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Commission Implementing Regulation (EU) 2016/347 of 10 March 2016 laying down implementing technical standards with regard to the precise format of insider lists and for updating insider lists in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2016/347

of 10 March 2016

laying down implementing technical standards with regard to the precise format of insider lists and for updating insider lists 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 Article 18(9) thereof,

Whereas:

(1) Pursuant to Article 18 of Regulation (EU) No 596/2014, issuers, emission allowance market participants, auction platforms, auctioneers and auction monitor, or any other persons acting on their behalf or on their account are required to draw up insider lists and keep them up to date in accordance with a precise format.

(2) The establishment of a precise format, including the use of standard templates, should facilitate the uniform application of the requirement to draw up and update insider lists laid down in Regulation (EU) No 596/2014. It should also ensure that competent authorities are provided with the information necessary to fulfil the task of protecting the integrity of the financial markets and investigate possible market abuse.

(3) Since multiple pieces of inside information can exist within an entity at the same time, insider lists should precisely identify the specific pieces of inside information to which persons working for issuers, emission allowance market participants, auction platforms, auctioneers and auction monitor have had access to (whether it is, inter alia, a deal, a project, a corporate or a financial event, publication of financial statements or profit warnings). To that end, the insider list should be divided into sections with a separate section for each piece of inside information. Each section should list all persons having access to the same specific piece of inside information.

(4) To avoid multiple entries in respect of the same individuals in different sections of the insider lists, the issuers, emission allowance market participants, auction platforms, auctioneers and auction monitor, or the persons acting on their behalf or on their

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account, may decide to draw up and keep up to date a supplementary section of the insider list, referred to as the permanent insiders section, which is of a different nature to the rest of sections of the insider list, as it is not created upon the existence of a specific piece of inside information. In such a case, the permanent insiders section should only include those persons who, due to the nature of their function or position, have access at all times to all inside information within the issuer, the emission allowance market participant, the auction platform, the auctioneer or the auction monitor.

(5) The insider list should in principle contain personal data that facilitates the identification of the insiders. Such information should include the date of birth, the personal address and, where applicable, the national identification number of the individuals concerned.

(6) The insider list should also contain data that may assist the competent authorities in the conduct of investigations, to rapidly analyse the trading behaviour of insiders, to establish connections between insiders and persons involved in suspicious trading, and to identify contacts between them at critical times. In this respect, telephone numbers are essential as they permit the competent authority to act swiftly and to request data traffic records, if necessary. Moreover, such data should be provided at the outset, so that the integrity of the investigation is not compromised by the competent authority having to revert in the course of an investigation to the issuer, the emission allowance market participant, the auction platform, the auctioneer, the auction monitor or the insider with further requests for information.

(7) To ensure that the insider list can be made available to the competent authority as soon as possible upon request and in order not to endanger an investigation by having to seek information from the persons in the insider list, the insider list should be drawn up in electronic format and updated at all times without delay when any of the circumstances specified in Regulation (EU) No 596/2014 for the updating of the insider list occurs.

(8) The use of specific electronic formats for the submission of insider lists as determined by competent authorities should also decrease the administrative burden for competent authorities, issuers, emission allowance market participants, auction platforms, auctioneers or auction monitor and those acting on their behalf or on their account. The electronic formats should allow for the information included in the insider list to be kept confidential and for the rules laid down in Union legislation on the processing of personal data and the transfer of such data to be complied with.

(9) Since issuers on an SME growth market are exempted however from drawing up and keeping insider lists up to date and, therefore, may produce and keep that information on a format other than an electronic format as required by this Regulation to the rest of issuers, it is necessary not to impose on issuers on an SME growth market the requirement of using an electronic format for submitting the insiders lists to competent authorities. Likewise, it is also appropriate not to require the submission of certain personal data where such data is not available to those issuers at the moment the insider list is requested. Insider lists should be in any case submitted in a way that ensures the completeness, confidentiality and integrity of the information.

(10) 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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(11) 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 by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[(2)].

(12) 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 definition shall apply:

'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.

Article 2

Format for drawing up and updating the insider list

1 Issuers, emission allowance market participants, auction platforms, auctioneers and auction monitor, or any person acting on their behalf or on their account, shall ensure that their insider list is divided into separate sections relating to different inside information. New sections shall be added to the insider list upon the identification of new inside information, as defined in Article 7 of Regulation (EU) No 596/2014.

Each section of the insider list shall only include details of individuals having access to the inside information relevant to that section.

2 The persons referred to in paragraph 1 may insert a supplementary section into their insider list with the details of individuals who have access at all times to all inside information ('permanent insiders').

The details of permanent insiders included in the supplementary section referred to in the first subparagraph shall not be included in the other sections of the insider list referred to in paragraph 1.

3 The persons referred to in paragraph 1 shall draw up and keep the insider list up to date in an electronic format in accordance with Template 1 of Annex I.

Where the insider list contains the supplementary section referred to in paragraph 2, the persons referred to in paragraph 1 shall draw up and keep that section updated in an electronic format in accordance with Template 2 of Annex I.

4 The electronic formats referred to in paragraph 3 shall at all times ensure:

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a the confidentiality of the information included by ensuring that access to the insider list is restricted to clearly identified persons from within the issuer, emission allowance market participant, auction platform, auctioneer and auction monitor, or any person acting on their behalf or on their account that need that access due to the nature of their function or position;

b the accuracy of the information contained in the insider list;

c the access to and the retrieval of previous versions of the insider list.

5 The insider list referred to in paragraph 3 shall be submitted using the electronic means specified by the competent authority. Competent authorities shall publish on their website the electronic means to be used. Those electronic means shall ensure that completeness, integrity and confidentiality of the information are maintained during the transmission.

Article 3

SME growth market issuers

For the purposes of Article 18(6)(b) of Regulation (EU) No 596/2014, an issuer whose financial instruments are admitted to trading on an SME growth market shall provide the competent authority, upon its request, with an insider list in accordance with the template in Annex II and in a format that ensures that the completeness, integrity and confidentiality of the information are maintained during the transmission.

Article 4

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, 10 March 2016.

For the Commission

The President

Jean-Claude JUNCKER