

COMMISSION DELEGATED REGULATION (EU) 2016/958**of 9 March 2016****supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the technical arrangements for objective presentation of investment recommendations or other information recommending or suggesting an investment strategy and for disclosure of particular interests or indications of conflicts of interest****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC ⁽¹⁾, and in particular the third subparagraph of Article 20(3) thereof,

Whereas:

- (1) Harmonised standards on the investment recommendations or other information recommending or suggesting an investment strategy (hereinafter 'recommendations') are necessary for the objective, clear and accurate presentation of such information and for the disclosure of interests and conflicts of interest. They should be complied with by persons producing or disseminating recommendations. In particular, in order to ensure high standards of fairness, probity and transparency in the market, recommendations should be presented objectively and in a way that does not mislead market participants or the public.
- (2) All persons who produce or disseminate recommendations should have in place arrangements to ensure that information is objectively presented and interests or conflicts of interest are effectively disclosed. Moreover, additional arrangements should be made for those categories of persons who, by virtue of their nature and their activities, generally pose greater risks to market integrity and investor protection. That group would include independent analysts, investment firms, credit institutions, any person whose main business is to produce or disseminate recommendations, and the natural persons working for them under a contract of employment or otherwise, as well as other persons proposing investment decisions in respect of financial instruments who present themselves as having financial experience or expertise, or are perceived as such by market participants (hereinafter 'experts'). Non-exhaustive indicators to be considered in relation to the identification of such experts include the frequency with which they produce recommendations; the number of followers they have when they propose recommendations; their personal work's history, including whether they have been professionally producing recommendations in the past; and whether their previous recommendations are or have been relayed by third parties, such as the media.
- (3) The identity of the persons producing recommendations, their competent authority, if any, and the dates and times when the recommendations were completed and then disseminated should be disclosed, since they may be valuable information for investors in relation to their investment decisions.
- (4) Disclosure of valuations and methodologies is useful information in order to understand recommendations, as well as to gauge the extent to which the persons producing them are consistent in the valuations and methodologies they adopt. Recommendations produced by the same person and related to companies that belong to the same industry or to the same country should aim at consistently exhibiting some consistent common factors. For those reasons, independent analysts, investment firms, credit institutions, persons whose main business is to produce recommendations, and the natural persons working for them under a contract of employment or otherwise, as well as experts, should explain in the recommendations any change in the valuations and methodologies they use.

⁽¹⁾ OJ L 173, 12.6.2014, p. 1.

- (5) The interests of persons producing recommendations, and the conflicts that those interests could entail, may influence the opinion that those persons express in their recommendations. In order to ensure that the objectivity and reliability of the information can be evaluated, it should be appropriate to disclose of any relationship and circumstance that may reasonably be expected to impair the objectivity of the information, including interests or conflicts of interest of the person producing the recommendation, or of a person belonging to the same group, concerning the financial instrument or the issuer to whom the recommendation, directly or indirectly, relates.
- (6) Disclosures of interests or conflicts of interest should be specific enough as to enable the recipient of the recommendation to take an informed view of the degree and nature of the interest or conflict of interest. Independent analysts, investment firms, credit institutions, persons whose main business is to produce recommendations, and the natural persons working for them under a contract of employment or otherwise, as well as experts, should also disclose whether they own a net long or short position above a predetermined threshold in the issued share capital of the issuer to which the recommendation relates. In that context, they should calculate the net long or short position in accordance with the methodology for calculating positions under Regulation (EU) No 236/2012 of the European Parliament and of the Council ⁽¹⁾.
- (7) In the interest of proportionality, persons producing recommendations should be allowed to adapt their arrangements for objective presentation and for disclosure of interest or conflicts of interest within the limits set out in this Regulation, including when they produce non-written recommendations that are made using modalities such as meetings, road shows or audio or video conferences as well as radio, TV or website interviews.
- (8) Recommendations may be disseminated in an unaltered, altered or summarised form by a person other than the person producing them. The way in which persons who disseminate recommendations handle those recommendations may have an important impact on the evaluation of those by investors. In particular, the knowledge of the identity of the person disseminating the recommendation and the extent of alteration of the source recommendation can be a valuable piece of information for investors when considering their investment decisions.
- (9) Where the persons disseminating recommendations extrapolate only some elements of a source recommendation, this could amount to a substantial alteration of the content of the source recommendation. A change in the direction of the source recommendation (e.g. by changing a 'buy' recommendation into a 'hold' or 'sell' recommendation, or vice versa, or by changing the price target) should always be considered a substantial alteration.
- (10) The processing of personal data in the context of this Regulation should be conducted in compliance with the national laws, regulations or administrative provisions transposing Directive 95/46/EC of the European Parliament and of the Council ⁽²⁾.
- (11) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority to the Commission.
- (12) The European Securities and Markets Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council ⁽³⁾.
- (13) In order to ensure the smooth functioning of the financial markets, it is necessary that this Regulation enters into force as a matter of urgency and that the provisions laid down in this Regulation apply from the same date as those laid down in Regulation (EU) No 596/2014,

⁽¹⁾ Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swap (OJ L 86, 24.3.2012, p. 1).

⁽²⁾ Directive 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 (OJ L 281, 23.11.1995, p. 31).

⁽³⁾ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Definitions

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

- (a) 'expert' means a person referred to in Article 3(1)(34)(ii) of Regulation (EU) No 596/2014 who repeatedly proposes investment decisions in respect of financial instruments and who:
 - (i) presents himself as having financial expertise or experience; or
 - (ii) puts forward his recommendation in such a way that other persons would reasonably believe he has financial expertise or experience;
- (b) 'group' means a group as defined in Article 2(11) of Directive 2013/34/EU of the European Parliament and of the Council ⁽¹⁾.

CHAPTER II

PRODUCTION OF RECOMMENDATIONS

Article 2

Identity of producers of recommendations

1. Persons who produce investment recommendations or other information recommending or suggesting an investment strategy ('recommendations') shall disclose clearly and prominently in all the recommendations they produce their identity and the following information about the identity of any other person(s) responsible for the production of the recommendation:

- (a) the name and the job title of all the natural persons involved in the production of the recommendation;
- (b) where a natural or a legal person involved in the production of the recommendation is acting under contract, including a contract of employment, or otherwise for a legal person, the name of such legal person.

2. Where the person who produces recommendations is an investment firm, a credit institution, or a natural person working for an investment firm or a credit institution under contract of employment or otherwise, that person shall, in addition to the information laid down in paragraph 1, state the identity of the relevant competent authority in the recommendation.

3. Where the person who produces recommendations is not a person referred to in paragraph 2, but is subject to self-regulatory standards or codes of conduct for the production of recommendations, that person shall, in addition to the information laid down in paragraph 1, state a reference to those standards or codes in the recommendation.

Article 3

General obligations in relation to objective presentation of recommendations

1. Persons who produce recommendations shall ensure that their recommendations comply with the following requirements:

- (a) facts are clearly distinguished from interpretations, estimates, opinions and other types of non-factual information;
- (b) all substantially material sources of information are clearly and prominently indicated;

⁽¹⁾ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

- (c) all sources of information are reliable or, where there is any doubt as to whether a source is reliable, this is clearly indicated;
- (d) all projections, forecasts and price targets are clearly and prominently labelled as such, and the material assumptions made in producing or using them are indicated;
- (e) the date and time when the production of the recommendation was completed is clearly and prominently indicated.

2. Where the disclosure of the information required in points (b) or (e) of paragraph 1 is disproportionate in relation to the length or form of the recommendation, including in the case of a non-written recommendation that is made using modalities, such as meetings, road shows, audio or video conferences, as well as radio, television or website interviews, the person who produces recommendations shall state in the recommendation where the required information can be directly and easily accessed by the persons receiving the recommendation free of charge.

3. Persons who produce recommendations shall substantiate any recommendation they have produced to the competent authority upon its request.

Article 4

Additional obligations in relation to objective presentation of recommendations applicable to the persons referred to Article 3(1)(34)(i) of Regulation (EU) No 596/2014 and experts

1. In addition to the information laid down in Article 3, the persons referred to Article 3(1)(34)(i) of Regulation (EU) No 596/2014 and experts shall include in the recommendation the following information in a clear and prominent manner:

- (a) if the recommendation has been disclosed to the issuer to which the recommendation, directly or indirectly, relates and it has been subsequently amended, a statement to that effect;
- (b) a summary of any basis of valuation or methodology and the underlying assumptions used to either evaluate a financial instrument or an issuer, or to set a price target for a financial instrument, as well as an indication and a summary of any changes in the valuation, methodology or underlying assumptions;
- (c) an indication of the place where detailed information about the valuation or methodology and the underlying assumptions is directly and easily accessible, in the event that the person who produces recommendations has not used proprietary models;
- (d) an indication of the place where material information about the proprietary models used is directly and easily accessible, in the event that the person who produces recommendations has used proprietary models;
- (e) the meaning of any recommendation made, such as the recommendations to 'buy', 'sell' or 'hold', and the length of time of the investment to which the recommendation relates are adequately explained and any appropriate risk warning, which shall include a sensitivity analysis of the assumptions, is indicated;
- (f) a reference to the planned frequency of updates to the recommendation;
- (g) an indication of the relevant date and time for any price of financial instruments mentioned in the recommendation;
- (h) where a recommendation differs from any of their previous recommendations concerning the same financial instrument or issuer that has been disseminated during the preceding 12-month period, the change(s) and the date of that previous recommendation are indicated; and
- (i) a list of all their recommendations on any financial instrument or issuer that were disseminated during the preceding 12-month period, containing for each recommendation: the date of dissemination, the identity of the natural person(s) referred to in Article 2(1)(a), the price target and the relevant market price at the time of dissemination, the direction of the recommendation and the validity time period of the price target or of the recommendation.

2. Where the disclosure of the information required in points (b), (e) or (i) of paragraph 1 is disproportionate in relation to the length or form of the recommendation, including in the case of a non-written recommendation that is made using modalities, such as meetings, road shows, audio or video conferences, as well as radio, television or website interviews, the person who produces recommendations shall state in the recommendation where the required information can be directly and easily accessed by the persons receiving the recommendation free of charge.

*Article 5***General obligations in relation to disclosure of interests or of conflicts of interest**

1. Persons who produce recommendations shall disclose in their recommendations all relationships and circumstances that may reasonably be expected to impair the objectivity of the recommendation, including interests or conflicts of interest, on their part or on the part of any natural or legal person working for them under a contract, including a contract of employment, or otherwise, who was involved in producing the recommendation, concerning any financial instrument or the issuer to which the recommendation directly or indirectly relates.
2. Where a person who produces recommendations referred to in paragraph 1 is a legal person, the information to be disclosed in accordance with paragraph 1 shall also include any interests or conflicts of interest of any person belonging to the same group that are:
 - (a) known, or reasonably expected to be known, to the persons involved in the production of the recommendation; or
 - (b) known to persons who, although not involved in the production of the recommendation, have or could reasonably be expected to have, access to the recommendation prior to its completion.
3. Where a person who produces recommendations referred to in paragraph 1 is a natural person, the information to be disclosed in accordance with paragraph 1 shall also include any interests or conflicts of interest of any person closely associated with him.

*Article 6***Additional obligations in relation to disclosure of interests or of conflicts of interest by persons referred to in Article 3(1)(34)(i) of Regulation (EU) No 596/2014 and experts**

1. In addition to the information required in Article 5, a person referred to in Article 3(1)(34)(i) of Regulation (EU) No 596/2014 and an expert shall include in the recommendation the following information on their interests and conflicts of interest concerning the issuer to which the recommendation, directly or indirectly, relates:
 - (a) if it owns a net long or short position exceeding the threshold of 0,5 % of the total issued share capital of the issuer, calculated in accordance with Article 3 of Regulation (EU) No 236/2012 and with Chapters III and IV of Commission Delegated Regulation (EU) No 918/2012 ⁽¹⁾, a statement to that effect specifying whether the net position is long or short;
 - (b) if holdings exceeding 5 % of its total issued share capital are held by the issuer, a statement to that effect;
 - (c) if the person producing the recommendation or any other person belonging to the same group with that person:
 - (i) is a market maker or liquidity provider in the financial instruments of the issuer, a statement to that effect;
 - (ii) has been lead manager or co-lead manager over the previous 12 months of any publicly disclosed offer of financial instruments of the issuer, a statement to that effect;
 - (iii) is party to an agreement with the issuer relating to the provision of services of investment firms set out in Sections A and B of Annex I to Directive 2014/65/EU of the European Parliament and of the Council ⁽²⁾, a statement to that effect, provided that this would not entail the disclosure of any confidential commercial information and that the agreement has been in effect over the previous 12 months or has given rise during the same period to the obligation to pay or receive compensation;
 - (iv) is party to an agreement with the issuer relating to the production of the recommendation, a statement to that effect.

⁽¹⁾ Commission Delegated Regulation (EU) No 918/2012 of 5 July 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps with regard to definitions, the calculation of net short positions, covered sovereign credit default swaps, notification thresholds, liquidity thresholds for suspending restrictions, significant falls in the value of financial instruments and adverse events (OJ L 274, 9.10.2012, p. 1).

⁽²⁾ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

2. Where the person referred to in paragraph 1 is an investment firm, a credit institution, or a natural or a legal person working for an investment firm or credit institution under a contract, including a contract of employment, or otherwise, that person shall, in addition to the information laid down in paragraph 1, include the following information in the recommendation:

- (a) a description of the effective internal organisational and administrative arrangements and of any information barrier it has set up for the prevention and avoidance of conflicts of interest with respect to the recommendations;
- (b) if the remuneration of natural or legal persons working for it under a contract of employment or otherwise, and who were involved in producing the recommendation, is directly tied to transactions in services of investment firms set out in Sections A and B of Annex I to Directive 2014/65/EU or other type of transactions it or any legal person part of the same group performs, or to trading fees it or any legal person that is part of the same group receives, a statement to that effect;
- (c) information on the price and date of acquisition of shares where natural persons working for the person referred to in the first subparagraph under a contract of employment or otherwise, and who were involved in producing the recommendation, receive or purchase the shares of the issuer to which the recommendation, directly or indirectly, relates, prior to a public offering of such shares.

3. Where the person referred to in paragraph 1 is an investment firm, a credit institution, or a natural or legal person working for an investment firm or credit institution under a contract, including a contract of employment, or otherwise, that person shall publish, on a quarterly basis, the proportion of all recommendations that are 'buy', 'hold', 'sell' or equivalent terms over the previous 12 months, and the proportion of issuers corresponding to each of those categories to which such person has supplied material services of investment firms set out in Sections A and B of Annex I to Directive 2014/65/EU over the previous 12 months.

4. Where the disclosure of the information referred to in paragraphs 1 and 2 is disproportionate in relation to the length or form of the recommendation, including in the case of a non-written recommendation that is made using modalities, such as meetings, road shows or audio or video conferences, as well as radio, television or website interviews, the person who produces recommendations shall state in the recommendation where the required information can be directly and easily accessed by the persons receiving the recommendation free of charge.

Article 7

Dissemination of recommendations by the producer

Where a person producing recommendations disseminates a recommendation it produced, it shall include in the recommendation the date and time when the recommendation was first disseminated.

CHAPTER III

DISSEMINATION OF RECOMMENDATIONS PRODUCED BY THIRD PARTIES

Article 8

Arrangements for dissemination of recommendations

1. Persons who disseminate recommendations produced by a third party shall communicate to the persons receiving the recommendations the following information:

- (a) their identity, in a clear and prominent manner;
- (b) all relationships and circumstances that may reasonably be expected to impair the objective presentation of the recommendation, including interests or conflicts of interest concerning any financial instrument or the issuer to which the recommendation, directly or indirectly, relates;
- (c) the date and time when the recommendation is first disseminated.

2. Where a person referred to in paragraph 1 is an investment firm, a credit institution, or a natural or legal person working for an investment firm or a credit institution under a contract, including a contract of employment, or otherwise, that person shall, in addition to the information laid down in paragraph 1, communicate to the persons receiving the recommendations the following information:

- (a) the identity of the relevant competent authority;
- (b) its own interests or indication of conflicts of interest as laid down in Article 5 and Article 6(1) and (2), unless that person is acting as the disseminating channel of the recommendations produced within the same group without exercising any discretion as to the selection of the recommendation to disseminate.

Article 9

Additional arrangements for dissemination of summary or extract of recommendations

1. In addition to the information laid down in Article 8, persons who disseminate a summary or an extract of a recommendation produced by a third party shall ensure that such summary or extract:

- (a) is clear and not misleading;
- (b) is identified as a summary or extract;
- (c) includes a clear identification of the original recommendation.

2. The persons referred to in paragraph 1 shall also ensure that the information regarding the producer of the recommendation set out in Articles 2 to 6 is made available either directly, in the summary or in the extract itself, or through reference to the place where that information can be accessed by the persons receiving the summary or extract of the recommendation free of charge.

Article 10

Additional arrangements for dissemination of substantially altered recommendations

1. In addition to the information laid down in Article 8, persons who disseminate a recommendation produced by a third party that is substantially altered, shall ensure that the recommendation clearly indicates the substantial alteration in detail.

2. The persons referred to in paragraph 1 shall meet the requirements laid down in Articles 2 to 5 to the extent of the substantial alteration and include in the substantially altered recommendation a reference to the place where the information regarding the producer of the original recommendation set out in Articles 2 to 6 can be accessed by the persons receiving the substantially altered recommendation free of charge.

CHAPTER IV

FINAL PROVISIONS

Article 11

Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 3 July 2016.

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

Done at Brussels, 9 March 2016.

For the Commission

The President

Jean-Claude JUNCKER
