Changes to legislation: *There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2016/1052. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)EUR 2016 No. 1052 may be subject to amendment by EU Exit Instruments made by the Financial Conduct Authority under powers set out in The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), regs. 2, 3, Sch. Pt. 1. These amendments are not currently available on legislation.gov.uk. Details of relevant amending instruments can be found on their website/s. (See end of Document for details) View outstanding changes*

Commission Delegated Regulation (EU) 2016/1052 of 8 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the conditions applicable to buy-back programmes and stabilisation measures (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2016/1052

of 8 March 2016

supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the conditions applicable to buy-back programmes and stabilisation measures

(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 the third subparagraph of Article 5(6) thereof,

Whereas:

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

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

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

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

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

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

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

(8) Market integrity requires the adequate public disclosure of stabilisation measures. Reporting of the stabilisation transactions is also necessary to allow competent authorities to supervise stabilisation measures. In order to ensure investor protection, preserve the integrity of markets and deter market abuse, it is also important that competent authorities in the performance of their supervisory activities become aware of all stabilisation transactions, irrespective of whether they take place in or outside a trading venue. Furthermore, it is appropriate to clarify in advance the division of responsibilities between the issuers, the offerors or the entities undertaking the stabilisation as regards fulfilment of applicable reporting and transparency requirements. Such division of responsibilities should take into account who is in possession of the relevant information. The appointed entity should be also responsible to respond to any request from the competent authority in each Member State concerned. To ensure easy access for any investor or market participant, the information to be disclosed prior to the start of the initial or secondary offer of the securities to be stabilised under Commission Regulation (EC) No 809/2004[(2)], is without prejudice to disclosure requirements under Article 6 of this Regulation.

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

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

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

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

(13) The European Securities and Markets Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and the Council[(3)].

(14) In order to ensure the smooth functioning of the financial markets, it is necessary that this Regulation enters into force as a matter of urgency and that the provisions laid down in this Regulation apply from the same date as those laid down in Regulation (EU) No 596/2014,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

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

(a) 'time-scheduled buy-back programme' means a buy-back programme where the dates and volume of shares to be traded during the time period of the programme are set out at the time of the public disclosure of the buy-back programme;

(b) 'adequate public disclosure' means making information public in a manner which enables fast access and complete, correct and timely assessment of the information

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by the public in accordance with Commission Implementing Regulation (EU) 2016/1055[4] and, where applicable, in the officially appointed mechanism referred to in Article 21 of Directive 2004/109/EC of the European Parliament and of the Council[5];

(c) 'offeror' means the prior holder of, or the entity issuing, the securities;

(d) 'allotment' means the process or processes by which the number of securities to be received by investors who have previously subscribed or applied for them is determined;

(e) 'ancillary stabilisation' means the exercise of an overallotment facility or of a greenshoe option by investment firms or credit institutions, in the context of a significant distribution of securities, exclusively for facilitating stabilisation activity;

(f) 'overallotment facility' means a clause in the underwriting agreement or lead management agreement which permits acceptance of subscriptions or offers to purchase a greater number of securities than originally offered;

(g) 'greenshoe option' means an option granted by the offeror in favour of the investment firm(s) or credit institution(s) involved in the offer for the purpose of covering overallotments, under the terms of which such firm(s) or institution(s) is allowed to purchase up to a certain amount in securities at the offer price for a certain period of time after the offer of the securities.

CHAPTER II

BUY-BACK PROGRAMMES

Article 2

Disclosure and reporting obligations

1 In order to benefit from the exemption laid down in Article 5(1) of Regulation (EU) No 596/2014, prior to the start of trading in a buy-back programme permitted in accordance with Article 21(1) of Directive 2012/30/EU of the European Parliament and of the Council[6], the issuer shall ensure adequate public disclosure of the following information:

a the purpose of the programme as referred to in Article 5(2) of Regulation (EU) No 596/2014;

b the maximum pecuniary amount allocated to the programme;

c the maximum number of shares to be acquired;

d the period for which authorisation for the programme has been given (hereafter: 'duration of the programme').

The issuer shall ensure adequate public disclosure of subsequent changes to the programme and to the information already published in accordance with the first subparagraph.

2 The issuer shall have in place mechanisms that allow it to fulfil reporting obligations to the competent authority and to record each transaction related to a buy-back programme including the information specified in Article 5(3) of Regulation (EU) No 596/2014. The issuer shall report to the competent authority of each trading venue on which the shares are admitted to trading or are traded no later than by the end of the seventh daily market session following the

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date of the execution of the transaction, all the transactions relating to the buy-back programme, in a detailed form and in an aggregated form. The aggregated form shall indicate the aggregated volume and the weighted average price per day and per trading venue.

3 The issuer shall ensure adequate public disclosure of the information on the transactions relating to buy-back programmes referred to in paragraph 2 no later than by the end of the seventh daily market session following the date of execution of such transactions. The issuer shall also post on its website the transactions disclosed and keep that information available to the public for at least a 5-year period from the date of adequate public disclosure.

Article 3

Conditions for trading

1 In order to benefit from the exemption laid down in Article 5(1) of Regulation (EU) No 596/2014, transactions relating to buy-back programmes shall meet the following conditions:

a the shares shall be purchased by the issuer on a trading venue where the shares are admitted to trading or traded;

b for shares traded continuously on a trading venue, the orders shall not be placed during an auction phase and the orders placed before the start of the auction phase shall not be modified during that phase;

c for shares traded solely on a trading venue through auctions, the orders shall be placed and modified by the issuer during the auction provided that other market participants have sufficient time to react to them.

2 In order to benefit from the exemption laid down in Article 5(1) of Regulation (EU) No 596/2014, issuers shall not, when executing transactions under a buy-back programme, purchase shares at a price higher than the higher of the price of the last independent trade and the highest current independent purchase bid on the trading venue where the purchase is carried out, including when the shares are traded on different trading venues.

3 In order to benefit from the exemption laid down in Article 5(1) of Regulation (EU) No 596/2014, issuers shall not, when executing transactions under a buy-back programme, purchase on any trading day more than 25 % of the average daily volume of the shares on the trading venue on which the purchase is carried out.

For the purposes of the first subparagraph, the average daily volume shall be based on the average daily volume traded during either of the following periods:

a the month preceding the month of the disclosure required under Article 2(1); such a fixed volume shall be referred to in the buy-back programme and apply for the duration of that programme;

b the 20 trading days preceding the date of purchase, where the programme makes no reference to that volume.

Article 4

Trading restrictions

1 In order to benefit from the exemption laid down in Article 5(1) of Regulation (EU) No 596/2014, the issuer shall not, for the duration of the buy-back programme, engage in the following activities:

a selling of own shares;