

Chapter 1

Commission Delegated Regulation (EU) 2016/1052

Preamble

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, and in particular the third subparagraph of Article 5(6) thereof,

01/01/2021

Whereas:

(1) To benefit from the exemption from the prohibitions on market abuse, trading in own shares in buy-back programmes and trading in securities or associated instruments for the stabilisation of securities should comply with the requirements and conditions set out in Regulation (EU) No 596/2014 and in this Regulation.

(2) Although Regulation (EU) No 596/2014 allows stabilisation through associated instruments, the exemption for transactions relating to buy-back programmes should be limited to actual trading in the own shares of the issuer and should not apply to transactions in financial derivatives.

(3) As transparency is a prerequisite for the prevention of market abuse, it is important to ensure that adequate information is disclosed or reported prior to, during and after the trading in own shares in buy-back programmes and trading for the stabilisation of securities.

(4) In order to prevent market abuse, it is appropriate to set conditions regarding the purchase price and permitted daily volume of trading in own shares in buy-back programmes. To avoid circumvention of such conditions, the buy-back transactions should be carried out on a trading venue where the shares of the issuer are admitted to trading or traded. However, negotiated transactions that do not contribute to price formation could be used for the purpose of a buy-back programme and benefit from the exemption, provided that all the conditions referred to in Regulation (EU) No 596/2014 and this Regulation are met.

(5) To avoid the risk of abusing the exemption for trading in own shares in buy-back programmes, it is important that this Regulation sets out restrictions with regard to the type of transactions an issuer can carry out during a buy-back programme and the timing of the trading in its own shares. Those restrictions should therefore prevent the selling of own shares by the issuer during the duration of a buy-back programme and take into account the possible existence of temporary prohibitions to trade within the issuer and the fact that an issuer may have legitimate reasons to delay public disclosure of inside information.

(6) Stabilisation of securities is intended to provide support for the price of an initial or secondary offering of securities during a limited time period if the securities come under selling pressure, thus alleviating sales pressure generated by short term investors and maintaining an orderly market in those securities. It thus contributes to greater confidence of investors and issuers in the financial markets. Therefore, in the interest of investors having subscribed or purchased the securities in the context of a significant distribution, and in the interest of the issuer, block trades that are strictly private transactions should not be considered a significant distribution of securities.

(7) In the context of initial public offers, certain Member States allow for trading prior to the commencement of official trading on a regulated market. This is commonly referred to as "when issued trading". Therefore, it should be possible for the purposes of the exemption for the stabilisation of securities that the stabilisation period starts before the beginning of the official trading provided that certain transparency and trading conditions are met.

(8) Market integrity requires the adequate public disclosure of stabilisation measures. Reporting of the stabilisation transactions is also necessary to allow competent authorities to supervise stabilisation measures. In order to ensure investor protection, preserve the integrity of markets and deter market abuse, it is also important that competent authorities in the performance of their supervisory activities become aware of all stabilisation transactions, irrespective of whether they take place in or outside a trading venue. Furthermore, it is appropriate to clarify in advance the division of responsibilities between the issuers, the offerors or the entities undertaking the stabilisation as regards fulfilment of applicable reporting and transparency requirements. Such division of responsibilities should take into account who is in possession of the relevant information. The appointed entity should be also responsible to respond to any request from the competent authority in each Member State concerned. To ensure easy access for any investor or market participant, the information to be disclosed prior to the start of the initial or secondary offer of the securities to be stabilised under Commission Regulation (EC) No 809/2004, is without prejudice to disclosure requirements under Article 6 of this Regulation.

(9) There should be adequate coordination in place between all investment firms and credit institutions undertaking stabilisation. During stabilisation, one investment firm or credit institution should act as a central point of inquiry for any regulatory intervention by the competent authorities of the Member States concerned.

(10) To provide resources and hedging for the stabilisation activity, ancillary stabilisation in the form of exercising overallotment facilities or greenshoe options should be allowed. However, it is important to set out conditions regarding the transparency of such ancillary stabilisation and the manner in which it is exercised, including the period during which it can be carried out. Moreover, particular attention should be paid to the exercise of an overallotment facility by an investment firm or a credit institution for the purpose of stabilisation when it results in a position that is not covered by the greenshoe option.

(11) In order to avoid confusion, stabilisation should be carried out in a manner that takes into account the market conditions and the offering price of the securities. Transactions to liquidate positions that were established as a result of stabilisation measures should be undertaken to minimise market impact, having due regard to prevailing market conditions. As the purpose of stabilisation is to support the price, selling securities that have been acquired through stabilising purchases, including selling in order to facilitate subsequent stabilising activity, should not be deemed to be for the purpose of price support. Neither those sales nor the subsequent purchases should be considered abusive in themselves even though they do not benefit from the exemption provided for under Regulation (EU) No 596/2014.

(12) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority to the Commission.

(13) The European Securities and Markets Authority has conducted open public consultations on the draft regulatory 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 the Council.

(14) 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: