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 (Text with EEA relevance)

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank[(1)],

Having regard to the opinion of the European Economic and Social Committee[(2)],

Acting in accordance with the ordinary legislative procedure[(3)],

Whereas:

(1) A genuine internal market for financial services is crucial for economic growth and job creation in the Union.

(2) An integrated, efficient and transparent financial market requires market integrity. The smooth functioning of securities markets and public confidence in markets are prerequisites for economic growth and wealth. Market abuse harms the integrity of financial markets and public confidence in securities and derivatives.

(3) Directive 2003/6/EC of the European Parliament and of the Council[(4)] completed and updated the Union's legal framework to protect market integrity. However, given the legislative, market and technological developments since the entry into force of that Directive, which have resulted in considerable changes to the financial landscape, that Directive should now be replaced. A new legislative instrument is also needed to ensure that there are uniform rules and clarity of key concepts and a single rule book in line with the conclusions of the report of 25 February 2009 by the High Level Group on Financial Supervision in the EU, chaired by Jacques de Larosière (the 'de Larosière Group').

Changes to legislation: *There are outstanding changes not yet made to Regulation (EU) No 596/2014 of the European Parliament and of the Council. 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) View outstanding changes*

(4) There is a need to establish a more uniform and stronger framework in order to preserve market integrity, to avoid potential regulatory arbitrage, to ensure accountability in the event of attempted manipulation, and to provide more legal certainty and less regulatory complexity for market participants. This Regulation aims at contributing in a determining manner to the proper functioning of the internal market and should therefore be based on Article 114 of the Treaty on the Functioning of the European Union (TFEU), as interpreted consistently in the case-law of the Court of Justice of the European Union.

(5) In order to remove the remaining obstacles to trade and the significant distortions of competition resulting from divergences between national laws and to prevent any further obstacles to trade and significant distortions of competition from arising, it is necessary to adopt a Regulation establishing a more uniform interpretation of the Union market abuse framework, which more clearly defines rules applicable in all Member States. Shaping market abuse requirements in the form of a regulation will ensure that those requirements are directly applicable. This should ensure uniform conditions by preventing diverging national requirements as a result of the transposition of a directive. This Regulation will require that all persons follow the same rules in all the Union. It will also reduce regulatory complexity and firms' compliance costs, especially for firms operating on a cross-border basis, and it will contribute to eliminating distortions of competition.

(6) The Commission Communication of 25 June 2008 on 'A 'Small Business Act' for Europe' calls on the Union and its Member States to design rules in order to reduce administrative burdens, to adapt legislation to the needs of issuers on markets for small and medium-sized enterprises (SMEs) and to facilitate access to finance for those issuers. A number of provisions in Directive 2003/6/EC impose administrative burdens on issuers, in particular on those whose financial instruments are admitted to trading on SME growth markets, which should be reduced.

(7) Market abuse is a concept that encompasses unlawful behaviour in the financial markets and, for the purposes of this Regulation, it should be understood to consist of insider dealing, unlawful disclosure of inside information and market manipulation. Such behaviour prevents full and proper market transparency, which is a prerequisite for trading for all economic actors in integrated financial markets.

(8) The scope of Directive 2003/6/EC focused on financial instruments admitted to trading on a regulated market or for which a request for admission to trading on such a market has been made. However, in recent years financial instruments have been increasingly traded on multilateral trading facilities (MTFs). There are also financial instruments which are traded only on other types of organised trading facilities (OTFs) or only over the counter (OTC). The scope of this Regulation should therefore include any financial instrument traded on a regulated market, an MTF or an OTF, and any other conduct or action which can have an effect on such a financial instrument irrespective of whether it takes place on a trading venue. In the case of certain types of MTFs which, like regulated markets, help companies to raise equity finance, the prohibition against market abuse also applies where a request for admission to trading on such a market has been made.

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The scope of this Regulation should therefore include financial instruments for which an application for admission to trading on an MTF has been made. This should improve investor protection, preserve the integrity of markets and ensure that market abuse of such instruments is clearly prohibited.

(9) For the purposes of transparency, operators of a regulated market, an MTF or an OTF should notify, without delay, their competent authority of details of the financial instruments which they have admitted to trading, for which there has been a request for admission to trading or that have been traded on their trading venue. A second notification should be made when the instrument ceases to be admitted to trading. Such obligations should also apply to financial instruments for which there has been a request for admission to trading on their trading venue and financial instruments that have been admitted to trading prior to the entry into force of this Regulation. The notifications should be submitted to the European Securities and Markets Authority (ESMA) by the competent authorities and ESMA should publish a list of all of the financial instruments notified. This Regulation applies to financial instruments whether or not they are included in the list published by ESMA.

(10) It is possible that certain financial instruments which are not traded on a trading venue are used for market abuse. This includes financial instruments the price or value of which depends or has an effect on financial instruments traded on a trading venue, or the trading of which has an effect on the price or value of other financial instruments traded on a trading venue. Examples of where such instruments can be used for market abuse include inside information relating to a share or bond, which can be used to buy a derivative of that share or bond, or an index the value of which depends on that share or bond. Where a financial instrument is used as a reference price, an OTC-traded derivative can be used to benefit from manipulated prices, or be used to manipulate the price of a financial instrument traded on a trading venue. A further example is the planned issue of a new tranche of securities that do not otherwise fall within the scope of this Regulation, but where trading in those securities could affect the price or value of existing listed securities that fall within the scope of this Regulation. This Regulation also covers the situation where the price or value of an instrument traded on a trading venue depends on an OTC-traded instrument. The same principle should apply to spot commodity contracts the prices of which are based on that of a derivative and to the buying of spot commodity contracts to which financial instruments are referenced.

(11) Trading in securities or associated instruments for the stabilisation of securities or trading in own shares in buy-back programmes can be legitimate for economic reasons and should, therefore, in certain circumstances, be exempt from the prohibitions against market abuse provided that the actions are carried out under the necessary transparency, where relevant information regarding the stabilisation or buy-back programme is disclosed.

(12) Trading in own shares in buy-back programmes and Stabilising a financial instrument which would not benefit from the exemptions under this Regulation should not of itself be deemed to constitute market abuse.

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(13) Member States, members of the European System of Central Banks (ESCB), 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 they are undertaken in the public interest and solely in pursuit of those policies. Neither should transactions or orders carried out, or behaviour by, the Union, a special purpose vehicle of one or several Member States, the European Investment Bank, the European Financial Stability Facility, the European Stability Mechanism or an international financial institution established by two or more Member States, be restricted in mobilising funding and providing financial assistance to the benefit of its members. Such an exemption from the scope of this Regulation may, in accordance with this Regulation, be extended to certain public bodies charged with, or intervening in, public debt management and to central banks of third countries. At the same time, the exemptions for monetary, exchange-rate or public debt management policy should not extend to cases where those bodies engage in transactions, orders or behaviour other than in pursuit of those policies or where persons working for those bodies engage in transactions, orders or behaviour on their own account.

(14) Reasonable investors base their investment decisions on information already available to them, that is to say, on *ex ante* available information. Therefore, the question whether, in making an investment decision, a reasonable investor would be likely to take into account a particular piece of information should be appraised on the basis of the *ex ante* available information. Such an assessment has to take into consideration the anticipated impact of the information in light of the totality of the related issuer's activity, the reliability of the source of information and any other market variables likely to affect the financial instruments, the related spot commodity contracts, or the auctioned products based on the emission allowances in the given circumstances.

(15) Ex post information can be used to check the presumption that the *ex ante* information was price sensitive, but should not be used to take action against persons who drew reasonable conclusions from *ex ante* information available to them.

(16) Where inside information concerns a process which occurs in stages, each stage of the process as well as the overall process could constitute inside information. An intermediate step in a protracted process may in itself constitute a set of circumstances or an event which exists or where there is a realistic prospect that they will come into existence or occur, on the basis of an overall assessment of the factors existing at the relevant time. However, that notion should not be interpreted as meaning that the magnitude of the effect of that set of circumstances or that event on the prices of the financial instruments concerned must be taken into consideration. An intermediate step should be deemed to be inside information if it, by itself, meets the criteria laid down in this Regulation for inside information.

(17) Information which relates to an event or set of circumstances which is an intermediate step in a protracted process may relate, for example, to the state of contract negotiations, terms provisionally agreed in contract negotiations, the possibility of the placement of financial instruments, conditions under which financial instruments will be marketed,

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provisional terms for the placement of financial instruments, or the consideration of the inclusion of a financial instrument in a major index or the deletion of a financial instrument from such an index.

(18) Legal certainty for market participants should be enhanced through a closer definition of two of the elements essential to the definition of inside information, namely the precise nature of that information and the significance of its potential effect on the prices of the financial instruments, the related spot commodity contracts, or the auctioned products based on the emission allowances. For derivatives which are wholesale energy products, information required to be disclosed in accordance with Regulation (EU) No 1227/2011 of the European Parliament and of the Council[(5)] should, in particular, be considered as inside information.

(19) This Regulation is not intended to prohibit discussions of a general nature regarding the business and market developments between shareholders and management concerning an issuer. Such relationships are essential for the efficient functioning of markets and should not be prohibited by this Regulation.

(20) Spot markets and related derivative markets are highly interconnected and global, and market abuse may take place across markets as well as across borders which can lead to significant systemic risks. This is true for both insider dealing and market manipulation. In particular, inside information from a spot market can benefit a person trading on a financial market. Inside information in relation to a derivative of a commodity should be defined as information which both meets the general definition of inside information in relation to financial markets and which is required to be made public in accordance with legal or regulatory provisions at the Union or national level, market rules, contracts or customs on the relevant commodity derivative or spot market. Notable examples of such rules include Regulation (EU) No 1227/2011 for the energy market and the Joint Organisations Database Initiative (JODI) database for oil. Such information may serve as the basis of market participants' decisions to enter into commodity derivatives or the related spot commodity contracts and should therefore constitute inside information required to be made public, where it is likely to have a significant effect on the prices of such derivatives or related spot commodity contracts.
Moreover, manipulative strategies can also extend across spot and derivatives markets. Trading in financial instruments, including commodity derivatives, can be used to manipulate related spot commodity contracts and spot commodity contracts can be used to manipulate related financial instruments. The prohibition of market manipulation should capture these inter-linkages. However, it is not appropriate or practicable to extend the scope of this Regulation to behaviour that does not involve financial instruments, for example, to trading in spot commodity contracts that only affects the spot market. In the specific case of wholesale energy products, the competent authorities should take into account the specific characteristics of the definitions of Regulation (EU) No 1227/2011 when they apply the definitions of inside information, insider dealing and market manipulation under this Regulation to financial instruments related to wholesale energy products.