Changes to legislation: *There are outstanding changes not yet made to Commission Implementing Regulation (EU) 2016/959. 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. 959 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 Implementing Regulation (EU) 2016/959 of 17 May 2016 laying down implementing technical standards for market soundings with regard to the systems and notification templates to be used by disclosing market participants and the format of the records in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2016/959

of 17 May 2016

laying down implementing technical standards for market soundings with regard to the systems and notification templates to be used by disclosing market participants and the format of the records 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 the third subparagraph of Article 11(10) thereof,

Whereas:

(1) Disclosing market participants are to keep records of the communications of information taking place for the purposes of the market soundings between themselves and all persons receiving the market soundings. Such records should assist disclosing market participants in providing evidence of proper conduct to the competent authorities, in particular where the nature of the information changes after the market sounding or where the competent authority needs to review the process of categorisation of the information. To that end, all such records should be kept in an electronic format.

(2) To ensure that the information communicated is consistently recorded also where market soundings take place during unrecorded meetings or telephone conversations, a uniform template should be drawn up for the written minutes or notes to be taken by the disclosing market participant of those meetings and conversations.

(3) To ensure that the information communicated is consistently recorded, disclosing market participants should keep records of the written communications to inform the persons who received the market soundings when the information disclosed in the course of the market sounding has ceased to be inside information.

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

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(5) The European Securities and Markets Authority 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[(2)].

(6) 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:

Article 1

Electronic format for the records

All the records referred to in Article 6 of Commission Delegated Regulation (EU) 2016/960[(3)] shall be kept in an electronic format.

Article 2

Format for the record keeping of the written minutes or notes

Disclosing market participants shall draw up the written minutes or notes referred to in Article 6(2)(d) of Delegated Regulation (EU) 2016/960 in an electronic format using:

(a) the template set out in Annex I where disclosing market participants consider that the market sounding involves the disclosure of inside information;

(b) the template set out in Annex II where disclosing market participants consider that the market sounding does not involve the disclosure of inside information.

Article 3

Format for the record keeping of the data regarding potential investors

1 Disclosing market participants shall keep records of the information referred to in Article 4(1) of Delegated Regulation (EU) 2016/960 in the form of separate lists for each market sounding.

2 Disclosing market participants shall keep records of the information referred to in Article 4(2) of Delegated Regulation (EU) 2016/960 in the form of a single list.

***Changes to legislation:** There are outstanding changes not yet made to Commission Implementing Regulation (EU) 2016/959. 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. 959 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*

Article 4

Format for communicating and recording that the information has ceased to be inside information

1 Disclosing market participants shall inform in writing the persons that received the market soundings that the information disclosed in the course of the market sounding has ceased to be inside information.

2 Disclosing market participants shall record the information given in accordance with paragraph 1 in compliance with the template set out in Annex III.

Article 5

Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 3 July 2016.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 17 May 2016.

For the Commission

The President

Jean-Claude JUNCKER

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ANNEX I

Template for the written minutes and notes referred to in Article 6(2)(d) of Delegated Regulation (EU) 2016/960 where inside information is disclosed

Item	Text field
i. Identity of the disclosing market participant	*Full names of the disclosing market participant and of the person within the disclosing market participant providing the information and the contact details used for the communication.*
ii. Identity of the person receiving the communication	*Full name of the person receiving the communication and the contact details used for the communication.*
iii. Date and time of the communication	*Date and time(s) of the communication specifying the time zone.*
iv. Clarification of the nature of the conversation in accordance with Article 3(3)(a) of Delegated Regulation (EU) 2016/960	*Record of the statement that the communication takes place for the purposes of a market sounding.*
v. Confirmation of the identity of the person receiving the market sounding in accordance with Article 3(3)(c) of Delegated Regulation (EU) 2016/960	*Record of the information about the confirmation from the contacted person that the disclosing market participant is communicating with the person entrusted by the potential investor to receive the market sounding.*
vi. Clarification in accordance with Article 3(3)(d) of Delegated Regulation (EU) 2016/960 that inside information will be communicated	*Record of the statement clarifying that, if agreeing to receive the market sounding, the person receiving the communication of information will receive information which the disclosing market participant considers to be inside information and a reference to the obligation set forth in Article 11(7) of Regulation (EU) No 596/2014.*
vii. Information on the estimation of when the information ceases to be inside information, in accordance with Article 3(3)(e) of Delegated Regulation (EU) 2016/960	*Record of the information given, if any, on the estimated time when the information is expected to be made public or the transaction launched, with an explanation of why this may be subject to change and how the person receiving the market sounding will be informed in case the estimated time is no longer valid.*
viii. Statement regarding the obligations of the person receiving the communication in accordance with Article 3(3)(f) of Delegated Regulation (EU) 2016/960	*Record of the statement explaining to the person receiving the communication the obligations that apply to the possession of inside information, in accordance with points (b), (c) and (d) of subparagraph 1 of Article 11(5) of Regulation (EU) No 596/2014.*