

Inclusion on insider list -
information in accordance with Article 18(2) of Regulation (EU) No
596/2014 of the European Parliament and of the Council on market abuse
(Market Abuse Regulation – MAR)

Dear Ms,
Dear Mr,

Under Article 18(1) of the Market Abuse Regulation (MAR), [Name des Verpflichteten] is obliged to draw up a list of all persons who have access to inside information and who are working for them under a contract of employment, or otherwise performing tasks through which they have access to inside information.

This insider list is to be provided to the competent authority (in Germany the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht – BaFin)) as soon as possible upon its request.

We would like to inform you that we have included you on this insider list.

We are therefore issuing this guidance notice in compliance with our specific duty to you to provide information regarding the legal obligations associated with access to inside information, and the legal consequences in the case of violations.

Please read through the following provisions of the Market Abuse Regulation and the German Securities Trading Act (Wertpapierhandelsgesetz – WpHG) carefully and confirm your acknowledgement thereof on the enclosed second copy of this guidance notice.

We would like to point out that the prohibition of insider dealing and the prohibition of unlawful disclosure of inside information protect the functioning of the capital market. Violating this prohibition can lead to criminal prosecution.

If you have any questions, please contact our compliance division/legal department/etc.

Market Abuse Regulation (EU) No 596/2014

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 an MTF, admitted to trading on an MTF or for which a request for admission to trading on an MTF has been made;

(c) financial instruments traded on an OTF;

(d) financial instruments not covered by point (a), (b) or (c), the price or value of which depends on or has an effect on the price or value of a financial instrument referred to in those points, including, but not limited to, credit default swaps and contracts for difference.

(...)

3. This Regulation applies to any transaction, order or behaviour concerning any financial instrument as referred to in paragraphs 1 and 2, irrespective of whether or not such transaction, order or behaviour takes place on a trading venue.

4. The prohibitions and requirements in this Regulation shall apply to actions and omissions, in the Union and in a third country, concerning the instruments referred to in paragraphs 1 and 2.

Article 3 Definitions

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

(1) 'financial instrument' means a financial instrument as defined in point (15) of Article 4(1) of Directive 2014/65/EU;

(...)

(6) 'regulated market' means a regulated market as defined in point (21) of Article 4(1) of Directive 2014/65/EU;

(7) 'multilateral trading facility' or 'MTF' means a multilateral system as defined in point (22) of Article 4(1) of Directive 2014/65/EU;

(8) 'organised trading facility' or 'OTF' means a system or facility in the Union as defined in point (23) of Article 4(1) of Directive 2014/65/EU;

(...)

(21) 'issuer' means a legal entity governed by private or public law, which issues or proposes to issue financial instruments, the issuer being, in case of depository receipts representing financial instruments, the issuer of the financial instrument represented;

(...)

Article 7 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 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;

(...)

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

2. For the purposes of paragraph 1, information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or which may reasonably be expected to come into existence, or an event which has occurred or which may reasonably be expected to occur, where 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 or the related derivative financial instrument, the related spot commodity contracts, or the auctioned products based on the emission allowances. In this respect in the case of a protracted process that is intended to bring about, or that results in, particular circumstances or a particular event, those future circumstances or that future event, and also the intermediate steps of that process which are connected with bringing about or resulting in those future circumstances or that future event, may be deemed to be precise information.

3. An intermediate step in a protracted process shall be deemed to be inside information if, by itself, it satisfies the criteria of inside information as referred to in this Article.

4. For the purposes of paragraph 1, information which, if it were made public, would be likely to have a significant effect on the prices of financial instruments, derivative financial instruments, related spot commodity contracts, or auctioned products

based on emission allowances shall mean information a reasonable investor would be likely to use as part of the basis of his or her investment decisions.

(...)

Article 8

Insider dealing

1. For the purposes of this Regulation, insider dealing arises where a person possesses inside information and uses that information by acquiring or disposing of, for its own account or for the account of a third party, directly or indirectly, financial instruments to which that information relates. The use of inside information by cancelling or amending an order concerning a financial instrument to which the information relates where the order was placed before the person concerned possessed the inside information, shall also be considered to be insider dealing. (...)

2. For the purposes of this Regulation, recommending that another person engage in insider dealing, or inducing another person to engage in insider dealing, arises where the person possesses inside information and:

(a) recommends, on the basis of that information, that another person acquire or dispose of financial instruments to which that information relates, or induces that person to make such an acquisition or disposal, or

(b) recommends, on the basis of that information, that another person cancel or amend an order concerning a financial instrument to which that information relates, or induces that person to make such a cancellation or amendment.

3. The use of the recommendations or inducements referred to in paragraph 2 amounts to insider dealing within the meaning of this Article where the person using the recommendation or inducement knows or ought to know that it is based upon inside information.

4. This Article applies to any person who possesses inside information as a result of:

(a) being a member of the administrative, management or supervisory bodies of the issuer or emission allowance market participant;

(b) having a holding in the capital of the issuer or emission allowance market participant;

(c) having access to the information through the exercise of an employment, profession or duties; or

(d) being involved in criminal activities.

This Article also applies to any person who possesses inside information under circumstances other than those referred to in the first subparagraph where that person knows or ought to know that it is inside information.

5. Where the person is a legal person, this Article shall also apply, in accordance with national law, to the natural persons who participate in the decision to carry out the acquisition, disposal, cancellation or amendment of an order for the account of the legal person concerned.

Article 10

Unlawful disclosure of inside information

1. For the purposes of this Regulation, unlawful disclosure of inside information arises where a person possesses inside information and discloses that information to any other person, except where the disclosure is made in the normal exercise of an employment, a profession or duties.

This paragraph applies to any natural or legal person in the situations or circumstances referred to in Article 8(4).

2. For the purposes of this Regulation the onward disclosure of recommendations or inducements referred to in Article 8(2) amounts to unlawful disclosure of inside information under this Article where the person disclosing the recommendation or inducement knows or ought to know that it was based on inside information.

Article 14

Prohibition of insider dealing and of unlawful disclosure of inside information

A person shall not:

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

Securities Trading Act (Wertpapierhandelsgesetz – WpHG)
(in the version of the Second Act Amending Financial Market Regulations
on the Basis of European Legislative Acts (Second Act Amending Financial
Market Regulations (Zweites Finanzmarktnovellierungsgesetz –
2. FiMaNoG))

Section 119 Provisions relating to criminal penalties

(1) Any persons who

(...)

will be liable to imprisonment for a term not exceeding five years or a fine.

(3) Persons will also be punished if they infringe the requirements of Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (Market Abuse Regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173 of 12 June 2014, page 1, L 287 of 21 October 2016, page 320; L 306 of 15 November 2016, page 43; L 348 of 21 December 2016, page 83), as most recently amended by Regulation (EU) 2016/1033 (OJ L 175 of 30 June 2016, page 1), by

1. engaging in insider dealing in contravention of Article 14(a);
 2. recommending that another person engage in insider dealing or inducing another person to engage in insider dealing in contravention of Article 14(b); or
 3. disclosing inside information in contravention of Article 14(c).
- (4) Any attempt is punishable.

§ 120

Provisions relating to administrative fines; power to issue statutory orders

(...)

(14) Any persons commit an administrative offence if they negligently commit one of the acts referred to in section 119 (3) numbers 1 to 3.

(...)

(18) The administrative offence is punishable by a fine not exceeding EUR five million in the cases referred to in subsections (14) (...). A higher fine than stipulated in sentence 1 can be imposed on a legal person or an association of persons;

1. in the cases referred to in subsections (14) (...), this fine may not exceed the higher of EUR fifteen million and 15 per cent of the total revenue generated by the legal person or association of persons in the financial year preceding the administrative decision,
2. (...)
3. (...).

Over and above the amounts referred to in sentences 1 and 2, the administrative offence is punishable by a fine of up to three times the economic benefit derived from the infringement. The economic benefit comprises profits gained and losses avoided and can be estimated.

Section 125

Publication of measures and penalties due to infringements of Regulation (EU) No. 596/2014, Regulation (EU) 2015/2365 and Regulation (EU) 2016/1011

(1) BaFin must publish decisions on measures and penalties imposed due to infringements of Articles 14, 15, 16(1) and (2), Article 17(1), 2, 4, 5 and 8, Article 18(1) to (6), Article 19(1), (2), (3), (5), (6), (7) and (11) and Article 20(1) of Regulation (EU) No. 596/2014, as well as Articles 4 and 15 of Regulation (EU) 2015/2365 on its website without undue delay after notifying the natural or legal person on whom the measure or penalty was imposed. This does not apply to decisions about investigative measures.

(2) In the publication, BaFin must state the provision that was infringed and the natural or legal person or association of persons that is responsible for the infringement.

(3) Where the publication of the identity of the legal person affected by the decision or the personal data of a natural person is disproportionate, or if publication would jeopardise an ongoing investigation or the stability of the financial markets,

1. BaFin must defer publication of the decision until the reasons for deferral cease to exist,

2. BaFin must publish the decision without stating the identity or personal data if this ensures effective protection of the identity or the relevant personal data, or

3. BaFin does not publish the decision if publication under numbers 1 and 2 would not be sufficient to ensure that

a) the stability of financial markets would not be put in jeopardy or

b) the proportionality of the publication is ensured.

In the case of sentence 1 number 2, BaFin can reverse the decision not to publish the identity or the personal data if the reasons for anonymous publication cease to exist.

(4) In the case of decisions that are not definitive under administrative law or unappealable, BaFin must add a corresponding note. If an appeal is lodged against a decision to be published, BaFin must supplement the publication without undue delay with a reference to the appeal and any subsequent information about the outcome of the appeal.

(5) Any publication under subsection (1) must be deleted five years after being published. By way of derogation from sentence 1, personal data must be deleted as soon as its publication is no longer necessary.

(6) In the case of decisions on measures and penalties imposed due to an infringement of Articles 4 to 16, 21, 23 to 29 and 34 of Regulation (EU) 2016/1011

or due to an infringement of an enforceable order issued by BaFin in connection with an investigation relating to the obligations under that order in accordance with section 6 (3) sentence 4 and subsections (6), (8), (11) to (13), section 7 (2), section 10 (2) sentence 2 numbers 1 or 2, subsections (1) to (5) apply, with the necessary modifications, provided that the withdrawal of a decision is also published if it was withdrawn because of an appeal.

(Place, date)

(Signature)