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THE EUROPEAN UNION**

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**NOTE**

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from:	Presidency
to:	Delegations
Subject:	Proposal for a Regulation of the European Parliament and of the Council on insider dealing and market manipulation (market abuse) - Presidency compromise

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Delegations will find attached a new Presidency compromise on the above proposal in view of the meeting of the Working Party on Financial Services on 10 September 2012.

Additions and changes to the previous proposal (doc. 12182/12) are denoted by bold underlining and the deletions by strikethroughs.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on insider dealing and market manipulation (market abuse)

(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<sup>1</sup>,

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

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Having regard to the opinion of the European Central Bank<sup>3</sup>,

Having regards to the opinion of the European Data Protection Supervisor,

Acting in accordance with the ordinary legislative procedure,

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<sup>1</sup> OJ C [...], [...], p. [...].

<sup>2</sup> OJ C , , p. .

<sup>3</sup> OJ C , , p. .

Whereas:

- (1) A genuine single market for financial services is crucial for economic growth and job creation in the Union.
- (2) An integrated and efficient 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<sup>4</sup> of the European Parliament and the Council on insider dealing and market manipulation (market abuse), adopted on 28 January 2003, completed and updated the Union's legal framework to protect market integrity. However, given the legislative, market and technological developments since then that have resulted in considerable changes to the financial landscape, that Directive should now be replaced to ensure that it keeps pace with these developments. A new legislative instrument is also needed to ensure uniform rules and clarity of key concepts and to ensure a single rulebook in line with the conclusions of the High Level Group on Financial Supervision<sup>5</sup>.
- (4) There is a need to establish a more uniform and stronger framework in order to preserve market integrity and to avoid potential regulatory arbitrage as well as to provide more legal certainty and less regulatory complexity for market participants. This directly applicable legal act aims at contributing in a determining manner to the smooth functioning of the internal market and should, consequently, be based on the provisions of Article 114 TFEU, as interpreted in accordance with the consistent case-law of the Court of Justice of the European Union.

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<sup>4</sup> OJ L 16, 12.4.2003, p.16.

<sup>5</sup> *Report of the High-Level Group on Financial Supervision in the EU*, Brussels, 25.2.2009.

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

- (6) The Commission Communication on "A Small Business Act for Europe"<sup>6</sup> 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 and to facilitate the access to finance of those issuers. A number of provisions in Directive 2003/6/EC impose administrative burdens on issuers, notably those whose financial instruments are admitted to trading on SME growth markets, that should be reduced.
- (7) Market abuse is the 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 or the misuse of inside information and market manipulation. Such behaviours prevent full and proper market transparency, which is a pre requisite 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 regulated markets **or for which a request for admission to trading on such a market had been made.** ~~but~~ **However,** in recent years financial instruments have been increasingly traded on multilateral trading facilities (MTFs). There are also financial instruments which are only traded on other types of organised trading facilities (OTFs) ~~such as broker crossing systems~~ or only traded over the counter. The scope of this Regulation should therefore be extended to include any financial instrument traded on a MTF or an OTF, or any other conduct or action which can have an effect on such a financial instrument traded on a regulated market, MTF or OTF. **In the case of certain types of MTFs which, like regulated markets, help companies raise equity finance, the prohibition against market abuse equally applies when a request for admission to trading on such a market has been made; therefore, the scope of this Regulation should include the period beginning when an application for admission to trading on a MTF has been made, where relevant. This includes but is not necessarily limited to SME growth markets.**

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<sup>6</sup> Commission Communication 'Think Small First' - A 'Small Business Act' for Europe, COM(2008) 394 final.

For transparency purposes, competent authorities should notify ESMA, which should publish a list of the financial instruments which are admitted to trading or are traded on the trading venues they supervise. **Without prejudice to the obligation of market operators to notify the competent authorities of each financial instrument which they have admitted to trading, for which there has been a request for admission to trading or that has been traded on their system.** This Regulation should apply to such financial instruments whether or not they are included in the list published by ESMA. This should improve investor protection, preserve the integrity of markets and ensure that market manipulation of such instruments is clearly prohibited.

- (8a) Certain financial instruments which are not traded on a trading venue may be used for market abuse. This includes instruments whose value depends on financial instruments traded on a trading venue, or whose trading has an effect on the value of other financial instruments traded on a trading venue, **typically derivatives. Examples may 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 whose value depends on that share or bond. When a financial instrument is used as a reference price or is generally seen as an indicator of the value of another financial instrument,~~ an OTC derivative can be used to benefit from manipulated prices, or be used to manipulate the price of a financial instrument traded on a venue. **This regulation also covers** ~~The scope of this Regulation should therefore include all financial instruments whose **trading has an effect on the** value depends on **of other** financial instruments traded on a trading venues. **This would include, for example, the planned issuance of a new tranche of securities not otherwise within the scope of this Regulation, but where trading in those instruments could affect the price of existing listed securities that are within the scope of this Regulation. This Regulation also covers** ~~This also includes the **possible** situation where the value of the instrument traded on a trading venue depends on the OTC instrument. ~~In addition, the scope of this regulation should include instruments linked by reference to an event.~~ The same principle should apply to spot commodity contracts the price of which is based on that of a derivative, as well as to the buying of spot commodity contracts to which financial instruments are referenced.~~~~

- (8b) Activities of trading in own shares in buy-back programmes and of stabilisation of a financial instrument which would not benefit from the exemption of the prohibitions of this Regulation as provided for by Article 3, should not in themselves be deemed to constitute market abuse.
- (9) Stabilisation of ~~financial instruments~~ **securities** or trading in own shares in buy-back programmes can be legitimate, in certain circumstances, for economic reasons and should not, therefore, in themselves be regarded as market abuse provided the actions are carried out under the necessary transparency as provided for by Article 3, where relevant information regarding the stabilisation or buy-back programme is disclosed.
- (10) Member States and the European System of Central Banks, national central banks and other agencies or special purpose vehicles of one or several Member States or third countries as well as 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 or climate policy. Neither should transactions or orders carried out by the Union, a special purpose vehicle for several Member States or third countries, the European Investment Bank, the European Financial Stability Facility, or an international financial institution established by two or more Member States or third countries be restricted in actions with the purpose of mobilising funding and provide financial assistance to the benefit of its members.
- (11) 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.

- (12) Ex post information may 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.

**(12a) 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 may be inside information if, by itself meets the criteria set forth in this Regulation for inside information.**

- (13) 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, notably information required to be disclosed according to Regulation [Regulation (EU) No... of the European Parliament and the Council on Wholesale Energy Market Integrity and Transparency] should be considered as inside information.
- (14) Inside information can be abused before an issuer is under the obligation to disclose it. This ~~can~~**may include, for example,** 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, provisional terms for the placement of financial instruments, the consideration of the inclusion of a financial instrument in a major index or the deletion of a financial instrument from such index-, **and excludes mere speculation or rumour by third parties as this does not fall within the definition of inside information under this Regulation.** Such information may be inside information for investors, in which case the prohibition against insider dealing should apply. However, such information may not be under an obligation to be disclosed.

- (14a) The intention of this Regulation is not 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.
- (15) Spot markets and related derivative markets are highly interconnected and global, and market abuse may take place across markets as well as across borders. 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. Therefore, the general definition of inside information in relation to financial markets should also apply to all information which is relevant to a derivative or the related commodity. In particular this include, information 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 derivatives or spot market and which is likely to have a significant effect on the prices on such derivatives or related spot commodity contracts. Notable examples of such rules are REMIT for the energy market and the 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 therefore constitutes inside information required to be made public, where it is likely to have a significant effect on the prices on 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 interlinkages. However, it is not appropriate or practicable to extend the scope of the 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... of the European Parliament and the Council on Wholesale Energy Market Integrity and Transparency] when they apply the definitions of the inside information, insider dealing and market manipulation of this Regulation to financial instruments related to wholesale energy products.

- (16) As a consequence of the classification of emission allowances as financial instruments as part of the review of the Markets in Financial Instruments Directive, those instruments will also come within the scope of this Regulation. Pursuant to the EU Emissions Trading Scheme (ETS) Directive the Commission, Member States and other officially designated bodies are *inter alia* responsible for the technical issuance of emission allowances, their free allocation to eligible industry sectors and new entrants and more generally the development and implementation of the Union's climate policy framework which underpins the supply of emission allowances for the EU ETS compliance buyers. In the exercise of those duties those public bodies have access to price-sensitive non-public information, ~~and pursuant to the EU ETS Directive they may need to perform certain market operations in relation to emission allowances.~~ In order to preserve the ability of the European Commission, Member States and other officially designated bodies to develop and execute the Union's climate policy, the activities of those public bodies, undertaken in the pursuit of that policy and concerning emission allowances, should be exempt from the application of this Regulation. Such exemption should not have a negative impact on the overall market transparency, as those public bodies have statutory obligations to operate in a way that ensures orderly, fair and non-discriminatory disclosure of and access to any decisions, developments and data, which have a price-sensitive nature. Furthermore, safeguards of fair and non-discriminatory disclosure of specific price-sensitive information held by public authorities exist under the EU ETS Directive and its implementing acts. At the same time, the exemption for public bodies acting in pursuit of the Union's climate policy should not extend to cases where those public bodies engage in a conduct or in transactions which are not in the pursuit of this Union's climate policy or when physical persons working for any of those bodies engage in a conduct or in transactions on their own account.

(16a) Moreover, the duty to disclose inside information needs to be addressed to participants in the carbon market in general. In order to avoid exposing the market to reporting that is not useful and as well as to maintain cost-efficiency of the measure foreseen, it appears necessary to limit the regulatory impact of that duty to only those EU ETS operators, that – by virtue of their size and activity – can reasonably be expected to be able to have a significant effect on the price of emission allowances. The Commission should adopt measures establishing a minimum threshold for the purposes of application of this exemption by means of a delegated act.

The information to be disclosed should concern the physical operations of the disclosing party and not own plans or strategies for trading emission allowances. Where emission allowance market participants already comply with equivalent inside information disclosure duties, notably pursuant to Regulation on energy market integrity and transparency (Regulation (EU) No...of the European Parliament and the Council on Wholesale Energy Market Integrity and Transparency), the obligation to disclose inside information concerning emission allowances should not lead to the duplication of mandatory disclosures with substantially the same content.

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**-In the case of emission allowance market participants with aggregate emissions or rated thermal input at or below the threshold set, since the information about their physical operations is deemed to be non-material for the disclosure purposes, it should also be deemed not to have a significant effect on the price of emission allowances, auctioned products based thereon or on the prices of related derivative financial instruments. Such emission allowance market participants should nevertheless be covered by the prohibition of insider dealing in relation to any other information they have access to and which is inside information**

- (16b) The essential characteristic of insider dealing consists in an unfair advantage being obtained from inside information to the detriment of third parties who are unaware of it and, consequently, the undermining of the integrity of financial markets and investor confidence. Consequently, the prohibition on insider dealing applies where an insider who is in a possession of inside information takes unfair advantage of the benefit gained from that information by entering into market transactions in accordance with that information. An insider in possession of inside information who carries out any transaction related to that information ~~may~~shall be presumed to have used that information. Orders placed before a person possesses inside information should not be presumed to be insider dealing, but when a person has received inside information, any subsequent change related to that information to these orders, including the cancellation or amendment of an order, or an attempt to cancel or amend an order, should be presumed to constitute insider dealing. The presumption may, however, be rebutted if the person establishes that he did not use the inside information in carrying out the transaction. Examples of not using inside information may include, but are not limited to, situations in which a legal person has a standard policy of cancelling all outstanding orders, when that [legal] person comes into possession of inside information.
- (16c) When a legal or natural person in possession of inside information, acquires or disposes of, or attempts to acquire or dispose of, for his own account or for the account of a third party, either directly or indirectly, financial instruments to which that information relates it should be implied that the person has “used that information”. ~~This presumption is, without prejudice to the right of the defence and, in particular, the right to be able to rebut that presumption.~~ The question whether a person has infringed the prohibition on insider dealing or attempt to commit insider dealing should be analysed in the light of the purpose of this Regulation, which is to protect the integrity of the financial market and to enhance investor confidence, which is based, in turn, on the assurance that investors will be placed on an equal footing and protected from the misuse of inside information.

- (16d) Use of inside information can consist in the acquisition or disposal of a financial instrument, or an auctioned product based on emission allowances, or in the cancellation or amendment of an order, or in an attempt to acquire or dispose of a financial instrument or to cancel or amend an order, by a person who knows, or ought to have known, that the information possessed constitutes inside information. In this respect, the competent authorities should consider what a normal and reasonable person would know or should have known in the circumstances. Moreover, the mere fact that market-makers, bodies authorised to act as counterparties, or persons authorised to execute orders on behalf of third parties with inside information confine themselves, in the first two cases, to pursuing their legitimate business of buying or selling financial instruments or, in the last case, to carrying out, canceling or amending an order dutifully, should not in itself be deemed to constitute use of such inside information.
- (16e) This Regulation should be interpreted in a manner consistent with the measures adopted by the Member States to protect the interests of holders of transferable securities carrying voting rights in a company (or which may carry such rights as a consequence of the exercise of rights or conversion) when the company is subject to a public take-over bid or other proposed change of control.

~~The use of information relating to an offeree company (as defined in Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids), including inside information, gained by an offeror (as defined in Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids), to acquire transferable securities carrying voting rights in a company or which may carry such rights as a consequence of the exercise of rights of conversion or exchange, through the acceptance of a bid carried out in compliance with all rules and regulations on takeover bids may be considered as not being insider dealing.~~

———In particular this Regulation should be interpreted in a manner consistent with the laws, regulations and administrative provisions adopted in relation to takeover bids, merger transactions and other transactions affecting ownership or control of companies regulated by the supervisory authorities appointed by Member States pursuant to Article 4 of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids.

(16f) Deleted

~~(16g) Research and estimates developed from publicly available data should not be regarded as inside information and, therefore, any transaction carried out on the basis of such research or estimates should not in itself be deemed to constitute the use of inside information.~~

(16h) Protections from the charge of insider dealing are necessary in order to avoid inadvertently prohibiting forms of financial activity which are legitimate, namely where there is no effect of market abuse. This may include, for example, recognising the role of market makers, when acting in the legitimate capacity of providing market liquidity. However, the protections in this Regulation to market makers, bodies authorised to act as counter parties or persons authorised to execute orders on behalf of third parties with inside information do not extend to activities clearly prohibited under this Regulation and, in particular to the practice commonly known as “front-running” Another example may be rebutting the liability of legal persons, when natural persons within their employment commit abuse in circumstances where those legal persons have taken all reasonable measures to prevent abuse from occurring.

However, none of these persons, either legal or natural persons as appropriate, will be protected by virtue of their professional function; they will only be protected if they act in a fit and proper manner, meeting both the standards expected of their profession and of this Regulation namely market integrity and investor protection.

**(16i) Market soundings are interactions between a seller of financial instruments and one or more potential investors, prior to the announcement of a transaction, in order to gauge the interest of potential investors in a possible transaction and its pricing, size and structuring. Market soundings may involve an initial or secondary offer of relevant securities, and are distinct from ordinary trading. They are a highly valuable tool to gauge the opinion of potential investors, enhance shareholder dialogue, ensure that deals run smoothly, and that the views of issuers, existing shareholders and potential new investors are aligned. They may be particularly beneficial when markets lack confidence or a relevant benchmark, or are volatile. Thus the ability to conduct market soundings is important for the proper functioning of capital markets and market soundings should not in themselves be regarded as market abuse.**

**(16j) Examples of market soundings would include, but are not limited to, where the sell-side firm has been in discussions with an issuer about a potential transaction, and it has decided to gauge potential investor interest in order to determine the terms that will make up a transaction; where an issuer intends to announce a debt issuance or additional equity offering and key investors are contacted by a sell-side firm and given the full terms of the deal to obtain a financial commitment to participate in the transaction; or where the sell-side is seeking to sell a large amount of securities on behalf of an investor and seeks to gauge potential interest in these securities from other potential investors.**

**(16k) Conducting market soundings may require disclosure to potential investors of inside information. There will generally only be the potential to benefit financially from trading on the basis of inside information passed in a market sounding where there is an existing market in the financial instrument that is the subject of the market sounding or in a related financial instrument. Given the timing of such discussions, it is possible that inside information may be disclosed to the investor in the course of the market sounding after a financial instrument has been admitted to trading on a regulated market or traded on a MTF or OTF. Before engaging in a market sounding, the disclosing market participant must assess whether that market sounding will involve the disclosure of inside information.**

**(16l) Inside information is disclosed legitimately if it is disclosed in the normal course of the exercise of a person's employment, profession or duty. Where a market sounding involves the disclosure of inside information, the disclosing market participant will be considered to be acting within the course of his employment, profession or duty where, at the time of making the disclosure, he informs the person to whom the disclosure is made that he may be given inside information; that he will be restricted by the provisions of this Regulation from trading or acting on that information; that reasonable steps must be taken to protect the ongoing confidentiality of the information; and that he must inform the disclosing market participant of the identities of all natural and legal persons to whom the information is disclosed in the course of developing a response to the market sounding. The disclosing market participant must also comply with the obligations, to be set out in detail in regulatory technical standards, regarding the maintenance of records of information disclosed. Market participants who do not comply with the detailed provisions of this Regulation when conducting a market sounding should not be presumed to have improperly disclosed inside information but they cannot take advantage of the exemption given to those who have complied with such provisions.**

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**The question whether they have infringed the prohibition on improper disclosure of inside information should be analysed in light of all the relevant provisions of this Regulation, and all disclosing market participant are under an obligation to record in writing their assessment, before engaging in a market sounding, whether that market sounding will involve the disclosure of inside information.**

**(16m) Potential investors who are the subject of a market sounding in turn should consider if the information disclosed to them amounts to inside information so that they are prohibited from dealing on the basis of it or further disclosing the inside information. Potential investors remain subject to insider dealing and improper disclosure rules, as set out in this Regulation. In order to assist potential investors in their considerations and as regards what steps they should take so as not to contravene the provisions of this Regulation, ESMA shall issue guidelines.**

(17) Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and the Council establishing a scheme for greenhouse gas emission allowances trading within the Community<sup>7</sup> provided for two parallel market abuse regimes applicable to the auctions of emission allowances. However, as a consequence of the classification of emission allowances as financial instruments, this Regulation should constitute a single rulebook of market abuse measures applicable to the entirety of the primary and secondary market in emission allowances.

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<sup>7</sup> Commission Regulation (EU) No 1031/2010 of 12 November 2010. on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and the Council establishing a scheme for greenhouse gas emission allowances trading within the Community, OJ L 302, 18.11.2010, p. 1.

The Regulation shall also apply to the auctioning of emission allowances or other auctioned products based thereon pursuant to Commission Regulation No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and the Council establishing a scheme for greenhouse gas emission allowances trading within the Community

- (18) This Regulation should provide measures regarding market manipulation that are capable of being adapted to new forms of trading or new strategies that may be abusive. To reflect the fact that trading of financial instruments is increasingly automated, it is desirable that the definition of market manipulation provides examples of specific abusive strategies that may be carried out by algorithmic trading including high frequency trading. The examples provided are neither intended to be exhaustive nor are they intended to suggest that the same strategies carried out by other means would not also be abusive.
- (18a) The prohibitions on insider dealing and market manipulation should also cover those persons who act in collaboration to commit market abuse. Examples may include, but are not limited to, brokers who devise and recommend a trading strategy designed to result in market abuse, persons who encourage a person with inside information to disclose that information improperly, persons who develop software in collaboration with a trader for the purpose of facilitating market abuse.
- ~~(18b) When this Regulation refers to rules governing the freedom of the press and the freedom of expression in other media and the rules or codes governing the journalist professions, consideration shall be taken to the rules or codes in Member States when applying their constitutional rules relating to freedom of the press and freedom of expression in the media, and to member states obligations under the treaties.~~

- (19) In order to complement the prohibition of market manipulation, this Regulation should include a prohibition against attempting to engage in market manipulation. An attempt to engage in market manipulation should be distinguished from actual behaviour which is likely to **result in market manipulation (as provided for in article 8) as both activities are prohibited under this Regulation.** ~~give false or misleading signals. An attempt to engage in market manipulation should be prohibited where a person has attempted to engage in behaviour which, if successful, would have given or been likely to give false or misleading signals, or attempt to enter into a transaction, to place an order to trade, to engage in any other behaviour, or to disseminate information which if successful would have given or been likely to give false or misleading signals.~~

Such an attempt may include, but not be limited to, situations where the activity is started but not completed, for example as a result of failed technology or an instruction to trade which is not acted upon.

- (19a) Without prejudice to the aim of this Regulation and its directly applicable provisions, ~~as markets across Member States are different and have different practices,~~ 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 reasons for entering into such transactions or issuing orders to trade were legitimate and that the transactions and orders to trade were in conformity with accepted practice on the ~~regulated~~ market concerned. ~~This, however, shall only be allowed for specific cases, where competent authorities of a Member State are authorized to accept these practices within the territory of this Member State.~~

**An accepted market practice can only be established by the competent authority of the market concerned. A sanction could still be imposed if the competent authority established that there was another, illegitimate, reason behind these transactions or orders to trade.**

(20) This Regulation should also clarify that engaging in market manipulation or attempting to engage in market manipulation in a financial instrument may take the form of using related financial instruments such as derivative instruments that are traded on another trading venue or over the counter. Prohibiting attempts to engage in market manipulation is necessary to enable competent authorities to sanction such attempts, even in the absence of an identifiable effect on market prices.

**(20a) Many financial instruments are priced by reference to benchmarks. The actual or attempted manipulation of benchmarks, such as interbank offer rates, can have a serious impact on market confidence and may result in significant losses to investors or distort the real economy. Therefore, specific provisions in relation to benchmarks are required in order to preserve the integrity of the markets and ensure that competent authorities can enforce a clear prohibition of the manipulation of benchmarks. It is necessary to complement the general prohibition of market manipulation by prohibiting the manipulation of the benchmark itself and any transmission of false or misleading information, provision of false or misleading inputs, or any other action that manipulates the calculation of a benchmark, including the benchmark's methodology. Those rules are in addition to Regulation (EU) No 1227/2011 of the European Parliament and the Council on Wholesale Energy Market Integrity and Transparency which prohibits the deliberate provision of false information to undertakings which provide price assessments or market reports on wholesale energy products with the effect of misleading market participants acting on the basis of those price assessments or market reports.**

(21) In order to ensure uniform market conditions between trading venues and facilities subject to this Regulation, any person who operates the business of regulated markets, MTFs and OTFs should be required to adopt proportionate structural provisions aimed at preventing and detecting market manipulation practices.

- (22) Manipulation or attempted manipulation of financial instruments may also consist in placing orders which may not be executed. Further, a financial instrument may be manipulated through behaviour which occurs outside a trading venue. Therefore, persons who professionally arrange or execute transactions are required to have and maintain systems in place to detect and report suspicious transactions. This should also include reporting suspicious orders and suspicious transactions that take place outside a trading venue.
- (23) Manipulation or attempted manipulation of financial instruments may also consist in disseminating false or misleading information. The spreading of false or misleading information can have a significant impact on the prices of financial instruments in a relatively short period of time. It may consist in the invention of manifestly false information, but also the wilful omission of material facts, as well as the knowingly inaccurate reporting of information. This form of market manipulation is particularly harmful to investors, because it causes them to base their investment decisions on incorrect or distorted information. It is also harmful to issuers, because it reduces the trust in the available information related to them. A lack of market trust can in turn jeopardise an issuer's ability to issue new financial instruments or to secure credit from other market participants in order to finance his operations. Information spreads through the market place very quickly. As a result, the harm to investors and issuers may persist for a relatively long-time until the information is found to be false or misleading, and can be corrected by the issuer or those responsible for its dissemination. It is therefore necessary to qualify the spreading of false or misleading information, including rumours and false or misleading news, as being a breach of this Regulation. It is therefore appropriate not to allow those active in the financial markets to freely express information contrary to their own opinion or better judgement, which they know or should know to be false or misleading, to the detriment of investors and issuers.

- (24) The public disclosure of inside information by an issuer is essential to avoid insider trading and ensure that investors are not misled. Issuers should therefore be required to inform the public as soon as possible of inside information. However this obligation may under special circumstances ~~lead to disproportionate losses~~ **prejudice the legitimate interests of** the issuer. In such circumstances, delayed disclosure should, be permitted provided that the delay would not be likely to mislead the public and the issuer is able to ensure the confidentiality of the information.

The issuer of ~~the~~ **financial instrument** ~~represented by depository receipts~~ is only under an obligation to disclose inside information if he has requested or approved admission of the ~~depository receipts~~ **financial instrument** to trading.

- (25) In order to protect the public interest, to preserve the stability of the financial system and for example to avoid that liquidity crises in [financial institutions] turn into solvency crises due to a sudden withdrawal of funds, it may be appropriate to allow, in exceptional circumstances, the delay of the disclosure of inside information for [financial institutions]. In particular, this may apply to information pertinent to temporary liquidity problems, where they need to receive central banking lending including emergency liquidity assistance from a central bank where disclosure of the information would have a systemic impact. This delay should be conditional upon the issuer obtaining the consent of the relevant competent authority and it being clear that the wider public and economic interest in delaying disclosure outweighs the interest of the market in receiving the information which is subject to delay.
- (25a) In respect to [financial institutions], notably where they receive central bank lending, including emergency liquidity assistance, the assessment of whether the information is of systemic importance and whether delay of disclosure is in the public interest should be made by the competent authority, after consulting with the relevant central bank and any other relevant national authority.

- (25b) The use or attempted use of inside information to trade either on one's own account or on the account of a third party should be clearly prohibited. Use of inside information can also consist of trading in emission allowances **and derivatives thereof and of bidding in the auctions products of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (No) 1031/2010** by persons who know, or ought to know, that the information they possess constitutes inside information. Information regarding the market participant's own plans and strategies for trading should not be considered as inside information ~~for the same market participant~~, although information regarding a third party's plans and strategies for trading may amount to inside information. When in possession of inside information, transactions conducted only in order to reduce risks (hedging) directly related to a commercial activity on the commodity market should not in itself be deemed to constitute insider dealing.
- (26) The requirement to disclose inside information can be burdensome for small and medium-sized enterprises, as defined by [new MiFID recast], whose financial instruments are admitted to trading on SME growth markets, given the costs of monitoring information in their possession and seeking legal advice about whether and when information needs to be disclosed. Nevertheless, prompt disclosure of inside information is essential to ensure investor confidence in those issuers. Therefore, the European Securities and Markets Authority (ESMA) should be able to issue guidelines which assist issuers to comply with the obligation to disclose inside information without compromising investor protection.
- (27) Insider lists are an important tool for regulators when investigating possible market abuse, but national differences in regards to data to be included in those lists impose unnecessary administrative burdens on issuers. Data fields required for insider lists should therefore be uniform in order to reduce those costs.

The requirement to keep and constantly update insider lists imposes administrative burdens specifically on issuers in SME growth markets. As competent authorities are able to exercise effective market abuse supervision without having those lists available at all times for those issuers they should be exempt from this obligation in order to reduce the administrative costs imposed by this Regulation.

- (27a) The establishment, by issuers or persons acting on their account, of lists of persons working for them under a contract of employment or otherwise and having access to inside information relating, directly or indirectly, to the issuer, is a valuable measure for protecting market integrity. These lists may serve issuers or such persons to control the flow of inside information and thereby manage their confidentiality duties. Moreover, these lists may also constitute a useful tool for competent authorities to which any insider has access and the date on which it gained access thereto is necessary for issuers and competent authorities. Access to inside information relating, directly or indirectly, to the issuer by persons included on such a list is without prejudice to their duty to refrain from insider dealing on the basis of any inside information as defined in this Regulation.
- (28) Greater transparency of transactions conducted by persons discharging managerial responsibilities at the issuer level and, where applicable, persons closely associated with them, constitutes a preventive measure against market abuse. The publication of those transactions on at least an individual basis can also be a highly valuable source of information to investors.

It is necessary to clarify that the obligation to publish those managers' transactions also includes the pledging or lending of financial instruments and also transactions by another person exercising discretion for the manager. In order to ensure an appropriate balance between the level of transparency and the number of reports notified to competent authorities and the public, a uniform threshold should be introduced in this Regulation below which transactions shall not be notified.

- (28a) The notification of transactions conducted by a person discharging managerial responsibilities within an issuer on their own account, or by person closely associated with them, is not only a [valuable] information for market participants, but also constitutes an additional means for competent authorities to supervise markets. The obligation by senior executive to notify transactions is without prejudice to their duty to refrain from insider dealing on the basis of any inside information as defined in this regulation.
- (28b) Notification of transactions should be in accordance with the rules on transfer of personal data laid down in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on protection of individuals with regard to the processing of personal data and on the movement of such data.
- (29) A set of effective tools and powers for the competent authority of each Member State guarantees supervisory effectiveness. **This Regulation therefore in particular foresees a minimum set of supervisory and investigative powers competent authorities of Member States should be entrusted with in accordance with national law. Those powers should be exercised, where the national law so requires, by application to the competent judicial authorities.**
- (29a)** Market undertakings and all economic actors should also contribute to market integrity. In this sense, the designation of a single competent authority for market abuse should not exclude collaboration links or delegation under the responsibility of the competent authority, between that authority and market undertakings with a view to guaranteeing efficient supervision of compliance with the provisions in this Regulation.
- (30) For the purpose of detecting cases of insider dealing and market manipulation, it is necessary for competent authorities to have in accordance with national law the possibility after having obtained the authorisation of judicial authorities to have access to natural persons' premises and the premises of legal persons, where the legal person is not under supervision by a competent authority in order to seize documents.

The access to such premises is necessary in particular where: the person to whom a demand for information has already been made fails (wholly or in part) to comply with it; or where there are reasonable grounds for believing that if a demand were to be made, it would not be complied with, or that the documents or information to which the information requirement relates, would be removed, tampered with or destroyed.

- (31) Existing recordings of telephone conversations and data traffic records from investment firms executing and documenting the executions of transactions, as well as existing telephone and data traffic records from telecommunications operators constitute crucial, and sometimes the only, evidence to detect and prove the existence of insider dealing and market manipulation. Telephone and data traffic records may establish the identity of a person responsible for the dissemination of false or misleading information or that persons have been in contact at a certain time, and that a relationship exists between two or more people. Access to data and telephone records is necessary to provide evidence and investigate leads on possible insider dealing or market manipulation, and therefore for the detection and sanctioning of market abuse. In order to introduce a level playing field in the Union in relation to the access to telephone and existing data traffic records held by a telecommunication operator or the existing recordings of telephone conversations and data traffic held by an investment firm, competent authorities should in conformity with national law be able to require existing telephone and existing data traffic records held by a telecommunication operator insofar as permitted under national law and existing recordings of telephone conversations as well as data traffic held by an investment firm, in those cases where such records related to the subject-matter of the inspection or investigation may be relevant to prove insider dealing or market manipulation in violation of this Regulation. Access to telephone and data traffic records held by a telecommunications operator do not encompass the content of voice communications by telephone.

- (32) Since market abuse can take place across borders and markets, competent authorities should be required to cooperate and exchange information with other competent and regulatory authorities, and with ESMA, in particular in relation to investigation activities. Where a competent authority is convinced that market abuse is being, or has been, carried out in another Member State or affecting financial instruments traded in another Member State, it should notify that fact to the competent authority and ESMA. In cases of market abuse with cross-border effects, ESMA may coordinate the investigation if requested to do so by one of the competent authorities concerned.
- (33) In order to ensure exchanges of information and cooperation with third country authorities in relation to the effective enforcement of this Regulation, competent authorities should conclude cooperation arrangements with their counterparts in third countries. Any transfer of personal data carried out on the basis of those agreements shall comply with Directive (EC) 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>8</sup> and with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>9</sup>.

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<sup>8</sup> OJ L 281, 23.11.1995, p. 31.

<sup>9</sup> OJ L 8, 12.1.2001, p. 1.

- (34) A sound prudential and conduct of business framework for the financial sector should rest on strong supervisory, investigatory and sanctioning regimes. To this end, supervisory authorities should be equipped with sufficient powers to act and should be able to rely on equal, strong and deterrent sanctions regimes against all financial misconduct, sanctions which should be enforced effectively. However, the High Level Group considered that none of these elements is currently in place. A review of existing sanctioning powers and their practical application aimed at promoting convergence of sanctions across the range of supervisory activities has been carried out in the Commission Communication of 8 December 2010 on reinforcing sanctioning regimes in the financial sector<sup>10</sup>.
- (35) **Sanctions applied in specific cases should be determined taking into account where appropriate factors such as the disgorgement of any identified financial benefit, the gravity and duration of the breach, any aggravating or mitigating factors, the need for fines to have a deterrent effect and, where appropriate, include a discount for cooperation with the competent authority. In particular, the actual amount of administrative fines to be imposed in a specific case may reach the maximum level provided for in this Regulation, or the higher level provided for in national law, for very serious breaches, while fines significantly lower than the maximum level may be applied to minor breaches or in case of settlement. This regulation should not limit Member States in their ability to provide for higher levels of administrative sanctions.**

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<sup>10</sup> European Commission, Communication on *Reinforcing sanctioning regimes in the financial sector*, COM (2010) 716, 8 December 2010.

~~Therefore, as well as providing regulators with effective supervisory and investigatory tools and powers, a set of administrative measures, sanctions and fines should be laid down to ensure a common approach in Member States and to enhance their deterrent effect. The Regulation should refer to both administrative sanctions and measures in order to cover all cases of non-compliance, irrespective of their qualification as a sanction or measure under national law. Administrative fines should where appropriate take into account factors such as the disgorgement of any identified financial benefit, the gravity and duration of the breach, any aggravating or mitigating factors, the need for fines to have a deterrent effect and, where appropriate, include a discount for cooperation with the competent authority. This Regulation should not limit Member States in their ability to impose higher levels of administrative sanctions. In providing additional sanctions or higher administrative sanctions and measures than the minimum levels already specified for breaches of this Regulation, Member States should have regard to local market conditions and the need for sufficiently dissuasive sanctions in order to support market integrity. The minimum levels specified in this Regulation are specified with regard to the objective of ensuring sufficient deterrent effect.~~

- (35a) In order to ensure that decisions made by competent authorities have a dissuasive effect on the public at large, they should normally be published. The publication of decisions is also an important tool for competent authorities to inform market participants of what behaviour is considered to be a violation of this Regulation and to promote wider good behaviour amongst market participants. If such publication causes disproportionate damage to the natural or legal persons involved, jeopardises the stability of financial markets, would be disproportionate in light of the breach which is sanctioned or jeopardise an ongoing investigation the competent authority may decide to delay publication or, where delayed publication would be insufficient to protect those interests, not to publish such decisions.

- (36) Whistleblowers bring new information to the attention of competent authorities which assists them in detecting and sanctioning cases of insider dealing and market manipulation. However, whistleblowing may be deterred for fear of retaliation, or for lack of incentives. Reporting of suspicious transactions is necessary to ensure that competent authority may detect and sanction market abuse. Measures on whistleblowing are necessary to facilitate detection of market abuse and to ensure the protection and the respect of the rights of the whistleblower and the reported person. This Regulation should therefore ensure that adequate arrangements are in place to encourage whistleblowers to alert competent authorities to possible breaches of this Regulation and to protect them from retaliation. Member States may provide for financial incentives for those persons who offer salient information about potential breaches of this Regulation. However, whistleblowers should only be eligible for those incentives where they bring to light new information which they are not already legally obliged to notify and where this information results in a sanction for a breach of this Regulation. Member States should also ensure that whistleblowing schemes they implement include mechanisms that provide appropriate protection of a reported person, particularly with regard the right to the protection of his personal data and procedures to ensure the right of the reported person of defence and to be heard before the adoption of a decision concerning him as well as the right to seek effective remedy before a court against a decision concerning him.
- (37) Since Member States have adopted legislation implementing Directive 2003/6/EC, and since delegated acts and implementing technical standards are foreseen which should be adopted before the framework to be introduced can be usefully applied, it is necessary to defer the application of the substantive provisions of this Regulation for a sufficient period of time.

- (38) In order to facilitate a smooth transition to the entry into application of this Regulation, market practices existing before the entry into force of this Regulation and accepted by competent authorities in accordance with Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments<sup>11</sup> for the purpose of applying point 2(a) of Article 1 of Directive 2003/6/EC, may remain applicable until one year after the date specified for effective application of this Regulation provided that they are notified to ESMA.
- (39) **This Regulation respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. Accordingly, this Regulation should be interpreted and applied in accordance with those rights and principles. Notably, when this Regulation refers to rules governing the freedom of the press and the freedom of expression in other media and the rules or codes governing the journalist professions, consideration should be given to these freedoms as they are guaranteed in the Union and in the Member States under Article 11 of the Charter of Fundamental Rights and other relevant provisions.**

~~This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights and other relevant provisions of the European Union, and by the constitutional traditions in the Member States. Accordingly this Regulation should be interpreted and applied in accordance with those rights and principles. Introducing common minimum rules for administrative measures, sanctions and fines is necessary to ensure that comparable market abuse breaches are sanctioned in a comparable way and to ensure that sanctions imposed are proportionate to the breach. Nothing in this Regulation is intended to restrict freedom of the press and freedom of expression in the media as they are guaranteed in the Union and in the Member States under Article 11 of the Charter of Fundamental Rights.~~

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<sup>11</sup> OJ L 336, 23.12.2003, p. 33.

- (40) Directive 95/46 of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>12</sup> and Regulation (EU) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the EU institutions and bodies and on the free movement of such data<sup>13</sup>, govern the processing of personal data carried out by ESMA within the framework of this Regulation and under the supervision of the Member States competent authorities, in particular the public independent authorities designated by the Member States. Any exchange or transmission of information by competent authorities should be in accordance with the rules on the transfer of personal data as laid down in Directive 95/46/EC. And any exchange or transmission of information by ESMA should be in accordance with the rules on the transfer of personal data as laid down in Regulation (EC) No 45/2001.
- (41) This Regulation, as well as the delegated acts, standards and guidelines adopted in accordance with it, are without prejudice to the application of the Union rules on competition.
- (42) [The Commission should be empowered to adopt delegated acts in accordance with Article 290 **TFEU**, ~~of the Treaty~~. In particular, delegated acts should be adopted in respect of, the indicators for manipulative behaviour listed in Annex 1, the threshold for determining the application of the public disclosure obligation to emission allowance market participants, the conditions for drawing up insider lists and the threshold and conditions relating to managers' transactions. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.]

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<sup>12</sup> OJ L 281, 23.11.1995, p. 31.

<sup>13</sup> OJ L 8, 12.1.2001, p. 1.

- (43) In order to ensure uniform conditions for the implementation of this Regulation in respect of procedures for the reporting of violations of this Regulation implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 183/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers.
- (44) Technical standards in financial services should ensure uniform conditions across the Union in matters covered by this Regulation. As a body with highly specialised expertise, it would be efficient and appropriate to entrust ESMA, with the elaboration of draft regulatory and implementing technical standards which do not involve policy choices, for submission to the Commission.
- (45) [The Commission should adopt the draft regulatory technical standards developed by ESMA in relation to procedures and arrangements for trading venues aimed at preventing and detecting market abuse and of systems and templates to be used by persons in order to detect and notify suspicious orders and transactions and in respect of technical arrangements for categories of persons for objective presentation of information recommending an investment strategy and for disclosure of particular interests or indications of conflicts of interest by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.]
- (46) The Commission should also be empowered to adopt implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1093/2010. ESMA should be entrusted with drafting implementing technical standards for submission to the Commission with regard to public disclosure of inside information, formats of insider lists and formats and procedures for the cooperation and exchange of information of competent authorities among themselves and with ESMA.

- (47) Since the objective of the proposed action, namely to prevent market abuse in the form of insider dealing and market manipulation, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the measures, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (48) The provisions of Directive 2003/6/EC being no longer relevant and sufficient, that Directive should be repealed from [24 months after entry into force of this Regulation]. The requirements and prohibitions of this Regulation are strictly related to those in the MiFD, therefore they should enter in to application on the date of entry into application of the MiFID review.
- (49) For the correct application of this Regulation, it is necessary that certain provisions of this Regulation, namely Article [16, 17, 24, 26, 29 and 30a], are implemented by Member States before entry into application of this Regulation.

HAVE ADOPTED THIS REGULATION:

## CHAPTER I GENERAL PROVISIONS

### SECTION 1

#### SUBJECT MATTER AND SCOPE

##### *Article 1*

##### *Subject matter*

This Regulation establishes a common regulatory framework on market abuse to ensure the integrity of financial markets in the Union and to enhance investor protection and confidence in those markets.

##### *Article 2*

##### *Scope*

1. This Regulation concerns misuse of inside information and market manipulation as well as measures to prevent market abuse and applies in relation to the following financial instruments:
  - (a) financial instruments admitted to trading on a regulated market or for which a request for admission to trading on a regulated market has been made;
  - (b) financial instruments traded, admitted to trading or for which a request for admission to trading on a MTF has been made;
  - (ba) financial instruments traded on an OTF

- (c) financial instruments not covered by subparagraph (a) or (b) or (ba) whose price or value depends on or has an effect on the price or value of a financial instrument referred to in those sub-paragraphs and which may include, but are not limited to, credit default swaps or contracts for difference.

This Regulation also concerns misuse of inside information and market manipulation as well as measures to prevent market abuse in relation to bids, relating to the auctioning of emission allowances or other auctioned products based thereon pursuant to Commission Regulation No 1031/2010.<sup>14</sup> Without prejudice to any specific provisions referring to bids submitted in the context of an auction, any requirements and prohibitions in this Regulation referring to orders to trade shall apply to such bids.

2. Market operators of regulated markets shall notify the competent authority of each financial instrument **the first time that it is** ~~which they have~~ admitted to trading, or **when** ~~for which there has been~~ a request for admission to trading **has been made**. Investment firms and market operators operating an MTF or an OTF shall notify the competent authority of each financial instrument **the first time** that **it** has been traded or for which there has been a request for admission to trading on their system. These notifications are to be transmitted by competent authorities without delay to ESMA, which shall publish them immediately on its web site. Such notifications shall include, in particular, details of the names and numbers of the instruments, and the date and time at which the trade, request for admission to trading or the admission to trading was made.

The reference to competent authority in the first subparagraph shall be the competent authority defined in article 16.

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<sup>14</sup> Commission Regulation (EU) No 1031/2010 of 12 November 2010. on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and the Council establishing a scheme for greenhouse gas emission allowances trading within the Community, OJ L 302, 18.11.2010, p. 1.

3. Articles 8 and 10 shall also apply to:
- (a) spot commodity contracts, which are not wholesale energy products, where the transaction, order or behaviour has or is likely to have an effect on the price or value of a financial instrument referred to in paragraph 1 of this Article; or
  - (b) financial instruments referred to in paragraph 1 in this Article, where the transaction, order, bid or behaviour has or is likely to have an effect on the price or value of a spot commodity contract where the price or value depends on the price or value of those financial instruments; **or**
  - (c) benchmarks, where any transmission of information, input, calculation or behaviour is used to affect, affects, or is likely to affect the calculation of the benchmark.**
4. This Regulation shall apply to any financial instruments as defined in paragraph 1 and 3 of this Article, irrespective of whether or not the transaction, order or behaviour itself actually takes place on a trading venue or OTC.
5. The prohibitions and requirements in this Regulation shall apply to actions, carried out in the Union or outside the Union, concerning instruments referred to in paragraphs 1 to 3.
6. In order to ensure uniform conditions of application of paragraph 1, ESMA shall develop draft implementing technical standards defining the timing and the format of information to be provided and published in accordance with paragraph 2. The implementing technical standards shall also include a mechanism for the list of financial instruments to be reviewed and updated in regards to financial instruments no longer covered by paragraph 1.

ESMA shall submit those draft implementing technical standards to the Commission by [ ] 2013.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No. 1095/2010.

## SECTION 2

### EXCLUSION FROM THE SCOPE

#### *Article 3*

##### *Exemption for buy-back programmes and stabilisation*

1. The prohibitions in Articles 9 and 10 of this Regulation do not apply to trading in own shares in buy-back programmes when the full details of the programme are disclosed prior to the start of trading, trades are reported as being part of the buy-back programme to the competent authority and subsequently disclosed to the public, and adequate limits with regards to price and volume are respected. Such trading must be carried out in accordance with the objectives specified in paragraph 2 and the measures specified in accordance with paragraph 4 of this Article.
2. In order to benefit from the exemption provided for in this Article, the sole purpose of that buy-back programme must be to reduce the capital of an issuer (in value or in number of shares) or to meet obligations arising from any of the following:
  - (a) debt financial instruments exchangeable into equity instruments;
  - (b) ~~employee~~ share option programmes or other allocations of shares, to employees or to members of the administrative management or supervisory bodies of the issuer or of an associate company.
3. The prohibitions in Articles 9 and 10 of this Regulation do not apply to the stabilisation of securities when stabilisation is carried out for a limited time period, when relevant information about the stabilisation is disclosed, notified to the competent authority, and adequate limits with regards to price are respected and provided such trading is in accordance with the measures in accordance with paragraph 4 of this article.

4. ESMA shall develop draft regulatory technical standards to specify the conditions such buy-back programmes and stabilisation measures referred to in paragraph 1 and 3 need to adhere to, including conditions for trading, restrictions regarding time and volume, disclosure and reporting obligations and price conditions.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by [ xx months after the entry into force of this Regulation].

Power is conferred to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Article 10 to 14 of Regulation 1095/2010.

#### *Article 3a*

##### *Accepted market practices*

- ~~1. The prohibition in Article 10 of this Regulation shall not apply to the activities indicated in Article 8(1)(a) provided that they are carried out for legitimate reasons and have been accepted by the competent authority in accordance with this article.~~
- ~~2. The competent authority of a Member State may, in accordance with the procedure set out in paragraph 3, accept specific market practices concerning financial instruments which are traded on one or more trading venues authorised in that Member State. The competent authority of a Member State, as defined in article 16, shall submit a request to ESMA.~~
- ~~3. ESMA shall develop draft implementing technical standards to authorise the acceptance of a specific market practice taking into account the following criteria as further specified by the delegated acts referred to in paragraph 4:~~
  - ~~(a) the specific market practice has a substantial level of transparency to the market;~~

- ~~(b) the specific market practice shall ensure a high degree of safeguards to the operation of the market forces and to the proper interplay of the forces of supply and demand;~~
- ~~(c) the specific market practice shall have a positive impact on market liquidity and efficiency;~~
- ~~(d) the specific market practice shall take into account the trading mechanism of the relevant market and enable market participants to react properly and in a timely manner to the new market situation created by that practice;~~
- ~~(e) the specific market practice shall not create risks for the integrity of, directly or indirectly, related markets in the relevant financial instrument within the whole Union;~~
- ~~(f) the specific market practice shall not reduce the level of investor protection;~~
- ~~(g) the duration of the market practice and the terms under which it may be cancelled;~~
- ~~(h) the structural characteristics of the relevant market including whether it is regulated or not, the types of financial instruments traded and the type of market participants, including the extent of retail investors' participation in the relevant market.~~

~~No later than 3 months after the request is submitted by the competent authorities to ESMA, ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission.~~

~~Power is conferred to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation 1095/2010.~~

~~4. The Commission shall adopt, by means of a delegated act in accordance with Article 31, measures to specify the criteria set out in paragraph 3.~~

- ~~5. ESMA shall review [every two years] the specific market practices accepted by the competent authorities, in particular taking into account significant changes to the relevant market environment, such as changes to trading rules or to market infrastructures, and where appropriate, develop draft implementing technical standards following such review in accordance with the procedure laid down in paragraph 3.~~
- ~~6. ESMA shall publish on its website the list of specific accepted market practices specifying in which trading venues they are applicable~~
- ~~7. Accepted market practices established by competent authorities before entry into force of this Regulation may remain applicable until [12 months after the entry into application of this Regulation] provided they are submitted to ESMA.~~

#### *Article 4*

##### *Exclusion for monetary and public debt management activities and climate policy activities*

1. This Regulation does not apply to transactions, orders or behaviours carried out in pursuit of monetary, exchange rate public debt management policy or in relation to public agricultural policy by a Member State, **the Commission**, by the European System of Central Banks, by a national central bank of a Member State, by any other ministry, agency or special purpose vehicle of a Member State, or by any person acting on their behalf and, in the case of a Member State that is a federal state, to such transactions, orders or behaviours carried out by a member making up the federation. It shall also not apply to such transactions, orders or behaviours carried out by the Union, a special purpose vehicle for several Member States, [European Stability Mechanism], the European Investment Bank, the European Financial Stability Facility, an international financial institution established by two or more Member States, which has the purpose to mobilise funding and provide financial assistance to the benefit of its members.

2. This Regulation does not apply to the activity of a Member State, the European Commission or any other officially designated body, or of any person acting on their behalf, which concerns emission allowances and which is undertaken in the pursuit of the Union's climate policy.
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 31 to extend the exclusion set out in paragraphs 1 ~~and 2~~ to certain public bodies and central banks of third countries.

To that end, the Commission shall prepare and present to the European Parliament and the Council a report by [12 months after the entry into force of this Regulation] assessing the international treatment of public bodies charged with or intervening in the management of the public debt and central banks in third countries.

The report shall include a comparative analysis of the treatment of those bodies and of central banks within the legal framework ~~of significant number~~ of third countries, ~~including at least the three most important jurisdictions as regards volumes of trades~~, and the risk management standards applicable to the transactions entered into by those bodies and the central banks in those jurisdictions. If the report concludes, in particular in regard to the comparative analysis, that the exemption of the monetary responsibilities of those third-country central banks from the obligations and prohibitions of this Regulation is necessary the Commission shall include them in the list set out in paragraphs 1 and 2.

- 4. The Commission shall also be empowered to adopt delegated acts in accordance with Article 31 to extend the exclusion set out in paragraph 2 to certain designated public bodies of third countries that have a linking agreement with the EU in the meaning of Article. 25 of Directive 2003/87/EC.**

**To that end, the Commission shall prepare and present to the European Parliament and the Council a report assessing the treatment of such designated public bodies charged with the climate policy or intervening in the carbon market in those third countries that have a linking agreement with the EU.**

## SECTION 3

### DEFINITIONS

#### *Article 5*

#### *Definitions*

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

1. "financial instrument" means any instrument within the meaning of Article 2(1)(8) of Regulation [MiFIR].
  - 1.a "investment firm" means any person within the meaning of Article 2(1)(1) of Regulation [MiFIR].
  1. b "Credit institution or other financial institutions" means a credit institution or other financial institutions within the meaning of Article 4 Directive 2006/48.
  - 1.c "accepted market practices" means specific market practices that are accepted by a competent authority of a given Member State in accordance with Article [3a] of this Regulation.
2. "regulated market" means a multilateral system in the Union within the meaning of Article 2(1)(5) of Regulation[MiFIR].
3. "multilateral Trading Facility (MTF)" means a multilateral system in the Union within the meaning of Article 2(1)(6) of Regulation[MiFIR].
4. "organised Trading Facility (OTF)" means a system or facility in the Union referred to in Article 2(1)(7) of Regulation[MiFIR].

5. "trading venue" means a system or facility in the Union referred to in Article 2(1)(26) of Regulation [MiFIR]
- 5a "Significant distribution" means an initial or secondary offer of securities that is distinct from ordinary trading both in terms of the amount in value of the securities to be offered and the selling method to be employed.
6. "SME growth market" means a MTF in the Union within the meaning of Article 4(1)(17) of Directive [new MiFID].
7. "competent authority" means the competent authority designated in accordance with Article 16.
8. "person" means any natural or legal person.
9. "commodity" means a commodity within the meaning of Article 2(1) of Commission Regulation (EC) No 1287/2006<sup>15</sup>.
10. "spot commodity contract" means any contract for the supply of a commodity traded on a spot market which is promptly delivered when the transaction is settled, ~~including any derivative contract that must be settled physically.~~ **as well as other contracts (such as physically settled forward contracts) for the supply of a commodity that are not financial instruments.**
11. "spot market" means any commodity market in which commodities are sold for cash and promptly delivered when the transaction is settled, ~~as well as other non financial markets, such as forward markets for commodities.~~ **as well as other non financial markets, such as forward markets for commodities.**

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<sup>15</sup> Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive. [OJ L 241, 2.9.2006, p. 1].

12. "buy-back programme" means trading in own shares in accordance with Articles 19 to 24 of Council Directive 77/91/EEC<sup>16</sup>.
13. "stabilisation" means any purchase or offer to purchase relevant financial instruments, or any transaction in associated instruments equivalent thereto, by investment firms or credit institutions, which is undertaken in the context of a significant distribution of such relevant securities exclusively for supporting the market price of these relevant securities for a predetermined period of time, due to a selling pressure in such securities;
14. "algorithmic trading" means trading of financial instruments using computer algorithms within the meaning of Article 4(1)(37) of Directive [new MiFID].
15. "emission allowance" means a financial instrument as defined in point (11) of Section C of Annex I of Directive [new MiFID].
16. "emission allowance market participant" means any person who enters into transactions, including the placing of orders to trade, in emission allowances.
17. "issuer of a financial instrument" means a legal entity governed by private or public law, which issues or proposes to issue financial instruments, the issuer being, in case of depository receipts representing financial instruments, the issuer of the financial instrument represented. .
18. "ACER" means the Agency for the Cooperation of Energy Regulators established under Regulation (EC) No. 713/2009<sup>17</sup>.

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<sup>16</sup> Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent. [OJ L 26, 31.1.1977, p. 1].

<sup>17</sup> Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators. OJ L 211, 14.8.2009, p.1.

19. "wholesale energy product" has the same meaning as in Article 2(4) of [Regulation (EU) No...of the European Parliament and the Council on Wholesale Energy Market Integrity and Transparency]<sup>18</sup>.

20. "national regulatory authority" has the same meaning as in Article 2(7) of [Regulation (EU) No...of the European Parliament and the Council on Wholesale Energy Market Integrity and Transparency]<sup>19</sup>.

21. "Person discharging managerial responsibilities within an issuer" shall mean a person who is:

- a. A member of the administrative management or supervisory bodies of the issuer.
- b. A senior executive, who is not a member of the bodies as referred to in point (a), having regular access to inside information relating, directly or indirectly, to the issuer, and the power to make managerial decisions affecting the future developments and business prospects of this issuer.

22. "Persons closely associated with another" shall mean:

- a. The spouse of the person ~~discharging managerial responsibilities~~, or any partner of that person considered by national law as equivalent to the spouse;
- b. According to national law, dependent children ~~of the person discharging managerial responsibilities~~;

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<sup>18</sup> Regulation (EU) No...of the European Parliament and the Council on Wholesale Energy Market Integrity and Transparency

<sup>19</sup> Regulation (EU) No...of the European Parliament and the Council on Wholesale Energy Market Integrity and Transparency

- c. Other relatives of the person ~~discharging managerial responsibilities~~, who have shared the same household as that person for at least one year on the date of the transaction concerned;
- d. Any legal person, trust or partnership, whose managerial responsibilities are discharged by a person referred to in point 21 of this Article or in letters (a), (b) and (c) of this point, or which is directly or indirectly controlled by such a person, or that is set up for the benefit of such a person, or whose economic interests are substantially equivalent to those of such person.
23. “recommendation” means any information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers of financial instruments, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public.
24. “information recommending or suggesting investment strategy” means:
- (a) information produced by an independent analyst, an investment firm, a credit institution, any other person whose main business is to produce recommendations or a natural person working for them under a contract of employment or otherwise, that, directly or indirectly, expresses a particular investment recommendation in respect of a financial instrument or an issuer of financial instruments;
- (b) information produced by persons other than the persons referred to in (a) which directly recommends a particular investment decision in respect of a financial instrument.
25. “data traffic records” means the records of traffic data as defined in Article 2 para b of Directive 2002/58/EC of the European Parliament and the eCouncil of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector.

- 26. “persons professionally arranging or executing transactions in financial instruments” means an investment firm, credit institution or financial institution, or natural persons in their employment, professionally engaged in the reception and transmission of orders or in the execution of transactions in financial instruments.**
- 27. “benchmark” means any commercial index or published figure calculated by the application of a formula to the value of one or more underlying assets or prices, including estimated prices, interest rates or other values, or surveys by reference to which the amount payable under a financial instrument is determined**

## SECTION 4

### INSIDE INFORMATION, INSIDER DEALING AND MARKET MANIPULATION

#### *Article 6*

#### *Inside information*

1. For the purposes of this Regulation, inside information shall comprise the following types of information:
  - (a) information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers of financial instruments or to one or more financial instruments, and which if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.
  - (b) in relation to derivatives on commodities, information of a precise nature, which has not been made public, relating, directly or indirectly to one or more such derivatives or relating directly to the related spot commodity contract, and which, if it were made public, would be likely to have a significant effect on the prices of such derivatives or related spot commodity contracts ~~and~~ or where this is information which is required to be disclosed in accordance with legal or regulatory provisions at the Union or national level, market rules, contracts or customs, on the relevant commodity derivatives or spot markets.
  - (c) in relation to emission allowances or auctioned products based thereon, information of a precise nature, which has not been made public, relating, directly [or indirectly], to one or more such instruments, and which, if it were made public, would be likely to have a significant effect on the prices of such instruments or on the prices of related derivative financial instruments.

(d) for persons charged with the execution of orders concerning financial instruments, it also means information conveyed by a client and related to the client's pending orders in financial instruments, which is of a precise nature, which relates, directly or indirectly, to one or more issuers of financial instruments or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments, the price of related spot commodity contracts, or on the price of related derivative financial instruments.

2. For the purposes of applying paragraph 1, information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or may reasonably be expected to come into existence or an event which has occurred or may reasonably be expected to do so and if it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the financial instruments, the related spot commodity contracts, or the auctioned products based on the emission allowances. In this respect in case of a process which occurs in stages, every intermediate stage of the process can constitute an event **or set of circumstances** which has occurred, **or which may reasonably be expected to come into existence or occur. Information relating thereto can therefore be deemed to be of a precise nature and may** ~~and can therefore be deemed to be of a precise nature and~~ as a result be inside information, irrespective of whether the end stage of the process can already be reasonably expected to occur.
3. For the purposes of applying paragraph 1, namely information which, if it were made public, would be likely to have a significant effect on the prices of the financial instruments, the related spot commodity contracts, or the auctioned products based on the emission allowances, account shall be taken of whether a reasonable investor would be likely to use that information as part of the basis of his investment decision.

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**In the case of emission allowance market participants with aggregate emissions or rated thermal input at or below the threshold set in accordance with the third subparagraph of Article 12(2), information about their physical operations shall be deemed not to have a significant effect on the price of emission allowances, auctioned products based thereon or on the prices of related derivative financial instruments.**

*Article 7*  
*Insider dealing*

1. For the purposes of this Regulation, insider dealing arises where a person possesses inside information and uses that information by acquiring or disposing of, for his own account or for the account of a third party, either directly or indirectly, financial instruments to which that information relates.
2. This article applies to any legal or natural person who possesses inside information as a result of any of the following situations:
  - (a) deleted
  - (b) being a member of the administrative, management or supervisory bodies of the issuer,
  - (c) having a holding in the capital of the issuer,
  - (d) having access to the information through the exercise of duties resulting from his employment, profession or duties;
  - (e) being involved in criminal activities.
  - (f) obtaining inside information under circumstances other than those in points (a) to (e) and which the person knows or ought to know is inside information.
3. The use of inside information by cancelling or amending an order concerning a financial instrument to which the information relates where the order was placed before the person concerned possessed the inside information, shall also be considered as insider dealing.

4. **In relation to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (No) 1031/2010, the use of inside information referred to in first subparagraph shall also comprise modifying or withdrawing a bid by a person for its own account or for the account of a third party.**

4. Deleted
5. For the purposes of this Regulation, recommending or inducing another person to engage in insider dealing arises where a person who possesses inside information recommends or induces another person on the basis of that information, to acquire or dispose of financial instruments to which that information relates.
6. The use of recommendations or inducements referred to in paragraph 5 amounts to insider dealing when the person using the recommendation or inducement knows or ought to know it is based on inside information.
7. **In conformity with national law,** ~~W~~where the person referred to in this Article is a legal person, the provisions shall also apply to the natural persons who participate in the decision to carry out, the acquisition or disposal or **cancellation or** amendment of an order for the account of the legal person concerned.
8. ~~In relation to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (No) 1031/2010, paragraph 1 shall also apply to the use of inside information by submitting, modifying or withdrawing a bid for its own account or for the account of a third party.~~
9. This article applies irrespective of whether the transaction or order actually takes place on a regulated market, MTF, OTF or over-the-counter.

## Article 7a

### Legitimate behaviour

- 1. For the purpose of applying article 7, a legal person in possession of inside information shall not be deemed to have used that information or consequently to have engaged in insider dealing on the basis of circumstances where the legal person:**
  - (a) had established, implemented and maintained adequate and effective internal arrangements and procedures that effectively ensured that neither the natural persons, who made the decision on its behalf to acquire or dispose of financial instruments to which the information relates, nor any other natural person who may have had any influence on the decision to acquire or dispose of those instruments, are in possession of the inside information; and**
  - (b) did not encourage, recommend, or induce or otherwise influence the natural person to acquire or dispose of financial instruments to which the information relates.**
  
- 2. For the purpose of applying Article 7, a person possessing inside information shall not be deemed to have used that information, or consequently to have engaged in insider dealing, on the basis of the following circumstances:**
  - (a) where that person is acting as a market maker or as a body authorised to act as a counter party and the acquisition or disposal of financial instruments to which that information relates is made legitimately in the normal course of the exercise of his employment, profession or duties;**

**(b) where that person is authorised to execute orders on behalf of third parties, and the acquisition or disposal of financial instruments to which the order relates is made to carry out such an order legitimately in the normal course of the exercise of his employment, profession or duties;**

**3. Transactions conducted in the discharge of an obligation to acquire or dispose of financial instruments, undertaken in good faith and not as a part of a plan to evade the prohibition of insider dealing, shall not constitute insider dealing where that obligation results from an order placed, or an agreement concluded, or is to satisfy a legal or regulatory obligation that arose, before the person concerned possessed inside information.**

**4. The provisions of this Article shall apply, unless there is evidence to the contrary.**

*Article 7a*

*Defences to insider dealing*

- ~~1. Except where the inside information has been obtained in contravention of Article 7b, insider dealing may be deemed not to arise in itself where the person possessing inside information obtained in the context of a public takeover bid uses that information in the context of the public takeover bid for the purposes of determining the offer price of the share to which the information relates or to propose a merger with that company.~~
- ~~2. For the purpose of applying article 7, a legal person shall be deemed not to have used that information and therefore not to have committed insider dealing if the legal person:~~

~~(a) had established, implemented and maintained adequate and effective internal arrangements and procedures designed to ensure that neither the natural persons, who made the decision on its behalf to acquire or dispose of financial instruments to which the information relates nor any other natural person who may have had any influence on the decision to acquire or dispose of those instruments, are in possession of the inside information; and~~

~~(b) did not encourage, recommend, or induce or otherwise influence the natural person to acquire or dispose of financial instruments to which the information relates.~~

~~3. Deleted.~~

~~4. Transactions conducted in the discharge of an obligation to acquire or dispose of financial instruments, undertaken in good faith and not as a part of a plan to evade the prohibition of insider dealing, shall not constitute insider dealing where that obligation results from an order placed, or an agreement concluded, or is to satisfy a legal regulatory obligation that arose, before the person concerned possessed inside information.~~

~~5. For the purpose of applying Article 7, a person possessing inside information may be deemed not to have used that information, and therefore not to have committed insider dealing, in the following circumstances:~~

~~(a) when that person is acting as a market maker or as a body authorised to act as a counter party and the acquisition or disposal of financial instruments to which that information relates is made legitimately in the normal course of the exercise of his employment, profession or duties;~~

~~(b) when that person is authorised to execute orders on behalf of third parties, and the acquisition or disposal of financial instruments to which the order relates is made to carry out such an order legitimately in the normal course of the exercise of his employment, profession or duties;~~

~~(c) when that person adequately demonstrates that they have not used or been influenced by inside information when deciding to acquiring or disposing of financial instruments to which the information relates.~~

~~6. This Article is designed to be without prejudice to the rights of the defence and, in particular, to the right to be able to rebut the presumption in Article 7 that a person in possession of inside information, who acquires or disposes of or tries to acquire or dispose of, financial instruments to which that information relates had used that information.~~

#### *Article 7b*

##### *Improper disclosure of inside information*

1. Improper disclosure of inside information arises when a person who possesses inside information ~~discloses~~discloses that information to others, except where the disclosure is made in the normal course of the exercise of his employment, profession or duties.
2. This article applies to any natural or legal person who possesses inside information as a result of any of the following situations:
  - (a) Deleted,
  - (b) being a member of the administrative, management or supervisory bodies of the issuer,

- (c) having a holding in the capital of the issuer,
  - (d) having access to the information through the exercise of duties resulting from his employment, profession or duties;
  - (e) being involved in criminal activities.
  - (f) obtaining inside information under circumstances other than those in points (a) to [(e)] and which the person knows or ought to know is inside information.
3. The onward disclosure of recommendations or inducements referred to in Article 7(5) amounts to improper disclosure under this Article when the person disclosing the recommendation or inducement knows or ought to know, **that** it was based on inside information.
- ~~4. When information is disclosed for the purpose of journalism or other expression in the media such disclosure of information shall be assessed taking into account the rules governing the freedom of the press and freedom of expression in other media and the rules or codes governing the journalist profession, unless:~~
- ~~(a) those persons or persons closely associated with them derive, directly or indirectly, an advantage or profits from the disclosure of the information in questions; or~~
  - ~~(b) the disclosure is made with the intention of misleading the market as to the supply of, demand for, or price of financial instruments.~~

### Article 7c

#### Market soundings

1. **A market sounding comprises the communication of information, prior to the announcement of a transaction, to one or more potential investors:**
- (a) by an issuer of a financial instrument;**
  - (b) by a secondary offeror of a financial instrument, in such quantity or value that the transaction is distinct from ordinary trading and involves a selling method based on the prior assessment of potential interest from potential investors;**

(c) by an emission allowance market participant; or

(d) by a third party acting on behalf of or on the account of any of (a) to (c) above,

in order to gauge the interest of potential investors in a possible transaction and the conditions relating to it such as its potential size or pricing.

In this Regulation, the expression “a disclosing market participant” shall refer to a natural or legal person falling into any of the categories set out in sub-paragraphs (a) to (d) of paragraph 1, who discloses information in the course of a market sounding.

1a. For the purposes of applying paragraph 1 and without prejudice to Article 17.4, disclosure of information by a party involved in a potential takeover bid, as defined in Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, to parties entitled to the securities shall be deemed disclosure of inside information in the normal course of the exercise of his employment, profession or duties provided that:

- (a) the information is necessary to enable the parties entitled to the securities to form an opinion on their willingness to offer their securities;
- (b) the willingness of parties entitled to the securities to offer their securities to the party intending to make the takeover bid is reasonably required for the decision to make the takeover bid;-
- (c) the party intending to make a takeover bid has informed the person to whom the disclosure is made that:
  - i. the information he is to receive comprises inside information, according to the assessment of the party intending to make a takeover bid;
  - ii. he will be prohibited from using that information, or attempting to use that information to acquire or dispose of, for his own account or for the account of a third party, financial instruments relating to that information;

- iii. he will be prohibited from using that information, or attempting to use that information, to cancel or amend an order which has already been placed concerning a financial instrument to which the information relates; and
- iv. by agreeing to receive the information he is also agreeing to, and must, keep the information confidential.

2. A disclosing market participant shall, prior to conducting a market sounding, specifically consider whether the market sounding will involve the disclosure of inside information. The disclosing market participant shall make a written record of its conclusion and the reasons for that conclusion. It shall provide the records to the competent authority upon request. This obligation shall apply separately to each disclosure of information throughout the course of the market sounding and the records referred to in this paragraph shall be updated accordingly.

3. For the purposes of Article 7b(1), a disclosure of inside information made in the course of a market sounding shall be deemed to have been made in the normal course of the exercise of a person's employment, profession or duty where:

(a) the disclosing market participant has complied with the obligations set out in paragraph 2 above with regard to that information; and

(b) the disclosure is made in accordance with the conditions set out in paragraph 4 of this Article.

4. **In order for paragraph 3 to apply, the disclosing market participant must:**

**(a) inform the person to whom the disclosure is made that:**

- (i) the information he is to receive comprises inside information, according to the disclosing market participant's assessment;**
- (ii) he will be prohibited from using that information, or attempting to use that information to acquire or dispose of, for his own account or for the account of a third party, financial instruments relating to that information;**
- (iii) he will be prohibited from using that information, or attempting to use that information, to cancel or amend an order which has already been placed concerning a financial instrument to which the information relates;**
- (iv) by agreeing to receive the information he is also agreeing to, and must, keep the information confidential; and**

**(b) make and maintain a record of all information given to the potential investor, including the information given in accordance with points (i) to (iv) of subparagraph (a) and the identity of the potential investors to whom the information has been disclosed, including but not limited to the legal persons and the natural persons acting on behalf of the potential investor, and the date and time of each disclosure. It shall provide the record to the competent authority as soon as possible upon its request.**

5. Where information has been disclosed to a person in the course of a market sounding and the information disclosed ceases to be inside information, the disclosing market participant shall inform that person that the information he has received is no longer inside information, according to their assessment, as soon as possible after the information has ceased to be inside information. The disclosing market participant shall maintain a record of the information given in accordance with this paragraph and shall provide it to the competent authority as soon as possible upon its request.
6. The records referred to in this Article shall be kept by the disclosing market participant for a period of at least [5] years after being created.
7. ESMA shall develop draft regulatory technical standards to determine appropriate arrangements and procedures for persons to comply with the requirements established by paragraphs 3 to 7 of this Article. The draft regulatory standards shall specify the full nature and extent of the record-keeping requirements, including in particular with regard to information which is disclosed in oral communications.

ESMA shall submit the draft regulatory technical standards to the Commission by [...].

Power is conferred to the Commission to adopt the regulatory technical standards in accordance with Article 10 to 14 of Regulation 1095/2010.

8. ESMA shall develop draft implementing technical standards to specify the systems and notification templates to be used by persons to comply with the requirements established by paragraphs 3 to 7 of this Article, particularly the precise format of the records referred to in paragraphs 3 to 7 and the technical means for appropriate communication of the information referred to in paragraph 5 to the investor.

**ESMA shall submit the draft implementing technical standards to the Commission by [...].**

**Power is conferred to the Commission to adopt the implementing technical standards in accordance with Article 15 of Regulation 1095/2010.**

9. **ESMA shall issue guidelines addressed to potential investors in accordance with Article 16 of Regulation 1095/2010 regarding:**

- (a) **the factors a potential investor should take into account when information is disclosed to him as part of a market sounding in order for him to consider whether the information may amount to inside information;**
- (b) **the steps that a potential investor ought to take if inside information has been disclosed to him in order to comply with the provisions of Articles [7] and [7b] of this Regulation; and**
- (c) **the records a potential investor should maintain in order to demonstrate that he has complied with the provision of Articles [7] and [7b] of this Regulation.**

*Article 8*

*Market manipulation*

1. For the purposes of this Regulation, market manipulation shall comprise the following activities:
  - (a) entering into a transaction, placing an order to trade or any other behaviour which:
    - gives, or is likely to give, false or misleading signals as to the supply of, demand for, **or volume of**, or price of, a financial instrument or a related spot commodity contract; or
    - secures, or is likely to secure, the price of one or several financial instruments or a related spot commodity contracts at an abnormal or artificial level; unless the person who entered into the transactions or issued the orders to trade establishes that his reasons for so doing are legitimate, ~~and that these transactions or orders to trade~~ **are in conformity with** ~~conform to~~ accepted market practices on the ~~regulated market~~ **trading venue** concerned; ~~or~~
  - (b) entering into a transaction, placing an order to trade or any other behaviour which affects or is likely to affect the price of one or several financial instruments or a related spot commodity contract, which employs a fictitious device or any other form of deception or contrivance; or

- (c) disseminating information through the media, including the Internet, or by any other means, which gives or is likely to give, false or misleading signals as to the supply of, demand for, or price of an financial instrument or a related spot commodity contract, or secures or is likely to secure the price of one or several financial instruments or a related spot commodity contract at an abnormal or artificial level, including the dissemination of rumours and false or misleading news, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading; or ~~When information is disseminated for the purposes of journalism or other expression in the media, such dissemination of information shall be assessed taking into account the rules governing the freedom of the press and freedom of expression in other media and the rules or codes governing the journalist profession, unless:~~
- ~~— those persons or persons closely associated with them derive, directly or indirectly, an advantage or profits from the dissemination of the information in question; or~~
- ~~the disclosure or dissemination is made with the intention of misleading the market as to the supply of, demand for, or price of financial instruments; or~~

**(d) transmitting false or misleading information, providing false or misleading inputs, or any action which manipulates the calculation of a benchmark.**

2. The following behaviour shall, inter alia, be considered as market manipulation where it has an effect referred to in paragraph 1 (a), 1 (b) or 1 (c) :
- (a) conduct by a person, or persons acting in collaboration, to secure a dominant position over the supply of or demand for a financial instrument or related spot commodity contracts which has or is likely to have the effect of fixing, directly or indirectly, purchase or sale prices or create or is likely to create other unfair trading conditions,
  - (b) the buying or selling of financial instruments at the close of the market with the effect or likely effect of misleading investors acting on the basis of closing prices,
  - (c) the placing of orders to a trading venue or facility including any cancellation or modification thereof , by means of algorithmic strategies, including high frequency trading strategies, which has one of the effects referred to in paragraph 1 (a) or 1 (b) by:
    - disrupting or delaying the functioning of the trading system of the trading venue or facility, or which is likely to do so or;
    - making it more difficult for other persons to identify genuine orders on the trading system of the trading venue or facility or which is likely to do so, for example by entering orders which result in the overloading and destabilisation of the order book; or
    - creating or being likely to create false or misleading signals about the supply of or demand for or price of a financial instrument, for example by entering orders to initiate or exacerbate a trend.

- (d) taking advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about a financial instrument or related spot commodity contract (or indirectly about its issuer) while having previously taken positions on that financial instrument or related spot commodity contract and profiting subsequently from the impact of the opinions voiced on the price of that instrument or related spot commodity contract, without having simultaneously disclosed that conflict of interest to the public in a proper and effective way.
- (e) the buying or selling on the secondary market of emission allowances or related derivatives prior to the auction held pursuant to Regulation No 1031/2010 with the effect of fixing the auction clearing price for the auctioned products at an abnormal or artificial level or misleading bidders bidding in the auctions.

34. For the purposes of applying points (a) and (b) of paragraph 1 of ~~this Article~~Article 8, and without prejudice to the forms of behaviour set out in paragraph 23, Annex I defines non-exhaustive indicators related to the employment of fictitious devices or any other form of deception or contrivance, and non-exhaustive indicators related to false or misleading signals and to price securing.

45. **In conformity with national law**, ~~W~~where the person referred to in this Article is a legal person, the provisions shall also apply to the natural persons who participate in the decision to carry out, activities for the account of the legal person concerned.

56. In accordance with Article 2, this Article shall apply irrespective of whether the activities take place on a regulated market, an MFT, an OTF or over the counter.

67. The Commission may adopt, by means of delegated acts in accordance with article 31, measures specifying the indicators laid down in Annex I, in order to clarify their elements and to take into account technical developments on financial markets.

Article 8a

Accepted Market Practices

1. The prohibition in Article 10 of this Regulation shall not apply to the activities indicated in Article 8(1)(a) provided that they are carried out for legitimate reasons and have been accepted by the competent authority in accordance with this article. A practice that is accepted in a particular market cannot be considered applicable to other markets unless the competent authorities of such other markets have officially accepted that practice.
  
2. Competent authorities shall be able to establish an accepted market practice taking into account the following criteria:
  - (a) the specific market practice has a substantial level of transparency to the market;
  
  - (b) the specific market practice shall ensure a high degree of safeguards to the operation of market forces and the proper interplay of the forces of supply and demand;
  
  - (c) the specific market practice shall have a positive impact on market liquidity and efficiency;
  
  - (d) the specific market practice shall take into account the trading mechanism of the relevant market and enable market participants to react properly and in a timely manner to the new market situation created by that practice;
  
  - (e) the specific market practice shall not create risks for the integrity of, directly or indirectly, related markets, whether regulated or not, in the relevant financial instrument within the whole Union;

(f) the outcome of any investigation of the relevant market practice by any competent authority or other authority, in particular whether the relevant market practice breached rules or regulations designed to prevent market abuse, or codes of conduct, be it on the market in question or on directly or indirectly related markets within the Union;

(g) the structural characteristics of the relevant market including whether it is regulated or not, the types of financial instruments traded and the type of market participants, including the extent of retail investors participation in the relevant market.

3. Before establishing anWhen considering to accepted a market practice, in accordance with paragraph 2, competent authorities shall notify ESMA and other competent authorities of the intention to recognise a market practice and provide details of the assessment made according to the criteria laid down in paragraph 2. Notification of the intention to establish an accepted market practice shall be made not less than 3 months before the accepted market practice is intended to take effect. Within 2 months following receipt of the notification, ESMA shall issue an opinion to the competent authority in question assessing the compatibility of each market practice with the requirements established in paragraph 2 and specified in the regulatory technical standards adopted pursuant to paragraph 5. The opinion shall be published on ESMA' s website.
  
4. Where a competent authority establishes an accepted market practice contrary to an ESMA opinion issued according to paragraph 3, it shall publish on its website within 24 hours of establishing the accepted market practice, a notice fully explaining its reasons for doing so.

5. In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards specifying the criteria, the process and the requirements conceived under paragraphs 2 and 3.

ESMA shall submit those draft regulatory technical standards to the Commission by XXX.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

6. ~~Competent authorities shall review regularly the market practices they have accepted, in particular taking into account significant changes to the relevant market environment, such as changes to trading rules or to market infrastructures~~Taking into account significant changes to the relevant market environment, such as changes to trading rules or to market infrastructures, competent authorities shall review every two years each accepted market practice, with a view to decide whether or not to maintain it or to modify the conditions for its acceptance.

7. ESMA shall publish on its website a list of accepted market practices and in which Member States they are applicable.

8. ESMA shall monitor the application of the accepted market practices and shall submit an annual report to the Commission on how they' re applied in the markets concerned.

9. Accepted market practice established by competent authorities before the entry into force of this regulation can continue to apply in respective Member States concerned until competent authorities made a decision regarding the continuation of this practice following ESMA' s opinion according to paragraph 3. Competent authorities shall submit the accepted market practices to ESMA within 3 months after the regulatory technical standards under paragraph 5 are adopted by the Commission.

## CHAPTER 2

### INSIDER DEALING AND MARKET MANIPULATION

#### *Article 9*

#### *Prohibition of insider dealing and of improperly disclosing inside information*

A person shall not:

- (a) engage or attempt to engage in insider dealing; or
- (b) recommend or induce another person to engage in insider dealing.
- (c) deleted
- (d) improperly disclose inside information

#### *Article 10*

#### *Prohibition of market manipulation*

A person shall not engage in market manipulation or attempt to engage in market manipulation.

*Article 11*

*Prevention and detection of market abuse*

1. Market operators operating a regulated market and market operators and investment firms operating an MTF or OTF shall ~~adopt appropriate~~ **establish and maintain effective** arrangements and systems aimed at preventing and detecting market abuse and attempted ~~at~~ market abuse in accordance with [articles 31 and 56] in Directive [New MIFID]. They shall report orders and transactions that might constitute insider dealing, market manipulation or an attempt to engage in market manipulation or insider dealing to the competent authority.
  
2. Any person professionally arranging or executing transactions in financial instruments shall **establish and maintain effective arrangements and systems to detect and report suspicious orders and transactions. Whenever such a person has a** ~~orders and transactions that might constitute insider dealing, market manipulation or an attempt to engage in market manipulation or insider dealing.~~ If there is reasonable suspicion that an order or transaction in any financial instrument, whether placed or executed on or outside a trading venue, might constitute insider dealing, market manipulation or an attempt to engage in market manipulation or insider dealing, the person shall notify the competent authority without delay.

3. ESMA shall develop draft regulatory technical standards to determine:

- appropriate arrangements and the systems and notification templates to be used by persons to comply with the requirements established in paragraphs 1 and 2.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by [...].

Power is conferred to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation 1095/2010.

## CHAPTER 3

### DISCLOSURE REQUIREMENTS

#### *Article 12*

##### *Public disclosure of inside information*

1. An issuer of a financial instrument shall inform the public as soon as possible of inside information, ~~when the inside information is likely to occur even if not yet formalised,~~ which directly concerns the issuer or the financial instrument issued by the issuer. **In case of a process which occurs in stages, the inside information relating to this process only has to be made public once the end stage meets the criteria set forth in this Regulation for inside information.**

**Irrespective of the above, when there is a leakage of inside information before the obligation to disclose arises, the issuer has the obligation to disclose the said information immediately.**

The issuer shall ensure that the inside information is made public in a manner which enables fast access and complete, correct and timely assessment of the information by the public, **and, where applicable, in the Officially Appointed Mechanism referred to in [Transparency Directive].** The issuer must not combine, ~~in a manner likely to be misleading,~~ inside information to the public with the marketing of its activities. The issuer shall, for an appropriate period, post on its Internet site all inside information it is required to disclose publicly.

This article shall apply 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 ~~an~~ instruments only being traded on a MTF or an OTF, issuers who have ~~requested or approved~~ trading of their financial instruments on a MTF or an OTF **or have requested admission to trading of their financial instruments on a MTF** in a Member State.

2. An emission allowance market participant shall publicly, effectively and in a timely manner disclose inside information concerning emission allowances which it holds in respect of its business, including aviation activities as specified in Annex I of Directive 2003/87/EC or installations within the meaning of Article 3(e) of the same Directive which the participant concerned, or parent undertaking or related undertaking, owns or controls or for which the participant, or its parent undertaking

or related undertaking, is responsible for operational matters, either in whole or in part.

With regard to installations, such disclosure shall include relevant information to the capacity and utilisation of installations, including planned or unplanned unavailability of such installations.

The first subparagraph shall not apply to an emission allowance market participant where the installations or aviation activities that it owns, controls or is responsible for, in the preceding year have had 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.

The Commission shall adopt, by means of a delegated act in accordance with Article 31, measures establishing a minimum threshold of carbon dioxide equivalent and a minimum threshold of rated thermal input for the purposes of application of the exemption provided for in the second subparagraph.

3. An issuer of a financial instrument or an emission allowance market participant, not exempted pursuant to the second subparagraph of paragraph 2 of this Article, may under his own responsibility delay the public disclosure of inside information, as referred to in paragraph 1, provided that all of the following conditions are met:

– the immediate disclosure would likely prejudice his legitimate interests;

- the omission would not be likely to mislead the public;
- the issuer of a financial instrument or emission allowance market participant is able to ensure the confidentiality of that information.

Where an issuer of a financial instrument or emission allowance market participant has delayed the disclosure of inside information under this paragraph it shall inform the competent authority that disclosure of the information was delayed **and provide in writing an explanation on how the conditions were met,** immediately after the information is disclosed to the public.

4. In order to preserve the stability of the financial system, an issuer of a financial instrument, which is a credit institution or other financial institution, may under its own responsibility delay the disclosure of inside information including, but not limited to, information which is related to a temporary liquidity problem, including the need to receive temporary liquidity assistance from a central bank or lender of last resort, provided that all the following conditions are satisfied:
- (a) the disclosure of the information entails a risk to undermine the financial stability of the issuer and of the financial system;
  - (b) it is in the public interest to delay the disclosure
  - (c) the confidentiality of that information can be ensured; and
  - (d) the competent authority has consented to the delay on the basis that the conditions at sub-paragraphs (a) to (c) are met.

In order to satisfy the conditions at sub-paragraphs (a) to (c), the issuer shall notify the competent authority of its intention to delay the disclosure of the inside information referred to in the first sub-paragraph and provide evidence that the conditions set out in sub-paragraph (a) to (c) are met. The competent authority shall consult as appropriate the central bank and the macro-prudential Authority where instituted or, otherwise the following Authority:

- a) if the issuer is a credit institution or an investment firm the Authority determined according to art 124a par. 1 a) of Directive [New CRD IV];
- b) in other cases the Authority ~~en~~in charge with of the supervision.

The competent authority shall ensure that the delay is only for such period as is necessary in the public interest, and the competent authority shall as a minimum evaluate on a weekly basis if the conditions set out in sub-paragraph (a) to (c) are met.

If the competent authority does not consent to the delay, the issuer shall disclose the information immediately.

Reference to the competent authority in this paragraph ~~are~~is without prejudice to the ability of the competent authority to exercise its functions in any ways referred to in Article 17 (1).

5. Where an issuer of a financial instrument or an emission allowance market participant, not exempted pursuant to the second subparagraph of paragraph 2 of Article 12, or a person acting on his behalf or for his account, discloses any inside information to any third party in the normal exercise of his duties resulting from employment or profession, as referred to in Article 7(4), he must make complete and effective public disclosure of that information, simultaneously in the case of an intentional disclosure, and promptly in the case of a non-intentional disclosure. This paragraph shall not apply if the person receiving the information owes a duty of confidentiality, regardless of whether such duty is based on a law, on regulations, on articles of association, or on a contract.
6. Inside information relating to issuers, whose financial instruments are admitted to trading on an SME growth market, may be posted by the trading venue on its website instead of on the website of the issuer where the trading venue chooses to provide this facility for issuers on that market. ~~In that event such issuer is deemed to have fulfilled the obligation in paragraph 1.~~
7. ESMA shall develop draft implementing technical standards to determine:
  - the conditions and technical means for appropriate public disclosure of inside information as referred to in paragraphs 1 and 6;
  - the technical means for delaying the public disclosure of inside information as referred to in paragraphs 3 and 4.

ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by [...].

Power is conferred to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation 1095/2010.

### *Article 13*

#### *Insider lists*

1. Issuers of a financial instrument or emission allowance market participants, ~~not exempted pursuant to the second subparagraph of paragraph 2 of Article 12~~, and persons acting on their behalf or on their account, shall:
  - draw up a list of all persons working for them, under a contract of employment or acting as advisers, accountants, credit rating agencies or otherwise performing tasks through which they get access to inside information;
  - provide the list to the competent authority as soon as possible upon its request; and
  - take all reasonable steps to ensure that any person on the list acknowledges the legal and regulatory duties entailed and is aware of the sanctions **applicable** attaching to the misuse or improper **disclosure** ~~circulation~~ of such information in writing, ~~or by equivalent means.~~

When an issuer has delegated the task to draw up and update the list to a person acting on its behalf, the issuer must take reasonable measures to ensure that the person fulfils the obligation under this Regulation. The Issuer must always retain a right of access to the list.

2. The insider list ~~shall be drawn up by the issuer as soon as the information constitutes inside information and~~ shall be promptly updated:
- (a) when there is a change in the reason why any person is already on the list;
  - (b) when any new person has to be added to the list;
3. The insider list shall document at least:
- (a) the identity of any person having access to inside information;
  - (b) the reason **for being included in** ~~why any such person is on the list~~;
  - (c) the date at which the list of insiders was created and updated; ~~and~~
  - (d) the date and time at which such person obtained access to inside information; ~~-~~
  - (e) **the date and time at which such person ceased to have access to inside information;**
4. The insider list should be kept by the issuer or, if applicable, the person acting on his behalf for a period of at least [5] years after being drawn up or updated. **Notwithstanding the retention period of at least [5] years, the issuer or, if applicable, the person acting on his behalf, shall retain the records for a longer period when asked to do so by the competent authority.**
5. Issuers whose financial instruments are admitted to trading on an SME growth market shall be exempted from drawing up such a list if the following conditions are met:

(a) the issuer takes all reasonable steps to ensure that any person with access to inside information acknowledges the legal and regulatory duties entailed and is aware of the sanctions applicable attaching to the misuse or improper circulation of such information; and

(b) if the issuer is able to ~~on request~~ provide the competent authority, upon request, with the insider list of this article, ~~information identifying those persons working for the issuer or on the issuers account with access to inside information before it had been disclosed and the date of when the persons obtained access to the inside information.~~

6. This Article shall apply 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 an instrument only traded on a MTF or an OTF, ~~have requested or approved trading of their financial instruments on a MTF or an OTF~~ or have requested admission to trading of their financial instruments on a MTF in a Member State.

7. Paragraphs 1 to 4 of this Article shall apply to an emission allowance market participant, not exempted pursuant to the second subparagraph of paragraph 2 of Article 12 in relation to inside information concerning emission allowances and auctioned products based thereon that arises in relation to the physical operations of that emission allowance market participant.

Paragraphs 1 to 4 of ~~T~~his Article shall also apply to any auction platform, auctioneer and auction monitor in relation to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (No) 1031/2010.

8. ESMA shall develop draft implementing technical standards to determine the precise format of insider lists and the format for updating insider lists referred to in this Article.

ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by [...].

Power is conferred to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation 1095/2010.

#### *Article 14*

##### *Manager's transactions*

1. Persons discharging managerial responsibilities within an issuer of a financial instrument, ~~or an emission allowance market participant, not exempted pursuant to the second subparagraph of paragraph 2 of Article 12,~~ as well as persons closely associated with them, shall within [3] business days of the transaction ~~inform~~ **notify** the issuer **and the competent authority** about the existence of every transaction conducted on their own account relating to the shares or debt instruments of that issuer, or to derivatives or other financial instruments linked to them, or in emission allowances or related derivatives, once the total amount of the transactions has reached the threshold set in paragraph 6 within a calendar year. The issuer shall ensure that the information is made public in a manner, **as specified in Article 12.7**, ensuring fast access to this information on a non-discriminatory basis and makes it available to the competent authority and, where applicable in the officially appointed mechanism referred to in [transparencydirective] as soon as possible, and no less than [3] business days after the day on which the transaction occurred. The issuer shall use such media as may reasonably be relied upon for the effective dissemination of information to the public throughout the Community.

**This Article shall apply 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 an instrument only traded on a MTF or an OTF, have approved trading of their financial instruments on a MTF or an OTF or have requested admission to trading of their financial instruments on a MTF in a Member State.**

2. The Issuer shall notify the persons discharging managerial responsibilities of their obligations under this article in writing, ~~or by equivalent means.~~ **The issuer shall draw up a list of all persons discharging managerial responsibilities and their closely associated persons.**

Persons discharging managerial responsibilities within an issuer shall notify the persons closely associated with them of their obligations under this article in writing, ~~or by equivalent means.~~ The manager shall keep a copy of this notification.

3. The notification of transactions shall contain the following information:
- a. Name of the person;
  - b. Reasons **for notification;** ~~for being including in/on the list,~~
  - c. Name of the relevant issuer;
  - d. Description **and identity** of the financial instrument;
  - e. Nature of the transaction(s) (e.g. acquisition or disposal), indicating whether it is linked to the exercise of share option programmes or to the case set out in paragraph 5;
  - f. Date and place of the transaction(s); and
  - g. Price and volume of the transaction(s).

5. For the purposes of paragraph 1 transactions that must be notified shall include:
- the pledging or lending of financial instruments by or on behalf of a person referred to in paragraph 1;
  - transactions undertaken by ~~a portfolio manager or~~ **any person professionally arranging or executing transactions or by any** other person, on behalf of a person **discharging managerial responsibilities** referred to in paragraph 1 including where discretion is exercised, ~~by that manager or other person. Transactions undertaken by a portfolio manager, where discretion is placed solely with the portfolio manager shall be exempt from the notification mentioned in paragraph 1.~~
6. Paragraph 1 shall apply to any subsequent transaction once a total amount of EUR [45,000] has been reached within a calendar year. The threshold of EUR [45,000] shall be computed by summing up without netting all transactions mentioned in paragraph 1.

**In conformity with national law, member states may set a higher threshold and notify ESMA accordingly. ESMA shall publish the said information on its website.**

7. **This Article shall apply to persons discharging managerial responsibilities within emission allowance market participants not exempted pursuant to the second subparagraph of paragraph 2 of Article 12 as well as to persons closely associated with them in so far as their transactions involve emission allowances, derivatives thereof or auctioned products based thereon.**

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This Article shall also apply to **persons discharging managerial responsibilities within any auction platform, auctioneer and auction monitor involved in the auctions held under Regulation (No) 1031/2010 as well as to persons closely associated with them in so far as their transactions involve emission allowances, derivatives thereof or auctioned products based thereon.** ~~in relation to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (No) 1031/2010.~~

8. ~~The Commission may adopt, by means of delegated acts in accordance with Article 31, measures modifying the threshold in paragraph 6 taking into account the developments in financial markets.~~
9. The Commission shall adopt, by means of delegated acts in accordance with Article 31, measures, specifying the characteristics of a transaction referred to in paragraph 5 which trigger that duty.

#### *Article 15*

##### *Investment recommendations and statistics*

1. Persons who produce or disseminate recommendations concerning financial instruments or issuers of financial instruments and persons who produce or disseminate other information recommending or suggesting an investment strategy, intended for distribution channels or for the public, shall take reasonable care to ensure that such information is objectively presented, and to disclose their interests or indicate conflicts of interest concerning the financial instruments to which that information relates.
2. Public institutions disseminating statistics **or forecasts** liable to have a significant effect on financial markets shall disseminate them in an objective and transparent way.

3. ESMA shall develop draft regulatory technical standards to determine the technical arrangements, for the various categories of person referred to in paragraph 1, for objective presentation of information recommending an investment strategy and for disclosure of particular interests or indications of conflicts of interest.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by [...].

Power is conferred to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation 1095/2010.

- ~~4. When recommendations are produced or disseminated for the purposes of journalism or other expression in the media, such dissemination of information shall be assessed taking into account the rules governing the freedom of the press and freedom of expression in other media and the rules or codes governing the journalist profession, unless:~~

~~those persons, or persons closely associated with them, derive, directly or indirectly, an advantage or profits from the dissemination of the recommendation in question; or~~

~~the disclosure or dissemination is made with the intention of misleading the market as to the supply of, demand for, or price of financial instruments.~~

## Article 15a

### Disclosure or dissemination of information in the media

When information is disclosed or disseminated for the purpose of journalism or other form of expression in the media, such disclosure or dissemination of information shall be assessed taking into account the rules governing the freedom of the press and freedom of expression in other media and the rules or codes governing the journalist profession, unless:

- (a) the persons concerned or persons closely associated with them derive, directly or indirectly, an advantage or profits from the disclosure or the dissemination of the information in question; or
- (b) the disclosure or the dissemination is made with the intention of misleading the market as to the supply of, demand for, or price of financial instruments.

Where recommendations are produced or disseminated for the purposes of journalism or other expression in the media, the provisions of Article 15 shall apply.

## CHAPTER 4

### ESMA AND COMPETENT AUTHORITIES

#### *Article 16*

#### *Competent authorities*

Without prejudice to the competences of the judicial authorities and paragraph 1 of article 17, each Member State shall designate a single administrative competent authority for the purpose of this Regulation. The competent authority shall ensure that the provisions of this regulation are applied on its territory, regarding all actions carried out on its territory, and those actions carried out abroad relating to instruments admitted to trading on a regulated market, for which a request for admission to trading on such market has been made, or which are traded on a MTF or OTF **or for which a request for admission to trading has been made on a MTF** operating within its territory. Member States shall inform the Commission, ESMA and the competent authorities of other Member States thereof.

#### *Article 17*

#### *Powers of competent authorities*

1. Competent authorities shall exercise their functions and powers in any of the following ways:
  - (a) directly;
  - (b) in collaboration with other authorities or with the market undertakings;
  - (c) under their responsibility by delegation to such authorities or to market undertakings;
  - (d) by application to the competent judicial authorities.

2. ~~[Only insofar as is permitted in national law]~~/[In conformity with their national law], competent authorities shall have at least the following supervisory and investigatory powers, to help fulfil their duties under this Regulation:
- (a) have access to any document **and other data** in any form, and to receive or take a copy thereof;
  - (b) require or demand information from any person, including those who are successively involved in the transmission of orders or conduct of the operations concerned, as well as their principals, and if necessary, to summon and question any such person with a view to obtain information;
  - (c) in relation to derivatives on commodities, request information from market participants on related spot markets according to standardized formats, obtain reports on transactions, and have direct access to traders' systems;
  - (d) carry out on-site inspections or investigations;
  - (e) ~~where prior authorisation is needed from the judicial authority of the Member State concerned, in accordance with national law, and after having obtained that prior authorisation, and where a reasonable suspicion exists that documents related to the subject matter of the inspection or investigation may be relevant to prove a case of insider dealing or market manipulation in violation of this Regulation,~~ enter premises of natural and legal persons in order to seize documents and other data in any form **where a reasonable suspicion exists that documents and other data related to the subject-matter of the inspection or investigation may be relevant to prove a case of insider dealing or market manipulation in violation of this Regulation; where prior authorisation is needed from the judicial authority of the Member State concerned, in accordance with national law, such power shall be used after having obtained that prior authorisation;**

- (f) require existing recordings of telephone conversations or electronic communications held by an investment firm or credit institution or other financial institutions;
- (h) require, insofar as is permitted by national law, existing data traffic records held by a telecommunication operator, where such records may be relevant to ~~prove~~the investigation of insider dealing or market manipulation in violation of this Regulation;
- (i) request the freezing and/or sequestration of assets;
- (j) suspend trading of the financial instrument concerned;
- (k) to temporary require the cessation of any practice that is contrary to the provisions in this regulation and prevent repetition of such practice;
- (l) temporary prohibition of professional activity;
- (m) take all the necessary measure to ensure that the public is correctly informed, including correction of false or misleading disclosed information, including by requiring an issuer or other person who has published or disseminated false or misleading information to publish a corrective statement.

3. The competent authorities shall exercise the supervisory and investigatory powers, referred to in paragraph 2 and in accordance with national law.

4. Member States shall ensure that appropriate measures are in place so that competent authorities have all the supervisory and investigatory powers that are necessary to fulfil their duties. This Regulation is without prejudice to laws, regulations and administrative provisions adopted in relation to takeover bids, merger transactions and other transactions affecting the ownership or control of companies regulated by the supervisory authorities appointed by Member States pursuant to Article 4 of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids that impose requirements in addition to the requirements of this Regulation.

#### *Article 18*

#### *Cooperation with ESMA*

1. The competent authorities shall cooperate with ESMA for the purposes of this Regulation, in accordance with Regulation (EU) No 1095/2010.
2. The competent authorities shall, without delay, provide ESMA with all information necessary to carry out its duties, in accordance with Article 35 of Regulation (EU) No 1095/2010.
3. ESMA shall develop draft implementing technical standards to determine the procedures and forms for exchange of information as referred to in paragraph 2.

ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by [...].

Power is conferred to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation 1095/2010.

*Article 19*  
*Obligation to co-operate*

1. Competent authorities shall cooperate with each other and ESMA where it is necessary for the purposes of this Regulation, unless one of the exceptions in paragraph 2 apply. In particular, competent authorities shall render assistance to competent authorities of other Member States and ESMA, and, without undue delay, exchange information and cooperate in investigation, supervision and enforcement activities. This cooperation and assistance shall also apply as regards the Commission in relation to the exchange of information relating to commodities which are agricultural products listed in Annex I to the Treaty.

**The cooperation between the competent authorities and ESMA shall be done in accordance with Regulation (EU) No 1095/2010, in particular its Article 35.**

2. A ~~C~~competent ~~A~~authority may refuse to act on a request for information or request to co-operate with an investigation where:
  - a. Communication might adversely affect the security ~~or public policy~~ of the Member State addressed, **in particular the fight against terrorism and other serious crimes,**
  - b. Complying might adversely affect its own investigation or enforcement activities,
  - c. Judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the Member State addressed; or
  - d. a final judgment has already been delivered in relation to such persons for the same actions in the Member State addressed.

3. Competent authorities and ESMA shall cooperate with ACER and the national regulatory authorities of the Member States to ensure that a coordinated approach is taken to the enforcement of the relevant rules where transactions, orders to trade or other actions or behaviours relate to one or more financial instruments to which this Regulation applies and also to one or more wholesale energy products to which Article 3, 4 and 5 of [Regulation (EU) No...of the European Parliament and the Council on Wholesale Energy Market Integrity and Transparency] apply. Competent authorities shall consider the specific characteristics of the definitions of Article 2 of [Regulation (EU) No...of the European Parliament and the Council on Wholesale Energy Market Integrity and Transparency] and the provisions of Article 3, 4 and 5 of [Regulation (EU) No...of the European Parliament and the Council on Wholesale Energy Market Integrity and Transparency] when they apply [Articles 6, 7 and 8] of this Regulation to financial instruments related to wholesale energy products.
4. Competent authorities shall, on request, immediately supply any information required for the purpose referred to in paragraph 1.
5. Where a competent authority is convinced that acts contrary to the provisions of this Regulation are being, or have been, carried out on the territory of another Member State or that acts are affecting financial instruments traded on a trading venue situated in another Member State, it shall give notice of that fact in as specific a manner as possible to the competent authority of the other Member State and to ESMA and, in relation to wholesale energy products, to ACER. The competent authorities of the various Member States involved shall consult each other and ESMA and, in relation to wholesale energy products, ACER, on the appropriate action to take and inform each other of significant interim developments. They shall coordinate their action, in order to avoid possible duplication and overlap when applying administrative measures, sanctions and fines to those cross border cases in accordance with Articles 24, 25, 26, 27 and 28, and assist each other in the enforcement of their decisions.

6. The competent authority of one Member State may request assistance of the competent authority of another Member State with regard to on-site inspections or investigations.

The requesting competent authority shall inform ESMA of any request referred to in the first subparagraph. In case of an investigation or an inspection with cross-border effect, ESMA may, if requested to do so by one of the competent authorities coordinate the investigation or inspection.

Where a competent authority receives a request from a competent authority of another Member State to carry out an on-site inspection or an investigation, it may do any of the following:

- (a) carry out the on-site inspection or investigation itself;
- (b) allow the competent authority which submitted the request to participate in an on-site inspection or investigation;
- (c) allow the competent authority which submitted the request to carry out the on-site inspection or investigation itself;
- (d) appoint auditors or experts to carry out the on-site inspection or investigation;
- (e) share specific tasks related to supervisory activities with the other competent authorities.

**Competent authorities shall also cooperate and render assistance to competent authorities of other member states with respect to recovery of pecuniary sanctions.**

7. Without prejudice to Article 258 TFEU, a competent authority whose request for information or assistance in accordance with paragraphs 1, , 3, 4 and 5 is not acted upon within a reasonable time or whose request for information or assistance is rejected may refer that rejection or absence of action within a reasonable timeframe to ESMA.

In those situations, ESMA may act in accordance with Article 19 of Regulation (EU) No 1095/2010, without prejudice to the possibility of ESMA acting in accordance with Article 17 of Regulation (EU) No 1095/2010.

8. Competent authorities shall cooperate and exchange information with relevant national and third country regulatory authorities responsible for the related spot markets where they have reasonable grounds to suspect that acts, which constitute market abuse in violation of this Regulation, are being, or have been, carried out. This cooperation shall ensure a consolidated overview of the financial and spot markets, and detect and sanction cross-market and cross-border market abuses.

In relation to emission allowances, the co-operation and exchange of information provided for under the preceding subparagraph shall also be ensured with:

- (a) the auction monitor, with regard to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (No) 1031/2010;
- (b) competent authorities, registry administrators, including the Central Administrator, and other public bodies charged with the supervision of compliance under Directive 2003/87/EC.

ESMA shall perform a facilitation and coordination role in relation to the cooperation and exchange of information between competent authorities and regulatory authorities in other Member states and third countries. Competent authorities shall wherever possible conclude cooperation arrangements with third country regulatory authorities responsible for the related spot markets in accordance with Article 20.

9. ESMA shall develop draft implementing technical standards to determine the procedures and forms for exchange of information and assistance as referred to in this Article.

ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by [...].

Power is conferred to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation 1095/2010.

## *Article 20*

### *Cooperation with third countries*

1. The competent authorities of Member States shall where necessary conclude cooperation arrangements with supervisory authorities of third countries concerning the exchange of information with supervisory authorities in third countries and the enforcement of obligations arising under this Regulation in third countries. These cooperation arrangements shall ensure at least an efficient exchange of information that allows the competent authorities to carry out their duties under this Regulation.

A competent authority shall inform ESMA and other competent authorities of Member States where it proposes to enter into such an arrangement.

2. ESMA shall ~~wherever possible~~ coordinate the development of cooperation arrangements between the competent authorities of Member States and the relevant competent authorities of third countries. For that purpose, ESMA shall prepare a template document for cooperation arrangements that may be used by competent authorities of Member States.

ESMA shall ~~wherever possible~~ also coordinate the exchange between competent authorities of Member States of information obtained from competent authorities of third countries that may be relevant to the taking of measures under [Articles 24, 25, 26, and 27].

3. The competent authorities shall conclude cooperation arrangements on exchange of information with the competent authorities of third countries only where the information disclosed is subject to guarantees of professional secrecy which are at least equivalent to those set out in Article 21. Such exchange of information must be intended for the performance of the tasks of those competent authorities.
4. The disclosure of personal data to a third country shall be governed by Articles 22 and 23.

#### *Article 21*

#### *Professional secrecy*

1. Any confidential information received, exchanged or transmitted pursuant to this Regulation shall be subject to the conditions of professional secrecy laid down in paragraph 2, except when the competent authority states that the information may be disclosed or where such disclosure is necessary for legal proceedings.
2. The obligation of professional secrecy applies to all persons who work or who have worked for the competent authority or for any authority or market undertaking to whom the competent authority has delegated its powers, including auditors and experts contracted by the competent authority. Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of provisions laid down by national law.

## *Article 22*

### *Data protection*

1. With regard to the processing of personal data carried out by Member States within the framework of this Regulation, competent authorities shall apply the provisions of Directive 95/46/EC as these are implemented in national law. With regard to the processing of personal data by ESMA within the framework of this Regulation, ESMA shall comply with the provisions of Regulation (EC) No 45/2001.
2. Personal data shall be retained for a maximum period of 5 years after any administrative or legal proceedings to which the information regards has been concluded, unless it is retained for historical, statistical or scientific purpose.

## *Article 23*

### *Disclosure of personal data to third countries*

1. The competent authority of a Member State may transfer personal data to a third country provided the requirements of Directive 95/46/EC, are fulfilled and only on a case-by-case basis. The competent authority shall ensure that the third country does not transfer the data to another third country unless it is given express written authorisation and complies with the conditions specified by the competent authority of the Member State.
2. The competent authority of a Member State shall only disclose personal data received from a competent authority of another Member State to a competent authority of a third country where the competent authority of the Member State concerned has obtained express agreement from the competent authority which transmitted the information and, where applicable, then information is disclosed solely for the purposes for which that competent authority gave its agreement.

Where a cooperation agreement provides for the exchange of personal data, it shall comply with Directive 95/46/EC as these are implemented in national law.

## CHAPTER 5

### Administrative measures and sanctions

#### *Article 24*

##### *Administrative measures and sanctions*

~~1. Without prejudice to the right of Member States to provide for criminal sanctions, Member States shall ensure, [in conformity with their national law] / [inso far as is permitted in national law], that the appropriate administrative measures can be taken or administrative sanctions be imposed. Member States shall ensure that these measures are effective, proportionate and dissuasive.~~

~~By [24 months after entry into force of this Regulation] the Member States shall notify the rules referred to in the first subparagraph to the Commission and ESMA. They shall notify the Commission and ESMA without delay of any subsequent amendment thereto.~~

~~2. In the exercise of their sanctioning powers under circumstances defined in Article 25, competent authorities shall cooperate closely to ensure that the administrative measures and sanctions produce the desired results of this Regulation and coordinate their action in order to avoid possible duplication and overlap when applying administrative measures and sanctions and fines to cross border cases in accordance with Article 19~~

#### *Article 25*

##### *Breaches*

~~Article 26 shall apply for breaches of the following provisions: 9, 10, 11(1), 11(2), 12(1), 12(2), 12(3), 12(4), 12(5), 12(6), 13(1), 13(2), 13(3), 13(4), 13(5), 14(1), 14(2), 14(3), 15(1), 15(2).~~

Article 26

Administrative Measures and sanctions for breaches of Article 25

1. Without prejudice to ~~their~~ right of Member States to provide for criminal sanctions in conformity with national law ~~[in so far as is permitted in national law]~~ ~~and~~ or Directive [new MAD], and without prejudice to the supervisory powers of competent authorities in accordance with Article 17, **Member States shall, in conformity with national law, provide for competent authorities to have the power to take appropriate administrative measures and impose administrative sanctions for the breaches of articles 9, 10, 11(1), 11(2), 12(1), 12(2), 12(3), 12(4), 12(5), 12(6), 13(1), 13(2), 13(3), 13(4), 13(5), 14(1), 14(2), 14(3), 15(1) and 15(2) of this Regulation.**

**By [24 months after entry into force of this Regulation] Member States shall notify the rules referred to in the first subparagraph to the Commission and ESMA. They shall notify the Commission and ESMA without delay of any subsequent amendment thereto.**

- 1a.** ~~In~~ case of a breach referred to in Article 25 **paragraph 1**, Member States shall, in conformity with national law, provide for competent authorities to, have the power to **take and or** impose at least the following administrative measures and sanctions:
- (a) an order requiring the person responsible for the breach to cease the conduct and to desist from a repetition of that conduct;
  - (b) Deleted.
  - (ba) the disgorgement of the profits gained or losses avoided because of the breach where those can be determined;

- (c) a public warning which indicates the person responsible and the nature of the breach;
- (d) Deleted
- (e) Deleted.
- (f) withdrawal or suspension of the authorisation of an investment firm as defined in Article 4 (1) of Directive [new MiFID];
- (g) a ban or temporary ban against any member of an investment firm's management body or any other natural person, who is held responsible, to exercise management functions in the investment firm;
- (h) Deleted.
- (i) Deleted
- (j) administrative pecuniary sanctions of up to at least ~~twice~~ the amount of the profits gained or losses avoided because of the breach where those can be determined; or
  - 1) in respect of a natural person up to at least:
    - (i) for breaches of articles 9 and 10, [EUR 5,000,000] or in the Member States where the Euro is not the official currency, the corresponding value in the national currency on the date of entry to force of this Regulation; or

(ii) for breaches of articles not covered by articles 9, ~~and 10~~, **13, 14 and 15** [EUR 1,000,000] or in the Member States where the Euro is not the official currency, the corresponding value in the national currency on the date of entry to force of this Regulation;

**(iii) for breaches of articles 13, 14 and 15 [EUR 500,000] or in the Member States where the Euro is not the official currency, the corresponding value in the national currency on the date of entry into force of this regulation.**

2) in respect of a legal person up to at least:

(i) for breaches of articles 9 and 10, EUR[~~5~~10,000,000] ~~or 10 % of its total annual turnover or the shareholders equity according to the last available accounts approved by the management body; where the legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts according to [as defined in Directive 83/349/EEC], the relevant total annual turnover shall be the total annual turnover or the corresponding type of income according to the relevant accounting directives [the relevant turnover is determined according to Article 67(1)e of Directive [New CRDIV] for credit institutions and investment firms, Directive 91/674/EC for insurance companies] according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking; or~~

(ii) for breaches not covered by articles 9~~2~~ and 10, 13, 14 and 15 EUR[2,500,000] or 2 % of its total annual turnover or the shareholders equity according to the last available accounts approved by the management body; where the legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts according to [as defined in Directive 83/349/EEC], the relevant total annual turnover shall be the total annual turnover or the corresponding type of income according to the relevant accounting directives [Directive 86/635/EC for banks, Directive 91/674/EC for insurance companies] according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking; or

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....(iii) for breaches of articles 13, 14 and 15 [EUR 1,000,000] or in the Member States where the Euro is not the official currency, the corresponding value in the national currency on the date of entry into force of this regulation.

References to the competent authority in this paragraph are without prejudice to the ability of the competent authority to exercise its functions in any ways referred to in Article 17.1 (1).

2. Member States may provide competent authorities under national law to have other sanctioning powers in addition to those referred to in paragraph 1a and may provide for higher levels of sanctions than those established in that paragraph.
3. Deleted.

*Article 27*

*Exercise of supervisory and sanctioning powers*

1. Member States shall ensure that, when determining the type and level of administrative sanctions, competent authorities take into account all relevant circumstances, including where appropriate:
  - (a) the gravity and duration of the breach;
  - (b) the degree of responsibility of the responsible person;
  - (c) the financial strength of the responsible person, as indicated by the total turnover of the responsible legal person or the annual income of the responsible natural person;
  - (d) the importance of the profits gained or losses avoided by the responsible person, insofar as they can be determined;
  - (e) the level of cooperation of the responsible person with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;
  - (f) previous breaches by the responsible person.
  
2. ~~Deleted.~~ **In the exercise of their sanctioning powers under circumstances defined in Article 26, competent authorities shall cooperate closely to ensure that the supervisory and investigative powers and administrative sanctions produce the desired results of this Regulation. They shall also and coordinate their action in order to avoid possible duplication and overlap when applying supervisory and investigative powers and administrative sanctions and fines to cross border cases in accordance with Article 19.**

*Article 28*

*Appeal*

Deleted.

*Article 29*

*Reporting of violations*

1. Member States shall ensure that competent authorities establish effective mechanisms to enable reporting of actual or potential breaches of the provisions of this Regulation to competent authorities.
  - 1a. The mechanisms referred to in paragraph 1 shall include at least:
    - (a) specific procedures for the receipt of reports of breaches and their follow-up;
    - (b) appropriate protection for employees who denounce breaches committed within their employer against retaliation, discrimination or other types of unfair treatment at a minimum;
    - (c) protection of **the identity** ~~personal data concerning both~~ **of** the person who reports the breaches and the natural person who is allegedly responsible for a breach, **at all stages of the procedure unless such disclosure is required by national law in the context of further investigation or subsequent judicial proceedings.** ~~in compliance with the principles laid down in Directive 95/46/EC.~~
    - (d)
  - ~~1b.~~ **Further to the above, Member States may provide competent authorities under national law to establish additional mechanisms.** ~~Member states may provide for additional factors when transposing the provisions of this article in national law.~~

2. Member States may require employers engaging in activities that are regulated for financial services purposes, to have in place appropriate procedures for their employees to report breaches internally through a specific, independent and autonomous channel.
3. Member States may provide for financial incentives to persons who offer salient information about potential breaches of this Regulation may be granted in conformity with national law where such persons do not have other pre-existing legal or contractual duties to report such information, and provided that the information is new, and it results in the imposition of an administrative sanction or measure or a criminal sanction for a breach of this Regulation.
4. The Commission shall adopt, by means of implementing acts in accordance with Article 33, measures to specify the procedures referred to in paragraph 1, including the modalities of reporting and the modalities for following-up of reports, ~~the~~ **and** measures for the protection of employees and ~~the~~ measures for the protection of personal data.

#### *Article 30*

##### *Exchange of information with ESMA*

1. Competent authorities shall provide ESMA annually with aggregated information regarding all administrative measures, sanctions and fines imposed by the competent authority or judicial authorities in accordance with Articles 24, 25, 26, 27, 28 and 29. ESMA shall publish this information in an annual report.

2. Where the competent authority has disclosed administrative measures, sanctions and fines to the public, it shall simultaneously report those administrative measures, sanctions and fines to ESMA.
3. Where a published administrative measure, sanction and fine relates to an investment firm authorised in accordance with Directive [new MiFID], ESMA shall add a reference to the published sanction in the register of investment firms established under Article 5(3) of Directive [new MiFID].
4. ESMA shall develop draft implementing technical standards to determine the procedures and forms for exchange of information as referred to in this Article.

ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by [...].

Power is conferred to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation 1095/2010.

## *Chapter 5a*

### *Article 30a*

#### *Publication of decisions*

1. Member States shall provide that competent authorities publish every decision on sanctions and measures imposed for a breach of this Regulation without undue delay, including at least information on the type and nature of the breach.

However competent authorities may delay publication of a decision, or where this is insufficient, not publish the decision, in a manner which is in conformity with national law, if publication would either:

- a. jeopardise the stability of financial markets,
  - b. cause disproportionate damage to the natural persons or legal persons involved,
  - c. be disproportionate damage in the light of the breach which is sanctioned, or
  - d. jeopardise an on-going investigation.
2. If the decision published under this Article is appealed, the competent authority is obliged to include this information in the publication either at the time of publication or amend the publication if appeal is submitted after the initial publication.

## CHAPTER 6

### DELEGATED ACTS

#### *Article 31*

#### *Delegation of powers*

As referred to in [Article 4(3), Article 12(2), Article 14(8) and (9)] the Commission shall be empowered to adopt delegated acts in accordance with Article 32.

#### *Article 32*

#### *Exercise of the delegation*

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power shall be conferred for an indeterminate period of time from the date referred to in Article 36(1).
3. The delegation of power may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.

## CHAPTER 7

### IMPLEMENTING ACTS

#### *Article 33*

#### *Committee procedure*

1. For the adoption of implementing acts under Article 29(3) the Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC<sup>20</sup>. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011<sup>21</sup>.
2. Where reference is made to this paragraph, Articles 5 of Regulation (EU) No 182/2011 shall apply, having regard to the provisions of Article 8 thereof.

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<sup>20</sup> OJ L 191, 13.7.2001, p.45.

<sup>21</sup> OJ L 55, 28.2.2011, p.13.

## CHAPTER 8

### TRANSITIONAL AND FINAL PROVISIONS

#### *Article 34*

#### *Repeal of Directive 2003/6/EC*

Directive 2003/6/EC and its implementing measures shall be repealed with effect from [24 months after entry into force of this Regulation]. References to Directive 2003/6/EC shall be construed as references to this Regulation.

#### *Article 35*

#### *Transitional provisions*

Market practices existing before the entry into force of this Regulation and accepted by competent authorities in accordance with Commission Regulation (EC) No 2273/2003<sup>22</sup> for the purpose of applying point 2(a) of Article 1 of Directive 2003/6/EC, may remain applicable until [12 months after entry into application of this Regulation] provided that they are notified to ESMA by the competent authorities concerned before the date of application of this Regulation.

#### *Article 36*

#### *Entry into force and application*

1. This Regulation shall enter into force [on the twentieth day following that] of its publication in the Official Journal of the European Union.
2. It shall apply from [24 months after entry into force of this Regulation] except for [Articles 3(2), , 8(5), 11(3), 12(9), 13(4), 13(6), 14(5), 14(6), 15(3), 18(9), 19(9), and 29(3)] which shall apply immediately following the entry into force of this Regulation.

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<sup>22</sup> OJ L 162, 29.04.2004, p. 72.

3. By 24 month after the entry into force of this Regulation Member States shall implement into national law; [Article 16, Article 17, Article 24,, Article 25,Article 26, Article 29 and Article 30a].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament*

*For the Council*

*The President*

*The President*

## ANNEX I

### A. Indicators of manipulative behaviour related to false or misleading signals and to price securing

For the purposes of applying point (a) of paragraph 1 of Article 8 of this Regulation, and without prejudice to the forms of behaviour set out in paragraph 3 thereof, the following non-exhaustive indicators, which should not necessarily be deemed in themselves to constitute market manipulation, shall be taken into account when transactions or orders to trade are examined by market participants and competent authorities:

- (a) the extent to which orders to trade given or transactions undertaken represent a significant proportion of the daily volume of transactions in the relevant financial instrument, related spot commodity contract, or auctioned product based on emission allowances, in particular when these activities lead to a significant change in their prices;
- (b) the extent to which orders to trade given or transactions undertaken by persons with a significant buying or selling position in a financial instrument, a related spot commodity contract, or a auctioned product based on emission allowances, lead to significant changes in the price of that financial instrument, related spot commodity contract, or auctioned product based on emission allowances;
- (c) whether transactions undertaken lead to no change in beneficial ownership of a financial instrument, a related spot commodity contract, or a auctioned product based on emission allowances;
- (d) the extent to which orders to trade given or transactions undertaken include position reversals in a short period and represent a significant proportion of the daily volume of transactions in the relevant financial instrument, a related spot commodity contract, or a auctioned product based on emission allowances, and might be associated with significant changes in the price of a financial instrument, a related spot commodity contract, or a auctioned product based on emission allowances;

- (e) the extent to which orders to trade given or transactions undertaken are concentrated within a short time span in the trading session and lead to a price change which is subsequently reversed;
- (f) the extent to which orders to trade given change the representation of the best bid or offer prices in a financial instrument, a related spot commodity contract, or a auctioned product based on emission allowances, or more generally the representation of the order book available to market participants, and are removed before they are executed;
- (g) the extent to which orders to trade are given or transactions are undertaken at or around a specific time when reference prices, settlement prices and valuations are calculated and lead to price changes which have an effect on such prices and valuations.

B. Indicators of manipulative behaviours related to the employment of fictitious devices or any other form of deception or contrivance

For the purposes of applying point (b) of paragraph 1 of Article 8 of this Regulation, and without prejudice to the forms of behaviour set out in the second paragraph of point 3 thereof, the following non-exhaustive indicators, which should not necessarily be deemed in themselves to constitute market manipulation, shall be taken into account when transactions or orders to trade are examined by market participants and competent authorities:

- (a) whether orders to trade given or transactions undertaken by persons are preceded or followed by dissemination of false or misleading information by the same persons or persons linked to them;

- (b) whether orders to trade are given or transactions are undertaken by persons before or after the same persons or persons linked to them produce or disseminate investment recommendations which are erroneous or biased or demonstrably influenced by material interest.
-