

COMMISSION IMPLEMENTING REGULATION (EU) 2016/1055**of 29 June 2016****laying down implementing technical standards with regard to the technical means for appropriate public disclosure of inside information and for delaying the public disclosure of inside information in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council****(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 (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 ⁽¹⁾, and in particular Article 17(10) thereof,

Whereas:

- (1) The protection of investors requires effective and timely public disclosure of inside information by issuers and emission allowance market participants. In order to guarantee at Union level equal access of investors to inside information, the inside information should be publicly disclosed free of charge, simultaneously and as fast as possible amongst all categories of investors throughout the Union and it should be communicated to the media which ensure an effective dissemination to the public.
- (2) Where emission allowance market participants already fulfil equivalent inside information disclosure requirements in accordance with Regulation (EU) No 1227/2011 of the European Parliament and of the Council ⁽²⁾, and where they are required to publicly disclose the same information under that Regulation and Regulation (EU) No 596/2014, the obligations under this Regulation should be considered to be fulfilled where the information is disclosed using a platform for the disclosure of inside information for the purposes of Regulation (EU) No 1227/2011, on the condition that the inside information is communicated to the relevant media.
- (3) It is important that the technical means for delaying the disclosure of inside information allow for the maintenance of the key information of the process for delaying the disclosure of inside information, so that issuers and emission allowance market participants are able to fulfil their obligation to notify the competent authorities.
- (4) The notification of the delay of the disclosure of inside information and, where required, the explanation of how all the applicable conditions for the delay were met should be provided to the competent authority in writing using secure electronic means specified by the same competent authority, thereby ensuring the integrity and confidentiality of the content of the information, as well as the rapidity of the transmission.
- (5) To enable the competent authority to identify the relevant persons within the issuer or the emission allowance market participant involved in the delay of disclosure of inside information, the notification of the delay should include the identity of the person who made the notification and of the person or persons responsible for the decision to delay the disclosure of inside information. Likewise, that notification should also indicate the temporal aspects of the delay enabling competent authorities to assess whether the conditions set out by Regulation (EU) No 596/2014 concerning the delay are met.
- (6) An issuer that is a credit or a financial institution should inform the competent authority in writing of the intention to delay the disclosure of inside information in order to preserve the stability of the financial system and, having regard to the sensitive nature of such information and the need to ensure maximum confidentiality of its content, appropriate standards of security should be employed to that end.

⁽¹⁾ OJ L 173, 12.6.2014, p. 1.

⁽²⁾ Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (OJ L 326, 8.12.2011, p. 1).

- (7) This Regulation is based on the draft implementing technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- (8) On 25 May 2016, the Commission notified ESMA of its intention to endorse the draft implementing technical standard with amendments to account for the fact that the disclosure provisions in Regulation (EU) No 1227/2011 are sufficient to ensure that emission allowance market participants disclose inside information publicly, effectively and in a timely manner, as required by Article 17(2) of Regulation (EU) No 596/2014. Commission Implementing Regulation (EU) No 1348/2014 ⁽¹⁾ already obliges emission allowance market participants to provide 'web feeds' for the website-based disclosures to be made public, effectively and in a timely manner. In its formal opinion of 16 June 2016, ESMA confirmed its initial position and did not resubmit an implementing technical standard amended in a way consistent with the Commission's proposed amendments. Since the disclosure requirements for emission allowance market participants under Regulation (EU) No 1227/2011 may be sufficient for the purpose of complying with the requirements in Article 17(2) of Regulation (EU) No 596/2014, the draft implementing technical standard should be amended to avoid duplicative reporting requirements.
- (9) ESMA has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council ⁽²⁾.
- (10) In order to ensure the smooth functioning of the financial markets, it is necessary that this Regulation enters into force as a matter of urgency and that the provisions laid down in this Regulation apply from the same date as those laid down in Regulation (EU) No 596/2014,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Definitions

For the purposes of this Regulation, the following definition shall apply:

'electronic means' are means of electronic equipment for the processing (including digital compression), storage and transmission of data, employing wires, radio, optical technologies, or any other electromagnetic means.

CHAPTER II

TECHNICAL MEANS FOR APPROPRIATE PUBLIC DISCLOSURE OF INSIDE INFORMATION

Article 2

Means for public disclosure of inside information

1. Issuers and emission allowance market participants shall disclose inside information using technical means that ensure:

(a) inside information is disseminated:

(i) to as wide a public as possible on a non-discriminatory basis;

⁽¹⁾ Commission Implementing Regulation (EU) No 1348/2014 of 17 December 2014 on data reporting implementing Article 8(2) and Article 8(6) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency (OJ L 363, 18.12.2014, p. 121),

⁽²⁾ 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).

- (ii) free of charge;
- (iii) simultaneously throughout the Union;
- (b) inside information is communicated, directly or through a third party, to the media which are reasonably relied upon by the public to ensure its effective dissemination. That communication shall be transmitted using electronic means that ensure that the completeness, integrity and confidentiality of the information is maintained during the transmission, and it shall clearly identify:
 - (i) that the information communicated is inside information;
 - (ii) the identity of the issuer or emissions allowance market participant: full legal name;
 - (iii) the identity of the person making the notification: name, surname, position within the issuer or emission allowance market participant;
 - (iv) the subject matter of the inside information;
 - (v) the date and time of the communication to the media.

Issuers and emission allowance market participants shall ensure the completeness, integrity and confidentiality by remedying any failure or disruption in the communication of inside information without delay.

2. Emission allowance market participants required to disclose inside information in accordance with Article 4 of Regulation (EU) No 1227/2011 may use the technical means established for the purpose of disclosing inside information under that Regulation for the disclosure of inside information under Article 17(2) of Regulation (EU) No 596/2014 provided the inside information required to be disclosed has substantially the same content and the technical means used for the disclosure ensure that the inside information is communicated to the relevant media.

Article 3

Posting of inside information on a website

The websites referred to in Article 17(1) and (9) of Regulation (EU) No 596/2014 shall comply with the following requirements:

- (a) they allow users to access the inside information posted on the website in a non-discriminatory basis and free of charge;
- (b) they allow users to locate the inside information in an easily identifiable section of the website;
- (c) they ensure the disclosed inside information clearly indicates date and time of disclosure and that the information is organised in chronological order.

CHAPTER III

TECHNICAL MEANS FOR DELAYING THE PUBLIC DISCLOSURE OF INSIDE INFORMATION

Article 4

Notification of delayed disclosure of inside information and written explanation

1. For the purpose of delaying the public disclosure of inside information in accordance with the third subparagraph of Article 17(4) of Regulation (EU) No 596/2014, issuers and emission allowance market participants shall use technical means that ensure the accessibility, readability, and maintenance in a durable medium of the following information:

- (a) the dates and times when:
 - (i) the inside information first existed within the issuer or the emission allowance market participant;

- (ii) the decision to delay the disclosure of inside information was made;
 - (iii) the issuer or emission allowance market participant is likely to disclose the inside information;
- (b) the identity of the persons within the issuer or emission allowance market participant responsible for:
 - (i) making the decision to delay disclosure and deciding on the start of the delay and its likely end;
 - (ii) ensuring the ongoing monitoring of the conditions for the delay;
 - (iii) making the decision to publicly disclose the inside information;
 - (iv) providing the requested information about the delay and the written explanation to the competent authority;
- (c) evidence of the initial fulfilment of the conditions referred to in Article 17(4) of Regulation (EU) No 596/2014, and of any change of this fulfilment during the delay period, including:
 - (i) the information barriers which have been put in place internally and with regard to third parties to prevent access to inside information by persons other than those who require it for the normal exercise of their employment, profession or duties within the issuer or emission allowance market participant;
 - (ii) the arrangements put in place to disclose the relevant inside information as soon as possible where the confidentiality is no longer ensured.

2. Issuers and emission allowance market participants shall inform, by means of a written notification, the competent authority of a delay in the disclosure of inside information and provide any written explanation of such delay through the dedicated contact point within, or designated by, the competent authority using the electronic means specified by the competent authority.

Competent authorities shall publish on their website the dedicated contact point within, or designated by, the competent authority and the electronic means referred to in the first subparagraph. Those electronic means shall ensure that completeness, integrity and confidentiality of the information are maintained during the transmission.

3. The electronic means referred to in paragraph 2 shall ensure that the notification of a delay in the disclosure of inside information includes the following information:

- (a) the identity of the issuer or emission allowance market participant: full legal name;
- (b) the identity of the person making the notification: name, surname, position within the issuer or emission allowance market participant;
- (c) the contact details of the person making the notification: professional e-mail address and phone number;
- (d) identification of the publicly disclosed inside information that was subject to delayed disclosure: title of the disclosure statement; the reference number where the system used to disseminate the inside information assigns one; date and time of the public disclosure of the inside information;
- (e) date and time of the decision to delay the disclosure of inside information;
- (f) the identity of all persons responsible for the decision to delay the public disclosure of inside information.

4. Where the written explanation of a delay in the disclosure of inside information is provided only upon request of the competent authority in accordance with the third subparagraph of Article 17(4) of Regulation (EU) No 596/2014, the electronic means referred to in paragraph 2 of this Article shall ensure that such written explanation includes the information referred to in paragraph 3 of this Article.

Article 5

Notification of intention to delay the disclosure of inside information

1. For the purpose of delaying the public disclosure of inside information in accordance with Article 17(5) of Regulation (EU) No 596/2014, an issuer that is a credit institution or a financial institution shall provide the competent authority with a notification in writing, of its intention to delay the disclosure of inside information in order to preserve the stability of the financial system, ensuring the completeness, integrity and confidentiality of the information, through a dedicated contact point within, or designated by, the competent authority.

Where the issuer transmits the notification referred to in the first subparagraph electronically, it shall use the electronic means referred to in Article 4(2) of this Regulation.

2. The competent authority shall communicate to the issuer its decision to consent or not the delay of the disclosure on the basis of the information provided pursuant to paragraph 1 in writing and ensuring the completeness, integrity and confidentiality of the information.

3. The issuer shall use the same technical means used to provide the competent authority with the notification referred to in paragraph 1 to inform the competent authority of any new information that may affect the decision of the competent authority regarding the delay of the disclosure of the inside information.

CHAPTER IV

FINAL PROVISIONS

Article 6

Entry into force

This Regulation shall enter into force on the 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.

Done at Brussels, 29 June 2016.

For the Commission

The President

Jean-Claude JUNCKER
