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Commission Implementing Regulation (EU) 2016/1055 of 29 June 2016 laying down implementing technical standards with regard to the technical means for appropriate public disclosure of inside information and for delaying the public disclosure of inside information in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2016/1055

of 29 June 2016

laying down implementing technical standards with regard to the technical means for appropriate public disclosure of inside information and for delaying the public disclosure of inside information in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC[(1)], and in particular Article 17(10) thereof,

Whereas:

(1) The protection of investors requires effective and timely public disclosure of inside information by issuers and emission allowance market participants. In order to guarantee at Union level equal access of investors to inside information, the inside information should be publicly disclosed free of charge, simultaneously and as fast as possible amongst all categories of investors throughout the Union and it should be communicated to the media which ensure an effective dissemination to the public.

(2) Where emission allowance market participants already fulfil equivalent inside information disclosure requirements in accordance with Regulation (EU) No 1227/2011 of the European Parliament and of the Council[(2)], and where they are required to publicly disclose the same information under that Regulation and Regulation (EU) No 596/2014, the obligations under this Regulation should be considered to be fulfilled where the information is disclosed using a platform for the disclosure of inside information for the purposes of Regulation (EU) No 1227/2011, on the condition that the inside information is communicated to the relevant media.

(3) It is important that the technical means for delaying the disclosure of inside information allow for the maintenance of the key information of the process for delaying the disclosure of inside information, so that issuers and emission allowance market participants are able to fulfil their obligation to notify the competent authorities.

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(4) The notification of the delay of the disclosure of inside information and, where required, the explanation of how all the applicable conditions for the delay were met should be provided to the competent authority in writing using secure electronic means specified by the same competent authority, thereby ensuring the integrity and confidentiality of the content of the information, as well as the rapidity of the transmission.

(5) To enable the competent authority to identify the relevant persons within the issuer or the emission allowance market participant involved in the delay of disclosure of inside information, the notification of the delay should include the identity of the person who made the notification and of the person or persons responsible for the decision to delay the disclosure of inside information. Likewise, that notification should also indicate the temporal aspects of the delay enabling competent authorities to assess whether the conditions set out by Regulation (EU) No 596/2014 concerning the delay are met.

(6) An issuer that is a credit or a financial institution should inform the competent authority in writing of the intention to delay the disclosure of inside information in order to preserve the stability of the financial system and, having regard to the sensitive nature of such information and the need to ensure maximum confidentiality of its content, appropriate standards of security should be employed to that end.

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

(8) On 25 May 2016, the Commission notified ESMA of its intention to endorse the draft implementing technical standard with amendments to account for the fact that the disclosure provisions in Regulation (EU) No 1227/2011 are sufficient to ensure that emission allowance market participants disclose inside information publicly, effectively and in a timely manner, as required by Article 17(2) of Regulation (EU) No 596/2014. Commission Implementing Regulation (EU) No 1348/2014[(3)] already obliges emission allowance market participants to provide 'web feeds' for the website-based disclosures to be made public, effectively and in a timely manner. In its formal opinion of 16 June 2016, ESMA confirmed its initial position and did not resubmit an implementing technical standard amended in a way consistent with the Commission's proposed amendments. Since the disclosure requirements for emission allowance market participants under Regulation (EU) No 1227/2011 may be sufficient for the purpose of complying with the requirements in Article 17(2) of Regulation (EU) No 596/2014, the draft implementing technical standard should be amended to avoid duplicative reporting requirements.

(9) ESMA has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[(4)].

(10) In order to ensure the smooth functioning of the financial markets, it is necessary that this Regulation enters into force as a matter of urgency and that the provisions laid

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down in this Regulation apply from the same date as those laid down in Regulation (EU) No 596/2014,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Definitions

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

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

CHAPTER II

TECHNICAL MEANS FOR APPROPRIATE PUBLIC DISCLOSURE OF INSIDE INFORMATION

Article 2

Means for public disclosure of inside information

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

a inside information is disseminated:

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

(ii) free of charge;

(iii) simultaneously throughout the Union;

b inside information is communicated, directly or through a third party, to the media which are reasonably relied upon by the public to ensure its effective dissemination. That communication shall be transmitted using electronic means that ensure that the completeness, integrity and confidentiality of the information is maintained during the transmission, and it shall clearly identify:

(i) that the information communicated is inside information;

(ii) the identity of the issuer or emissions allowance market participant: full legal name;

(iii) the identity of the person making the notification: name, surname, position within the issuer or emission allowance market participant;

(iv) the subject matter of the inside information;

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(v) the date and time of the communication to the media.

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

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

Article 3

Posting of inside information on a website

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

(a) they allow users to access the inside information posted on the website in a non-discriminatory basis and free of charge;

(b) they allow users to locate the inside information in an easily identifiable section of the website;

(c) they ensure the disclosed inside information clearly indicates date and time of disclosure and that the information is organised in chronological order.

CHAPTER III

TECHNICAL MEANS FOR DELAYING THE PUBLIC DISCLOSURE OF INSIDE INFORMATION

Article 4

Notification of delayed disclosure of inside information and written explanation

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

a the dates and times when:

(i) the inside information first existed within the issuer or the emission allowance market participant;

(ii) the decision to delay the disclosure of inside information was made;

(iii) the issuer or emission allowance market participant is likely to disclose the inside information;