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Commission Delegated Regulation (EU) 2016/522

of 17 December 2015

supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards an exemption for certain third countries public bodies and central banks, the indicators of market manipulation, the disclosure thresholds, the competent authority for notifications of delays, the permission for trading during closed periods and types of notifiable managers' transactions

(Text with EEA relevance)

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse 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, and in particular Article 6(5), Article 12(5), Article 17(2) and (3), and Article 19(13) and (14) thereof,

Whereas:

(1) Regulation (EU) No 596/2014 confers on the Commission the power to adopt delegated acts in a number of closely related matters pertaining the exemption of certain third countries public bodies and central banks from the scope of application of that Regulation, the indicators of market manipulation, the thresholds for the disclosure by emission allowance market participants of inside information, the specification of the competent authority for the notification of delays in the public disclosure of inside information, the circumstances under which trading during closed period can be permitted by the issuer and the types of notifiable managers' transactions.

(2) Member States, members of the European System of Central Banks, ministries and other agencies and special purpose vehicles of one or several Member States, and the Union and certain other public bodies or persons acting on their behalf should not be restricted in carrying out monetary, exchange-rate or public debt management policy insofar as those operations are undertaken in the public interest and solely in pursuit of those policies.

(3) An exemption from the scope of Regulation (EU) No 596/2014 for operations undertaken in the public interest may, in accordance with Article 6(5) of Regulation (EU) No 596/2014, be extended to certain public bodies charged with, or intervening in, public debt management and to central banks of third countries when they fulfil the relevant requirements. For that purpose, the Commission prepared and presented to the European Parliament and to the Council a report assessing the international treatment of certain public bodies charged with, or intervening in, public debt management and of central banks in third countries. The report included a comparative analysis of the treatment of certain bodies and central banks within the legal framework of third countries, and the risk management standards applicable to the transactions entered into by those public bodies and central banks in those jurisdictions. The report concluded in the comparative analysis the appropriateness of the extension of the exemption for transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy, also to certain public bodies and central banks of those third countries.

(4) A list of exempted public bodies and central banks of third countries should be set out and reviewed whenever necessary.

(5) It is essential to specify the indicators of manipulative behaviour relating to false or misleading signals and to price securing laid down in Annex I to Regulation (EU) No 596/2014, in order to clarify their elements and to take into account technical developments on financial markets. Therefore, a non-exhaustive list of such indicators including examples of practices should be provided.

(6) For some practices, additional indicators should be identified as they can respectively clarify and illustrate such practices. Those indicators should neither be deemed exhaustive nor determinative and their relations to one or more examples of practices should not be deemed limitative. The examples of practices should not be considered to constitute market manipulation *per se*, but should be taken into account where transactions or orders to trade are examined by market participants and competent authorities.

(7) A proportionate approach should be followed, taking into consideration the nature and specific characteristics of the financial instruments and markets concerned. The examples may be linked to and illustrate one or more indicators of market manipulation as provided in Annex I to Regulation (EU) No 596/2014. As a result, a specific practice may involve more than one indicator of market manipulation laid down in Annex I to Regulation (EU) No 596/2014 depending on how it is used, and there can be some overlap. Similarly, although not specifically referenced in this Regulation, certain other practices may illustrate each of the indicators set out in this Regulation. Therefore, market participants and competent authorities should take into account other unspecified circumstances that could be considered to be potential market manipulation in accordance with the definition set out in Regulation (EU) No 596/2014.

(8) Certain examples of practices set out in this Regulation describe cases that are included in the notion of market manipulation or that, in some respects, refer to manipulative conduct. On the other hand, certain examples of practices may be considered legitimate if, for instance, a person who enters into transactions or issues orders to trade which may be deemed to constitute market manipulation may be able to establish that his reasons for entering into such transactions or issuing orders to trade were legitimate and in conformity with an accepted practice on the market concerned.

(9) For the purposes of listing examples of practices referring to indicators of market manipulation as provided in Annex I to Regulation (EU) No 596/2014, cross-referencing in Annex II to this Regulation includes both the relevant example of practice and the additional indicator associated with that example.

(10) For the purpose of indicators of manipulative behaviour set out in this Regulation, any reference to 'order to trade' encompasses all types of orders, including initial orders, modifications, updates and cancellations, irrespective of whether or not they have been executed, of the means used to access the trading venue or to carry out a transaction or to enter an order to trade and of whether or not the order has been entered into the trading venue's order-book.

(11) Emission allowance market participants are a specific sub-set of the participants in the emission allowance market. Among the participants in the emission allowance market, those above certain minimum thresholds should qualify as emissions allowance market participants, and the requirement of public disclosure of inside information should apply only to them. Therefore, those minimum thresholds should be clearly established.

(12) Following the definition of inside information under Article 7(4) of Regulation (EU) No 596/2014, an emissions allowance market participant has to assess on a case by case basis whether the information under consideration meets the criteria of inside information. This implies that an emissions allowance market participant is not expected to publicly disclose all information about its physical operations. The emissions allowance market participant should properly assess the information at stake, taking into account the market circumstances and other external factors that may have a price effect on an emission allowance at the particular point in time when the information arises.

(13) The exemption set out in Article 17(2) of Regulation (EU) No 596/2014 excludes from the definition of emissions allowance market participant those participants in the emission allowance market where the installations or aviation activities they own, control or are responsible for, have had in the preceding year 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. Hence, the minimum thresholds should relate to all business, including aviation activities or installations, which the participant in the emission allowance market concerned, or its parent undertaking or related undertaking owns or controls or for the operational matters of which the participant concerned, or its parent undertaking or related undertaking is responsible, in whole or in part.

(14) Furthermore, the annual carbon dioxide equivalent threshold and the rated thermal input threshold should be taken into consideration cumulatively in order for the requirement not to apply. Therefore, exceeding one of the two thresholds should be sufficient for the disclosure obligations under Article 17(2) of Regulation (EU) No 596/2014 to apply.

(15) To enhance the integrity of the market while avoiding excessive disclosure, it is appropriate to set the minimum thresholds at a level which exempts companies which are unlikely to hold inside information.

(16) The minimum thresholds should be reviewed as appropriate to assess their functioning with regards to, inter alia, the expected increase in transparency of the emission allowance market, including number of events reported and the administrative burden involved, the development and maturity of the emission allowance market, the number of participants in the emission allowance market and the impact on availability of firm-specific information and on price formation or investment decisions in the emission allowance market.

(17) Taking into account the expanded scope of Regulation (EU) No 596/2014 in terms of financial instruments covered, the fact that the *ex post* notification to the competent authority requirement applies 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 a multilateral trading facility (MTF) or on other types of organised trading facilities (OTFs), 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 and the fact that such issuers may have their financial instruments admitted to trading or traded on trading venues in different Member States, it should be ensured that in all instances the single competent authority receiving the notification would be the one with the most interests in market supervision and to avoid the exercise of discretion by the

issuer. This approach relies on using the notion of equity securities.

(18) The duty to notify delays in disclosure of inside information to the competent authority set out in Article 17(4) of Regulation (EU) No 596/2014 also applies to emission allowance market participants. In terms of scope, Regulation (EU) No 596/2014 applies to emission allowance market participants active either on the primary market of emission allowances or auctioned product based thereon (bidding in the auctions) and on secondary markets of emission allowances of derivatives thereof.

(19) To ensure that a single competent authority is identified with certainty for emission allowance market participants, the competent authority for the purpose of the notifications under Article 17(4) of Regulation (EU) No 596/2014 should be the competent authority of the Member State where the emission allowance market participant is registered, as under Article 19(2) of that Regulation, rather than the competent authority of each of the trading venues where the emission allowances are traded.

(20) The choice of the competent authority of the Member State where the emission allowance market participant is registered is a solution that always identifies with certainty a single competent authority, and this limits the administrative burden on emission allowance market participants by ensuring that they do not have to make multiple and parallel notifications to several competent authorities.

(21) An issuer may allow a person discharging managerial responsibilities to proceed with immediate sales of its shares during a closed period under exceptional circumstances. The issuer's permission should be given on a case-by-case basis, and the first criterion should be that a person discharging managerial responsibilities has requested, and respectively obtained, prior to any trading, the issuer's permission to trade. To allow the issuer to assess the individual circumstances of each single case, that request should be reasoned and include an explanation of the transaction envisaged and description of the exceptional character of the circumstances.

(22) The decision to grant the permission to trade should only be envisaged if the reason for requesting to enter a transaction is exceptional. That exemption should be construed narrowly without unduly widening the scope of the exemption of prohibition to trade during a closed period. The circumstances in which an exception may be granted should be not only extremely urgent but also unforeseen, compelling and not being generated by the person discharging managerial responsibilities.

(23) Where the persons discharging managerial responsibilities present situations which are unforeseen, compelling and beyond their control, they should only be allowed to sell shares to obtain the necessary financial resources. Those situations could stem from a financial commitment that the person discharging managerial responsibilities has to fulfil, such as a legally enforceable demand, including a court order, and provided that the person discharging managerial responsibilities cannot reasonably meet this commitment without selling the concerned shares. It could also stem from a situation entered into by the person discharging managerial responsibilities before the closed period has started (for example, a tax liability) and requiring the payment of a sum to a third party that could not be fully or partly funded by the person discharging managerial responsibilities in ways other than selling issuer's shares.

(24) With regard to transactions made under or related to employee share or saving scheme, qualification or entitlement of shares it must be established whether they can be permitted by the issuer. Therefore, certain types of transactions should be clearly identified and determined in detail. The characteristics of such transactions relate to the nature of the transaction (e.g. a purchase or sale, exercise of option or other entitlements), the timing of the transaction or of the entering of the person discharging managerial responsibilities into a particular scheme, and whether the transaction and its characteristics (e.g. execution date, amount) was agreed, planned and organised a reasonable period before the closed period starts.

(25) In addition, transactions where the beneficial interest does not change, could be undertaken at the initiative of the person discharging managerial responsibilities, provided that that person has requested and obtained the permission from the issuer prior to the envisaged transaction. The concerned transaction should only relate to a transfer of the concerned instruments between accounts of the person discharging managerial responsibilities (for instance, between schemes), without entailing a change in the price of the instruments transferred. This approach does not include transfer of financial instruments or other transactions such as sales or purchases between the person discharging managerial responsibilities and another person, notably a legal entity fully owned by the person discharging managerial responsibilities.

(26) Regulation (EU) No 596/2014 imposes requirements on the persons discharging managerial responsibilities, as well as persons closely associated with them to notify to the issuer and the competent authority 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. Persons discharging managerial responsibilities, as well as persons closely associated with them should also notify 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.

(27) The notification of transactions conducted by persons discharging managerial responsibilities within an issuer or emission allowance market participant on their own account, or by persons closely associated with them, is not only valuable information for market participants, but also constitutes an additional means for competent authorities to supervise markets. The obligation by such persons to notify transactions is without prejudice to their duty to refrain from committing market abuse as defined in Regulation (EU) No 596/2014.

(28) The obligation to notify transactions conducted by persons discharging managerial responsibilities or a person closely associated with them applies to a broad spectrum of operations, and includes every transaction conducted on their own account. Therefore, it is appropriate to identify a broad non-exhaustive list of particular types of transactions that should be notified. This should not only facilitate the achievement of full transparency of transactions by persons discharging managerial responsibilities and persons closely associated with them but also mitigate the risk of circumvention of the notification requirement by means of identifying particular types of notifiable transactions.

(29) Since the scope of the transactions to be covered under the empowerment of Article 19(14) of Regulation (EU) No 596/2014 is broad and cannot be limited to only the three types of transactions explicitly listed in Article 19(7) of that Regulation, it is appropriate to identify a broad non-exhaustive list of particular types of transactions that should be notified.

(30) In relation to conditional transactions, the requirement to notify arises with the occurrence of the condition or conditions in question, thus when the transaction in question actually takes place. Therefore, no requirement to notify both the conditional contract and the transaction executed upon fulfilment of such conditions should be laid down, since such a notification would prove confusing in practice, in particular when the conditions do not occur and the transaction is not executed.

(31) The relevant provisions and empowerments set out in Regulation (EU) No 596/2014 only begin to apply from 3 July 2016. Therefore, it is important that the rules laid down in this Regulation also apply from the same date.

(32) The measures provided for in this Regulation are in accordance with the opinion of the Expert Group of the European Securities Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Subject-matter and scope

This Regulation lays down detailed rules with regard to:

(1) the extension of the exemption to certain public bodies and central banks of third countries from the obligations and prohibitions set out in Regulation (EU) No 596/2014 in carrying out monetary, exchange-rate or public debt management policy;

(2) the indicators of market manipulation laid down in Annex I to Regulation (EU) No 596/2014;

(3) the thresholds for the disclosure by emission allowance market participants of inside information;

(4) the competent authority for the notifications of delays of public disclosure of inside information;

(5) the circumstances under which trading during a closed period may be permitted by the issuer;

(6) types of transactions triggering the duty to notify managers' transactions.

Article 2

Definitions

For the purposes of this Regulation, ‘equity securities’ mean the class of transferable securities referred to in Article 4(1)(44)(a) of Directive 2014/65/EU of the European Parliament and of the Council.

Article 3

Exempted public bodies and central banks of third countries

Regulation (EU) No 596/2014 shall not apply to transactions, orders or behaviours, in pursuit of monetary, exchange rate or public debt management policy insofar as they are undertaken in the public interest and solely in pursuit of those policies by the public bodies and central banks of third countries set out in Annex I to this Regulation.

Article 4

Indicators of manipulative behaviour

1. In relation to indicators of manipulative behaviour relating to false or misleading signals and to price securing referred to in Section A of Annex I to Regulation (EU) No 596/2014, the practices set out in Indicators A(a) to A(g) of Annex I to Regulation (EU) No 596/2014 are laid down in Section 1 of Annex II to this Regulation.

2. In relation to indicators of manipulative behaviour relating to the employment of a fictitious device or any other form of deception or contrivance referred to in Section B of Annex I to Regulation (EU) No 596/2014, the practices set out in Indicators B(a) and (b) of Annex I to Regulation (EU) No 596/2014 are laid down in Section 2 of Annex II to this Regulation.

Article 5

Minimum thresholds of carbon dioxide and rated thermal input

1. For the purposes of the second subparagraph of Article 17(2) of Regulation (EU) No 596/2014:

(a) the minimum threshold of carbon dioxide (CO_2) equivalent shall be 6 million tonnes a year;

(b) the minimum threshold of rated thermal input shall be 2 430 MW.

2. Thresholds set out in paragraph 1 shall apply at group level and relate to all business, including aviation activities or installations, which the participant in the emission allowance market concerned, or its parent undertaking or related undertaking owns or controls or for the operational matters of which the participant concerned, or its parent undertaking or related undertaking is responsible, in whole or in part.

Article 6

Determination of the competent authority

1. The competent authority to which an issuer of financial instruments must notify the delay in disclosing inside information according to Article 17(4) and (5) of Regulation (EU) No 596/2014 shall be the competent authority of the Member State where the issuer is registered in any of the following cases:

(a) if and as long as the issuer has equity securities which are admitted to trading or traded with its consent, or for which the issuer has requested admission to trading, on a trading venue in the Member State where the issuer is registered;

(b) if and as long as the issuer does not have equity securities which are admitted to trading or traded with its consent, or for which the issuer has requested admission to trading, on a trading venue in any Member State, provided that the issuer has any other financial instruments which are admitted to trading or traded with its consent, or for which the issuer has requested admission to trading, on a trading venue in the Member State where the issuer is registered.

2. In all other cases, including in the case of issuers incorporated in a third country, the competent authority to which an issuer of financial instruments must notify the delay in disclosing inside information shall be the competent authority of the Member State where:

(a) the issuer has equity securities which are admitted to trading or traded with its consent, or for which the issuer has requested admission to trading, on a trading venue for the first time;

(b) the issuer has any other financial instruments which are admitted to trading or traded with its consent, or for which the issuer has requested admission to trading, on a trading venue for the first time, if and as long as the issuer does not have equity securities admitted to trading or traded with its consent, or for which it has requested admission to trading, on a trading venue in any Member State.

Where the issuer has the relevant financial instruments which are admitted to trading or traded with its consent, or for which the issuer has requested admission to trading, for the first time simultaneously on trading venues in more than one Member State, an issuer of financial instruments shall notify the delay to be the competent authority of the trading venue that is the most relevant market in terms of liquidity, as determined in the Commission Delegated Regulation to be adopted under Article 26(9)(b) of Regulation (EU) No 600/2014 of the European Parliament and of the Council.

3. For the purpose of the notifications under Article 17(4) of Regulation (EU) No 596/2014, an emission allowance market participant shall notify the delay in disclosing inside information to the competent authority of the Member State where the emission allowance market participant is registered.

Article 7

Trading during a closed period

1. A person discharging managerial responsibilities within an issuer shall have the right to conduct trading during a closed period as defined under Article 19(11) of Regulation (EU) No 596/2014 provided that the following conditions are met:

(a) one of the circumstances referred to in Article 19(12) of Regulation (EU) No 596/2014 is met;

(b) the person discharging managerial responsibilities is able to demonstrate that the particular transaction cannot be executed at another moment in time than during the closed period.

2. In the circumstances set out in Article 19(12)(a) of Regulation (EU) No 596/2014, prior to any trading during the closed period, a person discharging managerial responsibilities shall provide a reasoned written request to the issuer for obtaining the issuer's permission to proceed with immediate sale of shares of that issuer during a closed period.

The written request shall describe the envisaged transaction and provide an explanation of why the sale of shares is the only reasonable alternative to obtain the necessary financing.

Article 8

Exceptional circumstances

1. When deciding whether to grant permission to proceed with immediate sale of its shares during a closed period, an issuer shall make a case-by-case assessment of a written request referred to in Article 7(2) by the person discharging managerial responsibilities. The issuer shall have the right to permit the immediate sale of shares only when the circumstances for such transactions may be deemed exceptional.

2. Circumstances referred to in paragraph 1 shall be considered to be exceptional when they are extremely urgent, unforeseen and compelling and where their cause is external to the person discharging managerial responsibilities and the person discharging managerial responsibilities has no control over them.

3. When examining whether the circumstances described in the written request referred to in Article 7(2) are exceptional, the issuer shall take into account, among other indicators, whether and to the extent to which the person discharging managerial responsibilities:

(a) is at the moment of submitting its request facing a legally enforceable financial commitment or claim;

(b) has to fulfil or is in a situation entered into before the beginning of the closed period and requiring the payment of sum to a third party, including tax liability, and cannot reasonably satisfy a financial commitment or claim by means other than immediate sale of shares.

Article 9

Characteristics of the trading during a closed period

The issuer shall have the right to permit the person discharging managerial responsibilities within the issuer to trade on its own account or for the account of a third party during a closed period, including but not limited to circumstances where that person discharging managerial responsibilities:

(a) had been awarded or granted financial instruments under an employee scheme, provided that the following conditions are met:

  (i) the employee scheme and its terms have been previously approved by the issuer in accordance with national law and the terms of the employee scheme specify the timing of the award or the grant and the amount of financial instruments awarded or granted, or the basis on which such an amount is calculated and given that no discretion can be exercised;

  (ii) the person discharging managerial responsibilities does not have any discretion as to the acceptance of the financial instruments awarded or granted;

(b) had been awarded or granted financial instruments under an employee scheme that takes place in the closed period provided that a pre-planned and organised approach is followed regarding the conditions, the periodicity, the time of the award, the group of entitled persons to whom the financial instruments are granted and the amount of financial instruments to be awarded, the award or grant of financial instruments takes place under a defined framework under which any inside information cannot influence the award or grant of financial instruments;

(c) exercises options or warrants or conversion of convertible bonds assigned to him under an employee scheme when the expiration date of such options, warrants or convertible bonds falls within a closed period, as well as sales of the shares acquired pursuant to such exercise or conversion, provided that all of the following conditions are met:

  (i) the person discharging managerial responsibilities notifies the issuer of its choice to exercise or convert at least four months before the expiration date;

(ii) the decision of the person discharging managerial responsibilities is irrevocable;

(iii) the person discharging managerial responsibilities has received the authorisation from the issuer prior to proceed;

(d) acquires the issuer's financial instruments under an employee saving scheme, provided that all of the following conditions are met:

(i) the person discharging managerial responsibilities has entered into the scheme before the closed period, except when it cannot enter into the scheme at another time due to the date of commencement of employment;

(ii) the person discharging managerial responsibilities does not alter the conditions of his participation into the scheme or cancel his participation into the scheme during the closed period;

(iii) the purchase operations are clearly organised under the scheme terms and that the person discharging managerial responsibilities has no right or legal possibility to alter them during the closed period, or are planned under the scheme to intervene at a fixed date which falls in the closed period;

(e) transfers or receives, directly or indirectly, financial instruments, provided that the financial instruments are transferred between two accounts of the person discharging managerial responsibilities and that such a transfer does not result in a change in price of financial instruments;

(f) acquires qualification or entitlement of shares of the issuer and the final date for such an acquisition, under the issuer's statute or by-law falls during the closed period, provided that the person discharging managerial responsibilities submits evidence to the issuer of the reasons for the acquisition not taking place at another time, and the issuer is satisfied with the provided explanation.

Article 10

Notifiable transactions

1. Pursuant to Article 19 of Regulation (EU) No 596/2014 and in addition to transactions referred to in Article 19(7) of that Regulation, persons discharging managerial responsibilities within an issuer or an emission allowance market participant and persons closely associated with them shall notify the issuer or the emission allowance market participant and the competent authority of their transactions.

Those notified transactions shall include all transactions conducted by persons discharging managerial responsibilities on their own account relating, in respect of the issuers, to the shares or debt instruments of the issuer or to derivatives or other financial instruments linked thereto, and in respect of emission allowance market participants, to emission allowances, to auction products based thereon or to derivatives relating thereto.

2. Those notified transactions shall include the following:

(a) acquisition, disposal, short sale, subscription or exchange;

(b) acceptance or exercise of a stock option, including of a stock option granted to managers or employees as part of their remuneration package, and the disposal of shares stemming from the exercise of a stock option;

(c) entering into or exercise of equity swaps;

(d) transactions in or related to derivatives, including cash-settled transaction;

(e) entering into a contract for difference on a financial instrument of the concerned issuer or on emission allowances or auction products based thereon;

(f) acquisition, disposal or exercise of rights, including put and call options, and warrants;

(g) subscription to a capital increase or debt instrument issuance;

(h) transactions in derivatives and financial instruments linked to a debt instrument of the concerned issuer, including credit default swaps;

(i) conditional transactions upon the occurrence of the conditions and actual execution of the transactions;

(j) automatic or non-automatic conversion of a financial instrument into another financial instrument, including the exchange of convertible bonds to shares;

(k) gifts and donations made or received, and inheritance received;

(l) transactions executed in index-related products, baskets and derivatives, insofar as required by Article 19 of Regulation (EU) No 596/2014;

(m) transactions executed in shares or units of investment funds, including alternative investment funds (AIFs) referred to in Article 1 of Directive 2011/61/EU of the European Parliament and of the Council, insofar as required by Article 19 of Regulation (EU) No 596/2014;

(n) transactions executed by manager of an AIF in which the person discharging managerial responsibilities or a person closely associated with such a person has invested, insofar as required by Article 19 of Regulation (EU) No 596/2014;

(o) transactions executed by a third party under an individual portfolio or asset management mandate on behalf or for the benefit of a person discharging managerial responsibilities or a person closely associated with such a person;

(p) borrowing or lending of shares or debt instruments of the issuer or derivatives or other financial instruments linked thereto.

Article 11

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 3 July 2016.

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

ANNEX I

Public bodies and central banks of third countries

1. Australia:

- Reserve Bank of Australia;
- Australian Office of Financial Management;

2. Brazil:

- Central Bank of Brazil;
- National Treasury of Brazil;

3. Canada:

- Bank of Canada;

- Department of Finance Canada;

4. China:

- People's Bank of China;

5. Hong Kong SAR:

- Hong Kong Monetary Authority;
- Financial Services and the Treasury Bureau of Hong Kong;

6. India:

- Reserve Bank of India;

7. Japan:

- Bank of Japan;
- Ministry of Finance of Japan;

8. Mexico:

- Bank of Mexico;
- Ministry of Finance and Public Credit of Mexico;

9. Singapore:

- Monetary Authority of Singapore;

10. South Korea:

- Bank of Korea;
- Ministry of Strategy and Finance of Korea;

11. Switzerland:

- Swiss National Bank;
- Federal Finance Administration of Switzerland;

12. Turkey:

- Central Bank of the Republic of Turkey;
- Undersecretariat of Treasury of the Republic of Turkey;

13. The United States:

- Federal Reserve System;
- U.S. Department of the Treasury

ANNEX II

Indicators of manipulative behaviour

SECTION 1

INDICATORS OF MANIPULATIVE BEHAVIOUR RELATING TO FALSE OR MISLEADING SIGNALS AND TO PRICE SECURING (SECTION A OF ANNEX I TO REGULATION (EU) No 596/2014)

1. Practices specifying Indicator A(a) of Annex I to Regulation (EU) No 596/2014:

(a) Buying of positions, also by colluding parties, of a financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances, on the secondary market, after the allocation in the primary market in order to post the price to an artificial level and generate interest from other investors — usually known, for example in the equity context, as colluding in the after-market of an Initial Public Offer (IPO) where colluding parties are involved. This practice may also be illustrated by the following additional indicators of market manipulation:

  (i) unusual concentration of transactions and/or orders to trade, whether generally, or by only one person using one or different accounts, or by a limited number of persons;

  (ii) transactions or orders to trade with no other apparent justification than to increase the price of or to increase the volume of trading, namely near to a reference point during the trading day, for instance at the opening or near the close;

(b) Transactions or orders to trade carried out in such a way that obstacles are created to the financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances, with prices falling below, or rising above a certain level, mainly in order to avoid negative consequences deriving from changes in the price of the financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances — usually known as ‘creation of a floor, or a ceiling in the price pattern’. This practice may also be illustrated by the following additional indicators of market manipulation:

  (i) transactions or orders to trade which have the effect, or are likely to have the effect, of increasing or decreasing or maintaining the price during the days preceding the issue, optional redemption or expiry of a related derivative or convertible;

  (ii) transactions or orders to trade which have the effect of, or are likely to have the effect of increasing or decreasing the weighted average price of the day or of a period during the trading session;

  (iii) transactions or orders to trade which have the effect of, or are likely to have the effect of, maintaining the price of an underlying financial instrument, related spot commodity contract, or an auctioned product based on emission allowances, below or above a strike price or other element used to determine the pay-out (e.g. barrier) of a related derivative at expiration date;

  (iv) transactions on any trading venue which have the effect of, or are likely to have the effect of, modifying the price of the underlying financial instrument, related spot commodity contract, or an auctioned product based on emission allowances, so that it surpasses or does not reach the strike price or other element used to determine the pay-out (e.g. barrier) of a related derivative at expiration date;

  (v) transactions which have the effect of, or are likely to have the effect of, modifying the settlement price of a financial instrument, related spot commodity contract, or an auctioned product based on emission allowances, when this price is used as a reference or determinant namely in the calculation of margin requirements.

(c) Entering small orders to trade in order to ascertain the level of hidden orders and particularly to assess what is resting on a dark platform — usually known as ‘ping orders’;

(d) Executing orders to trade, or a series of orders to trade, in order to uncover orders of other participants, and then entering an order to trade to take advantage of the information obtained — usually known as ‘phishing’.

2. Practices specifying Indicator A(b) of Annex I of Regulation (EU) No 596/2014:

(a) The practice set out in Point 1(a) of this Section, usually known, for example in the equity context, as colluding in the after-market of an Initial Public Offer where colluding parties are involved;

(b) Taking advantage of the significant influence of a dominant position over the supply of, or demand for, or delivery mechanisms for a financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances, in order to materially distort, or likely to distort, the prices at which other parties have to deliver, take delivery or defer delivery in order to satisfy their obligations — usually known as ‘abusive squeeze’;

(c) Undertaking trading or entering orders to trade in one trading venue or outside a trading venue (including entering indications of interest) with a view to improperly influencing the price of the same financial instrument in another trading venue or outside a trading venue, related spot commodity contract, or an auctioned product based on emission allowances — usually known as ‘inter-trading venues manipulation’ (trading on one trading venue or outside a trading venue to improperly position the price of a financial instrument in another trading venue or outside a trading venue). This practice may also be illustrated by the following additional indicators of market manipulation:

  (i) execution of a transaction, changing the bid-offer prices, when the spread between the bid and offer prices is a factor in the determination of the price of any other transaction whether or not on the same trading venue;

  (ii) the indicators set out in Point 1(b)(i), (b)(iii), (b)(iv) and (b)(v) of this Section;

(d) Undertaking trading or entering orders to trade in one trading venue or outside a trading venue (including entering indications of interest) with a view to improperly influencing the price of a related financial instrument in another or in the same trading venue or outside a trading venue, related spot commodity contract, or a related auctioned product based on emission allowances — usually known as ‘cross-product manipulation’ (trading on a financial instrument to improperly position the price of a related financial instrument in another or in the same trading venue or outside a trading venue). This practice may also be illustrated by the additional indicators of market manipulation referred to in Point 1(b)(i), (b)(iii), (b)(iv) and (b)(v), and Point 2(c)(i) of this Section.

3. Practices specifying Indicator A(c) of Annex I of Regulation (EU) No 596/2014:

(a) Entering into arrangements for the sale or purchase of a financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances, where there is no change in beneficial interests or market risk or where beneficial interest or market risk is transferred between parties who are acting in concert or collusion — usually known as ‘wash trades’. This practice may also be illustrated by the following additional indicators of market manipulation:

  (i) unusual repetition of a transaction among a small number of parties over a certain period of time;

  (ii) transactions or orders to trade which modify, or are likely to modify, the valuation of a position while not decreasing/increasing the size of the position;

  (iii) the indicator set out in Point 1(a)(i) of this Section.

(b) Entering into orders to trade or engaging in a transaction or series of transactions which are shown on a public display facility to give the impression of activity or price movement in a financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances — usually known as ‘painting the tape’. This practice may also be illustrated by the indicators set out in Point 1(a)(i) and Point 3(a)(i) of this Section.

(c) Transactions carried out as a result of the entering of buy and sell orders to trade at or nearly at the same time, with very similar quantity and similar price, by the same party or different but colluding parties —

usually known as ‘improper matched orders’. This practice may also be illustrated by the following additional indicators of market manipulation:

(i) transactions or orders to trade which have the effect of, or are likely to have the effect of setting a market price when the liquidity or the depth of the order book is not sufficient to fix a price within the session;

(ii) the indicators set out in Points 1(a)(i), 3(a)(i) and 3(a)(ii) of this Section.

(d) Transaction or series of transactions designed to conceal the ownership of a financial instrument, related spot commodity contract, or an auctioned product based on emission allowances via the breach of disclosure requirements through the holding of the financial instrument, related spot commodity contract, or an auctioned product based on emission allowances in the name of a colluding party or parties. The disclosures are misleading in respect of the true underlying holding of the financial instrument, related spot commodity contract, or an auctioned product based on emission allowances — usually known as ‘concealing ownership’. This practice may also be illustrated by the indicator described in Point 3(a)(i) of this Section.

4. Practices specifying Indicator A(d) of Annex I of Regulation (EU) No 596/2014:

(a) The practice set out in Point 3(b) of this Section, usually known as ‘painting the tape’;

(b) The practice set out in Point 3(c) of this Section, usually known as ‘improper matched orders’;

(c) Taking of a long position in a financial instrument, related spot commodity contract, or an auctioned product based on emission allowances and then undertaking further buying activity and/or disseminating misleading positive information about the financial instrument, related spot commodity contract, or an auctioned product based on emission allowances with a view to increasing the price of the financial instrument, related spot commodity contract, or an auctioned product based on emission allowances, by the attraction of other buyers. When the price is at an artificial high level, the long position held is sold out — usually known as ‘pump and dump’;

(d) Taking of a short position in a financial instrument, related spot commodity contract, or an auctioned product based on emission allowances and then undertaking further selling activity and/or disseminating misleading negative information about the financial instrument, related spot commodity contract, or an auctioned product based on emission allowances with a view to decreasing the price of the financial instrument, related spot commodity contract, or an auctioned product based on emission allowances, by the attraction of other sellers. When the price has fallen, the position held is closed — usually known as ‘trash and cash’;

(e) Entering large number of orders to trade and/or cancellations and/or updates to orders to trade so as to create uncertainty for other participants, slowing down their process and/or to camouflage their own strategy — usually known as ‘quote stuffing’;

(f) Entering orders to trade or a series of orders to trade, or executing transactions or series of transactions, likely to start or exacerbate a trend and to encourage other participants to accelerate or extend the trend in order to create an opportunity to close out or open a position at a favourable price — usually known as momentum ignition. This practice may also be illustrated by the high ratio of cancelled orders (e.g. order to trade ratio) which may be combined with a ratio on volume (e.g. number of financial instruments per order).

5. Practices specifying Indicator A(e) of Annex I of Regulation (EU) No 596/2014:

(a) The practice set out in Point 1(b) of this Section, usually known as ‘creation of a floor, or a ceiling in the price pattern’;

(b) The practice set out in Point 2(c) of this Section, usually known as ‘inter-trading venues manipulation’ (trading on one trading venue or outside a trading venue to improperly position the price of a financial instrument in another trading venue or outside a trading venue);

(c) The practice set out in Point 2(d) of this Section, usually known as ‘cross-product manipulation’ (trading on a financial instrument to improperly position the price of a related financial instrument in another or in the same trading venue or outside a trading venue);

(d) Buying or selling of a financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances, deliberately, at the reference time of the trading session (e.g. opening, closing, settlement) in an effort to increase, to decrease or to maintain the reference price (e.g. opening price, closing price, settlement price) at a specific level — usually known as 'marking the close'. This practice may also be illustrated by the following additional indicators of market manipulation:

(i) entering orders representing significant volumes in the central order book of the trading system a few minutes before the price determination phase of the auction and cancelling these orders a few seconds before the order book is frozen for computing the auction price so that the theoretical opening price might look higher/lower than it otherwise would do;

(ii) the indicators set out in Point 1(b)(i), (b)(iii), (b)(iv) and (b)(v) of this Section;

(iii) transactions carried out or submission of orders to trade, namely near to a reference point during the trading day, which, because of their size in relation to the market, shall clearly have a significant impact on the supply of or demand for or the price or value;

(iv) transactions or orders to trade with no other apparent justification than to increase/decrease the price or to increase the volume of trading, namely near to a reference point during the trading day — e.g. at the opening or near the close;

(e) Submitting multiple or large orders to trade often away from the touch on one side of the order book in order to execute a trade on the other side of the order book. Once the trade has taken place, the orders with no intention to be executed shall be removed — usually known as layering and spoofing. This practice may also be illustrated by the indicator set out in Point 4(f)(i);

(f) The practice set out in Point 4(e) of this Section, usually known as 'quote stuffing';

(g) The practice set out in Point 4(f) of this Section, usually known as 'momentum ignition'.

6. Practices specifying Indicator A(f) of Annex I of Regulation (EU) No 596/2014:

(a) Entering of orders which are withdrawn before execution, thus having the effect, or which are likely to have the effect, of giving a misleading impression that there is demand for or supply of a financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances at that price — usually known as 'placing orders with no intention of executing them'. This practice may also be illustrated by the following additional indicators of market manipulation:

(i) orders to trade inserted with such a price that they increase the bid or decrease the offer, and have the effect, or are likely to have the effect, of increasing or decreasing the price of a related financial instrument;

(ii) the indicator set out in Point 4(f)(i) of this Section.

(b) The practice set out in Point 1(b) of this Section, usually known as 'creation of a floor, or a ceiling, in the price pattern';

(c) Moving the bid-offer spread to and/or maintaining it at artificial levels, by abusing of market power, usually known as excessive bid-offer spreads. This practice may also be illustrated by the following additional indicators of market manipulation:

(i) transactions or orders to trade which have the effect of, or are likely to have the effect of bypassing the trading safeguards of the market (e.g. price limits, volume limits, bid/offer spread parameters, etc.);

(ii) the indicator set out in Point 2(c)(i) of this Section.

(d) Entering orders to trade which increase the bid (or decrease the offer) for a financial instrument, related spot commodity contract, or an auctioned product based on emission allowances, in order to increase (or decrease) its price — usually known as 'advancing the bid'. This practice may also be illustrated by the indicator set out in Point 6(a)(i) of this Section;

(e) The practice set out in Point 2(c) of this Section, usually known as 'inter-trading venues manipulation' (trading on one trading venue or outside a trading venue to improperly position the price of a financial instrument in another trading venue or outside a trading venue);

(f) The practice set out in Point 2(d) of this Section, usually known as ‘cross-product manipulation’ (trading on a financial instrument to improperly position the price of a related financial instrument in another or in the same trading venue or outside a trading venue);

(g) The practice set out in Point 5(e) of this Section, usually known as ‘layering’ and ‘spoofing’;

(h) The practice set out in Point 4(e) of this Section, usually known as ‘quote stuffing’;

(i) The practice set out in Point 4(f) of this Section, usually known as ‘momentum ignition’;

(j) Posting orders to trade, to attract other market participants employing traditional trading techniques (‘slow traders’), that are then rapidly revised onto less generous terms, hoping to execute profitably against the incoming flow of ‘slow traders’ orders to trade, usually known as ‘smoking’.

7. Practices specifying Indicator A(g) of Annex I of Regulation (EU) No 596/2014:

(a) The practice set out in Point 5(d) of this Section, usually known as ‘marking the close’;

(b) The practice set out in Point 1(a) of this Section, usually known, for example in the equity context, as ‘colluding in the after-market of an Initial Public Offer where colluding parties are involved’;

(c) The practice set out in Point 1(b) of this Section, usually known as ‘creation of a floor, or a ceiling’ in the price pattern;

(d) The practice set out in Point 2(c) of this Section, usually known as ‘inter-trading venues manipulation’ (trading on one trading venue or outside a trading venue to improperly position the price of a financial instrument in another trading venue or outside a trading venue);

(e) The practice set out in Point 2(d) of this Section, usually known as ‘cross-product manipulation’ (trading on a financial instrument to improperly position the price of a related financial instrument in another or in the same trading venue or outside a trading venue);

(f) Entering into arrangements in order to distort costs associated with a commodity contract, such as insurance or freight, with the effect of fixing the settlement price of a financial instrument or a related spot commodity contract at an abnormal or artificial price.

8. The practice set out in Point 2(c) of this Section and also referred to in Points 5(c), 6(e) and 7(d) of this Section is relevant in the context of the scope of Regulation (EU) No 596/2014 concerning cross-venue manipulation.

9. The practice set out in Point 2(d) of this Section and also referred to in Points 5(c), 6(f) and 7(e) of this Section is relevant the context of the scope of Regulation (EU) No 596/2014 concerning cross-venue manipulation, taking into account that the price or value of a financial instrument may depend on or may have an effect on the price or value of another financial instrument or spot commodity contract.

SECTION 2

INDICATORS OF MANIPULATIVE BEHAVIOUR RELATING TO THE EMPLOYMENT OF A FICTITIOUS DEVICE OR ANY OTHER FORM OF DECEPTION OR CONTRIVANCE (SECTION B OF ANNEX I OF REGULATION (EU) No 596/2014)

1. Practices specifying Indicator B(a) of Annex I of Regulation (EU) No 596/2014:

(a) Dissemination of false or misleading market information through the media, including the internet, or by any other means, which results or is likely to result in the moving of the price of a financial instrument, related spot commodity contract, or an auctioned product based on emission allowances, in a direction favourable to the position held or to a transaction planned by the person or persons interested in the dissemination of the information;

(b) Opening a position in a financial instrument, related spot commodity contract, or an auctioned product based on emission allowances and closing such position immediately after having publicly disclosed and having put emphasis on the long holding period of the investment — usually known as ‘opening a position and closing it immediately after its public disclosure’;

(c) The practice set out in Point 4(c) of Section 1, usually known as ‘pump and dump’. This practice may also be illustrated by the following additional indicators of market manipulation:

(i) dissemination of news through the media related to the increasing (or decreasing) of a qualified holding before or shortly after an unusual movement of the price of a financial instrument;

(ii) the indicator set out in Point 5(d)(i) of Section 1;

(d) The practice set out in Point 4(d) of Section 1, usually known as ‘trash and cash’. This practice may also be illustrated by the indicators set out in Point 5(d)(i) of Section 1 and Point 1(c)(i) of this Section;

(e) The practice set out in Point 3(d) of Section 1, usually known as ‘concealing ownership’;

(f) Movement or storage of physical commodities, which might create a misleading impression as to the supply of, or demand for, or price or value of, a commodity or the deliverable into a financial instrument or a related spot commodity contract;

(g) Movement of an empty cargo ship, which might create a false or misleading impression as to the supply of, or the demand for, or the price or value of a commodity or the deliverable into a financial instrument or a related spot commodity contract.

2. Practices specifying Indicator B(b) of Annex I of Regulation (EU) No 596/2014:

(a) The practice set out in Point 1(a) of this Section. This practice may also be illustrated by entering orders to trade or transactions before or shortly after the market participant or persons publicly known as linked to that market participant produce or disseminate contrary research or investment recommendations that are made publicly available.

(b) The practice set out in Point 4(c) of Section 1, usually known as ‘pump and dump’. This practice may also be illustrated by the indicator set out in Point 2(a)(i) of this Section.

(c) The practice set out in Point 3(d) of Section 1, usually known as ‘trash and cash’. This practice may also be illustrated by the indicator set out in Point 2(a)(i) of this Section.