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Commission Delegated Regulation (EU) 2016/958 of 9 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the technical arrangements 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 (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2016/958

of 9 March 2016

supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the technical arrangements 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

(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 20(3) thereof,

Whereas:

(1) Harmonised standards on the investment recommendations or other information recommending or suggesting an investment strategy (hereinafter 'recommendations') are necessary for the objective, clear and accurate presentation of such information and for the disclosure of interests and conflicts of interest. They should be complied with by persons producing or disseminating recommendations. In particular, in order to ensure high standards of fairness, probity and transparency in the market, recommendations should be presented objectively and in a way that does not mislead market participants or the public.

(2) All persons who produce or disseminate recommendations should have in place arrangements to ensure that information is objectively presented and interests or conflicts of interest are effectively disclosed. Moreover, additional arrangements should be made for those categories of persons who, by virtue of their nature and their activities, generally pose greater risks to market integrity and investor protection. That group would include independent analysts, investment firms, credit institutions, any person whose main business is to produce or disseminate recommendations, and the natural persons working for them under a contract of employment or otherwise, as well as other persons proposing investment decisions in respect of financial instruments who

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present themselves as having financial experience or expertise, or are perceived as such by market participants (hereinafter 'experts'). Non-exhaustive indicators to be considered in relation to the identification of such experts include the frequency with which they produce recommendations; the number of followers they have when they propose recommendations; their personal work's history, including whether they have been professionally producing recommendations in the past; and whether their previous recommendations are or have been relayed by third parties, such as the media.

(3) The identity of the persons producing recommendations, their competent authority, if any, and the dates and times when the recommendations were completed and then disseminated should be disclosed, since they may be valuable information for investors in relation to their investment decisions.

(4) Disclosure of valuations and methodologies is useful information in order to understand recommendations, as well as to gauge the extent to which the persons producing them are consistent in the valuations and methodologies they adopt. Recommendations produced by the same person and related to companies that belong to the same industry or to the same country should aim at consistently exhibiting some consistent common factors. For those reasons, independent analysts, investment firms, credit institutions, persons whose main business is to produce recommendations, and the natural persons working for them under a contract of employment or otherwise, as well as experts, should explain in the recommendations any change in the valuations and methodologies they use.

(5) The interests of persons producing recommendations, and the conflicts that those interests could entail, may influence the opinion that those persons express in their recommendations. In order to ensure that the objectivity and reliability of the information can be evaluated, it should be appropriate to disclose of any relationship and circumstance that may reasonably be expected to impair the objectivity of the information, including interests or conflicts of interest of the person producing the recommendation, or of a person belonging to the same group, concerning the financial instrument or the issuer to whom the recommendation, directly or indirectly, relates.

(6) Disclosures of interests or conflicts of interest should be specific enough as to enable the recipient of the recommendation to take an informed view of the degree and nature of the interest or conflict of interest. Independent analysts, investment firms, credit institutions, persons whose main business is to produce recommendations, and the natural persons working for them under a contract of employment or otherwise, as well as experts, should also disclose whether they own a net long or short position above a predetermined threshold in the issued share capital of the issuer to which the recommendation relates. In that context, they should calculate the net long or short position in accordance with the methodology for calculating positions under Regulation (EU) No 236/2012 of the European Parliament and of the Council[(2)].

(7) In the interest of proportionality, persons producing recommendations should be allowed to adapt their arrangements for objective presentation and for disclosure of interest or conflicts of interest within the limits set out in this Regulation, including when they produce non-written recommendations that are made using modalities such

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as meetings, road shows or audio or video conferences as well as radio, TV or website interviews.

(8) Recommendations may be disseminated in an unaltered, altered or summarised form by a person other than the person producing them. The way in which persons who disseminate recommendations handle those recommendations may have an important impact on the evaluation of those by investors. In particular, the knowledge of the identity of the person disseminating the recommendation and the extent of alteration of the source recommendation can be a valuable piece of information for investors when considering their investment decisions.

(9) Where the persons disseminating recommendations extrapolate only some elements of a source recommendation, this could amount to a substantial alteration of the content of the source recommendation. A change in the direction of the source recommendation (e.g. by changing a 'buy' recommendation into a 'hold' or 'sell' recommendation, or vice versa, or by changing the price target) should always be considered a substantial alteration.

(10) The processing of personal data in the context of this Regulation should be conducted in compliance with the national laws, regulations or administrative provisions transposing Directive 95/46/EC of the European Parliament and of the Council[(3)].

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

(12) 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 of the Council[(4)].

(13) 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

Definitions

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

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(a) 'expert' means a person referred to in Article 3(1)(34)(ii) of Regulation (EU) No 596/2014 who repeatedly proposes investment decisions in respect of financial instruments and who:

(i) presents himself as having financial expertise or experience; or

(ii) puts forward his recommendation in such a way that other persons would reasonably believe he has financial expertise or experience;

(b) 'group' means a group as defined in Article 2(11) of Directive 2013/34/EU of the European Parliament and of the Council[5].

CHAPTER II

PRODUCTION OF RECOMMENDATIONS

Article 2

Identity of producers of recommendations

1 Persons who produce investment recommendations or other information recommending or suggesting an investment strategy ('recommendations') shall disclose clearly and prominently in all the recommendations they produce their identity and the following information about the identity of any other person(s) responsible for the production of the recommendation:

a the name and the job title of all the natural persons involved in the production of the recommendation;

b where a natural or a legal person involved in the production of the recommendation is acting under contract, including a contract of employment, or otherwise for a legal person, the name of such legal person.

2 Where the person who produces recommendations is an investment firm, a credit institution, or a natural person working for an investment firm or a credit institution under contract of employment or otherwise, that person shall, in addition to the information laid down in paragraph 1, state the identity of the relevant competent authority in the recommendation.

3 Where the person who produces recommendations is not a person referred to in paragraph 2, but is subject to self-regulatory standards or codes of conduct for the production of recommendations, that person shall, in addition to the information laid down in paragraph 1, state a reference to those standards or codes in the recommendation.

Article 3

General obligations in relation to objective presentation of recommendations

1 Persons who produce recommendations shall ensure that their recommendations comply with the following requirements:

a facts are clearly distinguished from interpretations, estimates, opinions and other types of non-factual information;

b all substantially material sources of information are clearly and prominently indicated;

c all sources of information are reliable or, where there is any doubt as to whether a source is reliable, this is clearly indicated;

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d all projections, forecasts and price targets are clearly and prominently labelled as such, and the material assumptions made in producing or using them are indicated;

e the date and time when the production of the recommendation was completed is clearly and prominently indicated.

2 Where the disclosure of the information required in points (b) or (e) of paragraph 1 is disproportionate in relation to the length or form of the recommendation, including in the case of a non-written recommendation that is made using modalities, such as meetings, road shows, audio or video conferences, as well as radio, television or website interviews, the person who produces recommendations shall state in the recommendation where the required information can be directly and easily accessed by the persons receiving the recommendation free of charge.

3 Persons who produce recommendations shall substantiate any recommendation they have produced to the competent authority upon its request.

Article 4

Additional obligations in relation to objective presentation of recommendations applicable to the persons referred to Article 3(1)(34)(i) of Regulation (EU) No 596/2014 and experts

1 In addition to the information laid down in Article 3, the persons referred to Article 3(1)(34)(i) of Regulation (EU) No 596/2014 and experts shall include in the recommendation the following information in a clear and prominent manner:

a if the recommendation has been disclosed to the issuer to which the recommendation, directly or indirectly, relates and it has been subsequently amended, a statement to that effect;

b a summary of any basis of valuation or methodology and the underlying assumptions used to either evaluate a financial instrument or an issuer, or to set a price target for a financial instrument, as well as an indication and a summary of any changes in the valuation, methodology or underlying assumptions;

c an indication of the place where detailed information about the valuation or methodology and the underlying assumptions is directly and easily accessible, in the event that the person who produces recommendations has not used proprietary models;

d an indication of the place where material information about the proprietary models used is directly and easily accessible, in the event that the person who produces recommendations has used proprietary models;

e the meaning of any recommendation made, such as the recommendations to 'buy', 'sell' or 'hold', and the length of time of the investment to which the recommendation relates are adequately explained and any appropriate risk warning, which shall include a sensitivity analysis of the assumptions, is indicated;

f a reference to the planned frequency of updates to the recommendation;

g an indication of the relevant date and time for any price of financial instruments mentioned in the recommendation;

h where a recommendation differs from any of their previous recommendations concerning the same financial instrument or issuer that has been disseminated during the preceding 12-month period, the change(s) and the date of that previous recommendation are indicated; and

i a list of all their recommendations on any financial instrument or issuer that were disseminated during the preceding 12-month period, containing for each recommendation: the date of dissemination, the identity of the natural person(s) referred