

Chapter 7

Commission Implementing Regulation (EU) 2016/1055

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 Article 17(10) thereof,

01/01/2021

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, 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.

(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 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.

(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: