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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)

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ANNEX II

Regulation (EU) No 596/2014 of the European Parliament and of the Council

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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)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank,

Having regard to the opinion of the European Economic and Social Committee,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) A genuine internal market for financial services is crucial for economic growth and job creation in the Union.
- (2) An integrated, efficient and transparent financial market requires market integrity. The smooth functioning of securities markets and public confidence in markets are prerequisites for economic growth and wealth. Market abuse harms the integrity of financial markets and public confidence in securities and derivatives.
- (3) Directive 2003/6/EC of the European Parliament and of the Council completed and updated the Union's legal framework to protect market integrity. However, given the legislative, market and technological developments since the entry into force of that Directive, which have resulted in considerable changes to the financial landscape, that Directive should now be replaced. A new legislative instrument is also needed to ensure that there are uniform rules and clarity of key concepts and a single rule book in line with the conclusions of the report of 25 February 2009 by the High Level Group on Financial Supervision in the EU, chaired by Jacques de Larosière (the 'de Larosière Group').
- (4) There is a need to establish a more uniform and stronger framework in order to preserve market integrity, to avoid potential regulatory arbitrage, to ensure accountability in the event of attempted manipulation, and to provide more legal certainty and less regulatory complexity for market participants. This Regulation aims at contributing in a determining manner to the proper functioning of the internal market and should therefore be based on Article 114 of the Treaty on the Functioning of the European Union (TFEU), as interpreted consistently in the case-law of the Court of Justice of the European Union.
- (5) In order to remove the remaining obstacles to trade and the significant distortions of competition resulting from divergences between national laws and to prevent any further obstacles to trade and significant distortions of competition from arising, it is necessary to adopt a Regulation establishing a more uniform interpretation of the Union market abuse framework, which more clearly defines rules applicable in all Member States. Shaping market abuse requirements in the form of a regulation will ensure that those requirements are directly applicable. This should ensure uniform conditions by preventing diverging national requirements as a result of the transposition of a directive. This Regulation will require that all persons follow the same rules in all the Union. It will also reduce regulatory complexity and firms' compliance costs, especially for firms operating on a cross-border basis, and it will contribute to eliminating distortions of competition.
- (6) The Commission Communication of 25 June 2008 on 'A 'Small Business Act' for Europe' calls on the Union and its Member States to design rules in order to reduce administrative burdens, to adapt legislation to the needs of issuers on markets for small and medium-sized enterprises (SMEs) and to facilitate access to finance for those issuers. A number of provisions in Directive 2003/6/EC impose administrative burdens on issuers, in particular on those whose financial instruments are admitted to trading on SME growth markets, which should be reduced.
- (7) Market abuse is a concept that encompasses unlawful behaviour in the financial markets and, for the purposes of this Regulation, it should be understood to consist of insider dealing, unlawful disclosure of inside information and market manipulation. Such behaviour prevents full and proper market transparency, which is a prerequisite for trading for all economic actors in integrated financial markets.
- (8) The scope of Directive 2003/6/EC focused on financial instruments admitted to trading on a regulated market or for which a request for admission to trading on such a market has been made. However, in recent years financial instruments have been increasingly traded on multilateral trading facilities (MTFs). There are also financial instruments which are traded only on other types of organised trading facilities (OTFs) or only over the counter (OTC). The scope of this Regulation should therefore include any financial instrument traded on a regulated market, an MTF or an OTF, and any other conduct or action which can have an effect on such a financial instrument irrespective of whether it takes place on a trading venue. In the case of certain types of MTFs which, like regulated markets, help companies to raise equity finance, the prohibition against market abuse also applies where a request for admission to trading on such a market has been made. The scope of this Regulation should therefore include financial

instruments for which an application for admission to trading on an MTF has been made. This should improve investor protection, preserve the integrity of markets and ensure that market abuse of such instruments is clearly prohibited.

- (9) For the purposes of transparency, operators of a regulated market, an MTF or an OTF should notify, without delay, their competent authority of details of the financial instruments which they have admitted to trading, for which there has been a request for admission to trading or that have been traded on their trading venue. A second notification should be made when the instrument ceases to be admitted to trading. Such obligations should also apply to financial instruments for which there has been a request for admission to trading on their trading venue and financial instruments that have been admitted to trading prior to the entry into force of this Regulation. The notifications should be submitted to the European Securities and Markets Authority (ESMA) by the competent authorities and ESMA should publish a list of all of the financial instruments notified. This Regulation applies to financial instruments whether or not they are included in the list published by ESMA.
- (10) It is possible that certain financial instruments which are not traded on a trading venue are used for market abuse. This includes financial instruments the price or value of which depends or has an effect on financial instruments traded on a trading venue, or the trading of which has an effect on the price or value of other financial instruments traded on a trading venue. Examples of where such instruments can be used for market abuse include inside information relating to a share or bond, which can be used to buy a derivative of that share or bond, or an index the value of which depends on that share or bond. Where a financial instrument is used as a reference price, an OTC-traded derivative can be used to benefit from manipulated prices, or be used to manipulate the price of a financial instrument traded on a trading venue. A further example is the planned issue of a new tranche of securities that do not otherwise fall within the scope of this Regulation, but where trading in those securities could affect the price or value of existing listed securities that fall within the scope of this Regulation. This Regulation also covers the situation where the price or value of an instrument traded on a trading venue depends on an OTC-traded instrument. The same principle should apply to spot commodity contracts the prices of which are based on that of a derivative and to the buying of spot commodity contracts to which financial instruments are referenced.
- (11) Trading in securities or associated instruments for the stabilisation of securities or trading in own shares in buy-back programmes can be legitimate for economic reasons and should, therefore, in certain circumstances, be exempt from the prohibitions against market abuse provided that the actions are carried out under the necessary transparency, where relevant information regarding the stabilisation or buy-back programme is disclosed.
- (12) Trading in own shares in buy-back programmes and Stabilising a financial instrument which would not benefit from the exemptions under this Regulation should not of itself be deemed to constitute market abuse.
- (13) Member States, members of the European System of Central Banks (ESCB), 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 they are undertaken in the public interest and solely in pursuit of those policies. Neither should transactions or orders carried out, or behaviour by, the Union, a special purpose vehicle of one or several Member States, the European Investment Bank, the European Financial Stability Facility, the European Stability Mechanism or an international financial institution established by two or more Member States, be restricted in mobilising funding and providing financial assistance to the benefit of its members. Such an exemption from the scope of this Regulation may, in accordance with this Regulation, be extended to certain public bodies charged with, or intervening in, public debt management and to central banks of third countries. At the same time, the exemptions for monetary, exchange-rate or public debt management policy should not extend to cases where those bodies engage in transactions, orders or behaviour other than in pursuit of those policies or where persons working for those bodies engage in transactions, orders or behaviour on their own account.
- (14) Reasonable investors base their investment decisions on information already available to them, that is to say, on *ex ante* available information. Therefore, the question whether, in making an investment decision, a reasonable investor would be likely to take into account a particular piece of information should be appraised on the basis of the *ex ante* available information. Such an assessment has to take into consideration the anticipated impact of the information in light of the totality of the related issuer's activity, the reliability of the source of information and any other market variables likely to affect the financial instruments, the related spot commodity contracts, or the auctioned products based on the emission allowances in the given circumstances.

- (15) Ex post information can be used to check the presumption that the *ex ante* information was price sensitive, but should not be used to take action against persons who drew reasonable conclusions from *ex ante* information available to them.
- (16) Where inside information concerns a process which occurs in stages, each stage of the process as well as the overall process could constitute inside information. An intermediate step in a protracted process may in itself constitute a set of circumstances or an event which exists or where there is a realistic prospect that they will come into existence or occur, on the basis of an overall assessment of the factors existing at the relevant time. However, that notion should not be interpreted as meaning that the magnitude of the effect of that set of circumstances or that event on the prices of the financial instruments concerned must be taken into consideration. An intermediate step should be deemed to be inside information if it, by itself, meets the criteria laid down in this Regulation for inside information.
- (17) Information which relates to an event or set of circumstances which is an intermediate step in a protracted process may relate, for example, to the state of contract negotiations, terms provisionally agreed in contract negotiations, the possibility of the placement of financial instruments, conditions under which financial instruments will be marketed, provisional terms for the placement of financial instruments, or the consideration of the inclusion of a financial instrument in a major index or the deletion of a financial instrument from such an index.
- (18) Legal certainty for market participants should be enhanced through a closer definition of two of the elements essential to the definition of inside information, namely the precise nature of that information and the significance of its potential effect on the prices of the financial instruments, the related spot commodity contracts, or the auctioned products based on the emission allowances. For derivatives which are wholesale energy products, information required to be disclosed in accordance with Regulation (EU) No 1227/2011 of the European Parliament and of the Council should, in particular, be considered as inside information.
- (19) This Regulation is not intended to prohibit discussions of a general nature regarding the business and market developments between shareholders and management concerning an issuer. Such relationships are essential for the efficient functioning of markets and should not be prohibited by this Regulation.
- (20) Spot markets and related derivative markets are highly interconnected and global, and market abuse may take place across markets as well as across borders which can lead to significant systemic risks. This is true for both insider dealing and market manipulation. In particular, inside information from a spot market can benefit a person trading on a financial market. Inside information in relation to a derivative of a commodity should be defined as information which both meets the general definition of inside information in relation to financial markets and which is required to be made public in accordance with legal or regulatory provisions at the Union or national level, market rules, contracts or customs on the relevant commodity derivative or spot market. Notable examples of such rules include Regulation (EU) No 1227/2011 for the energy market and the Joint Organisations Database Initiative (JODI) database for oil. Such information may serve as the basis of market participants' decisions to enter into commodity derivatives or the related spot commodity contracts and should therefore constitute inside information required to be made public, where it is likely to have a significant effect on the prices of such derivatives or related spot commodity contracts. Moreover, manipulative strategies can also extend across spot and derivatives markets. Trading in financial instruments, including commodity derivatives, can be used to manipulate related spot commodity contracts and spot commodity contracts can be used to manipulate related financial instruments. The prohibition of market manipulation should capture these inter-linkages. However, it is not appropriate or practicable to extend the scope of this Regulation to behaviour that does not involve financial instruments, for example, to trading in spot commodity contracts that only affects the spot market. In the specific case of wholesale energy products, the competent authorities should take into account the specific characteristics of the definitions of Regulation (EU) No 1227/2011 when they apply the definitions of inside information, insider dealing and market manipulation under this Regulation to financial instruments related to wholesale energy products.
- (21) Pursuant to Directive 2003/87/EC of the European Parliament and of the Council, the Commission, Member States and other officially designated bodies are, inter alia, responsible for the technical issuance of emission allowances, their free allocation to eligible industry sectors and new entrants and more generally the development and implementation of the Union's climate policy framework which underpins the supply of emission allowances to compliance buyers of the Union's emissions trading scheme (EU ETS). In the exercise of those duties, those public bodies can, inter alia, have access to price-sensitive, non-public information and, pursuant to Directive 2003/87/EC, may need to perform certain market operations in relation to emission allowances. As a consequence of the classification of emission allowances as financial instruments as part of the review of Directive 2004/39/EC of the

European Parliament and of the Council, those instruments will also fall within the scope of this Regulation. In order to preserve the ability of the Commission, Member States and other officially designated bodies to develop and implement the Union's climate policy, the activities of those public bodies, insofar as they are undertaken in the public interest and explicitly in pursuit of that policy and concerning emission allowances, should be exempt from the application of this Regulation. Such exemption should not have a negative impact on overall market transparency, as those public bodies have statutory obligations to operate in a way that ensures orderly, fair and non-discriminatory disclosure of, and access to, any new decisions, developments and data that have a price-sensitive nature. Furthermore, safeguards of fair and non-discriminatory disclosure of specific price-sensitive information held by public authorities exist under Directive 2003/87/EC and the implementing measures adopted pursuant thereto. At the same time, the exemption for public bodies acting in pursuit of the Union's climate policy should not extend to cases in which those public bodies engage in conduct or in transactions which are not in the pursuit of the Union's climate policy or when persons working for those bodies engage in conduct or in transactions on their own account.

- (22) Pursuant to Article 43 TFEU and to the implementation of international agreements concluded under the TFEU, the Commission, Member States and other officially designated bodies are, inter alia, responsible for pursuing the Common Agricultural Policy (CAP) and the Common Fisheries Policy (CFP). In the exercise of those duties, those public bodies undertake activities and take measures aiming to manage the agricultural markets and fisheries, including those of public intervention, imposing additional, or suspending, import duties. In the light of the scope of this Regulation, certain provisions thereof that apply to spot commodity contracts which have or which are likely to have an effect on financial instruments and financial instruments the value of which depends on the value of spot commodity contracts and which have or which are likely to have an effect on spot commodity contracts, it is necessary to ensure that the activity of the Commission, Member States and other bodies officially designated to pursue the CAP and the CFP, is not restricted. In order to preserve the ability of the Commission, Member States and other officially designated bodies to develop and pursue the CAP and the CFP, their activities, insofar as they are undertaken in the public interest and solely in pursuance of those policies, should be exempted from the application of this Regulation. Such exemption should not have a negative impact on overall market transparency, as those public bodies have statutory obligations to operate in a way that ensures orderly, fair and non-discriminatory disclosure of, and access to, any new decisions, developments and data that have a price-sensitive nature. At the same time, the exemption for public bodies acting in pursuance of the CAP and the CFP should not extend to cases where those public bodies engage in conduct or in transactions which are not in pursuance of the CAP and the CFP or where persons working for those bodies engage in conduct or in transactions on their own account.
- (23) The essential characteristic of insider dealing consists in an unfair advantage being obtained from inside information to the detriment of third parties who are unaware of such information and, consequently, the undermining of the integrity of financial markets and investor confidence. Consequently, the prohibition against insider dealing should apply where a person who is in possession of inside information takes unfair advantage of the benefit gained from that information by entering into market transactions in accordance with that information by acquiring or disposing of, by attempting to acquire or dispose of, by cancelling or amending, or by attempting to cancel or amend, an order to acquire or dispose of, for his own account or for the account of a third party, directly or indirectly, financial instruments to which that information relates. Use of inside information can also consist of trading in emission allowances and derivatives thereof and of bidding in the auctions of emission allowances or other auctioned products based thereon that are held pursuant to Commission Regulation (EU) No 1031/2010.
- (24) Where a legal or natural person in possession of inside information acquires or disposes of, or attempts to acquire or dispose of, for his own account or for the account of a third party, directly or indirectly, financial instruments to which that information relates, it should be implied that that person has used that information. That presumption is without prejudice to the rights of the defence. The question whether a person has infringed the prohibition on insider dealing or has attempted to commit insider dealing should be analysed in the light of the purpose of this Regulation, which is to protect the integrity of the financial market and to enhance investor confidence, which is based, in turn, on the assurance that investors will be placed on an equal footing and protected from the misuse of inside information.
- (25) Orders placed before a person possesses inside information should not be deemed to be insider dealing. However, where a person comes into possession of inside information, there should be a presumption that any subsequent change relating that information to orders placed before possession of such information, including the cancellation or amendment of an order, or an attempt to cancel or amend an

order, constitutes insider dealing. That presumption could, however, be rebutted if the person establishes that he or she did not use the inside information when carrying out the transaction.

- (26) Use of inside information can consist of the acquisition or disposal of a financial instrument, or an auctioned product based on emission allowances, of the cancellation or amendment of an order, or the attempt to acquire or dispose of a financial instrument or to cancel or amend an order, by a person who knows, or ought to have known, that the information constitutes inside information. In this respect, the competent authorities should consider what a normal and reasonable person knows or should have known in the circumstances.
- (27) This Regulation should be interpreted in a manner consistent with the measures adopted by the Member States to protect the interests of holders of transferable securities carrying voting rights in a company (or which may carry such rights as a consequence of the exercise of rights or conversion) where the company is subject to a public take-over bid or any other proposed change of control. In particular this Regulation should be interpreted in a manner consistent with the laws, regulations and administrative provisions adopted in relation to takeover bids, merger transactions and other transactions affecting ownership or control of companies regulated by the supervisory authorities appointed by Member States pursuant to Article 4 of Directive 2004/25/EC of the European Parliament and of the Council.
- (28) Research and estimates based on publicly available data, should not per se be regarded as inside information and the mere fact that a transaction is carried out on the basis of research or estimates should not therefore be deemed to constitute use of inside information. However, for example, where the publication or distribution of information is routinely expected by the market and where such publication or distribution contributes to the price-formation process of financial instruments, or the information provides views from a recognised market commentator or institution which may inform the prices of related financial instruments, the information may constitute inside information. Market actors must therefore consider the extent to which the information is non-public and the possible effect on financial instruments traded in advance of its publication or distribution, to establish whether they would be trading on the basis of inside information.
- (29) In order to avoid inadvertently prohibiting forms of financial activity which are legitimate, namely where there is no effect of market abuse, it is necessary to recognise certain legitimate behaviour. This may include, for example, recognising the role of market makers, when acting in the legitimate capacity of providing market liquidity.
- (30) The mere fact that market makers or persons authorised to act as counterparties confine themselves to pursuing their legitimate business of buying or selling financial instruments or that persons authorised to execute orders on behalf of third parties with inside information confine themselves to carrying out, cancelling or amending an order dutifully, should not be deemed to constitute use of such inside information. However, the protection, laid down in this Regulation, of market makers, bodies authorised to act as counterparties or persons authorised to execute orders on behalf of third parties with inside information, does not extend to activities clearly prohibited under this Regulation including, for example, the practice commonly known as 'front-running'. Where legal persons have taken all reasonable measures to prevent market abuse from occurring but nevertheless natural persons within their employment commit market abuse on behalf of the legal person, this should not be deemed to constitute market abuse by the legal person. Another example that should not be deemed to constitute use of inside information is transactions conducted in the discharge of a prior obligation that has become due. The mere fact of having access to inside information relating to another company and using it in the context of a public takeover bid for the purpose of gaining control of that company or proposing a merger with that company should not be deemed to constitute insider dealing.
- (31) Since the acquisition or disposal of financial instruments necessarily involves a prior decision to acquire or dispose taken by the person who undertakes one or other of those operations, the mere fact of making such an acquisition or disposal should not be deemed to constitute use of inside information. Acting on the basis of one's own plans and strategies for trading should not be considered as using inside information. However, none of those legal or natural persons should be protected by virtue of their professional function; they should only be protected if they act in a fit and proper manner, meeting both the standards expected of their profession and of this Regulation namely market integrity and investor protection. An infringement could still be deemed to have occurred if the competent authority established that there was an illegitimate reason behind those transactions or orders or that behaviour, or that the person used inside information.
- (32) Market soundings are interactions between a seller of financial instruments and one or more potential investors, prior to the announcement of a transaction, in order to gauge the interest of potential investors in a possible transaction and its pricing, size and structuring. Market soundings could involve an initial or secondary offer of relevant securities, and are distinct from ordinary trading. They are a highly

valuable tool to gauge the opinion of potential investors, enhance shareholder dialogue, ensure that deals run smoothly, and that the views of issuers, existing shareholders and potential new investors are aligned. They may be particularly beneficial when markets lack confidence or a relevant benchmark, or are volatile. Thus the ability to conduct market soundings is important for the proper functioning of financial markets and market soundings should not in themselves be regarded as market abuse.

- (33) Examples of market soundings include situations in which the sell-side firm has been in discussions with an issuer about a potential transaction, and it has decided to gauge potential investor interest in order to determine the terms that will make up a transaction; where an issuer intends to announce a debt issuance or additional equity offering and key investors are contacted by a sell-side firm and given the full terms of the deal to obtain a financial commitment to participate in the transaction; or where the sell-side is seeking to sell a large amount of securities on behalf of an investor and seeks to gauge potential interest in those securities from other potential investors.
- (34) Conducting market soundings may require disclosure to potential investors of inside information. There will generally only be the potential to benefit financially from trading on the basis of inside information passed in a market sounding where there is an existing market in the financial instrument that is the subject of the market sounding or in a related financial instrument. Given the timing of such discussions, it is possible that inside information may be disclosed to the potential investor in the course of the market sounding after a financial instrument has been admitted to trading on a regulated market or has been traded on an MTF or an OTF. Before engaging in a market sounding, the disclosing market participant should assess whether that market sounding will involve the disclosure of inside information.
- (35) Inside information should be deemed as being disclosed legitimately if it is disclosed in the normal course of the exercise of a person's employment, profession or duties. Where a market sounding involves the disclosure of inside information, the disclosing market participant will be considered to be acting within the normal course of his employment, profession or duties where, at the time of making the disclosure, he informs and receives the consent of the person to whom the disclosure is made that he may be given inside information; that he will be restricted by the provisions of this Regulation from trading or acting on that information; that reasonable steps must be taken to protect the ongoing confidentiality of the information; and that he must inform the disclosing market participant of the identities of all natural and legal persons to whom the information is disclosed in the course of developing a response to the market sounding. The disclosing market participant should also comply with the obligations, to be set out in detail in regulatory technical standards, regarding the maintenance of records of information disclosed. There should be no presumption that market participants that do not comply with this Regulation when conducting a market sounding have unlawfully disclosed inside information but they should not be able to take advantage of the exemption given to those who have complied with such provisions. The question whether they have infringed the prohibition against the unlawful disclosure of inside information should be analysed in light of all the relevant provisions of this Regulation, and all disclosing market participants should be under an obligation to record in writing their assessment, before engaging in a market sounding, whether that market sounding will involve the disclosure of inside information.
- (36) Potential investors who are the subject of a market sounding should, in turn, consider if the information disclosed to them amounts to inside information which would prohibit them from dealing on the basis of it or further disclosing that information. Potential investors remain subject to the rules on insider dealing and unlawful disclosure of inside information, as set out in this Regulation. In order to assist potential investors in their considerations and as regards what steps they should take so as not to contravene this Regulation, ESMA should issue guidelines.
- (37) Regulation (EU) No 1031/2010 provides for two parallel market abuse regimes applicable to the auctions of emission allowances. However, as a consequence of the classification of emission allowances as financial instruments, this Regulation should constitute a single rule book of market abuse measures applicable to the entirety of the primary and secondary markets in emission allowances. This Regulation should also apply 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.
- (38) This Regulation should provide measures regarding market manipulation that are capable of being adapted to new forms of trading or new strategies that may be abusive. To reflect the fact that trading in financial instruments is increasingly automated, it is desirable that the definition of market manipulation provide examples of specific abusive strategies that may be carried out by any available means of trading including algorithmic and high-frequency trading. The examples provided are neither intended

to be exhaustive nor intended to suggest that the same strategies carried out by other means would not also be abusive.

- (39) The prohibitions against market abuse should also cover those persons who act in collaboration to commit market abuse. Examples could include, but are not limited to, brokers who devise and recommend a trading strategy designed to result in market abuse, persons who encourage a person with inside information to disclose that information unlawfully or persons who develop software in collaboration with a trader for the purpose of facilitating market abuse.
- (40) To ensure that liability is conferred on both the legal person and any natural person who participates in the decision-making of the legal person, it is necessary to give recognition of the different national legal mechanisms in Member States. Such mechanisms should relate directly to the methods of attribution of liability in national law.
- (41) In order to complement the prohibition of market manipulation, this Regulation should include a prohibition against attempting to engage in market manipulation. An attempt to engage in market manipulation should be distinguished from behaviour which is likely to result in market manipulation as both activities are prohibited under this Regulation. Such an attempt may include situations where the activity is started but is not completed, for example as a result of failed technology or an instruction to trade which is not acted upon. Prohibiting attempts to engage in market manipulation is necessary to enable competent authorities to impose sanctions for such attempts.
- (42) Without prejudice to the aim of this Regulation and its directly applicable provisions, 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 that the transactions and orders to trade were in conformity with accepted practice on the market concerned. An accepted market practice can only be established by the competent authority responsible for the market abuse supervision of the market concerned. A practice that is accepted in a particular market cannot be considered applicable to other markets unless the competent authorities of such other markets have officially accepted that practice. An infringement could still be deemed to have occurred if the competent authority established that there was an illegitimate reason behind these transactions or orders to trade.
- (43) This Regulation should also clarify that engaging in market manipulation or attempting to engage in market manipulation in a financial instrument may take the form of using related financial instruments such as derivative instruments that are traded on another trading venue or OTC.
- (44) Many financial instruments are priced by reference to benchmarks. The actual or attempted manipulation of benchmarks, including interbank offer rates, can have a serious impact on market confidence and may result in significant losses to investors or distort the real economy. Therefore, specific provisions in relation to benchmarks are required in order to preserve the integrity of the markets and ensure that competent authorities can enforce a clear prohibition of the manipulation of benchmarks. Those provisions should cover all published benchmarks including those accessible through the internet whether free of charge or not such as CDS benchmarks and indices of indices. It is necessary to complement the general prohibition of market manipulation by prohibiting the manipulation of the benchmark itself and the transmission of false or misleading information, provision of false or misleading inputs, or any other action that manipulates the calculation of a benchmark, where that calculation is broadly defined to include the receipt and evaluation of all data which relates to the calculation of that benchmark and include in particular trimmed data, and including the benchmark's methodology, whether algorithmic or judgement-based in whole or in part. Those rules are in addition to Regulation (EU) No 1227/2011 which prohibits the deliberate provision of false information to undertakings which provide price assessments or market reports on wholesale energy products with the effect of misleading market participants acting on the basis of those price assessments or market reports.
- (45) In order to ensure uniform market conditions between trading venues and facilities subject to this Regulation, any person who operates regulated markets, MTFs and OTFs should be required to establish and to maintain effective arrangements, systems and procedures aimed at preventing and detecting market manipulation and abusive practices.
- (46) Manipulation or attempted manipulation of financial instruments may also consist in placing orders which may not be executed. Furthermore, a financial instrument may be manipulated through behaviour which occurs outside a trading venue. Persons professionally arranging or executing transactions should be required to establish and to maintain effective arrangements, systems and procedures in place to detect and report suspicious transactions. They should also report suspicious orders and suspicious transactions that take place outside a trading venue.

- (47) The manipulation or attempted manipulation of financial instruments may also consist in disseminating false or misleading information. The spreading of false or misleading information can have a significant impact on the prices of financial instruments in a relatively short period of time. It may consist in the invention of manifestly false information, but also the wilful omission of material facts, as well as the knowingly inaccurate reporting of information. That form of market manipulation is particularly harmful to investors, because it causes them to base their investment decisions on incorrect or distorted information. It is also harmful to issuers, because it reduces the trust in the available information related to them. A lack of market trust can in turn jeopardise an issuer's ability to issue new financial instruments or to secure credit from other market participants in order to finance its operations. Information spreads through the market place very quickly. As a result, the harm to investors and issuers may persist for a relatively long time until the information is found to be false or misleading, and can be corrected by the issuer or those responsible for its dissemination. It is therefore necessary to qualify the spreading of false or misleading information, including rumours and false or misleading news, as being an infringement of this Regulation. It is therefore appropriate not to allow those active in the financial markets to freely express information contrary to their own opinion or better judgement, which they know or should know to be false or misleading, to the detriment of investors and issuers.
- (48) Given the rise in the use of websites, blogs and social media, it is important to clarify that disseminating false or misleading information via the internet, including through social media sites or unattributable blogs, should be considered, for the purposes of this Regulation, to be equivalent to doing so via more traditional communication channels.
- (49) The public disclosure of inside information by an issuer is essential to avoid insider dealing and ensure that investors are not misled. Issuers should therefore be required to inform the public as soon as possible of inside information. However that obligation may, under special circumstances, prejudice the legitimate interests of the issuer. In such circumstances, delayed disclosure should be permitted provided that the delay would not be likely to mislead the public and the issuer is able to ensure the confidentiality of the information. The issuer is only under an obligation to disclose inside information if it has requested or approved admission of the financial instrument to trading.
- (50) For the purposes of applying the requirements relating to public disclosure of inside information and delaying such public disclosure, as provided for in this Regulation, legitimate interests may, in particular, relate to the following non-exhaustive circumstances: (a) ongoing negotiations, or related elements, where the outcome or normal pattern of those negotiations would be likely to be affected by public disclosure. In particular, in the event that the financial viability of the issuer is in grave and imminent danger, although not within the scope of the applicable insolvency law, public disclosure of information may be delayed for a limited period where such a public disclosure would seriously jeopardise the interest of existing and potential shareholders by undermining the conclusion of specific negotiations designed to ensure the long-term financial recovery of the issuer; (b) decisions taken or contracts made by the management body of an issuer which need the approval of another body of the issuer in order to become effective, where the organisation of such an issuer requires the separation between those bodies, provided that public disclosure of the information before such approval, together with the simultaneous announcement that the approval remains pending, would jeopardise the correct assessment of the information by the public.
- (51) Moreover, the requirement to disclose inside information needs to be addressed to the participants in the emission allowance market. In order to avoid exposing the market to reporting that is not useful and to maintain cost-efficiency of the measure foreseen, it appears necessary to limit the regulatory impact of that requirement to only those EU ETS operators which, by virtue of their size and activity, can reasonably be expected to be able to have a significant effect on the price of emission allowances, of auctioned products based thereon, or of derivative financial instruments relating thereto and for bidding in the auctions pursuant to Regulation (EU) No 1031/2010. The Commission should adopt measures establishing a minimum threshold for the purposes of application of that exemption by means of a delegated act. The information to be disclosed should concern the physical operations of the disclosing party and not own plans or strategies for trading emission allowances, auctioned products based thereon, or derivative financial instruments relating thereto. Where emission allowance market participants already comply with equivalent inside information disclosure requirements, notably pursuant to Regulation (EU) No 1227/2011, the obligation to disclose inside information concerning emission allowances should not lead to the duplication of mandatory disclosures with substantially the same content. In the case of participants in the emission allowance market with aggregate emissions or rated thermal input at or below the threshold set, since the information about their physical operations is deemed to be non-material for the purposes of disclosure, it should also be deemed not to have a significant effect on the price of emission allowances, of auctioned products based thereon, or of the derivative financial instruments relating thereto. Such participants in the emission allowance market

should nevertheless be covered by the prohibition of insider dealing in relation to any other information they have access to and which is inside information.

- (52) In order to protect the public interest, to preserve the stability of the financial system and, for example, to avoid liquidity crises in financial institutions from turning into solvency crises due to a sudden withdrawal of funds, it may be appropriate to allow, in exceptional circumstances, the delay of the disclosure of inside information for credit institutions or financial institutions. In particular, this may apply to information pertinent to temporary liquidity problems, where they need to receive central banking lending including emergency liquidity assistance from a central bank where disclosure of the information would have a systemic impact. This delay should be conditional upon the issuer obtaining the consent of the relevant competent authority and it being clear that the wider public and economic interest in delaying disclosure outweighs the interest of the market in receiving the information which is subject to delay.
- (53) In respect of financial institutions, in particular where they receive central bank lending, including emergency liquidity assistance, the assessment of whether the information is of systemic importance and whether delay of disclosure is in the public interest should be made by the competent authority, after consulting, as appropriate, the national central bank, the macro-prudential authority or any other relevant national authority.
- (54) The use or attempted use of inside information to trade on one's own account or on the account of a third party should be clearly prohibited. Use of inside information can also consist of trading in emission allowances and derivatives thereof and of bidding in the auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (EU) No 1031/2010 by persons who know, or who ought to know, that the information they possess constitutes inside information. Information regarding the market participant's own plans and strategies for trading should not be considered to be inside information, although information regarding a third party's plans and strategies for trading may amount to inside information.
- (55) The requirement to disclose inside information can be burdensome for small and medium-sized enterprises, as defined in Directive 2014/65/EU of the European Parliament and of the Council, whose financial instruments are admitted to trading on SME growth markets, given the costs of monitoring information in their possession and seeking legal advice about whether and when information needs to be disclosed. Nevertheless, prompt disclosure of inside information is essential to ensure investor confidence in those issuers. Therefore, ESMA should be able to issue guidelines which assist issuers to comply with the obligation to disclose inside information without compromising investor protection.
- (56) Insider lists are an important tool for regulators when investigating possible market abuse, but national differences in regard to data to be included in those lists impose unnecessary administrative burdens on issuers. Data fields required for insider lists should therefore be uniform in order to reduce those costs. It is important that persons included on insider lists are informed of that fact and of its implications under this Regulation and Directive 2014/57/EU of the European Parliament and of the Council. The requirement to keep and constantly update insider lists imposes administrative burdens specifically on issuers on SME growth markets. As competent authorities are able to exercise effective market abuse supervision without having those lists available at all times for those issuers, they should be exempt from this obligation in order to reduce the administrative costs imposed by this Regulation. However, such issuers should provide an insider list to the competent authorities upon request.
- (57) The establishment, by issuers or any person acting on their behalf or account, of lists of persons working for them under a contract of employment or otherwise and having access to inside information relating, directly or indirectly, to the issuer, is a valuable measure for protecting market integrity. Such lists may serve issuers or such persons to control the flow of inside information and thereby help manage their confidentiality duties. Moreover, such lists may also constitute a useful tool for competent authorities to identify any person who has access to inside information and the date on which they gained access. Access to inside information relating, directly or indirectly, to the issuer by persons included on such a list is without prejudice to the prohibitions laid down in this Regulation.
- (58) Greater transparency of transactions conducted by persons discharging managerial responsibilities at the issuer level and, where applicable, persons closely associated with them, constitutes a preventive measure against market abuse, particularly insider dealing. The publication of those transactions on at least an individual basis can also be a highly valuable source of information to investors. It is necessary to clarify that the obligation to publish those managers' transactions also includes the pledging or lending of financial instruments, as the pledging of shares can result in a material and potentially destabilising impact on the company in the event of a sudden, unforeseen disposal. Without disclosure, the market would not know that there was the increased possibility of, for example, a significant future change in share ownership, an increase in the supply of shares to the marketplace or a loss of voting

rights in that company. For that reason, notification under this Regulation is required where the pledge of the securities is made as part of a wider transaction in which the manager pledges the securities as collateral to gain credit from a third party. Additionally, full and proper market transparency is a prerequisite for the confidence of market actors and, in particular, the confidence of a company's shareholders. It is also necessary to clarify that the obligation to publish those managers' transactions includes transactions by another person exercising discretion for the manager. In order to ensure an appropriate balance between the level of transparency and the number of reports notified to competent authorities and the public, thresholds should be introduced in this Regulation below which transactions need not be notified.

- (59) The notification of transactions conducted by persons discharging managerial responsibilities on their own account, or by a person 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 to notify transactions is without prejudice to the prohibitions laid down in this Regulation.
- (60) Notification of transactions should be in accordance with the rules on transfer of personal data laid down in Directive 95/46/EC of the European Parliament and of the Council.
- (61) Persons discharging managerial responsibilities should be prohibited from trading before the announcement of an interim financial report or a year-end report which the relevant issuer is obliged to make public according to the rules of the trading venue where the issuer's shares are admitted to trading or according to national law, unless specific and restricted circumstances exist which would justify a permission by the issuer allowing a person discharging managerial responsibilities to trade. However, any such permission by the issuer is without prejudice to the prohibitions laid down in this Regulation.
- (62) A set of effective tools and powers and resources for the competent authority of each Member State guarantees supervisory effectiveness. Accordingly, this Regulation, in particular, provides for a minimum set of supervisory and investigative powers competent authorities of Member States should be entrusted with under national law. Those powers should be exercised, where the national law so requires, by application to the competent judicial authorities. When exercising their powers under this Regulation competent authorities should act objectively and impartially and should remain autonomous in their decision making.
- (63) Market undertakings and all economic actors should also contribute to market integrity. In that sense, the designation of a single competent authority for market abuse should not exclude collaboration links or delegation under the responsibility of the competent authority, between that authority and market undertakings with a view to guaranteeing efficient supervision of compliance with the provisions in this Regulation. Where persons who produce or disseminate investment recommendations or other information recommending or suggesting an investment strategy in one or more financial instruments also deal on own account in such instruments, the competent authorities should, inter alia, be able to require or demand from such persons any information necessary to determine whether the recommendations produced or disseminated by that person are compliant with this Regulation.
- (64) For the purpose of detecting cases of insider dealing and market manipulation, it is necessary for competent authorities to have, in accordance with national law, the ability to access the premises of natural and legal persons in order to seize documents. Access to such premises is necessary where there is a reasonable suspicion that documents and other data relating to the subject matter of an investigation exist and may be relevant to prove a case of insider dealing or market abuse. Additionally access to such premises is necessary where the person of whom a demand for information has already been made fails, wholly or in part, to comply with it or where there are reasonable grounds for believing that if a demand were to be made it would not be complied with or that the documents or information to which the information requirement relates would be removed, tampered with or destroyed. If prior authorisation is needed from the judicial authority of the Member State concerned, in accordance with national law, access to premises should take place after having obtained that prior judicial authorisation.
- (65) Existing recordings of telephone conversations and data traffic records from investment firms, credit institutions and financial institutions executing and documenting the execution of transactions, as well as existing telephone and data traffic records from telecommunications operators, constitute crucial, and sometimes the only, evidence to detect and prove the existence of insider dealing and market manipulation. Telephone and data traffic records may establish the identity of a person responsible for the dissemination of false or misleading information or that persons have been in contact at a certain time, and that a relationship exists between two or more people. Therefore, competent authorities should be able to require existing recordings of telephone conversations, electronic communications and data traffic records held by an investment firm, a credit institution or a financial institution in accordance with Directive 2014/65/EU. Access to data and telephone records is necessary to provide

evidence and investigate leads on possible insider dealing or market manipulation, and therefore for detecting and imposing sanctions for market abuse. In order to introduce a level playing field in the Union in relation to the access to telephone and existing data traffic records held by a telecommunications operator or the existing recordings of telephone conversations and data traffic held by an investment firm, a credit institution or a financial institution, competent authorities should, in accordance with national law, be able to require existing telephone and existing data traffic records held by a telecommunications operator, insofar as permitted under national law and existing recordings of telephone conversations as well as data traffic held by an investment firm, in cases where a reasonable suspicion exists that such records related to the subject matter of the inspection or investigation may be relevant to prove insider dealing or market manipulation infringing this Regulation. Access to telephone and data traffic records held by a telecommunications operator does not encompass access to the content of voice communications by telephone.

- (66) While this Regulation specifies a minimum set of powers competent authorities should have, those powers are to be exercised within a complete system of national law which guarantees the respect for fundamental rights, including the right to privacy. For the exercise of those powers, which may amount to serious interferences with the right to respect for private and family life, home and communications, Member States should have in place adequate and effective safeguards against any abuse, for instance, where appropriate a requirement to obtain prior authorisation from the judicial authorities of a Member State concerned. Member States should allow the possibility for competent authorities to exercise such intrusive powers to the extent necessary for the proper investigation of serious cases where there are no equivalent means for effectively achieving the same result.
- (67) Since market abuse can take place across borders and markets, in all but exceptional circumstances competent authorities should be required to cooperate and exchange information with other competent and regulatory authorities, and with ESMA, in particular in relation to investigation activities. Where a competent authority is convinced that market abuse is being, or has been, carried out in another Member State or affects financial instruments traded in another Member State, it should notify that fact to the competent authority and ESMA. In cases of market abuse with cross-border effects, ESMA should be able to coordinate the investigation if requested to do so by one of the competent authorities concerned.
- (68) It is necessary for competent authorities to have the necessary tools for effective cross-market order book surveillance. Pursuant to Directive 2014/65/EU, competent authorities are able to request and receive data from other competent authorities relating to the order book to assist in monitoring and detecting market manipulation on a cross-border basis.
- (69) In order to ensure exchanges of information and cooperation with third-country authorities in relation to the effective enforcement of this Regulation, competent authorities should conclude cooperation arrangements with their counterparts in third countries. Any transfer of personal data carried out on the basis of those agreements should comply with Directive 95/46/EC and with Regulation (EC) No 45/2001 of the European Parliament and of the Council.
- (70) A sound prudential and conduct of business framework for the financial sector should rest on strong supervisory, investigation and sanction regimes. To that end, supervisory authorities should be equipped with sufficient powers to act and should be able to rely on equal, strong and deterrent sanction regimes against all financial misconduct, and sanctions should be enforced effectively. However, the de Larosière Group considered that none of those elements is currently in place. A review of existing powers to impose sanctions and their practical application aimed at promoting convergence of sanctions across the range of supervisory activities has been carried out in the Commission Communication of 8 December 2010 on Reinforcing sanctioning regimes in the financial sector.
- (71) Therefore, a set of administrative sanctions and other administrative measures should be provided for to ensure a common approach in Member States and to enhance their deterrent effect. The possibility of a ban from exercising management functions within investment firms should be available to the competent authority. Sanctions imposed in specific cases should be determined taking into account where appropriate factors such as the disgorgement of any identified financial benefit, the gravity and duration of the infringement, any aggravating or mitigating factors, the need for fines to have a deterrent effect and, where appropriate, include a discount for cooperation with the competent authority. In particular, the actual amount of administrative fines to be imposed in a specific case may reach the maximum level provided for in this Regulation, or the higher level provided for in national law, for very serious infringements, while fines significantly lower than the maximum level may be applied to minor infringements or in case of settlement. This Regulation does not limit Member States' ability to provide for higher administrative sanctions or other administrative measures.

- (72) Even though nothing prevents Member States from laying down rules for administrative as well as criminal sanctions for the same infringements, they should not be required to lay down rules for administrative sanctions for infringements of this Regulation which are already subject to national criminal law by 3 July 2016. In accordance with national law, Member States are not obliged to impose both administrative and criminal sanctions for the same offence, but they can do so if their national law so permits. However, maintenance of criminal sanctions rather than administrative sanctions for infringements of this Regulation or of Directive 2014/57/EU should not reduce or otherwise affect the ability of competent authorities to cooperate and access and exchange information in a timely manner with competent authorities in other Member States for the purposes of this Regulation, including after any referral of the relevant infringements to the competent judicial authorities for criminal prosecution.
- (73) In order to ensure that decisions made by competent authorities have a dissuasive effect on the public at large, they should normally be published. The publication of decisions is also an important tool for competent authorities to inform market participants of what behaviour is considered to be an infringement of this Regulation and to promote good behaviour amongst market participants. If such publication causes disproportionate damage to the persons involved or jeopardises the stability of financial markets or an ongoing investigation the competent authority should publish the administrative sanctions and other administrative measures on an anonymous basis in accordance with national law or delay the publication. Competent authorities should have the option of not publishing sanctions and other administrative measures where anonymous or delayed publication is considered to be insufficient to ensure that the stability of the financial markets will not be jeopardised. Competent authorities should also not be required to publish measures which are deemed to be of a minor nature and the publication of which would be disproportionate.
- (74) Whistleblowers may bring new information to the attention of competent authorities which assists them in detecting and imposing sanctions in cases of insider dealing and market manipulation. However, whistleblowing may be deterred for fear of retaliation, or for lack of incentives. Reporting of infringements of this Regulation is necessary to ensure that a competent authority may detect and impose sanctions for market abuse. Measures regarding whistleblowing are necessary to facilitate detection of market abuse and to ensure the protection and the respect of the rights of the whistleblower and the accused person. This Regulation should therefore ensure that adequate arrangements are in place to enable whistleblowers to alert competent authorities to possible infringements of this Regulation and to protect them from retaliation. Member States should be allowed to provide for financial incentives for those persons who offer relevant information about potential infringements of this Regulation. However, whistleblowers should only be entitled to such financial incentives where they bring to light new information which they are not already legally obliged to notify and where that information results in a sanction for an infringement of this Regulation. Member States should also ensure that whistleblowing schemes that they implement include mechanisms that provide appropriate protection of an accused person, particularly with regard to the right to the protection of his personal data and procedures to ensure the right of the accused person of defence and to be heard before the adoption of a decision concerning him as well as the right to seek effective remedy before a court against a decision concerning him.
- (75) Since Member States have adopted legislation implementing Directive 2003/6/EC, and since the delegated acts, regulatory technical standards and implementing technical standards provided for in this Regulation should be adopted before the framework to be introduced can be usefully applied, it is necessary to defer the application of the substantive provisions of this Regulation for a sufficient period of time.
- (76) In order to facilitate a smooth transition to the entry into application of this Regulation, market practices existing before the entry into force of this Regulation and accepted by competent authorities in accordance with Commission Regulation (EC) No 2273/2003 for the purpose of applying point 2(a) of Article 1 of Directive 2003/6/EC, may remain applicable provided that they are notified to ESMA within a prescribed time period, until the competent authority has made a decision regarding the continuation of those practices in accordance with this Regulation.
- (77) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union (Charter). Accordingly, this Regulation should be interpreted and applied in accordance with those rights and principles. In particular, when this Regulation refers to rules governing the freedom of the press and the freedom of expression in other media and the rules or codes governing the journalist profession, account should be taken of those freedoms as guaranteed in the Union and in the Member States and as recognised pursuant to Article 11 of the Charter and to other relevant provisions.

- (78) In order to increase transparency and to better inform the operation of the sanction regimes, competent authorities should provide anonymised and aggregated data to ESMA on an annual basis. That data should comprise the number of investigations that have been opened, the number that are ongoing and the number that have been closed during the relevant period.
- (79) Directive 95/46/EC and Regulation (EC) No 45/2001 govern the processing of personal data carried out by ESMA within the framework of this Regulation and under the supervision of the Member States competent authorities, in particular the public independent authorities designated by the Member States. Any exchange or transmission of information by competent authorities should be in accordance with the rules on the transfer of personal data as laid down in Directive 95/46/EC. Any exchange or transmission of information by ESMA should be in accordance with the rules on the transfer of personal data as laid down in Regulation (EC) No 45/2001.
- (80) This Regulation, as well as the delegated acts, implementing acts, regulatory technical standards, implementing technical standards and guidelines adopted in accordance therewith, are without prejudice to the application of Union rules on competition.
- (81) In order to specify the requirements set out in this Regulation, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the exemption from the scope of this Regulation of certain public bodies and central banks of third countries and of certain designated public bodies of third countries that have a linking agreement with the Union within the meaning of Article 25 of Directive 2003/87/EC; the indicators for manipulative behaviour listed in Annex I to this Regulation; the thresholds for determining the application of the public disclosure obligation to emission allowance market participants; the circumstances under which trading during a closed period is permitted; and the types of certain transactions conducted by persons discharging managerial responsibilities or persons closely associated with them that would trigger a requirement to notify. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (82) In order to ensure uniform conditions for the implementation of this Regulation in respect of procedures for the reporting of infringements of this Regulation, implementing powers should be conferred on the Commission to specify those procedures, including the arrangements for following up of the reports and measures for the protection of persons working under a contract of employment and measures for the protection of personal data. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.
- (83) Technical standards in financial services should ensure uniform conditions across the Union in matters covered by this Regulation. As a body with highly specialised expertise, it would be efficient and appropriate to entrust ESMA with the elaboration of draft regulatory technical standards and draft implementing technical standards which do not involve policy choices, for submission to the Commission.
- (84) The Commission should be empowered to adopt the draft regulatory technical standards developed by ESMA to specify the content of notifications that will have to be made by the operators of regulated markets, MTFs and OTFs concerning the financial instruments that are admitted to trading, traded, or for which a request for admission to trading on their trading venue has been made; the manner and conditions of compilation, publication and maintenance of the list of those instruments by ESMA; the conditions that buy-back programmes and stabilisation measures must meet including conditions for trading, time and volume restrictions, disclosure and reporting obligations and price conditions for the stabilisation; in relation to procedures and arrangements, systems for trading venues aimed at preventing and detecting market abuse and of systems and templates to be used by persons in order to detect and notify suspicious orders and transactions; appropriate arrangements, procedures and record-keeping requirements in the process of market soundings; and in respect of technical arrangements for categories of persons for objective presentation of information recommending an investment strategy and for disclosure of particular interests or indications of conflicts of interest by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.
- (85) The Commission should also be empowered to adopt implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1093/2010. ESMA should be entrusted with drafting implementing technical standards for submission to the Commission with regard to public disclosure of inside information, formats of insider lists and formats and procedures for the cooperation and exchange of information of competent

authorities among themselves and with ESMA.

- (86) Since the objective of this Regulation, namely to prevent market abuse in the form of insider dealing, the unlawful disclosure of inside information and market manipulation, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (87) The provisions of Directive 2003/6/EC being no longer relevant or sufficient, that Directive should be repealed from 3 July 2016. The requirements and prohibitions of this Regulation are strictly related to those in Directive 2014/65/EU and should therefore enter into force on the date of entry into force of that Directive.
- (88) For the correct application of this Regulation, it is necessary that Member States take all necessary measures in order to ensure that their national law comply by 3 July 2016 with the provisions of this Regulation concerning competent authorities and their powers, administrative sanctions and other administrative measures, the reporting of infringements and the publication of decisions.
- (89) The European Data Protection Supervisor delivered an opinion on 10 February 2012,

HAVE ADOPTED THIS REGULATION:

CHAPTER 1

GENERAL PROVISIONS

Article 1

Subject matter

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.

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;
- (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;
- (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;
- (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;
- (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;
- (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.

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.

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;
- (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.

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.

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).

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.

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 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(1)(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.

Article 14

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.

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. 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.

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.

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.

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
- (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;
- (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.

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.

Article 18

Insider lists

1. Issuers or any person acting on their behalf or on their account, shall:

- (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 or 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 acting on behalf or on the account of the issuer assumes the task of drawing up and updating the insider list, the issuer remains fully responsible for complying with this Article. The issuer shall always retain a right of access to the insider list.

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 or any person acting on their behalf or on their account shall update the 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 or any person acting on their behalf or on their account shall retain the 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 exempt from drawing up an insider list, provided that the following conditions are met:

- (a) the issuer takes all reasonable steps to ensure that any person with access to inside information acknowledges the legal and regulatory duties entailed and is aware of the sanctions applicable to insider dealing and unlawful disclosure of inside information; and
- (b) the issuer is able to provide the competent authority, upon request, with an insider list.

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.

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;
- (b) 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 ensure that the information that is notified in accordance with paragraph 1 is made public promptly and no later than three business days after the transaction in a manner which enables fast access to this information on a non-discriminatory basis in accordance with the implementing technical standards referred to in point (a) of Article 17(10).

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, 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 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.

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(1)(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;
- (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.

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, 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 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 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.

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;
- (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 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
 - (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.

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, 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 for banks and Council Directive 91/674/EEC 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.

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;
- (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.

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) [F2, Article 19(13) and (14) and Article 38] shall be conferred on the Commission for an indeterminate period of time from 2 July 2014.

3. The delegation of power referred to in Article 6(5) and (6), Article 12(5), the third subparagraph of Article 17(2), Article 17(3) [F2, Article 19(13) and (14) 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.

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.

Article 36

Committee procedure

1. The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC. 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 and 2003/124/EC and Commission Regulation (EC) No 2273/2003 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.

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.

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 [F3 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

This Regulation	Directive 2003/6/EC
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)	
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