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Commission Delegated Regulation (EU) 2016/957 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 appropriate arrangements, systems and procedures as well as notification templates to be used for preventing, detecting and reporting abusive practices or suspicious orders or transactions (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2016/957

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 appropriate arrangements, systems and procedures as well as notification templates to be used for preventing, detecting and reporting abusive practices or suspicious orders or transactions

(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 16(5) thereof,

Whereas:

(1) It is necessary to specify appropriate requirements for the arrangements, procedures and systems that market operators and investment firms operating a trading venue and any person professionally arranging or executing transactions should have in place for the reporting of orders and transactions that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation under Regulation (EU) No 596/2014. Such requirements should assist the prevention and detection of market abuse. They should also assist in ensuring that notifications submitted to competent authorities are meaningful, comprehensive and useful. In order to ensure that detection of market abuse is effective, appropriate systems should be in place to monitor orders and transactions. Such systems should provide for human analysis carried out by appropriately trained staff. The systems for monitoring market abuse should be capable of producing alerts in line with predefined parameters in order to allow for further anaysis to be conducted on potential insider dealing, market manipulation or attempted insider dealing or market manipulation. The whole process is likely to require some level of automation.

(2) In order to facilitate and promote a consistent approach and practices across the Union in relation to prevention and detection of market abuse, it is appropriate to lay down

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detailed provisions harmonising the content of, the template for and the timing of the reporting of suspicious orders and transactions.

(3) Persons professionally arranging or executing transactions engaged in algorithmic trading and subject to Directive 2014/65/EU of the European Parliament and of the Council[(2)] should establish and maintain the systems referred to in this Regulation and Regulation (EU) No 596/2014 and should remain subject to Article 17(1) of Directive 2014/65/EU.

(4) Persons that are professionally engaged in arranging or executing transactions should be able to delegate the monitoring, detection and identification of suspicious orders and transactions within a group or to delegate the data analysis and the generation of alerts, subject to appropriate conditions. Such delegation should make it possible to share resources, to centrally develop and maintain monitoring systems and to build expertise in the context of monitoring orders and transactions. Such delegationg should not prevent the competent authorities from assessing, at any time, whether the systems, arrangements and procedures of the person to whom the functions are delegated are effective to comply with the obligation to monitor and detect market abuse. The obligation to report as well as the responsibility to comply with this Regulation and with Article 16 of Regulation (EU) No 596/2014 should remain with the delegating person.

(5) Trading venues should have appropriate trading rules contributing to the prevention of insider dealing and market manipulation or attempted insider dealing or market manipulation. Trading venues should also have facilities to replay the order book in order to analyse the activity of a trading session in a context of algorithmic trading including high frequency trading.

(6) A single and harmonised template for electronically submitting a suspicious transaction and order report (STOR) should assist compliance with the requirements set out in this Regulation and in Article 16 of Regulation (EU) No 596/2014 in markets where orders and transactions are becoming increasingly cross-border. It should also facilitate the efficient sharing of information on suspicious orders and transactions between competent authorities in cross-border investigations.

(7) The relevant information fields contained in the template, if completed clearly, comprehensively, objectively and accurately, should assist the competent authorities to promptly assess the suspicion and initiate relevant actions. The template should therefore allow the persons submitting the report to provide the information considered relevant about the suspicious orders and transactions reported and to explain the reasons for the suspicion. The template should also allow to provide personal data that would make it possible to identify the persons involved in the suspicious orders and transactions and assist the competent authorities in the conduct of investigations to rapidly analyse the trading behaviour of the suspected persons and to establish connections with persons involved in other suspicious trades. Such information should be provided at the outset, so that the integrity of the investigation is not compromised by the potential necessity for a competent authority to revert in the course of an investigation to the person who submitted the STOR. It should include the date of birth, the address, information about the person's employement and accounts, and,

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where applicable, the client identifier code and the national identification number of the individuals concerned.

(8) To facilitate the submission of a STOR, the template should allow for the attachment of documents and materials considered necessary to support the notification made, including in the form of an annex listing the orders or transactions relevant for the same report and detailling their prices and volumes.

(9) Market operators and investment firms operating a trading venue and persons professionally arranging or executing transactions should not notify all orders received or transactions conducted that have triggered an internal alert. Such a requirement would be inconsistent with the requirement to assess on a case-by-case basis whether there are reasonable grounds for suspicion.

(10) The reports of suspicious orders and transactions should be submitted to the relevant competent authority without delay once a reasonable suspicion that those orders or transactions could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation has been formed. The analysis as to whether or not a given order or transaction is to be considered suspicious should be based on facts, not speculation or presumption and should be carried out as quickly as practicable. The practice of delaying the submission of a report in order to incorporate further suspicious orders or transactions is irreconcilable with the obligation to act without delay, where a reasonable suspicion has already been formed. In any case the submission of a STOR should be assessed on a case-by-case basis to determine if several orders and transactions could be reported in a single STOR. Furthermore, the practice which consists of waiting for a particular number of STORs to accumulate before reporting them should not be regarded as consistent with the requirement to notify without delay.

(11) There might be circumstances when a reasonable suspicion of insider dealing, market manipulation or attempted insider dealing or market manipulation is formed some time after the suspected activity occurred, due to subsequent events or available information. This should not be a reason for not reporting the suspected activity to the competent authority. In order to demonstrate compliance with the reporting requirements in those specific circumstances, the person submitting the report should be able to justify the time discrepancy between the occurrence of the suspected activity and the formation of the reasonable suspicion of insider dealing, market manipulation or attempted insider dealing or market manipulation.

(12) Retention of and access to STORs which have been submitted and of the analysis performed on suspicious orders and transactions which did not result in the submission of a STOR forms an important part of the procedures to detect market abuse. The ability to recall and review the analysis performed on STORs which have been submitted, as well as those suspicious orders and transactions which were analysed, but in relation to which it was concluded that the grounds for suspicion were not reasonable, will assist persons professionally executing or arranging transactions and market operators or investment firms operating a trading venue in exercising their judgement when considering subsequent suspicious orders or transactions. The analysis performed on suspicious orders and transactions which did not ultimately lead to a STOR being

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submitted assists those persons in refining their surveillance systems and in detecting patterns of repeated behaviour, the aggregate of which could, considered as a whole, result in a reasonable suspicion of insider dealing, market manipulation or attempted insider dealing or market manipulation. Furthermore, the above records will also assist in evidencing compliance with the requirements laid down in this Regulation and facilitate the performance by competent authorities of their supervisory, investigatory and enforcement functions under Regulation (EU) No 596/2014.

(13) Any processing of personal data under this Regulation should be carried out in compliance with the national laws, regulations or administrative provisions transposing Directive 95/46/EC of the European Parliament and of the Council[(3)].

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

(15) 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[(4)].

(16) 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

Definitions

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

(a) 'suspicious transaction and order report' (STOR) means the report on suspicious orders and transactions, including any cancellation or modification thereof, that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation to be made pursuant to Article 16(1) and (2) of Regulation (EU) No 596/2014.

(b) '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;

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

(d) 'order' means each and every order, including each and every quote, irrespective of whether its purpose is initial submission, modification, update or cancellation of an order and irrespective of its type.

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Article 2

General requirements

1 Persons professionally arranging or executing transactions shall establish and maintain arrangements, systems and procedures that ensure:

a effective and ongoing monitoring, for the purposes of detecting and identifying orders and transactions that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation, of all orders received and transmitted and all transactions executed;

b the transmission of STORs to competent authorities in accordance with the requirements set out in this Regulation and using the template set out in the Annex.

2 The obligations referred to in paragraph 1 shall apply to orders and transactions relating to any financial instrument and shall apply irrespective of:

a the capacity in which the order is placed or the transaction is executed;

b the types of clients concerned;

c whether the orders were placed or transactions executed on or outside a trading venue.

3 Market operators and investment firms operating a trading venue shall establish and maintain arrangements, systems and procedures that ensure:

a effective and ongoing monitoring, for the purposes of preventing, detecting and identifying insider dealing, market manipulation and attempted insider dealing and market manipulation, of all orders received and all transactions executed;

b the transmission of STORs to competent authorities in accordance with the requirements set out in this Regulation and using the template set out in the Annex.

4 The obligations referred to in paragraph 3 shall apply to orders and transactions relating to any financial instrument and shall apply irrespective of:

a the capacity in which the order is placed or the transaction is executed;

b the types of clients concerned.

5 Persons professionally arranging or executing transactions, market operators and investment firms operating a trading venue shall ensure that the arrangements, systems and procedures referred to in paragraphs 1 and 3:

a are appropriate and proportionate in relation to the scale, size and nature of their business activity;

b are regularly assessed, at least through an annually conducted audit and internal review, and updated when necessary;

c are clearly documented in writing, including any changes or updates to them, for the purposes of complying with this Regulation, and that the documented information is maintained for a period of five years.

The persons referred to in the first subparagraph shall, upon request, provide the competent authority with the information referred to in point (b) and (c) of that subparagraph.