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

4. For the purpose of this Article, ‘small and medium-sized enterprise’ or ‘SME’ means a micro, small or medium-sized enterprise within the meaning of Article 2 of the Annex to Commission Recommendation 2003/361/EC\*.

(\* ) Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

## Article 31

### Exercise of supervisory powers and imposition of sanctions

1. Member States shall ensure that when determining the type and level of administrative sanctions, competent authorities take into account all relevant circumstances, including, where appropriate:

- (a) the gravity and duration of the infringement;
- (b) the degree of responsibility of the person responsible for the infringement;

1. Member States shall ensure that when determining the type and level of administrative sanctions, competent authorities take into account all relevant circumstances, in order to apply proportionate sanctions, including, where appropriate:

(c) the financial strength of the person responsible for the infringement, as indicated, for example, by the total turnover of a legal person or the annual income of a natural person;

(d) the importance of the profits gained or losses avoided by the person responsible for the infringement, insofar as they can be determined;

(e) the level of cooperation of the person responsible for the infringement with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

(f) previous infringements by the person responsible for the infringement; and

(g) measures taken by the person responsible for the infringement to prevent its repetition.

(c) the financial strength of the person responsible for the infringement, as indicated, for example, by the total turnover of a legal person or the annual **personal** income of a natural person;

(f) previous infringements by the person responsible for the infringement; **and**

(g) measures taken by the person responsible for the infringement to prevent its repetition; **and**

(h) **the disadvantage for the person responsible for the infringement resulting from the duplication of criminal and administrative proceedings and penalties for the same conduct.**

2. In the exercise of their powers to impose administrative sanctions and other administrative measures under Article 30, competent authorities shall cooperate closely to ensure that the exercise of their supervisory and investigative powers, and the administrative sanctions that they impose, and the other administrative measures that they take, are effective and appropriate under this Regulation. They shall coordinate their actions in accordance with Article 25 in order to avoid duplication and overlaps when exercising their supervisory and investigative powers and when imposing administrative sanctions in respect of cross-border cases.

## *Article 32*

### **Reporting of infringements**

1. Member States shall ensure that competent authorities establish effective mechanisms to enable reporting of actual or potential infringements of this Regulation to competent authorities.

2. The mechanisms referred to in paragraph 1 shall include at least:

(a) specific procedures for the receipt of reports of infringements and their follow-up, including the establishment of secure communication channels for such reports;

- (b) within their employment, appropriate protection for persons working under a contract of employment, who report infringements or are accused of infringements, against retaliation, discrimination or other types of unfair treatment at a minimum; and
- (c) protection of personal data both of the person who reports the infringement and the natural person who allegedly committed the infringement, including protection in relation to preserving the confidentiality of their identity, at all stages of the procedure without prejudice to disclosure of information being required by national law in the context of investigations or subsequent judicial proceedings.

3. Member States shall require employers who carry out activities that are regulated by financial services regulation to have in place appropriate internal procedures for their employees to report infringements of this Regulation.

4. Member States may provide for financial incentives to persons who offer relevant information about potential infringements of this Regulation to be granted in accordance with national law where such persons do not have other pre-existing legal or contractual duties to report such information, and provided that the information is new, and that it results in the imposition of an administrative or criminal sanction, or the taking of another administrative measure, for an infringement of this Regulation.

5. The Commission shall adopt implementing acts to specify the procedures referred to in paragraph 1, including the arrangements for reporting and for following-up reports, and measures for the protection of persons working under a contract of employment and measures for the protection of personal data. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 36(2).

*Article 33*

**Exchange of information with ESMA**

1. Competent authorities shall provide ESMA annually with aggregated information regarding all administrative sanctions and other administrative measures imposed by the competent authority in accordance with Articles 30, 31 and 32. ESMA shall publish that information in an annual report. Competent authorities shall also provide ESMA annually with anonymised and aggregated data regarding all administrative investigations undertaken in accordance with those Articles.
2. Where Member States have, in accordance with the second subparagraph of Article 30(1), laid down criminal sanctions for the infringements referred to in that Article, their competent authorities shall provide ESMA annually with anonymised and aggregated data regarding all criminal investigations undertaken and criminal penalties imposed by the judicial authorities in accordance with Articles 30, 31 and 32. ESMA shall publish data on criminal sanctions imposed in an annual report.
3. Where the competent authority has disclosed administrative or criminal sanctions or other administrative measures to the public, it shall simultaneously notify ESMA thereof.
4. Where a published administrative or criminal sanction or other administrative measure relates to an investment firm authorised in accordance with Directive 2014/65/EU, ESMA shall add a reference to that published sanction or measure in the register of investment firms established under Article 5(3) of that Directive.

5. In order to ensure uniform conditions of application of this Article, ESMA shall develop draft implementing technical standards to determine the procedures and forms for exchange of information as 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 34*

##### **Publication of decisions**

1. Subject to the third subparagraph, competent authorities shall publish any decision imposing an administrative sanction or other administrative measure in relation to an infringement of this Regulation on their website immediately after the person subject to that decision has been informed of that decision. Such publication shall include at least information on the type and nature of the infringement and the identity of the person subject to the decision.

The first subparagraph does not apply to decisions imposing measures that are of an investigatory nature.

Where a competent authority considers that the publication of the identity of the legal person subject to the decision, or of the personal data of a natural person, would be disproportionate following a case- by-case assessment conducted on the proportionality of the publication of such data, or where such publication would jeopardise an ongoing investigation or the stability of the financial markets, it shall do any of the following:

- (a) defer publication of the decision until the reasons for that deferral cease to exist;
- (b) publish the decision on an anonymous basis in accordance with national law where such publication ensures the effective protection of the personal data concerned;
- (c) not publish the decision in the event that the competent authority is of the opinion that publication in accordance with point (a) or (b) will be insufficient to ensure:
  - (i) that the stability of financial markets is not jeopardised; or
  - (ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.

Where a competent authority takes a decision to publish a decision on an anonymous basis as referred to in point (b) of the third subparagraph, it may postpone the publication of the relevant data for a reasonable period of time where it is foreseeable that the reasons for anonymous publication will cease to exist during that period.

2. Where the decision is subject to an appeal before a national judicial, administrative or other authority, competent authorities shall also publish immediately on their website such information and any subsequent information on the outcome of such an appeal. Moreover, any decision annulling a decision subject to appeal shall also be published.

3. Competent authorities shall ensure that any decision that is published in accordance with this Article shall remain accessible on their website for a period of at least five years after its publication. Personal data contained in such publications shall be kept on the website of the competent authority for the period which is necessary in accordance with the applicable data protection rules.

## CHAPTER 6

### DELEGATED ACTS AND IMPLEMENTING ACTS

#### *Article 35*

##### **Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 6(5) and (6), Article 12(5), the third subparagraph of Article 17(2), Article 17(3), Article 19(13) and (14), and Article 38 shall be conferred on the Commission for a period of five years from 31 December 2019. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
2. The power to adopt delegated acts referred to in Article 6(5) and (6), Article 12(5), Article 17(1), second subparagraph, Article 17(2), ~~the~~ third subparagraph, ~~of Article 17(2)~~, Article 17(3), Article 19(13) and (14), Article 25a~~(5), (5a) and (6)~~ and Article 38 shall be conferred on the Commission for a period of five years from 31 December 20XX49. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Article 6(5) and (6), Article 12(5), Article 17(1), second subparagraph, Article 17(2), ~~the~~ third subparagraph ~~of Article 17(2)~~, Article 17(3), Article 19(13) and (14), Article 25a~~(5), (5a) and (6)~~ and Article 38, may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the

European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 6(5) or (6), Article 12(5), the third subparagraph of Article 17(2), Article 17(3), Article 19(13) or (14) or Article 38, shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.

5. A delegated act adopted pursuant to Article 6(5) or (6), Article 12(5), ~~the third subparagraph of~~ Article 17(2), third subparagraph, Article 17(3), Article 17(12), Article 19(13) or (14), Article 25a(5), (5a) and (6) or Article 38, shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.

### *Article 36*

#### **Committee procedure**

1. The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC (<sup>16</sup>). That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

### **CHAPTER 7**

#### **FINAL PROVISIONS**

### *Article 37*

#### **Repeal of Directive 2003/6/EC and its implementing measures**

Directive 2003/6/EC and Commission Directives 2004/72/EC, 2003/125/EC (<sup>17</sup>) and 2003/124/EC (<sup>18</sup>) and Commission Regulation (EC) No 2273/2003 (<sup>19</sup>) shall be repealed with effect from 3 July 2016. References to Directive 2003/6/EC shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in Annex II to this Regulation.

## Article 38

### Report

By 3 July 2019, the Commission shall submit a report to the European Parliament and to the Council on the application of this Regulation, together with a legislative proposal to amend it if appropriate. That report shall assess, *inter alia*:

- (a) the appropriateness of introducing common rules on the need for all Member States to provide for administrative sanctions for insider dealing and market manipulation;
- (b) whether the definition of inside information is sufficient to cover all information relevant for competent authorities to effectively combat market abuse;
- (c) the appropriateness of the conditions under which the prohibition on trading is mandated in accordance with Article 19(11) with a view to identifying whether there are any further circumstances under which the prohibition should apply;
- (d) the possibility of establishing a Union framework for cross-market order book surveillance in relation to market abuse, including recommendations for such a framework; and
- (e) the scope of the application of the benchmark provisions.

### Reports

By [4 years from the date of entry into force of this amending Regulation] ~~3 July 2019~~, the Commission shall submit a report to the European Parliament and to the Council on the application of this Regulation, together with a legislative proposal to amend it if appropriate. That report shall assess, *inter alia*:

- (c) ~~the appropriateness of the conditions under which the prohibition on trading is mandated in accordance with Article 19(11) with a view to identifying whether there are any further circumstances under which the prohibition should apply~~  
~~whether the provision on non-disclosure of inside information relating to intermediate steps in a protracted process in Article 17 paragraph 1 strikes an adequate balance between reducing burden for issuers and allowing investors to take informed investment decisions~~; and
- (d) ~~the possibility of establishing a Union framework for proportionality of the cross-market order book surveillance in relation to market abuse, including recommendations for such a framework, and absolute amounts, as expressed in Article 30(2)(j)(iii) and (iv), and their appropriateness in relation to micro, small and medium-sized enterprise~~.
- (e) ~~the scope of the application of the benchmark provisions~~.

For the purposes of point (a) of the first subparagraph, ESMA shall undertake a mapping exercise of the application of administrative sanctions and, where Member States have decided, pursuant to the second subparagraph of Article 30(1), to lay down criminal sanctions as referred to therein for infringements of this

Regulation, of the application of such criminal sanctions within Member States. That exercise shall also include any data made available under Article 33(1) and (2).

By 3 July 2019, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the level of the thresholds set out in Article 19(1a)(a) and (b) in relation to managers' transactions where the issuer's shares or debt instruments form part of a collective investment undertaking or provide exposure to a portfolio of assets, with a view to assessing whether that level is appropriate or should be adjusted.

(g) By [7 years after entry into force of this amending Regulation], the Commission shall submit a report to the European Parliament and to the Council on the functioning of the cross-market order data surveillance mechanism, its impact on the ability of national competent authorities to ensure effective supervision, how to enforce such mechanism, and the merits of the potential inclusion of systematic internalisers in the scope of the mechanism;'

By [4 years after entry into force of this amending Regulation] ~~3 July 2019~~, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the level of the thresholds set out in Article 19(1a)(a) and (b) in relation to managers' transactions where the issuer's shares or debt instruments form part of a collective investment undertaking or provide exposure to a portfolio of assets, with a view to assessing whether that level is appropriate or should be adjusted.

The Commission shall be empowered to adopt delegated acts in accordance with Article 35 adjusting the thresholds in Article 19(1a)(a) and (b), if it determines in that report that those thresholds should be adjusted.

### *Article 39*

#### **Entry into force and application**

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.
2. It shall apply from 3 July 2016 except for:
  - (a) Article 4(2) and (3), which shall apply from 3 January 2018; and
  - (b) Article 4(4) and (5), Article 5(6), Article 6(5) and (6), Article 7(5), Article 11(9), (10) and (11), Article 12(5), Article 13(7) and (11), Article 16(5), the third subparagraph of Article 17(2), Article 17(3), (10) and (11), Article 18(9), Article 19(13), (14) and (15), Article 20(3), Article 24(3), Article 25(9), the second, third and fourth subparagraphs of Article 26(2), Article 32(5) and Article 33(5), which shall apply from 2 July 2014.
3. Member States shall take the necessary measures to comply with Articles 22, 23 and 30, Article 31(1) and Articles 32 and 34 by 3 July 2016.

4. References in this Regulation to Directive 2014/65/EU and Regulation (EU) No 600/2014 shall, before 3 January 2018, be read as references to Directive 2004/39/EC in accordance with the correlation table set out in Annex IV to Directive 2014/65/EU in so far as that correlation table contains provisions referring to Directive 2004/39/EC.

Where reference in the provisions of this Regulation is made to OTFs, SME growth markets, emission allowances or auctioned products based thereon, those provisions shall not apply to OTFs, SME growth markets, emission allowances or auctioned products based thereon until 3 January 2018 .

This Regulation shall be binding in its entirety and directly applicable in all Member States.

#### *ANNEX I*

##### **A. Indicators of manipulative behaviour relating to false or misleading signals and to price securing**

For the purposes of applying point (a) of Article 12(1) of this Regulation, and without prejudice to the forms of behaviour set out in paragraph 2 of that Article, the following non-exhaustive indicators, which shall not necessarily be deemed, in themselves, to constitute market manipulation, shall be taken into account when transactions or orders to trade are examined by market participants and competent authorities:

- (a) the extent to which orders to trade given or transactions undertaken represent a significant proportion of the daily volume of transactions in the relevant financial instrument, related spot commodity contract, or auctioned product based on emission allowances, in particular when those activities lead to a significant change in their prices;
- (b) the extent to which orders to trade given or transactions undertaken by persons with a significant buying or selling position in a financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances, lead to significant changes in the price of that financial instrument, related spot commodity contract, or auctioned product based on emission allowances;
- (c) whether transactions undertaken lead to no change in beneficial ownership of a financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances;
- (d) the extent to which orders to trade given or transactions undertaken or orders cancelled include position reversals in a short period and represent a significant proportion of the daily volume of transactions in the relevant financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances, and might be associated with significant changes in the price of a financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances;
- (e) the extent to which orders to trade given or transactions undertaken are concentrated within a short time span in the trading session and lead to a price change which is subsequently reversed;

- (f) the extent to which orders to trade given change the representation of the best bid or offer prices in a financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances, or more generally the representation of the order book available to market participants, and are removed before they are executed; and
- (g) the extent to which orders to trade are given or transactions are undertaken at or around a specific time when reference prices, settlement prices and valuations are calculated and lead to price changes which have an effect on such prices and valuations.

#### **B. Indicators of manipulative behaviour relating to the employment of a fictitious device or any other form of deception or contrivance**

For the purposes of applying point (b) of Article 12(1) of this Regulation, and without prejudice to the forms of behaviour set out in paragraph 2 of that Article thereof, the following non-exhaustive indicators, which shall not necessarily be deemed, in themselves, to constitute market manipulation, shall be taken into account where transactions or orders to trade are examined by market participants and competent authorities:

- (a) whether orders to trade given or transactions undertaken by persons are preceded or followed by dissemination of false or misleading information by the same persons or by persons linked to them; and
- (b) whether orders to trade are given or transactions are undertaken by persons before or after the same persons or persons linked to them produce or disseminate investment recommendations which are erroneous, biased, or demonstrably influenced by material interest.

#### *ANNEX II*

##### **Correlation table**

<b>This Regulation</b>	<b>Directive 2003/6/EC</b>
Article 1	
Article 2	
Article 2(1)(a)	Article 9, first paragraph
Article 2(1)(b)	
Article 2(1)(c)	
Article 2(1)(d)	Article 9, second paragraph
Article 2(3)	Article 9, first paragraph
Article 2(4)	Article 10 (a)

Point (1) of Article 3(1)	Article 1(3)
Point (2) of Article 3(1)	
Point (3) of Article 3(1)	
Point (4) of Article 3(1)	
Point (5) of Article 3(1)	
Point (6) of Article 3(1)	Article 1(4)
Point (7) of Article 3(1)	
Point (8) of Article 3(1)	
Point (9) of Article 3(1)	Article 1(5)
Point (10) of Article 3(1)	
Point (11) of Article 3(1)	
Point (12) of Article 3(1)	Article 1(7)
Point (13) of Article 3(1)	Article 1(6)
Points (14) to (35) of Article 3(1)	
Article 4	
Article 5	Article 8
Article 6(1)	Article 7
Article 6(2)	
Article 6(3)	
Article 6(4)	
Article 6(5)	
Article 6(6)	

Article 6(7)	
Article 7(1)(a)	Article 1(1), first paragraph
Article 7(1)(b)	Article 1(1), second paragraph
Article 7(1)(c)	
Article 7(1)(d)	Article 1(1), third paragraph
Article 7(2)	
Article 7(3)	
Article 7(4)	
Article 7(5)	
Article 8(1)	Article 2(1), first subparagraph
Article 8(2)	
Article 8(2)(a)	Article 3(b)
Article 8(2)(b)	
Article 8(3)	
Article 8(4)(a)	Article 2(1)(a)
Article 8(4)(b)	Article 2(1)(b)
Article 8(4)(c)	Article 2(1)(c)
Article 8(4), second subparagraph	Article 4
Article 8(5)	Article 2(2)
Article 9(1)	
Article 9(2)	
Article 9(3)(a)	Article 2(3)

Article 9(3)(b)	Article 2(3)
Article 9(4)	
Article 9(5)	
Article 9(6)	
Article 10(1)	Article 3(a)
Article 10(2)	
Article 11	
Article 12(1)	
Article 12(l)(a)	Article l(2)(a)
Article 12(l)(b)	Article l(2)(b)
Article 12(l)(c)	Article l(2)(c)
Article 12(l)(d)	
Article 12(2)(a)	Article 1(2), first indent of second paragraph
Article 12(2)(b)	Article 1(2), second indent of second paragraph
Article 12(2)(c)	
Article 12(2)(d)	Article 1(2), third indent of second paragraph
Article 12(2)(e)	
Article 12(3)	
Article 12(4)	
Article 12(5)	Article 1(2), third paragraph
Article 13(1)	Article l(2)(a), second paragraph
Article 13(1)	

Article 13(2)	
Article 13(3)	
Article 13(4)	
Article 13(5)	
Article 13(6)	
Article 13(7)	
Article 13(8)	
Article 13(9)	
Article 13(10)	
Article 13(11)	
Article 14(a)	Article 2(1), first paragraph
Article 14(b)	Article 3(b)
Article 14(c)	Article 3(a)
Article 15	Article 5
Article 16(1)	Article 6(6)
Article 16(2)	Article 6(9)
Article 16(3)	
Article 16(4)	
Article 16(5)	Article 6(10), seventh indent
Article 17(1)	Article 6(1)
Article 17(1), third subparagraph	Article 9, third paragraph
Article 17(2)	

Article 17(3)	
Article 17(4)	Article 6(2)
Article 17(5)	
Article 17(6)	
Article 17(7)	
Article 17(8)	Article 6(3), first and second subparagraph
Article 17(9)	
Article 17(10)	Article 6(10), first and second indent
Article 17(11)	
Article 18(1)	Article 6(3), third subparagraph
Article 18(2)	
Article 18(3)	
Article 18(4)	
Article 18(5)	
Article 18(6)	
Article 18(7)	Article 9, third paragraph
Article 18(8)	
Article 18(9)	Article 6(10), fourth indent
Article 19(1)	Article 6(4)
Article 19(l)(a)	Article 6(4)
Article 19(l)(b)	
Article 19(2)	

Article 19(3)	
Article 19(4)(a)	
Article 19(4)(b)	
Article 19(5) to (13)	
Article 19(14)	Article 6(10), fifth indent
Article 19(15)	Article 6(10), fifth indent
Article 20(1)	Article 6(5)
Article 20(2)	Article 6(8)
Article 20(3)	Article 6(10), sixth indent and Article 6(11)
Article 21	Article 1(2)(c), second sentence
Article 22	Article 11, first paragraph and Article 10
Article 23(1)	Article 12(1)
Article 23(1)(a)	Article 12(1)(a)
Article 23(1)(b)	Article 12(1)(b)
Article 23(1)(c)	Article 12(1)(c)
Article 23(1)(d)	Article 12(1)(d)
Article 23(2)(a)	Article 12(2)(a)
Article 23(2)(b)	Article 12(2)(b)
Article 23(2)(c)	
Article 23(2)(d)	Article 12(2)(c)
Article 23(2)(e)	
Article 23(2)(f)	

Article 23(2)(g)	Article 12(2)(d)
Article 23(2)(h)	Article 12(2)(d)
Article 23(2)(i)	Article 12(2)(g)
Article 23(2)(j)	Article 12(2)(f)
Article 23(2)(k)	Article 12(2)(e)
Article 23(2)(1)	Article 12(2)(h)
Article 23(2)(m)	Article 6(7)
Article 23(3)	
Article 23(4)	
Article 24(1)	Article 15a(1)
Article 24(2)	Article 15a(2)
Article 24(3)	
Article 25(1) first subparagraph	Article 16(1)
Article 25(2)	Article 16(2) and Article 16(4), fourth subparagraph
Article 25(2)(a)	Article 16(2), first indent of second subparagraph and Article 16(4) fourth subparagraph
Article 25(2)(b)	
Article 25(2)(c)	Article 16(2), second indent of second subparagraph and Article 16(4), fourth subparagraph
Article 25(2)(d)	Article 16(2) third indent of second subparagraph and Article 16(4) fourth subparagraph
Article 25(3)	
Article 25(4)	Article 16(2), first sentence
Article 25(5)	Article 16(3)
Article 25(6)	Article 16(4)

Article 25(7)	Article 16(2), fourth subparagraph and Article 16(4), fourth subparagraph
Article 25(8)	
Article 25(9)	Article 16(5)
Article 26	
Article 27(1)	
Article 27(2)	
Article 27(3)	Article 13
Article 28	
Article 29	
Article 30(1) first subparagraph	Article 14(1)
Article 30(1)(a)	
Article 30(1)(b)	Article 14(3)
Article 30(2)	
Article 30(3)	
Article 31	
Article 32	
Article 33(1)	Article 14(5), first subparagraph
Article 33(2)	
Article 33(3)	Article 14(5), second subparagraph
Article 33(4)	Article 14(5), third subparagraph
Article 33(5)	
Article 34(1)	Article 14(4)

Article 34(2)

Article 34(3)

Article 35

Article 36(1) Article 17(1)

Article 36(2)

Article 37 Article 20

Article 38

Article 39 Article 21

Annex

<sup>(1)</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

<sup>(2)</sup> Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive (OJ L 241, 2.9.2006, p. 1).

<sup>(3)</sup> Directive 2012/30/EU of the European Parliament and of the Council of 25 October 2012 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (OJ L 315, 14.11.2012, p. 74).

<sup>(4)</sup> Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (see page 84 of this Official Journal).

<sup>(5)</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

<sup>(6)</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

<sup>(7)</sup> Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12).

<sup>(8)</sup> Commission Delegated Regulation (EU) 2016/908 of 26 February 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council laying down regulatory technical standards on the criteria, the procedure and the requirements for establishing an accepted market practice and the requirements for maintaining it, terminating it or modifying the conditions for its acceptance (OJ L 153, 10.6.2016, p. 3).

(<sup>9</sup>) 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).

(<sup>10</sup>) 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).

(<sup>11</sup>) 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).

(<sup>12</sup>) Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators (OJ L 211, 14.8.2009, p. 1).

 <sup>\*\*7</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

(<sup>13</sup>) Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

(<sup>14</sup>) Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (OJ L 372, 31.12.1986, p. 1).

(<sup>15</sup>) Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings (OJ L 374, 31.12.1991, p. 7).

 <sup>\*\*8</sup> Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

(<sup>16</sup>) Commission Decision 2001/528/EC of 6 June 2001 establishing the European Securities Committee (OJ L 191, 13.7.2001, p. 45).

(<sup>17</sup>) Commission Directive 2003/125/EC of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the fair presentation of investment recommendations and the disclosure of conflicts of interest (OJ L 339, 24.12.2003, p. 73).

(<sup>18</sup>) Commission Directive 2003/124/EC of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the definition and public disclosure of inside information and the definition of market manipulation (OJ L 339, 24.12.2003, p. 70).

(<sup>19</sup>) Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments (OJ L 336, 23.12.2003, p. 33).