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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on insider dealing and market manipulation (market abuse)

(Text with EEA relevance)

{SEC(2011) 1217 final}

{SEC(2011) 1218 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Adopted in early 2003, the Market Abuse Directive (MAD) 2003/6/EC¹ introduced a comprehensive framework to tackle insider dealing and market manipulation practices, jointly referred to as "market abuse". The Directive aims to increase investor confidence and market integrity by prohibiting those who possess inside information from trading in related financial instruments, and by prohibiting the manipulation of markets through practices such as spreading false information or rumours and conducting trades which secure prices at abnormal levels.

The importance of market integrity has been highlighted by the current global economic and financial crisis. In this context, the Group of Twenty (G20) agreed to strengthen financial supervision and regulation and to build a framework of internationally agreed high standards. In line with the G20 findings, the report by the High-Level Group on Financial Supervision in the EU recommended that "a sound prudential and conduct of business framework for the financial sector must rest on strong supervisory and sanctioning regimes"².

In its Communication on "Ensuring efficient, safe and sound derivatives markets: Future policy actions" the Commission undertook to extend relevant provisions of the MAD in order to cover derivatives markets in a comprehensive fashion³. The importance of efficient coverage of over the counter (OTC) transactions in derivatives has been stressed also in discussions at various international fora including the G20 and IOSCO as well as in the recent US Treasury Financial Regulatory Reform programme.

Furthermore, the Commission Communication on a Small Business Act for Europe calls on the Union and Member States to design rules according to the "think small first principle" by reducing administrative burdens, adapting legislation to the needs of issuers, whose financial instruments are admitted to trading on SME growth markets, and facilitating the access to finance of those issuers⁴. 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 on sanctions in the financial services sector⁵.

The European Commission has assessed the application of the MAD and has identified a number of problems which have negative impacts in terms of market integrity and investor protection, lead to an unlevel playing field and result in

¹ OJ L 16, 12.4.2003, p.16.

² *Report of the High-Level Group on Financial Supervision in the EU*, Brussels, 25.2.2009, p.23.

³ European Commission, Communication on *Ensuring efficient, safe and sound derivatives markets*, COM (2009) 332, 3 July 2009.

⁴ European Commission, Communication on *Review of the "Small Business Act" for Europe*, COM (2011) 78, 23 February 2011.

⁵ European Commission, Communication on *Reinforcing sanctioning regimes in the financial sector*, COM (2010) 716, 8 December 2010.

compliance costs and disincentives for issuers, whose financial instruments are admitted to trading on SME growth markets, to raise capital.

As a result of regulatory, market and technological developments, gaps in the regulation of new markets, platforms and over the counter instruments have emerged. Similarly, these same factors have led to gaps in the regulation of commodities and related derivatives. The fact that regulators lack certain information and powers, and that sanctions are either lacking or insufficiently dissuasive, mean that regulators cannot effectively enforce the Directive. Finally, the existence of numerous options and discretions in the MAD, as well as a lack of clarity on certain key concepts, undermines the effectiveness of the Directive.

In light of these problems, this initiative aims to increase market integrity and investor protection, while ensuring a single rulebook and level playing field and increasing the attractiveness of securities markets for capital raising.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

The initiative is the result of extensive consultations with all major stakeholders, including public authorities (governments and securities regulators), issuers, intermediaries and investors.

It takes into consideration the reports published by the Committee of European Securities Regulators (CESR) on the nature and extent of the supervisory powers of Member States under the Market Abuse Directive⁶ and on the options and discretions of the MAD regime used by Member States⁷.

It also takes into account a report by the European Securities Markets Expert Group (ESME)⁸ which assesses the effectiveness of the MAD in achieving its primary objectives, identifies certain weaknesses and problems and sets out suggested improvements⁹.

On 12 November 2008 the European Commission held a public conference on the review of the market abuse regime¹⁰. On 20 April 2009, the European Commission launched a call for evidence on the review of the Market Abuse Directive. The Commission services received 85 contributions. The non-confidential contributions can be consulted in the Commission website¹¹.

⁶ Ref. CESR/07-380, June 2007, available at www.cesr-eu.org.

⁷ Ref. CESR/09-1120.

⁸ ESME is an advisory body to the Commission, composed of securities markets practitioners and experts, whose mandate expired at the end of 2009 and was not renewed. It was established by the Commission in April 2006 and operated on the basis of the Commission Decision 2006/288/EC of 30 March 2006 setting up a European Securities Markets Expert Group to provide legal and economic advice on the application of the EU securities Directives (OJ L 106, 19.4.2006, p. 14–17).

⁹ Issued in June 2007 and entitled "*market abuse EU legal framework and its implementation by Member States: a first evaluation*".

¹⁰ See http://ec.europa.eu/internal_market/securities/abuse/12112008_conference_en.htm.

¹¹ See http://ec.europa.eu/internal_market/consultations/2009/market_abuse_en.htm

On 28 June 2010 the Commission launched a public consultation on the revision of the Directive which closed on 23 July 2010¹². The Commission services received 96 contributions. The non-confidential contributions can be consulted in the Commission website¹³. A summary is found in Annex 2 to the impact assessment report¹⁴. On 2 July 2010, the Commission held a further public conference on the review of the Directive¹⁵.

In line with its "Better Regulation" policy, the Commission conducted an impact assessment of policy alternatives. Policy options related to regulation of new markets, platforms and OTC instruments, commodities and related derivatives, sanctions, powers of competent authorities, clarification of key concepts and reducing administrative burdens. Each policy option was assessed against the following criteria: impact on stakeholders, effectiveness and efficiency. The overall impact of all the preferred policy options will lead to considerable improvements in addressing market abuse within the EU.

First of all market integrity and investor protection will be improved by clarifying which financial instruments and markets are covered, ensuring that instruments admitted to trading only on a multilateral trading facility (MTF) and other new types of organised trading facilities (OTFs) are covered. In addition the preferred options will improve protection against market abuse through commodity derivatives by improved market transparency.

In addition they will ensure better detection of market abuse by offering the necessary powers to competent authorities to perform investigations and improve the deterrence of sanctioning regimes by introducing minimum principles for administrative measures or sanctions. The proposal for a Directive [XX] also requires the introduction of criminal sanctions.

Furthermore, the preferred options will lead to a more coherent approach regarding market abuse by reducing options and discretions for member States and will introduce a proportionate regime for issuers, whose financial instruments are admitted to trading on SME growth markets.

Overall, the preferred policy options are expected to contribute to the improved integrity of financial markets which will have a positive impact on investors' confidence and this will further contribute to the financial stability of financial markets.

DG MARKT services met the Impact Assessment Board on 23 February 2011. The Board analysed this Impact Assessment and delivered its opinion on 25 February 2011. During this meeting the members of the Board provided DG MARKT services with comments to improve the content of the Impact Assessment that led to some modifications to the text. These are:

¹² See http://ec.europa.eu/internal_market/consultations/docs/2010/mad/consultation_paper.pdf

¹³ See http://ec.europa.eu/internal_market/consultations/2010/mad_en.htm

¹⁴ The impact assessment report can be found on XXX.

¹⁵ See Annex 3 of the impact assessment report for a summary of the discussions.

- Clarification of how the performance of the existing legislation has been evaluated and how the evaluation results have informed the analysis of the problem;
- The addition of evidence-based estimates of the overall damage to the European economy as a consequence of abusive practices in the markets under consideration, and of the estimated overall benefits of the preferred policy options, with the necessary caveats regarding the interpretation of these estimates;
- Clarification in the baseline scenario of how other related financial regulations complement the Market Abuse Directive;
- Clarification of the content of certain policy options and improved presentation of the packages of preferred options, as well as an assessment of the overall impacts of the packages of preferred options, taking into account synergies or trade-offs between different options where they exist;
- A more proportionate analysis of the most costly measures in the assessment of the administrative burdens and costs;
- The addition in the main text of more clearly visible, concise summaries of the assessment of impacts of policy options in terms of fundamental rights, especially in the areas of investigative powers and sanctions;
- An improved justification of why the approximation of criminal law is essential for an effective EU policy on market abuse, based on studies and evidence from Member States about the effectiveness of criminal sanctions, as well as a summary of the responses to the Commission Communication on reinforcing sanctioning regimes in the financial services sector; and
- A clearer presentation in the main text of the views of stakeholders, including institutional and individual investors, on the policy options.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Legal basis

The proposal is based on Article 114 TFEU as the most appropriate basis for a Regulation in this field. A Regulation is considered to be the most appropriate legal instrument to define the market abuse framework in the Union. The direct applicability of a Regulation will reduce regulatory complexity and offer greater legal certainty for those subject to the legislation across the Union introducing a harmonised set of core rules and contributing to the functioning of the Single Market.

3.2. Subsidiarity and proportionality

According to the principle of subsidiarity (Article 5.3 TFEU), action at Union level should be taken only when the aims envisaged cannot be achieved sufficiently by Member States alone and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Union. Although all the problems outlined

above have important implications for each individual Member State, their overall impact can only be fully perceived in a cross-border context. This is because market abuse can be carried out wherever that instrument is listed, or over the counter, so even in markets other than the primary market of the instrument concerned. Therefore there is a real risk of national responses to market abuse being circumvented or ineffective in the absence of action at the Union level.

Further, a consistent approach is essential in order to avoid regulatory arbitrage and since this issue is already covered by the *acquis* of the existing MAD addressing the problems highlighted above can best be achieved in a common effort. Against this background the Union action appears appropriate in terms of the principle of subsidiarity.

The principle of proportionality requires that any intervention is targeted and does not go beyond what is necessary to achieve the objectives. This principle has guided the process from the identification and evaluation of alternative policy options to the drafting of this proposal.

3.3. Compliance with Articles 290 and 291 TFEU

On 23 September 2009, the Commission adopted proposals for Regulations establishing EBA, EIOPA, and ESMA¹⁶. In this respect the Commission wishes to recall the Statements in relation to Articles 290 and 291 TFEU it made at the adoption of the Regulations establishing the European Supervisory Authorities according to which: "As regards the process for the adoption of regulatory standards, the Commission emphasises the unique character of the financial services sector, following from the Lamfalussy structure and explicitly recognised in Declaration 39 to the TFEU. However, the Commission has serious doubts whether the restrictions on its role when adopting delegated acts and implementing measures are in line with Articles 290 and 291 TFEU."

3.4. Detailed explanation of the proposal

3.4.1. Chapter I (General Provisions)

3.4.1.1. Regulation of new markets, trading facilities and OTC financial instruments

The MAD is based on the concept of prohibiting insider dealing or market manipulation in financial instruments which are admitted to trading on a regulated market. However, since the adoption of MiFID¹⁷, financial instruments have been increasingly traded on MTFs, on other types of OTFs, such as swap execution facilities or broker crossing systems, or only traded OTC. These new trading venues and facilities have provided more competition to existing regulated market, gaining an increased share of liquidity and attracting a broader range of investors. The increase in trading across different venues had made it more difficult to monitor for possible market abuse. Therefore the Regulation extends the scope of the market abuse framework applying to any financial instrument admitted to trading on a MTF

¹⁶ COM(2009) 501, COM(2009) 502, COM(2009) 503.

¹⁷ Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments. OJ L 145, 30.4.2004.

or an OTF, as well as to any related financial instruments traded OTC which can have an effect on the covered underlying market. This is necessary to avoid any regulatory arbitrage among trading venues, to ensure that the protection of investors and the integrity of markets are preserved on a level playing field in the entire Union, and to ensure that the market manipulation of such financial instruments through derivatives traded OTC, such as CDS, is clearly prohibited.

3.4.1.2. Regulation of commodity derivatives and the related spot commodity contracts

Spot markets and related derivative markets are highly interconnected and market abuse may take place across these markets. This raises special concerns for spot markets because the existing rules on transparency and market integrity only apply to financial and derivative markets and not to the related spot markets. The purpose of the Regulation is not to govern directly those spot markets. Indeed, any transaction or behaviour strictly within those non-financial markets should be outside the scope of this Regulation and be subject to specific and sectoral regulation and supervision as provided for in the field of energy by the proposal of the Commission for a Regulation on energy market integrity and transparency (REMIT)¹⁸. However, the Regulation should cover the transactions or behaviours in those spot markets which are related to and have an effect on financial and derivative markets which are within its scope. In particular, under the current MAD the lack of a clear and binding definition of inside information in relation to commodity derivative markets may allow information asymmetries in connection with those related spot markets. This means that, under the current market abuse framework, investors in commodity derivatives may be less protected than investors in derivatives of financial markets because a person could benefit from inside information in a spot market by trading on a related derivative market. For this reason the definition of inside information in relation to commodity derivatives should be aligned to the general definition of inside information extending it to price sensitive information which is relevant to the related spot commodity contract as well as to the derivative itself. This will ensure legal certainty and better information for investors. Moreover, the MAD only prohibits any manipulation which distorts the price of financial instruments. As certain transactions in the derivatives markets can also be used to manipulate the price of the related spot markets, and transactions in the spot markets can be used to manipulate derivatives markets, the definition of market manipulation should be extended in the Regulation to also capture these types of cross-market manipulation. In the specific case of wholesale energy products, the 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 relating to financial instruments and wholesale energy products. In particular, 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.

¹⁸

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0726:FIN:EN:PDF>

3.4.1.3. Market Manipulation through algorithmic and high frequency trading

Financial markets are experiencing a widespread increase in the use of automated trading methods such as algorithmic trading or high frequency trading. Such trading involves computer algorithms deciding on whether an order is placed and/or on aspects of the execution of the order. A specific type of algorithmic trading is known as high frequency trading (HFT). HFT is typically not a strategy in itself but the use of very sophisticated technology to implement traditional trading strategies such as arbitrage and market making strategies. While most algorithmic and HFT strategies are legitimate there are particular automated strategies that have been identified by regulators which, if carried out, are likely to constitute market abuse. For example, this includes strategies such as quote stuffing, layering and spoofing. The definition of market manipulation in the MAD is very broad and already capable of applying to abusive behaviour no matter what medium is used for trading. However, it is appropriate to specify further in the Regulation specific examples of strategies using algorithmic trading and high frequency trading that fall within the prohibition against market manipulation. Further identifying abusive strategies will ensure a consistent approach in monitoring and enforcement by competent authorities.

3.4.1.4. Attempt at market manipulation

As the MAD does not cover attempts at market manipulation, proving market manipulation requires a regulator to demonstrate that either an order was placed or a transaction was executed. However, there are situations where a person takes steps and there is clear evidence of an intention to manipulate the market but either an order is not placed, or a transaction is not executed. The Regulation expressly prohibits attempts at market manipulation, which will enhance market integrity. The existing definition of insider dealing already contained elements of attempted behaviour. These will be removed and attempted insider dealing will be qualified as a separate offence.

3.4.1.5. Emission allowances

Emission allowances will be reclassified as financial instruments as part of the review of the Markets in Financial Instruments Directive. As a result, they will also fall into the scope of the market abuse framework. While most measures under the market abuse regime would apply without adaptation to the emission allowances, a few provisions will need to be adjusted in consideration of the specific nature of these instruments and structural features of this market. In particular, unlike for most classes of financial instruments, inside information disclosure as well as duties related to insider lists and managers transactions cannot be effectively addressed to the issuer of emission allowances that holds responsibilities for development and implementation of Union's climate policies. The public authorities in charge (including the Commission) are anyhow obliged to ensure fair and non-discriminatory disclosure of and access to new decisions, developments and data. Moreover, in their pursuit of Union's climate policy, the Member States, the European Commission as well as other officially designated bodies should not be limited by the duties set by the market abuse regime.

Therefore, a specific definition of inside information for emission allowances is introduced. The obligation to disclose inside information will be placed on the

participants in the emission allowance market, as it is them who will hold the relevant information suitable for ad-hoc or periodic disclosure. A threshold (expressed in terms of emissions or thermal input or a combination thereof) defined in a delegated act would remove from the scope of the obligation under Art. 12 (and also Articles 13 and 14) all those entities, the activity of which on an individual basis may have no material impact on the price formation of emission allowances or the (consequential) risks of insider dealing.

Finally, due to classification of emission allowances as financial instruments under the MiFID it is possible to put all market abuse measures concerning the auctioning of emission allowances in a single rulebook and jointly with the general regime against market abuse for the secondary market.

3.4.2. *Chapter II (Insider Dealing and Market Manipulation)*

3.4.2.1. Inside information

Inside information can be abused before an issuer is under the obligation to disclose it. 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, or provisional terms for the placement of financial instruments may be relevant information for investors. Therefore, such information should qualify as inside information. However, such information may not be sufficiently precise for the issuer to be under an obligation to disclose it. In such cases, the prohibition against insider dealing should apply, but the obligation on the issuer to disclose the information should not.

3.4.2.2. Level playing field among trading venues and facilities in the prevention and detection of market abuse

The increasing trading of instruments across different venues makes it more difficult to monitor for possible market abuse. According to the MiFID, MTFs can be operated by market operators or investment firms. The monitoring obligations in Article 26 of the MiFID apply to them alike. However, the obligation in Article 6 of the MAD to adopt structural provisions aimed at preventing and detecting market manipulation practices only applies to market operators. The Regulation aims to ensure a level playing field among all trading venues and facilities within its scope by requiring them to adopt the necessary structural provisions aimed at preventing and detecting market manipulation practices.

3.4.3. *Chapter III (Disclosure Requirements)*

3.4.3.1. Public disclosure of inside information

3.4.3.2. Article 6(1) of the MAD requires that issuers of financial instruments inform the public as soon as possible of inside information which directly concerns those issuers. Paragraph 2 allows those issuers under specific conditions to delay the public disclosure. Under the Regulation, issuers will be required to inform the competent authorities of their decision to delay the disclosure of inside information immediately after such a disclosure is made. The responsibility for assessing whether such delay is justified remains with the issuer. The possibility for the competent authorities

where appropriate to investigate ex post whether in fact the specific conditions for the delay were met will increase investor protection and market integrity. However, if inside information is of systemic importance and it is in the public interest to delay its publication, the competent authorities will have the power to permit such a delay for a limited period in the wider public interest of maintaining the stability of the financial system and avoiding the losses which could result for example from the failure of a systemically important issuer. Insiders' lists

Insiders' lists are an important tool for competent authorities when investigating possible market abuse. The Regulation aims to eliminate national differences which have imposed so far unnecessary administrative burdens on issuers, by providing that the precise data to be included in such lists should be defined in delegated acts and implementing technical standards adopted by the Commission.

3.4.3.3. Disclosure requirements for issuers whose financial instruments are admitted to trading on SME growth markets

Without prejudice to the objectives of preserving the integrity and transparency of financial markets and of protecting investors, the market abuse framework is adapted to the characteristics and needs of issuers, whose financial instruments are admitted to trading on SME growth markets. Applying the new market abuse framework of the Regulation in an undifferentiated manner to all SME growth markets may deter issuers on those markets from raising capital on the capital markets. The scope and size of the business of those issuers is more restricted and the events giving rise to the need to disclose inside information are typically more limited than those of larger issuers. The Regulation requires those issuers to disclose inside information in a modified and simplified market-specific way. Such inside information may be published by those SME growth markets, on behalf of those issuers, in accordance with a standardised content and format defined in implementing technical standards adopted by the Commission. Those issuers are also exempt, under certain conditions, from the obligation to keep and constantly update insiders' lists, and benefit from the new threshold for the reporting of manager's transactions mentioned below.

3.4.3.4. Reporting of manager's transactions

The Regulation clarifies the scope of the reporting obligations in relation to manager's transactions. These reports serve important purposes by deterring managers from insider trading and providing useful information to the market about the manager's view on the price movements of the shares of the issuers. The Regulation clarifies that any transaction made by a person exercising discretion on behalf of a manager of an issuer or whereby the manager pledges or lends his shares must also be reported to the competent authorities and be made accessible to the public. Moreover, it introduces a threshold of EUR 20 000, uniform in all Member States, which triggers the obligation to report such manager's transactions.

3.4.4. *Chapter IV (ESMA and Competent Authorities)*

3.4.4.1. Powers of Competent Authorities

Under Article 12(2)(b) of the MAD, competent authorities have the power to demand information from any person. However, there is an information gap for spot

commodity markets, where there are no transparency rules or reporting obligations to sectoral regulators, when they exist. The power to request information from any person typically allows competent authorities access to all information needed to investigate suspicions of possible market abuse. But this information may not be sufficient in particular if there is no sectoral authority to supervise these spot commodity markets. The Regulation allows competent authorities access to continuous data by requiring such data to be directly submitted to them in a specified format. By gaining access to spot commodity market traders' systems, competent authorities are also able to monitor real-time data flows.

For the purpose of detecting cases of insider dealing and market manipulation, it is necessary for competent authorities to have the possibility to have access to private premises and seize documents. The access to private premises is necessary in particular where: (i) the person to whom a demand for information has already been made fails (wholly or in part) to comply with it; or (ii) 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. While currently all jurisdictions provide for access to any document, not all competent authorities have the power to enter private premises and seize documents. As a result, the risk exists that competent authorities in such cases are deprived from important and necessary evidence, and accordingly, cases of insider dealing and market manipulation might remain undetected and unsanctioned. In this context, it is important to point out that such access to private premises might constitute an interference with the fundamental rights to private and family life as recognized respectively by Article 7 of the Charter of Fundamental Rights of the European Union. It is essential that any limitation thereof be fully compatible with Article 52 of the Charter. Therefore, the competent authority of a Member State should have the power to enter private premises in order to seize documents only after having obtained prior authorisation from the judicial authority of that Member State concerned in accordance with national law, and where a reasonable suspicion exists that documents related to the subject-matter of the inspection may be relevant to prove a case of insider dealing or market manipulation in violation of this Regulation or Directive [new MAD]. The prohibitions against insider dealing and market manipulation apply to all persons. Therefore, the competent authorities need to have access to information held, not just by investment firms, but by those persons themselves and to information regarding those persons' behaviour held in databases by non-financial companies. Existing telephone and data traffic records from investment firms executing transactions, and existing telephone and data traffic records from telecom operators constitute important 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. Most forms of insider dealing or market manipulation involve the actions of two or more people, transferring information or coordinating their activities. Telephone and data traffic records may establish that a relationship exists between a person who has access to inside information and the suspicious trading activity of another, or to establish a link between two persons' collusive trading activity. In particular, access to telephone and data traffic records from telecom operators is considered among the

most important issues for the accomplishment of the investigatory and enforcement tasks of CESR members.¹⁹ Indeed, access to telephone and data traffic records held by telecom operators is an important and sometimes even the sole piece of evidence to establish whether inside information has been transferred from a primary insider to someone trading with this inside information. For example, this data would represent evidence in a case where a board member of a company in possession of inside information transfers inside information by phone to a friend, relative or family member who afterwards executes a suspicious transaction based on the inside information received. The telephone and data traffic records from telecom operators could be used by the regulator to demonstrate that a call had been placed by the primary insider to their friend or relative shortly before that person then called their broker to instruct them to make a suspicious transaction. The telephone and data traffic records from telecom operators would provide evidence of a link which could be used as evidence to sanction the case which otherwise would never be detected. Another example is a case where a false or misleading message is posted on an internet bulletin board to affect the price of a financial instrument. Telephone and data traffic records can serve to identify the author of the message. In addition, such records can provide evidence of a link with another person who made prior or subsequent suspicious transactions in order to prove market manipulation by the dissemination of false or misleading information. In this context, it is important to introduce a level playing field in the internal market in relation to the access by competent authorities to telephone and existing data traffic records held by a telecommunication operator or by an investment firm. Therefore, competent authorities should be able to require existing telephone and existing data traffic records held by a telecommunication operator or by an investment firm, where a reasonable suspicion exists that such records related to the subject-matter of the inspection may be relevant to prove insider dealing or market manipulation as defined in this Regulation or in the [new MAD]. It should also be clear that these records shall however not concern the content of the communication to which they relate.

As market abuse can take place across borders and different markets, ESMA has a strong coordination role and competent authorities are required to cooperate and exchange information with other competent authorities and, when applicable to commodity derivatives, with the regulatory authorities responsible for the related spot markets, within the Union and in third countries.

3.4.5. *Chapter V (Administrative sanctions)*

3.4.5.1. Sanctions

Financial markets are increasingly integrated in the Union and offenses can have cross-borders effects in the Union. The existing divergent sanctioning regimes among Member States foster regulatory arbitrage and impair the ultimate objectives of market integrity and transparency within the Single Market for financial services. A stocktaking of the national regimes in place has, for example, revealed that the levels of pecuniary sanctions vary widely among Member States, that some

¹⁹ CESR answer to the call for evidence on the review of the MAD, of 20 April 2009, available at http://ec.europa.eu/internal_market/securities/abuse/index_en.htm

competent authorities do not have certain important sanctioning powers at their disposal and that some competent authorities cannot address sanctions at natural and legal persons.²⁰ Therefore, this Regulation introduces minimum rules for administrative measures, sanctions and fines. This does not prevent individual Member States from fixing higher standards. The Regulation provides for the disgorgement of any profits where identified, including interests, and, in order to ensure an appropriate deterrent effect, it introduces fines which must exceed any profit gained or loss avoided as a result of the violation of this Regulation, and must be determined by the competent authorities in light of the facts and circumstances.

Moreover, criminal sanctions have a stronger deterrent effect than administrative measures and sanctions. The proposal for a Directive [XX] introduces the requirement for all Member States to put in place effective, proportionate and dissuasive criminal sanctions for the most serious insider dealing and market manipulation offences. That Directive is to be applied taking into account the provisions established in this Regulation, including prospective implementing measures. However, the definitions used for the purposes of the Directive may differ from the ones used for the purposes of this Regulation.

3.4.5.2. Protection and incentives for whistleblowers

Whistle blowing can be a useful source of primary information and may alert competent authorities to cases of suspected market abuse. The Regulation enhances the market abuse framework in the Union introducing appropriate protection for whistleblowers reporting suspected market abuse, the possibility of financial incentives for persons who provide competent authorities with salient information that leads to a monetary sanction, and enhancements of Member States' provisions for receiving and reviewing whistleblowing notifications.

4. BUDGETARY IMPLICATION

The specific budget implications of the proposal relate to task allocated to ESMA as specified in the legislative financial statements accompanying this proposal. Specific budgetary implications for the Commission are also assessed in the financial statement accompanying this proposal.

The proposal has implications for the Community budget.

²⁰

(COM (2010) 1496) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions reinforcing sanctioning regimes in the financial services sector, December 2010, Chapter 3.

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 Commission²¹,

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

Having regard to the opinion of the European Economic and Social Committee²²,

Having regard to the opinion of the European Central Bank²³,

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

Acting in accordance with the ordinary legislative procedure,

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/EC²⁴ 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

²¹ OJ C [...], [...], p. [...].

²² OJ C , , p. .

²³ OJ C , , p. .

²⁴ OJ L 16, 12.4.2003, p.16.

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 Supervision²⁵.

- (4) There is a need to establish a uniform 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.
- (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 establishing uniform 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"²⁶ 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 all 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 but 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, as well as financial instruments traded over the counter, such as for

²⁵ *Report of the High-Level Group on Financial Supervision in the EU*, Brussels, 25.2.2009.

²⁶ Commission Communication 'Think Small First' - A 'Small Business Act' for Europe, COM(2008) 394 final.

example credit default swaps, or any other conduct or action which can have an effect on such a financial instrument traded on a regulated market, MTF or OTF. This should improve investor protection, preserve the integrity of markets and ensure that market manipulation of such instruments through financial instruments traded over the counter is clearly prohibited.

- (9) Stabilisation of financial instruments 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.
- (10) Member States and the European System of Central Banks, the European Financial Stability Facility, national central banks and other agencies or special purpose vehicles of one or several Member States as well as the Union and certain other public bodies should not be restricted in carrying out monetary, exchange-rate or public debt management or climate policy.
- (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.
- (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. 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, or provisional terms for the placement of financial instruments may be relevant information for investors. Therefore, such information should qualify as inside information. However, such information may not be sufficiently precise for the issuer to be under an obligation to disclose it. In such cases, the prohibition against insider dealing should apply, but the obligation on the issuer to disclose the information should not.

- (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 and commodity derivatives should also apply to all information which is relevant to the related commodity. 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. Bearing in mind the specific nature of those instruments and structural features of the carbon market, it is necessary to ensure that the activity of Member States, the European Commission and other officially designated bodies involving emission allowances is not restricted in the pursuit of the Union's climate policy. Moreover, the duty to disclose inside information needs to be addressed to the participants in that market in general. Nevertheless, 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. 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.
- (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 Community²⁷ provided for two parallel market abuse regimes applicable to the

²⁷ 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.

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. 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 market manipulation should be supplemented by 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.
- (19) In order to complement the prohibition of market manipulation, this Regulation should include a prohibition against attempting to engage in market manipulation, given that failed attempts to manipulate the market should also be sanctioned. The attempt to engage in market manipulation should be distinguished from situations where behaviour does not have the desired effect on the price of a financial instrument. Such behaviour is considered to be market manipulation because it was likely to give false or misleading signals.
- (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.
- (21) In order to ensure uniform market conditions between trading venues and facilities subject to this Regulation, operators 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 and are required to have systems in place to detect and report suspicious transactions should also report 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 its 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 prompt 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, unless a delay would not be likely to mislead the public and the issuer is able to ensure the confidentiality of the information.
- (25) At times, where a financial institution is receiving emergency lending assistance, it may be in the best interest of financial stability for the disclosure of inside information to be delayed when the information is of systemic importance. It should therefore be possible for the competent authority to authorise a delay in the disclosure of inside information.
- (26) The requirement to disclose inside information can be burdensome for issuers, 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 on 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.
- (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.

- (29) A set of effective tools and powers for the competent authority of each Member State guarantees supervisory effectiveness. 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 the possibility to have access to private premises and seize documents. The access to private 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 telephone and data traffic records from investment firms executing transactions, and existing telephone and data traffic records from telecom 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, that persons have been in contact at a certain time, and that a relationship exists between two or more people. In order to introduce a level playing field in the Union in relation to the access by competent authorities to telephone and existing data traffic records held by a telecommunication operator or by an investment firm, competent authorities should be able to require existing telephone and existing data traffic records held by a telecommunication operator or by an investment firm, where a reasonable suspicion exists that such records related to the subject-matter of the inspection may be relevant to prove insider dealing or market manipulation as defined in [new MAD] in violation of this Regulation or Directive [new MAD]. Telephone and data traffic records do not encompass the content of such records.
- (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 should be required to 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 data²⁸ 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 data²⁹.
- (34) A sound prudential and conduct of business framework for the financial sector should rest on strong supervisory 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 sector³⁰.
- (35) Therefore, as well as providing regulators with effective supervisory 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. Administrative fines should 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. The adoption and publication of sanctions should respect fundamental rights as laid down in the Charter of Fundamental Rights of the European Union, in particular the right to respect for private and family life (Article 7), the right to the protection of personal data (Article 8) and the right to an effective remedy and to a fair trial (Article 47).
- (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. 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. 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

²⁸ OJ L 281, 23.11.1995, p. 31.

²⁹ OJ L 8, 12.1.2001, p. 1.

³⁰ European Commission, Communication on *Reinforcing sanctioning regimes in the financial sector*, COM (2010) 716, 8 December 2010.

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 instruments³¹ 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 in the Charter of Fundamental Rights of the European Union as enshrined in the Treaty, notably the right to respect for private and family life, the right to the protection of personal data, the freedom of expression and information, the freedom to conduct a business, the right to an effective remedy and to a fair trial, the presumption of innocence and right of defence, the principles of legality and proportionality of criminal offences and penalties, and the right not to be tried or punished twice for the same offence. Limitations placed on these rights are in accordance with article 52(1) of the Charter as they are necessary to ensure the general interest objectives of the protection of investors and the integrity of financial markets, and appropriate safeguards are provided to ensure that rights are limited only to the extent necessary to meet these objectives and by measures that are proportionate to the objective to be met. In particular, reporting of suspicious transactions is necessary to ensure that competent authorities may detect and sanction market abuse. Prohibiting attempts to engage in market manipulation is necessary to enable competent authorities to sanction such attempts where they have evidence of intent to commit market manipulation, even in the absence of an identifiable effect on market prices. Access to data and telephone records is necessary to provide evidence and investigative leads on possible insider dealing or market manipulation, and therefore for the detection and sanctioning of market abuse. The conditions imposed by this Regulation ensure compliance with fundamental rights. Measures on whistleblowing are necessary to facilitate the detection of market abuse and to ensure the protection of the whistleblower and of the reported person, including the protection of their private life, personal data, and the right to be heard and to an effective remedy before a court. Introducing common minimum rules for administrative measures, sanctions and fines is necessary to ensure that comparable market abuse breaches are sanctioned in a

³¹ OJ L 336, 23.12.2003, p. 33.

comparable way and to ensure that sanctions imposed are proportionate to the breach. This Regulation does not in any way prevent Member States from applying their constitutional rules relating to freedom of the press and freedom of expression in the media.

- (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 data³² 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 data³³, 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 of the Treaty. In particular, delegated acts should be adopted in respect of the conditions for buy-back programmes and stabilisation of financial instruments, 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.
- (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

³² OJ L 281, 23.11.1995, p. 31.

³³ OJ L 8, 12.1.2001, p. 1.

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.

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 applies to the following:
 - (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 on a MTF or on an OTF in at least one Member State;
 - (c) behaviour or transactions relating to a financial instrument referred to in points (a) or (b) irrespective of whether or not the behaviour or transaction actually takes place on a regulated market, MTF or OTF;
 - (d) behaviour or transactions, including bids, relating to the auctioning of emission allowances or other auctioned products based thereon pursuant to Commission Regulation No 1031/2010.³⁴ 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. Articles 7 and 9 also apply to the acquisition or disposal of financial instruments not referred to in points (a) and (b) of paragraph 1 but whose value relates to a financial

³⁴ 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.

instrument referred to in that paragraph. This notably includes derivative instruments for the transfer of credit risk that relate to a financial instrument referred to paragraph 1 and financial contracts for differences that relate to such a financial instrument.

3. Articles 8 and 10 also apply to transactions, orders to trade or other behaviour relating to:
 - (a) types of financial instruments, including derivative contracts or derivative instruments for the transfer of credit risk where the transaction, order or behaviour has or is likely or intended to have an effect on a financial instrument referred to in points (a) and (b) of paragraph 1;
 - (b) spot commodity contracts, which are not wholesale energy products, where the transaction, order or behaviour has or is likely or intended to have an effect on a financial instrument referred to in points (a) and (b) of paragraph 1; or
 - (c) types of financial instruments, including derivative contracts or derivative instruments for the transfer of credit risk where the transaction, order or behaviour has or is likely or intended to have an effect on spot commodity contracts.
4. 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.

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.
2. The prohibitions in Articles 9 and 10 of this Regulation do not apply to trading in own shares for the stabilisation of a financial instrument when stabilisation is carried out for a limited time period, when relevant information about the stabilisation is disclosed, and adequate limits with regards to price are respected.
3. The Commission shall adopt, by means of delegated acts in accordance with Article 31, measures specifying the conditions such buy-back programmes and stabilisation measures referred to in paragraphs 1 and 2 need to adhere to, including conditions for trading, restrictions regarding time and volume, disclosure and reporting obligations, and price conditions.

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 or public debt management policy by a Member State, 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, the European Investment Bank, 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 that are experiencing or threatened by severe financing problems or the European Financial Stability Facility.
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.

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].
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].
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 1287/2006³⁵.
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.
11. "spot market" means any commodity market in which commodities are sold for cash and promptly delivered when the transaction is settled.
12. "buy-back programme" means trading in own shares in accordance with Articles 19 to 24 of Council Directive 77/91/EEC³⁶.
13. "algorithmic trading" means trading of financial instruments using computer algorithms within the meaning of Article 4(1)(37) of Directive [new MiFID].
14. "emission allowance" means a financial instrument as defined in point (11) of Section C of Annex I of Directive [new MiFID].
15. "emission allowance market participant" means any person who enters into transactions, including the placing of orders to trade, in emission allowances.
16. "issuer of a financial instrument" means an issuer as defined in Article 2(1)(h) of Directive 2003/71/EC³⁷.
17. "ACER" means the Agency for the Cooperation of Energy Regulators established under Regulation (EC) No. 713/2009³⁸.
18. "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]³⁹.

³⁵ 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].

³⁶ 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].

³⁷ Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC. OJ L 345, 31.12.2003, p. 64.

³⁸ 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.

³⁹ Regulation (EU) No...of the European Parliament and the Council on Wholesale Energy Market Integrity and Transparency

19. "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]⁴⁰.

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 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; notably 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.

⁴⁰ Regulation (EU) No...of the European Parliament and the Council on Wholesale Energy Market Integrity and Transparency

- (e) information not falling within paragraphs (a), (b), (c) or (d) relating to one or more issuers of financial instruments or to one or more financial instruments, which is not generally available to the public, but which, if it were available to a reasonable investor, who regularly deals on the market and in the financial instrument or a related spot commodity contract concerned, would be regarded by that person as relevant when deciding the terms on which transactions in the financial instrument or a related spot commodity contract should be effected.
- 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.
 - 3. For the purposes of applying paragraph 1, 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 shall mean information a reasonable investor would be likely to use as part of the basis of his investment decisions.

Article 7

Insider dealing and improper disclosure of inside information

- 1. For the purposes of this Regulation, insider dealings 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. The use of inside information to cancel or amend 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.
- 2. For the purposes of this Regulation, attempting to engage in insider dealing arises where a person possesses inside information and 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. The attempt to cancel or amend an order concerning a financial instrument to which the information relates on the basis of inside information where the order was placed before the person concerned possessed the inside information, shall also be considered an attempt to engage in insider dealing.
- 3. For the purposes of this Regulation, a person recommends or induces another person to engage in insider dealing if the person possesses inside information and recommends or induces another person, on the basis of inside information, to acquire or dispose of financial instruments to which that information relates.
- 4. For the purposes of the Regulation, improper disclosure of inside information arises where a person possesses inside information and discloses the inside information to

any other person, except where the disclosure is made in the normal course of the exercise of duties resulting from an employment or profession.

5. Paragraphs 1, 2, 3 and 4 apply to any person who possesses inside information as a result of any of the following situations:
 - (a) being a member of the administrative, management or supervisory bodies of the issuer;
 - (b) having a holding in the capital of the issuer;
 - (c) his having access to the information through the exercise of duties resulting from an employment or profession;
 - (d) being involved in criminal activities.

Paragraphs 1, 2, 3 and 4 also apply to any inside information obtained by a person under circumstances other than those referred to in points (a) to (d) and which the person knows or ought to know, is inside information.

6. Where the person referred to in paragraph 1 and 2 is a legal person, the provisions of those paragraphs shall also apply to the natural persons who take part in or influence the decision to carry out, or attempt to carry out, the acquisition or disposal for the account of the legal person concerned.
7. Where the person referred to in paragraph 1 is a legal person, the provisions of that paragraph shall not apply to a transaction by the legal person if the legal person had in place effective arrangements which ensure that no person in possession of inside information relevant to the transaction had any involvement in the decision or behaved in such a way as to influence the decision or had any contact with those involved in the decision whereby the information could have been transmitted or its existence could have been indicated.
8. Paragraph 1 shall not apply to transactions conducted in the discharge of an obligation that has become due to acquire or dispose of financial instruments where that obligation results from an agreement concluded, or is to satisfy a legal or regulatory obligation that arose, before the person concerned possessed inside information.
9. In relation to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (No) 1031/2010, the prohibition under paragraph 1 shall also apply to the use of inside information by submitting, modifying or withdrawing a bid for own account of the person that possesses inside information or for the account of a third party.

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 has the following consequences:
 - it gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument or a related spot commodity contract; or
 - it 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;
 - (b) entering into a transaction, placing an order to trade or any other behaviour affecting 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 has the consequences referred to in subparagraph (a), where the person who made the dissemination knew, or ought to have known, that the information was false or misleading. When information is disseminated for the purposes of journalism, 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, unless:
 - those persons 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.
2. For the purposes of this Regulation, an attempt to engage in market manipulation shall comprise the following:
- (a) attempting to enter into a transaction, trying to place an order to trade or trying to engage in any other behaviour as defined in paragraph 1(a) or (b); or
 - (b) attempting to disseminate information as defined in paragraph 1(c).
3. The following behaviour shall be considered as market manipulation or attempts to engage in market manipulation:
- (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 the effect of fixing, directly or indirectly, purchase or sale prices or creating other unfair trading conditions,
 - (b) the buying or selling of financial instruments at the close of the market with the effect or intention of misleading investors acting on the basis of closing prices,

- (c) the sending of orders to a trading venue by means of algorithmic trading, including high frequency trading, without an intention to trade but for the purpose of:
 - disrupting or delaying the functioning of the trading system of the trading venue;
 - making it more difficult for other persons to identify genuine orders on the trading system of the trading venue; or
 - creating a false or misleading impression about the supply of or demand for a financial instrument.
 - (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.
4. For the purposes of applying points (a) and (b) of paragraph 1 of Article 8, and without prejudice to the forms of behaviour set out in paragraph 3, 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.
5. 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.

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;

- (b) recommend or induce another person to engage in insider dealing; or
- (c) 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. Any person who operates the business of a trading venue shall adopt and maintain effective arrangements and procedures in accordance with [Articles 31 and 56] of Directive [new MiFID] aimed at preventing and detecting market abuse.
2. Any person professionally arranging or executing transactions in financial instruments shall have systems in place to detect and report orders and transactions that might constitute insider dealing, market manipulation or an attempt to engage in market manipulation or insider dealing. If that person reasonably suspects 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 procedures for persons to comply with the requirements established in paragraph 1 and to determine the systems and notification templates to be used by persons to comply with the requirements established in paragraph 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, which directly concerns the issuer, and shall, for an appropriate

period, post on its Internet site all inside information it is required to disclose publicly.

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. Paragraphs 1 and 2 shall not apply to information which is only inside information within the meaning of point (e) of paragraph 1 of Article 6.
4. Without prejudice to paragraph 5, 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, may under his own responsibility delay the public disclosure of inside information, as referred to in paragraph 1, such as not to prejudice his legitimate interests provided that both of the following conditions are met:
 - 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 immediately after the information is disclosed to the public.

5. A competent authority may permit the delay by an issuer of a financial instrument of the public disclosure of inside information provided that the following conditions are satisfied:
 - the information is of systemic importance;
 - it is in the public interest to delay its publication;

- the confidentiality of that information can be ensured.

That permission shall be in writing. The competent authority shall ensure that the delay is only for such period as is necessary in the public interest.

The competent authority shall at least once every week review whether the delay continues to be appropriate and shall revoke the authorisation immediately if any of the conditions in points (a), (b) or (c) are no longer satisfied.

6. 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.
7. Inside information relating to issuers of a financial instrument, 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.
8. This Article shall not apply to issuers who have not 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 not requested or approved trading of their financial instruments on a MTF or an OTF in a Member State.
9. ESMA shall develop draft implementing technical standards to determine:
 - the technical means for appropriate public disclosure of inside information as referred to in paragraphs 1, 6 and 7;
 - the technical means for delaying the public disclosure of inside information as referred to in paragraphs 4 and 5.

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 any person 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 otherwise, who have access to inside information;
 - regularly update the list; and
 - provide the list to the competent authority as soon as possible upon its request.
2. Issuers of a financial instrument whose financial instruments are admitted to trading on an SME growth market shall be exempt from drawing up such a list. However, if requested to do so by the competent authority as part of the exercise of its supervisory or investigatory functions, that issuer shall provide the competent authority with a list identifying those persons working for them with access to inside information.
3. This Article shall not apply to issuers who have not 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 not requested or approved trading of their financial instruments on a MTF or an OTF in a Member State.
4. The Commission shall adopt, by means of delegated acts in accordance with Article 31, measures determining the content of a list as referred to in paragraph 1, including information as to the identities and the reasons for persons to be included on an insider list, and the conditions under which issuers of a financial instrument or emission allowance market participants, or entities acting on their behalf, are to draw up such a list, including the conditions under which such lists are to be updated, the time for which they are kept, and the responsibilities of the persons thereon.
5. This 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.
6. 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 ensure that information is made public about the existence of transactions conducted on their own account relating to the shares of that issuer, or to derivatives or other financial instruments linked to them, or in emission allowances. Such persons shall ensure that the information is made public within two business days after the day on which the transaction occurred.
2. 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 other person on behalf of a person referred to in paragraph 1 including where discretion is exercised by that manager or other person.
3. Paragraph 1 shall not apply to transactions totalling under EUR 20,000 over the period of a calendar year.
4. This 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.
5. The Commission may adopt, by means of delegated acts in accordance with Article 31, measures modifying the threshold in paragraph 3 taking into account the developments in financial markets.
6. The Commission shall adopt, by means of delegated acts in accordance with Article 31, measures specifying the professional functions of persons who are considered to discharge managerial responsibility as referred to in paragraph 1, the types of association, including by birth as well as under civil and contractual law, considered to create a close personal association, the characteristics of a transaction referred to in paragraph 2 which trigger that duty, and the information that must be made public and the means of informing the public.

Article 15
Investment recommendations and statistics

1. Persons who produce or disseminate 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 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.

CHAPTER 4

ESMA AND COMPETENT AUTHORITIES

Article 16 *Competent authorities*

Without prejudice to the competences of the judicial authorities, 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 an MTF or OTF 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 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. In order to fulfil their duties under this Regulation, competent authorities shall have, in conformity with national law, at least the following supervisory and investigatory powers:
 - (a) request access to any document in any form, and to receive or take a copy thereof;

- (b) request 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 at sites other than private premises with or without announcement;
 - (e) after having obtained prior authorisation from the judicial authority of the Member State concerned in accordance with national law, and where a reasonable suspicion exists that documents related to the subject-matter of the inspection may be relevant to prove a case of insider dealing or market manipulation in violation of this Regulation or Directive [new MAD], enter private premises in order to seize documents in any form ;
 - (f) require existing telephone and existing data traffic records held by a telecommunication operator or by an investment firm, where a reasonable suspicion exists that such records related to the subject-matter of the inspection may be relevant to prove insider dealing or market manipulation as defined in [new MAD] in violation of this Regulation or Directive [new MAD]; these records shall however not concern the content of the communication to which they relate.]
3. The competent authorities shall exercise the supervisory and investigatory powers, referred to in paragraph 2, in accordance with national law.
 4. The processing of personal data collected in the exercise of the supervisory and investigatory powers pursuant to this Article shall be carried out in accordance with Directive 95/46/EC.
 5. 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.

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. 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 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.
2. 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.
3. Competent authorities shall, on request, immediately supply any information required for the purpose referred to in paragraph 1.
4. 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.

5. 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 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 shall 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.
6. Without prejudice to Article 258 TFEU, a competent authority whose request for information or assistance in accordance with paragraphs 1, 2, 3 and 4 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.

7. 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 accordance with Article 2, 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.

- 8. The disclosure of personal data to a third country shall be governed by Articles 22 and 23.
- 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 competent authorities of third countries concerning the exchange of information with competent 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 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 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, 27 and 28.

- 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*

5. 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 and 3.
6. 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 law.
7. All information exchanged between competent authorities under this Regulation shall be considered confidential, except when the competent authority states at the time of communication that the information may be disclosed or where such disclosure is necessary for legal proceedings.

Article 22 *Data protection*

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. 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.

Personal data shall be retained for a maximum period of 5 years.

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, particularly of Articles 25 or 26, are fulfilled and only on a case-by-case basis. The competent authority of the Member State shall ensure that the transfer is necessary for the purpose of this Regulation. 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. Personal data may only be transferred to a third country which provides an adequate level of protection of personal data.

2. The competent authority of a Member State shall only disclose information 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 of the competent authority which transmitted the information and, where applicable, the information is disclosed solely for the purposes for which that competent authority gave its agreement.
3. Where a cooperation agreement provides for the exchange of personal data, it shall comply with Directive 95/46/EC.

CHAPTER 5

Administrative measures and sanctions

Article 24

Administrative measures and sanctions

1. Member States shall lay down the rules on administrative measures and sanctions applicable in the circumstances defined in Article 25 to the persons responsible for breaches of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The measures and sanctions provided for shall be 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

Sanctioning powers

This Article shall apply in all the following circumstances:

- (a) a person engages in insider dealing in breach of Article 9;
- (b) a person recommends or induces another person to engage in insider dealing in breach of Article 9;
- (c) a person improperly discloses insider information in breach of Article 9;
- (d) a person engages in market manipulation in violation of Article 10;

- (e) a person attempts to engage in market manipulation in violation of Article 10;
- (f) a person who operates the business of a trading venue of a trading venue fails to adopt and maintain effective arrangements and procedures aimed at preventing and detecting market manipulation practices, in breach of Article 11 (1) ;
- (g) a person professionally arranging or executing transactions fails to have in place systems to detect and report transactions that might constitute insider dealing, market manipulation or an attempt to engage in market manipulation or fails to notify suspicious orders or transactions to the competent authority without delay, in breach of Article 11 (2);
- (h) an issuer of a financial instrument or emission allowance market participant, not exempted pursuant to the second subparagraph of paragraph 2 of Article 12, fails to inform the public as soon as possible of inside information or to post on its Internet site inside information to be disclosed publicly, in breach of Article 12 (1);
- (i) 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, delays the disclosure of inside information where such a delay is likely to mislead the public or without ensuring the confidentiality of that information, in breach of Article 12 (2);
- (j) 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, fails to inform the competent authority that the disclosure of inside information was delayed, in breach of Article 12 (2);
- (k) an issuer of a financial instrument or an emission allowance market participant, or a person acting on their behalf or on their account fails to disclose to the public the inside information disclosed to any person in the normal exercise of duties resulting from employment or profession, in breach of Article 12 (4);
- (l) an issuer of a financial instrument, an emission allowance market participant, not exempted pursuant to the second subparagraph of paragraph 2 of Article 12, or a person acting on their behalf or on their account fails to draw up, regularly update or transmit to the competent authority on request a list of insiders, in breach of Article 13 (1);
- (m) a person discharging managerial responsibilities within an issuer of financial instruments, an emission allowance market participant, not exempted pursuant to the second subparagraph of paragraph 2 of Article 12, or a person closely associated with them fails to make public the existence of transactions conducted on their own account, in breach of Article 14 (1) and (2);
- (n) a person producing or disseminating information recommending or suggesting an investment strategy intended for distribution channels or for the public fails to take reasonable care to ensure the information is objectively presented or to disclose interests or conflicts of interest, in breach of Article 15 (1);

- (o) a person who works or has worked for a competent authority or for any authority or market undertaking to whom the competent authority has delegated its tasks discloses information covered by professional secrecy in breach of Article 21;
- (p) a person fails to grant the competent authority access to a document and to provide a copy of it, requested in accordance with Article 17 (2) (a);
- (q) a person fails to provide information or to respond to a summons demanded by the competent authority in accordance with Article 17 (2) (b);
- (r) a market participant fails to provide competent authority with information in relation to commodity derivatives or with suspicious transaction reports or to grant direct access to traders' systems, requested in accordance with Article 17 (2) (c);
- (s) a person fails to grant access to a site for inspection, requested by the competent authority in accordance with Article 17 (2) (d) ;
- (t) a person fails to grant access to existing telephone and data traffic records requested in accordance with Article 17 (2) (f);
- (u) a person fails to comply with a request by the competent authority to cease a practice contrary to this Regulation, to suspend trading of financial instruments or to publish a corrective statement;
- (v) a person carries out an activity when prohibited from doing so by the competent authority.

Article 26

Administrative measures and sanctions

1. Without prejudice to the supervisory powers of competent authorities in accordance with Article 17, in case of a breach referred to in paragraph 1, competent authorities shall, in conformity with national law, have the power to 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) measures to be applied for failure to cooperate in an investigation covered by Article 17;
 - (c) measures which have the effect of putting an end to a continuous breach of this Regulation and eliminating its effect;
 - (d) a public statement which indicates the person responsible and the nature of the breach, published on the website of competent authorities;

- (e) correction of false or misleading disclosed information including by requiring any issuer or other person who has published or disseminated false or misleading information to publish a corrective statement;
 - (f) temporary prohibition of an activity;
 - (g) withdrawal of the authorisation of an investment firm as defined in Article 4 (1) of Directive [new MiFID];
 - (h) a temporary ban against any member of an investment firm's body or any other natural person, who is held responsible, to exercise functions in investment firms;
 - (i) suspend trading of the financial instruments concerned;
 - (j) request the freezing and/or sequestration of assets;
 - (k) administrative pecuniary sanctions of up to twice the amount of the profits gained or losses avoided because of the breach where those can be determined;
 - (l) in respect of a natural person, administrative pecuniary sanctions of up to [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;
 - (m) in respect of a legal person, administrative pecuniary sanctions of up to 10 % of its total annual turnover in the preceding business year; where the legal person is a subsidiary of a parent undertaking [as defined in Articles 1 and 2 of Directive 83/349/EEC], the relevant total annual turnover shall be the total annual turnover resulting from the consolidated account of the ultimate parent undertaking in the preceding business year.
2. Competent authorities may have other sanctioning powers in addition to those referred to in paragraph 2 and may provide for higher levels of administrative pecuniary sanctions than those established in that paragraph.
 3. Every administrative measure and sanction imposed for breach of this Regulation shall be published without undue delay, including at least information on the type and nature of the breach and the identity of persons responsible for it, unless such publication would seriously jeopardise the stability of financial markets. Where publication would cause disproportionate damage to the parties involved, competent authorities shall publish the measures and sanctions on an anonymous basis.

Article 27
Effective application of sanctions

1. When determining the type of administrative measures and sanctions, competent authorities shall take into account all relevant circumstances, including:
 - (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.

Additional factors may be taken into account by competent authorities, if such factors are specified in national law.

2. ESMA shall issue guidelines addressed to competent authorities in accordance with Article 16 of Regulation No (EU) 1095/2010 on types of administrative measures and sanctions and level of fines.

Article 28 *Appeal*

Member States shall ensure that decisions taken by the competent authority in accordance with this Regulation are subject to the right of appeal.

Article 29 *Reporting of violations*

1. Member States shall put in place effective mechanisms to encourage reporting of breaches of this Regulation to competent authorities, including at least:
 - (a) specific procedures for the receipt of reports of breaches and their follow-up;
 - (b) appropriate protection for persons who report potential or actual breaches;
 - (c) protection of personal data concerning both the person who reports the potential or actual breaches and the accused person in compliance with the principles laid down in Directive 95/46/EC;
 - (d) appropriate procedures to ensure the right of the accused person of defence and to be heard before the adoption of a decision concerning him and the right to seek effective judicial remedy against any decision or measure concerning him.
2. 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 a pre-existing legal or contractual duty to report such information, 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.

3. 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 measures for the protection of persons.

Article 30

Exchange of information with ESMA

1. Competent and judicial authorities shall provide ESMA annually with aggregated information regarding all administrative measures, sanctions and fines imposed 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 6 DELEGATED ACTS

Article 31

Delegation of powers

The Commission shall be empowered to adopt delegated acts in accordance with Article 32 concerning the supplementing and amending of the conditions for buy-back programmes and stabilisation of financial instruments, the definitions in this Regulation, the conditions for drawing up insider lists, the conditions relating to managers' transactions and the arrangements for persons who provide information that may lead to the detection of breaches of this Regulation.

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/EC⁴¹. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011⁴².
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.

⁴¹ OJ L 191, 13.7.2001, p.45.

⁴² 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 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 2273/2003⁴³ 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), 28(3) and 29(3) which shall apply immediately following the entry into force of this Regulation.

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President

⁴³ OJ L 162, 29.04.2004, p. 72.

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.

LEGISLATIVE FINANCIAL STATEMENT FOR PROPOSALS

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

- 1.1. Title of the proposal/initiative
- 1.2. Policy area(s) concerned in the ABM/ABB structure
- 1.3. Nature of the proposal/initiative
- 1.4. Objective(s)
- 1.5. Grounds for the proposal/initiative
- 1.6. Duration and financial impact
- 1.7. Management method(s) envisaged

2. MANAGEMENT MEASURES

- 2.1. Monitoring and reporting rules
- 2.2. Management and control system
- 2.3. Measures to prevent fraud and irregularities

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

- 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected
- 3.2. Estimated impact on expenditure
 - 3.2.1. Summary of estimated impact on expenditure
 - 3.2.2. Estimated impact on operational appropriations
 - 3.2.3. Estimated impact on appropriations of an administrative nature
 - 3.2.4. Compatibility with the current multiannual financial framework
 - 3.2.5. Third-party participation in financing
- 3.3. Estimated impact on revenue

LEGISLATIVE FINANCIAL STATEMENT FOR PROPOSALS

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Proposal for a Regulation of the European Parliament and of the Council on insider dealing and market manipulation (market abuse)

Proposal for a Directive of the European Parliament and of the Council on criminal sanctions for insider dealing and market manipulation (market abuse)

1.2. Policy area(s) concerned in the ABM/ABB structure⁴⁴

Internal Market – Financial markets

1.3. Nature of the proposal/initiative

☒ The proposal/initiative relates to **a new action**

☐ The proposal/initiative relates to **a new action following a pilot project/preparatory action**⁴⁵

☐ The proposal/initiative relates to **the extension of an existing action**

☐ The proposal/initiative relates to **an action redirected towards a new action**

1.4. Objectives

1.4.1. *The Commission's multiannual strategic objective(s) targeted by the proposal/initiative*

The general objectives of the Market Abuse Regulation and Directive are to increase market integrity and investor protection by prohibiting those who possess inside information from trading in related financial instruments, and by prohibiting the manipulation of financial markets through practices such as spreading false information or rumours and conducting trades which secure prices at abnormal levels while ensuring a single rulebook and level playing field and increasing the attractiveness of securities markets for capital raising for issuers on SME growth markets.

1.4.2. *Specific objective(s) and ABM/ABB activity(ies) concerned*

Specific objective No..

In the light of the general objectives above, the following more specific policy objectives are relevant:

- Ensure Regulation and Directive keep pace with market developments;

- Ensure effective enforcement of market abuse rules;

⁴⁴

ABM: Activity-Based Management – ABB: Activity-Based Budgeting.

⁴⁵

As referred to in Article 49(6)(a) or (b) of the Financial Regulation.

- Enhance the effectiveness of the market abuse regime by ensuring greater clarity and legal certainty;
- Reduce administrative burdens where possible, especially for issuers on SME markets.

ABM/ABB activity(ies) concerned

The specific objectives listed above require the attainment of the following operational objectives:

- Prevent market abuse on organised markets, platforms & OTC transactions;
- Prevent market abuse on commodities and related derivatives markets;
- Ensure regulators have necessary information and powers to enforce effectively;
- Ensure consistent, effective and dissuasive sanctions;
- Reduce or eliminate options and discretions;
- Clarify certain key concepts.

1.4.3. *Expected result(s) and impact*

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

The overall impact of the proposals will lead to considerable improvements in addressing market abuse within the EU. First of all, market integrity and investor protection will be improved by clarifying which financial instruments and markets are covered, ensuring that instruments admitted to trading only on a MTF and other new types of organised trading facilities are covered. In addition it will improve protection against market abuse in commodity derivatives by improved market transparency. In addition they will ensure better detection of market abuse by offering the necessary powers to competent authorities to perform investigations and improve the deterrence of sanctioning regimes by introducing minimum principles for administrative measures of sanctions and requiring for the introduction of criminal sanctions. Furthermore, it will lead to a more coherent approach regarding market abuse by reducing options and discretions for member States and will introduce a proportionate regime for issuers on SME growth markets. Overall, it is expected to contribute to the improved integrity of financial markets which will have a positive impact on investors' confidence and this will further contribute to the financial stability of financial markets.

1.4.4. *Indicators of results and impact*

Specify the indicators for monitoring implementation of the proposal/initiative.

The main indicators and sources of information that could be used in the evaluation are as follows:

- Data from national competent authorities on the number of market abuse cases they have investigated and sanctioned; and
- A report (which could be undertaken by ESMA) on the experience gained by regulators in enforcing the legislation.

1.5. **Grounds for the proposal/initiative**

1.5.1. *Requirement(s) to be met in the short or long term*

Short Term:

- Ensure regulators have necessary information and powers to enforce effectively;
- Ensure consistent, effective and dissuasive sanctions;
- Reduce or eliminate options and discretions;
- Clarify certain key concepts.

Long Term:

- Prevent market abuse on organised markets, platforms & OTC transactions;
- Prevent market abuse on commodities and related derivatives markets.

1.5.2. *Added value of EU involvement*

Although all the problems outlined in the Impact Assessment have important implications for each individual Member State, their overall impact can only be fully perceived in a cross-border context. This is because market abuse can be carried out wherever that instrument is listed, or over the counter, so even in markets other than the primary market of the instrument concerned. Therefore there is a real risk of national responses to market abuse being circumvented or ineffective in the absence of EU level action. Further, a consistent approach is essential in order to avoid regulatory arbitrage and since this issue is already covered by the acquis of the existing Market Abuse Directive addressing the problems highlighted in the Impact Assessment can best be achieved in a common effort.

1.5.3. *Lessons learned from similar experiences in the past*

The proposal for this Regulation builds on the existing Market Abuse Directive which has shown some limits in its application and has been applied in different ways among Member States leading to the need of a review in the form of a Regulation and a Directive.

1.5.4. *Coherence and possible synergy with other relevant instruments*

As announced in its Communication of 2 June 2010 on Regulating Financial Services for Sustainable Growth,⁴⁶ the Commission will complete its full financial reform programme in the coming months. Of the existing or pending proposals listed in the Communication, a number are related to this initiative and will contribute to achieving its objectives of improving investor protection and enhancing market transparency and integrity.

The proposal for a Regulation on short selling and certain aspects of Credit Default Swaps includes a short selling disclosure regime which would make it easier for regulators to detect possible cases of market manipulation or insider dealing linked to short selling.⁴⁷

The proposal for a regulation on OTC derivatives, central counterparties and trade repositories will also increase transparency of significant positions in OTC derivatives which will assist regulators to monitor for market abuse through the use of derivatives.⁴⁸

The review of the Markets in Financial Instruments Directive will consider options to widen the current scope of reporting in relation to transactions in instruments only traded on multilateral trading facilities (MTFs) and reporting on over the counter (OTC) transactions including derivatives. The reporting to competent authorities of OTC transactions in instruments not admitted to trading on a regulated market is not currently mandatory, and such reporting would make it easier for regulators to detect possible market abuse through such instruments.⁴⁹

The issues of transparency requirements and manipulative behaviours specific to physical energy markets, as well as transaction reporting to ensure the integrity of energy markets,

⁴⁶ (COM (2010) 301) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the European Central Bank regulating financial services for sustainable growth, June 2010.

⁴⁷ (COM(2010) 482) Proposal for a Regulation of the European Parliament and of the Council on short selling and certain aspects of credit default swaps, September 2010.

⁴⁸ COM(2010) 484) Proposal for a Regulation of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, September 2010.

⁴⁹ (COM(2011) XXX)

are the subject of the Commission proposal for a Regulation on energy market integrity and transparency.⁵⁰

⁵⁰

COM(2010) 484) Proposal for a Regulation of the European Parliament and of the Council on energy market integrity and transparency, December 2010.

1.6. Duration and financial impact

☐ Proposal/initiative of **limited duration**

- ☐ Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY
- ☐ Financial impact from YYYY to YYYY

☒ Proposal/initiative of **unlimited duration**

- Implementation with a start-up period from YYYY to YYYY,
- followed by full-scale operation.

1.7. Management mode(s) envisaged⁵¹

☒ **Centralised direct management** by the Commission

☐ **Centralised indirect management** with the delegation of implementation tasks to:

- ☐ executive agencies
- ☐ bodies set up by the Communities⁵²
- ☐ national public-sector bodies/bodies with public-service mission
- ☐ persons entrusted with the implementation of specific actions pursuant to Title V of the Treaty on European Union and identified in the relevant basic act within the meaning of Article 49 of the Financial Regulation

☐ **Shared management** with the Member States

☐ **Decentralised management** with third countries

☐ **Joint management** with international organisations (*to be specified*)

If more than one management mode is indicated, please provide details in the "Comments" section.

Comments

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⁵¹ Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html

⁵² As referred to in Article 185 of the Financial Regulation.

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

Article 81 of the Regulation establishing the European Securities and Markets Authority provides for evaluation of the experience acquired as a result of the operation of the Authority within three years from the effective start of its operation. To this end, the Commission shall publish a general report that shall be forwarded to the European Parliament and to the Council.

2.2. Management and control system

2.2.1. Risk(s) identified

An Impact Assessment has been carried out for the reform the financial supervision system in the EU to accompany the Regulations establishing the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities Markets Authority.

The additional resource to ESMA foreseen as a result of the current proposals is needed in order to allow ESMA to carry out its competences.

1. ESMA will ensure harmonization and coordination of rules in respect of:

- Exemption for buy-back programmes and stabilization (Article 3);
- Technical arrangements for the detection and notification of suspicious transactions (Article 11);
- Technical means for appropriate public disclosure of inside information (Article 12);
- Technical means for delaying the public disclosure of inside information (Article 12);
- An indicative and non-exhaustive list of events relating to issuers whose financial instruments are admitted to trading on an SME market that might constitute inside information (Article 12);
- Content and format of insider lists (Article 13);
- Arrangements relating to investment recommendations and statistics (Article 15);
- Procedures and forms for exchange of information among EU and foreign competent and regulatory authorities (Articles 18, 19, 20, 29).

2. Moreover, if requested by one competent authority ESMA will coordinate investigations and inspections among competent authorities for cross-border cases of market abuse (Article 19).

3. ESMA will also coordinate the development of cooperation arrangements between the competent authorities of Member States and the relevant competent authorities of third countries. ESMA will prepare template documents for cooperation arrangements that may

be used by competent authorities. ESMA will also coordinate the exchange between authorities of information obtained from competent authorities of third countries (Article 20).

4. Finally, in relation to derivatives on commodities, ESMA will perform a facilitation and coordination role for the cooperation and exchange of information between competent authorities and regulatory authorities in other Member States and third countries responsible for the spot markets (Article 19).

The lack of this resource could not ensure a timely and efficient fulfilment of the role of the Authority.

2.2.2. *Control method(s) envisaged*

Management and control systems as provided for in the ESMA Regulation will apply also with regard to the role of ESMA according to the present proposal. The final set of indicators to assess the performance of the European Securities and Markets Authority will be decided by the Commission at the time of conducting the first required evaluation. For the final assessment, the quantitative indicators will be as important as the qualitative evidence gathered in the consultations. The evaluation shall be repeated every three years.

2.3. **Measures to prevent fraud and irregularities**

Specify existing or envisaged prevention and protection measures.

For the purposes of combating fraud, corruption and any other illegal activity, the provisions of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) shall apply to the ESMA without any restriction.

The Authority shall accede to the Inter-institutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF) and shall immediately adopt appropriate provisions for all staff of the Authority.

The funding decisions and the agreements and the implementing instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF may, if need be, carry out on-the-spot checks on the beneficiaries of monies disbursed by the Authority as well as on the staff responsible for allocating these monies.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing expenditure budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Description.....]	Diff./non-diff (⁵³)	from EFTA ⁵⁴ countries	from candidate countries ⁵⁵	from third countries	within the meaning of Article 18(1)(aa) of the Financial Regulation
	12.040401.01 ESMA – Subsidy under Titles 1 and 2 (Staff and administrative expenditure)	Diff.	YES	NO	NO	NO

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

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⁵³ Diff. = Differentiated appropriations / Non-Diff. = Non-differentiated appropriations

⁵⁴ EFTA: European Free Trade Association.

⁵⁵ Candidate countries and, where applicable, potential candidate countries from the Western Balkans.

3.2. Estimated impact on expenditure

3.2.1. Summary of estimated impact on expenditure

EUR million (to 3 decimal places)

Heading of multiannual financial framework:	1A	Competitiveness for Growth and Employment
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DG: <MARKT>			Year 2013 ⁵⁶	Year 2014	Year 2015					TOTAL
• Operational appropriations										
12.0404.01	Commitments	(1)	0,179	0,327	0,327					0.832
	Payments	(2)	0,179	0,327	0,327					0.832
Appropriations of an administrative nature financed from the envelope for specific programmes ⁵⁷										
Number of budget line		(3)	0	0	0					
TOTAL appropriations for DG MARKT	Commitments	=1+1a +3	0,179	0,327	0,327					0.832
	Payments	=2+2a +3	0,179	0,327	0,327					0.832

• TOTAL operational appropriations	Commitments	(4)	0	0	0					
	Payments	(5)	0	0	0					

⁵⁶ Year N is the year in which implementation of the proposal/initiative starts.

⁵⁷ Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)	0	0	0					
TOTAL appropriations under HEADING 1A of the multiannual financial framework	Commitments	=4+ 6	0,179	0,327	0,327					0.832
	Payments	=5+ 6	0,179	0,327	0,327					0.832

1. ESMA will have to draft a certain number of draft implementing technical standards in respect of:
 - Exemption for buy-back programmes and stabilization (Article 3);
 - Technical arrangements for the detection and notification of suspicious transactions (Article 11);
 - Technical means for appropriate public disclosure of inside information (Article 12);
 - Technical means for delaying the public disclosure of inside information (Article 12);
 - An indicative and non-exhaustive list of events relating to issuers whose financial instruments are admitted to trading on an SME market that might constitute inside information (Article 12);
 - Content and format of insider lists (Article 13);
 - Arrangements relating to investment recommendations and statistics (Article 15);
 - Procedures and forms for exchange of information among EU and foreign competent and regulatory authorities (Articles 18, 19, 20, 29).
2. If requested by one competent authority ESMA will coordinate investigations and inspections among competent authorities for cross-border cases of market abuse.
3. ESMA will coordinate the development of cooperation arrangements between the competent authorities of Member States and the relevant competent authorities of third countries. ESMA will prepare template documents for cooperation arrangements that may be used by competent authorities. ESMA will also coordinate the exchange between authorities of information obtained from competent authorities of third countries.

4. 4. In relation to derivatives on commodities, ESMA will perform a facilitation and coordination role for the cooperation and exchange of information between competent authorities and regulatory authorities in other Member States and third countries responsible for the spot markets.

If more than one heading is affected by the proposal / initiative:

• TOTAL operational appropriations	Commitments	(4)								
	Payments	(5)								
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)								
TOTAL appropriations under HEADINGS 1 to 4 of the multiannual financial framework (Reference amount)	Commitments	=4+ 6	0,179	0,327	0,327					0.832
	Payments	=5+ 6	0,179	0,327	0,327					0.832

Heading of multiannual financial framework:	5	" Administrative expenditure "
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EUR million (to 3 decimal places)

		Year 2013	Year 2014	Year 2015					TOTAL
DG: <.....>									
• Human resources		0	0	0					
• Other administrative expenditure		0	0	0					
TOTAL DG <.....>	Appropriations								

TOTAL appropriations under HEADING 5 of the multiannual financial framework	(Total commitments = Total payments)	0	0	0					
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EUR million (to 3 decimal places)

		Year 2013 ⁵⁸	Year 2014	Year 2015					TOTAL
TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial framework	Commitments	0,179	0,327	0,327					0.832
	Payments	0,179	0,327	0,327					0.832

⁵⁸ Year N is the year in which implementation of the proposal/initiative starts.

3.2.2. *Estimated impact on operational appropriations*

- ☐ The proposal/initiative does not require the use of operational appropriations
- ☒ The proposal/initiative requires the use of operational appropriations, as explained below:

The specific objectives of the proposal are set out under 1.4.2. They will be reached through the legislative measures proposed, to be implemented at national level, and through the involvement of the European Securities and Markets Authority.

In particular, although it is not possible to attribute concrete numerical outputs to each operational objective, ESMA role, coupled with new powers for national regulators, should contribute to increasing market integrity and investor protection by prohibiting those who possess inside information from trading in related financial instruments, and by prohibiting the manipulation of financial markets through practices such as spreading false information or rumours and conducting trades which secure prices at abnormal levels. This new framework will prevent market abuse on organised markets, platforms & OTC transactions, and on commodities and related derivatives markets. Moreover, it will ensure ESMA and the national regulators have necessary information and powers to enforce consistent, effective and dissuasive sanctions.

3.2.3. *Estimated impact on appropriations of an administrative nature*

3.2.3.1. Summary

- ☒ The proposal/initiative does not require the use of administrative appropriations
- ☐ The proposal/initiative requires the use of administrative appropriations, as explained below:

3.2.3.2. Estimated requirements of human resources

- ☒ The proposal/initiative does not require the use of human resources
- ☐ The proposal/initiative requires the use of human resources, as explained below:

Comment:

No additional human and administrative resources will be needed in DG MARKT as a result of the proposal. Resources currently deployed to follow the MAD will continue to do so.

3.2.4. Compatibility with the current multiannual financial framework

- ☐ Proposal/initiative is compatible the current multiannual financial framework.
- ☒ Proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

The proposal provides for extra tasks to be carried out by ESMA. This will require additional resources under budget line 12.0404.01

- ☐ Proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework⁵⁹.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

3.2.5. Third-party contributions

- ☐ The proposal/initiative does not provide for co-financing by third parties
- ☒ The proposal/initiative provides for the co-financing estimated below:

Appropriations in EUR million (to 3 decimal places)

	Year 2013	Year 2014	Year 2015					Total
Specify the co-financing body								
Member States via EU national supervisors (*)	0,268	0,490	0,490					1,248
TOTAL appropriations cofinanced	0,268	0,490	0,490					1,248

(*) Estimation based on current financing mechanism in draft ESMA regulation (Member States 60% - Community 40%).

⁵⁹ See points 19 and 24 of the Interinstitutional Agreement.

3.3. Estimated impact on revenue

- ☒ Proposal/initiative has no financial impact on revenue.
- ☐ Proposal/initiative has the following financial impact:
 - ☐ on own resources
 - ☐ on miscellaneous revenue

Annex to Legislative Financial Statement for proposal for a Regulation of the European Parliament and of the Council on insider dealing and market manipulation (market abuse) and for a Directive of the European Parliament and of the Council on criminal sanctions for insider dealing and market manipulation (market abuse).

Applied methodology and main underlying assumptions

The costs related to tasks to be carried out by ESMA stemming from the two proposals have been estimated for staff expenditure (Title 1), in conformity with the cost classification in the ESMA draft budget for 2012 submitted to the Commission.

The two proposals of the Commission include provisions for ESMA to develop some 11 sets of new binding technical standards (BTS) that should ensure that provisions of highly technical nature are consistently implemented across the EU. According to the proposals, ESMA is expected to deliver the new BTS 24 months after entry into force of the Regulation. To meet this goal, increase in staffing level is required already starting with 2013. As regards the nature of positions, the successful and timely delivery of new BTS will require, in particular, additional policy, legal and impact assessment officers.

Based on the estimates of the Commission services and ESMA, the following assumptions were applied to assess the impact on number of FTEs required to develop BTS related to the two proposals:

- One policy officer, one impact assessment officer, and one legal officer are needed by 2013.

Hence, delivery of BTS that are falling due 24 months after entry into force of the Regulation requires 3 FTEs.

Lastly ESMA would be entrusted with some permanent tasks in the field of:

- coordination of investigations and inspections among competent authorities for cross-border cases of market abuse;
- development of cooperation arrangements between the competent authorities of Member States and the relevant competent authorities of third countries. ESMA will prepare template documents for cooperation arrangements that may be used by competent authorities. ESMA will also coordinate the exchange between authorities of information obtained from competent authorities of third countries;
- facilitation and coordination role for the cooperation and exchange of information between competent authorities and regulatory authorities in other Member States and third countries responsible for the spot markets and emission allowances.

Overall this means an additional 6 FTEs are needed.

Other assumptions:

- based on the distribution of FTEs in 2012 draft budget, additional 6 FTEs are assumed to be comprised of 3 temporary agents (50%), 2 seconded national expert (33,3%) and 1 contractual agent (16.7%);
- average annual salary costs for different categories of personnel are based on DG BUDG guidance;
- salary weighting coefficient for Paris of 1.27;
- training costs assumed at €1,000 per FTE per year;
- mission costs of €10,000, estimated based on 2012 draft budget for missions per headcount;
- recruiting-related costs (travel, hotel, medical examinations, installation and other allowances, removal costs, etc) of €2,700, estimated based on 2012 draft budget for recruiting per new headcount.

It was assumed that the workload behind the above increase in FTEs will be maintained in 2014 onwards, and is linked to amending the already developed BTS.

The method of calculating the increase in the required budget for the next three years is presented in more detail in table below. The calculation reflects the fact that that the Community budget funds 40% of the costs.

Cost type	Calculation	Amount (in thousands)			
		2013	2014	2015	Total
Title 1: Staff expenditure					
<i>6 Salaries and allowances</i>					
- of which temporary agents	=3*127*1,27	241.93	483.87	483.87	1209.67
- of which SNEs	=2*73*1,27	92.71	185.42	185.42	463.55
- of which contract agents	=1*64*1,27	40.64	81.28	81.28	203.2
<i>6 Expenditure related to recruitment</i>					
	=6*12,7	76.2			76.2
<i>6 Mission expenses</i>					
	=6*10	30	60	60	150
<i>6 Training</i>					
	=6*1	3	6	6	15
Total Title 1: Staff expenditure		484.48	816.57	816.57	2079.53
Of which Community contribution (40%)		193.79	326.63	326.63	847.05
Of which Member State contribution (60%)		290.68	489.94	489.94	1270.56

The following table presents the proposed establishment plan for the three temporary agent positions:

Function Group and Grade	Temporary Posts
AD16	
AD15	
AD14	
AD13	
AD12	
AD11	
AD10	
AD9	1
AD8	
AD7	2
AD6	
AD5	
AD Total	3