# Commission Delegated Regulation (EU) 2016/522 of 17 December 2015 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards an exemption for certain third countries public bodies and central banks, the indicators of market manipulation, the disclosure thresholds, the competent authority for notifications of delays, the permission for trading during closed periods and types of notifiable managers' transactions (Text with EEA relevance)

## COMMISSION DELEGATED REGULATION (EU) 2016/522

## of 17 December 2015

## supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards an exemption for certain third countries public bodies and central banks, the indicators of market manipulation, the disclosure thresholds, the competent authority for notifications of delays, the permission for trading during closed periods and types of notifiable managers' 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 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 6(5), Article 12(5), Article 17(2) and (3), and Article 19(13) and (14) thereof,

Whereas:

(1) Regulation (EU) No 596/2014 confers on the Commission the power to adopt delegated acts in a number of closely related matters pertaining the exemption of certain third countries public bodies and central banks from the scope of application of that Regulation, the indicators of market manipulation, the thresholds for the disclosure by emission allowance market participants of inside information, the specification of the competent authority for the notification of delays in the public disclosure of inside information, the circumstances under which trading during closed period can be permitted by the issuer and the types of notifiable managers' transactions.

(2) Member States, members of the European System of Central Banks, ministries and other agencies and special purpose vehicles of one or several Member States, and the Union and certain other public bodies or persons acting on their behalf should not be restricted in carrying out monetary, exchange-rate or public debt management policy insofar as those operations are undertaken in the public interest and solely in pursuit of those policies.

(3) An exemption from the scope of Regulation (EU) No 596/2014 for operations undertaken in the public interest may, in accordance with Article 6(5) of Regulation

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(EU) No 596/2014, be extended to certain public bodies charged with, or intervening in, public debt management and to central banks of third countries when they fulfil the relevant requirements. For that purpose, the Commission prepared and presented to the European Parliament and to the Council a report assessing the international treatment of certain public bodies charged with, or intervening in, public debt management and of central banks in third countries. The report included a comparative analysis of the treatment of certain bodies and central banks within the legal framework of third countries, and the risk management standards applicable to the transactions entered into by those public bodies and central banks in those jurisdictions. The report concluded in the comparative analysis the appropriateness of the extension of the exemption for transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy, also to certain public bodies and central banks of those third countries.

(4) A list of exempted public bodies and central banks of third countries should be set out and reviewed whenever necessary.

(5) It is essential to specify the indicators of manipulative behaviour relating to false or misleading signals and to price securing laid down in Annex I to Regulation (EU) No 596/2014, in order to clarify their elements and to take into account technical developments on financial markets. Therefore, a non-exhaustive list of such indicators including examples of practices should be provided.

(6) For some practices, additional indicators should be identified as they can respectively clarify and illustrate such practices. Those indicators should neither be deemed exhaustive nor determinative and their relations to one or more examples of practices should not be deemed limitative. The examples of practices should not be considered to constitute market manipulation *per se*, but should be taken into account where transactions or orders to trade are examined by market participants and competent authorities.

(7) A proportionate approach should be followed, taking into consideration the nature and specific characteristics of the financial instruments and markets concerned. The examples may be linked to and illustrate one or more indicators of market manipulation as provided in Annex I to Regulation (EU) No 596/2014. As a result, a specific practice may involve more than one indicator of market manipulation laid down in Annex I to Regulation (EU) No 596/2014 depending on how it is used, and there can be some overlap. Similarly, although not specifically referenced in this Regulation, certain other practices may illustrate each of the indicators set out in this Regulation. Therefore, market participants and competent authorities should take into account other unspecified circumstances that could be considered to be potential market manipulation in accordance with the definition set out in Regulation (EU) No 596/2014.

(8) Certain examples of practices set out in this Regulation describe cases that are included in the notion of market manipulation or that, in some respects, refer to manipulative conduct. On the other hand, certain examples of practices may be considered legitimate if, for instance, a person who enters into transactions or issues orders to trade which may be deemed to constitute market manipulation may be able to establish that his

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reasons for entering into such transactions or issuing orders to trade were legitimate and in conformity with an accepted practice on the market concerned.

(9) For the purposes of listing examples of practices referring to indicators of market manipulation as provided in Annex I to Regulation (EU) No 596/2014, cross-referencing in Annex II to this Regulation includes both the relevant example of practice and the additional indicator associated with that example.

(10) For the purpose of indicators of manipulative behaviour set out in this Regulation, any reference to 'order to trade' encompasses all types of orders, including initial orders, modifications, updates and cancellations, irrespective of whether or not they have been executed, of the means used to access the trading venue or to carry out a transaction or to enter an order to trade and of whether or not the order has been entered into the trading venue's order-book.

(11) Emission allowance market participants are a specific sub-set of the participants in the emission allowance market. Among the participants in the emission allowance market, those above certain minimum thresholds should qualify as emissions allowance market participants, and the requirement of public disclosure of inside information should apply only to them. Therefore, those minimum thresholds should be clearly established.

(12) Following the definition of inside information under Article 7(4) of Regulation (EU) No 596/2014, an emissions allowance market participant has to assess on a case by case basis whether the information under consideration meets the criteria of inside information. This implies that an emissions allowance market participant is not expected to publicly disclose all information about its physical operations. The emissions allowance market participant should properly assess the information at stake, taking into account the market circumstances and other external factors that may have a price effect on an emission allowance at the particular point in time when the information arises.

(13) The exemption set out in Article 17(2) of Regulation (EU) No 596/2014 excludes from the definition of emissions allowance market participant those participants in the emission allowance market where the installations or aviation activities they own, control or are responsible for, have had in the preceding year emissions not exceeding a minimum threshold of carbon dioxide equivalent and, where they carry out combustion activities, have had a rated thermal input not exceeding a minimum threshold. Hence, the minimum thresholds should relate to all business, including aviation activities or installations, which the participant in the emission allowance market concerned, or its parent undertaking or related undertaking owns or controls or for the operational matters of which the participant concerned, or its parent undertaking or related undertaking is responsible, in whole or in part.

(14) Furthermore, the annual carbon dioxide equivalent threshold and the rated thermal input threshold should be taken into consideration cumulatively in order for the requirement not to apply. Therefore, exceeding one of the two thresholds should be sufficient for the disclosure obligations under Article 17(2) of Regulation (EU) No 596/2014 to apply.

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(15) To enhance the integrity of the market while avoiding excessive disclosure, it is appropriate to set the minimum thresholds at a level which exempts companies which are unlikely to hold inside information.

(16) The minimum thresholds should be reviewed as appropriate to assess their functioning with regards to, inter alia, the expected increase in transparency of the emission allowance market, including number of events reported and the administrative burden involved, the development and maturity of the emission allowance market, the number of participants in the emission allowance market and the impact on availability of firm-specific information and on price formation or investment decisions in the emission allowance market.

(17) Taking into account the expanded scope of Regulation (EU) No 596/2014 in terms of financial instruments covered, the fact that the *ex post* notification to the competent authority requirement applies to issuers who have requested or approved admission of their financial instruments to trading on a regulated market in a Member State or, in the case of instruments only traded on a multilateral trading facility (MTF) or on other types of organised trading facilities (OTFs), issuers who have approved trading of their financial instruments on an MTF or an OTF or have requested admission to trading of their financial instruments on an MTF in a Member State and the fact that such issuers may have their financial instruments admitted to trading or traded on trading venues in different Member States, it should be ensured that in all instances the single competent authority receiving the notification would be the one with the most interests in market supervision and to avoid the exercise of discretion by the issuer. This approach relies on using the notion of equity securities.

(18) The duty to notify delays in disclosure of inside information to the competent authority set out in Article 17(4) of Regulation (EU) No 596/2014 also applies to emission allowance market participants. In terms of scope, Regulation (EU) No 596/2014 applies to emission allowance market participants active either on the primary market of emission allowances or auctioned product based thereon (bidding in the auctions) and on secondary markets of emission allowances of derivatives thereof.

(19) To ensure that a single competent authority is identified with certainty for emission allowance market participants, the competent authority for the purpose of the notifications under Article 17(4) of Regulation (EU) No 596/2014 should be the competent authority of the Member State where the emission allowance market participant is registered, as under Article 19(2) of that Regulation, rather than the competent authority of each of the trading venues where the emission allowances are traded.

(20) The choice of the competent authority of the Member State where the emission allowance market participant is registered is a solution that always identifies with certainty a single competent authority, and this limits the administrative burden on emission allowance market participants by ensuring that they do not have to make multiple and parallel notifications to several competent authorities.

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(21) An issuer may allow a person discharging managerial responsibilities to proceed with immediate sales of its shares during a closed period under exceptional circumstances. The issuer's permission should be given on a case-by-case basis, and the first criterion should be that a person discharging managerial responsibilities has requested, and respectively obtained, prior to any trading, the issuer's permission to trade. To allow the issuer to assess the individual circumstances of each single case, that request should be reasoned and include an explanation of the transaction envisaged and description of the exceptional character of the circumstances.

(22) The decision to grant the permission to trade should only be envisaged if the reason for requesting to enter a transaction is exceptional. That exemption should be construed narrowly without unduly widening the scope of the exemption of prohibition to trade during a closed period. The circumstances in which an exception may be granted should be not only extremely urgent but also unforeseen, compelling and not being generated by the person discharging managerial responsibilities.

(23) Where the persons discharging managerial responsibilities present situations which are unforeseen, compelling and beyond their control, they should only be allowed to sell shares to obtain the necessary financial resources. Those situations could stem from a financial commitment that the person discharging managerial responsibilities has to fulfil, such as a legally enforceable demand, including a court order, and provided that the person discharging managerial responsibilities cannot reasonably meet this commitment without selling the concerned shares. It could also stem from a situation entered into by the person discharging managerial responsibilities before the closed period has started (for example, a tax liability) and requiring the payment of a sum to a third party that could not be fully or partly funded by the person discharging managerial responsibilities in ways other than selling issuer's shares.

(24) With regard to transactions made under or related to employee share or saving scheme, qualification or entitlement of shares it must be established whether they can be permitted by the issuer. Therefore, certain types of transactions should be clearly identified and determined in detail. The characteristics of such transactions relate to the nature of the transaction (e.g. a purchase or sale, exercise of option or other entitlements), the timing of the transaction or of the entering of the person discharging managerial responsibilities into a particular scheme, and whether the transaction and its characteristics (e.g. execution date, amount) was agreed, planned and organised a reasonable period before the closed period starts.

(25) In addition, transactions where the beneficial interest does not change, could be undertaken at the initiative of the person discharging managerial responsibilities, provided that that person has requested and obtained the permission from the issuer prior to the envisaged transaction. The concerned transaction should only relate to a transfer of the concerned instruments between accounts of the person discharging managerial responsibilities (for instance, between schemes), without entailing a change in the price of the instruments transferred. This approach does not include transfer of financial instruments or other transactions such as sales or purchases between the person