



# Investment Recommendations

Publication date: July 2017

## The Dutch Authority for the Financial Markets

The AFM is committed to promoting fair and transparent financial markets.

As an independent market conduct authority, we contribute to a sustainable financial system and prosperity in the Netherlands.

*The European Securities and Markets Authority (ESMA) regularly publishes Q&As with regard to the Market Abuse Regulation (MAR). Although the AFM processes this information in its brochures on a regular basis, it may occur that certain information in this document no longer applies. Therefore, we advise you to consult the ESMA website for the latest information on this subject. In case of any uncertainties with regard to interpretations set out in this brochure, you should also consult the Q&As of ESMA.*

*Click on the following link for a current overview of the latest Q&As:*

<https://www.esma.europa.eu/questions-and-answers>

*In this brochure the Q&As of ESMA have been processed up to and including the version of 6 July 2017.*

## Contents

Introduction	4
1. What is an investment recommendation?	6
2. Who is subject to obligations relating to investment recommendations?	9
2.1 Producers or disseminators of investment recommendations	9
2.2 Exemption for journalistic purposes	10
3. Obligations for producers of investment recommendations	11
3.1 Identity of producers of recommendations (article 2)	11
3.2 Objective presentation of recommendations (article 3 )	11
3.3 Additional obligations relating to objective presentation of recommendations (article 4)	12
3.4 Disclosure of (conflicts of) interests (article 5)	13
3.5 Additional obligations relating to disclosure of (conflicts of) interests (article 6)	14
4. Obligations for disseminators of recommendations	16
4.1 Dissemination of recommendations by the producer (article 7)	16
4.2 Dissemination of recommendations produced by third parties (article 8)	16
4.3 Additional obligations for dissemination of summary or extract of recommendations (article 9)	17
4.4 Additional obligations for dissemination of substantially altered recommendations (article 10)	17
5. Enforcement by the AFM	18

## Introduction

In this brochure<sup>1</sup>, the Dutch Authority for the Financial Markets (AFM) provides further explanation about the rules governing investment recommendations. This brochure is directed at persons who produce or disseminate investment recommendations, but also at those who receive them. It is based on the European Regulation on market abuse<sup>2</sup> (MAR), which came into force on 3 July 2016, as well as on Commission Delegated Regulation (EU) 2016/958<sup>3</sup>, and on “ESMA Questions and Answers on the market abuse regulation”.

The MiFID II rules on inducements, including the rules about research, have not been taken into account in this brochure. Investment firms should consider whether a particular investment recommendation qualifies an inducement and/or research under MiFID, and they have to comply with the relevant MiFID II obligations when receiving or providing inducements and/or research.

### *What is an investment recommendation?*

*An investment recommendation means information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public.*

Investment recommendations can be made in many different names, labels or formats and through different mediums, for instance in analyst reports, columns, articles in magazines, on radio or television, newspapers or opinions on the internet. Investors are likely to use investment recommendations as part of the basis of his or her investment decision. To prevent a situation in which investors are misled, investment recommendations must meet a number of transparency requirements

### *What is the objective of the rules governing investment recommendations?*

The information that has to be provided on the basis of these transparency requirements allows investors to assess the status or credibility of an investment recommendation, the interests the

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<sup>1</sup> This brochure has been prepared to provide a general impression of the obligations applying to the publication of investment recommendations. The brochure also contains references to relevant (legal) documents and other sources of information. It is intended to provide information. No rights can be derived from this brochure. You should not base actions solely on the content of this brochure. If the text of the brochure deviates from that of the MAR, the MAR will prevail.

<sup>2</sup> 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

<sup>3</sup> Commission Delegated Regulation (EU) 2016/958 of 9 March 2016, supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the technical arrangements for objective presentation of investment recommendations or other information recommending or suggesting an investment strategy and for disclosure of particular interests or indications of conflicts of interest.

producers and publisher of the recommendations hold and whether the recommendations are presented objectively. An investor can then decide for himself how much value he wishes to attach to an investment recommendation.

Persons who produce or disseminate investment recommendations or other information recommending or suggesting an investment strategy 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.

Depending on the capacity of the publisher of the investment recommendation and its content, certain transparency rules must be met. This brochure explains which regime has to be followed in the various circumstances.

Everyone is free to express his or her opinion, with the exception of disseminating information which gives false or misleading signals as to the supply of, demand for, or price of, a financial instrument, including the dissemination of rumours, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading<sup>4</sup>. The obligations relating to investment recommendations do not limit the freedom of the press and the freedom of expression in media, but are solely intended to increase transparency towards investors.

#### *What is the AFM's role related to investment recommendations?*

The AFM is the competent authority for supervision of obligations relating to investment recommendations on Dutch territory. The AFM follows conduct of market participants, but also orders and transactions of investors in the market. If certain conduct is against the rules, administrative or criminal sanctions can be imposed. This means that the AFM can, in certain cases, impose a fine, or transfer a case to the Public Prosecutor.

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<sup>4</sup> Information manipulation, see paragraph c) of article 12 (1) of MAR (Regulation (EU) No 596/2014);

# 1. What is an investment recommendation?

## *Definition of an investment recommendation*

In MAR article 3(1), paragraph 35, an investment recommendation is defined as “information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public”.

## *To recommend or suggest an investment strategy*

‘Information recommending or suggesting an investment strategy’ means (article 3(1), paragraph 34) information:

- (i) produced by an independent analyst, an investment firm, a credit institution, any other person whose main business is to produce investment recommendations or a natural person working for them under a contract of employment or otherwise, which, directly or indirectly, expresses a particular investment proposal in respect of a financial instrument or an issuer; or
- (ii) produced by persons other than those referred to in point (i), which directly proposes a particular investment decision in respect of a financial instrument;

To clarify: in the definition above, the criterion under i. ‘whose main business is to produce investment recommendations’ does not apply to an independent analyst, an investment firm or a credit institution.

## *Financial instruments*

In the context of investment recommendations, “financial instruments<sup>56</sup>” mean:

- a) financial instruments admitted to trading on a regulated market<sup>7</sup> or for which a request for admission to trading on a regulated market has been made;

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<sup>5</sup> As described in paragraph 15 of article 4(1) of Directive 2014/65/EU (MiFID II): those instruments specified in Section C of Annex 1. These include transferable securities (such as [depository receipts of] shares, bonds or other forms of securitised debt); money-market instruments; units in collective undertakings; options, futures, swaps, forward rate agreements and any other derivative contracts related to securities, currencies, interest rates or yields, commodities (under certain conditions), emission allowances or other derivative instruments, financial indices or financial measures which may be settled physically or in cash; financial contracts for difference.

<sup>6</sup> References in this brochure to Directive 2014/65/EU (MiFID II) and Regulation (EU) No. 600/2014 are read as references to Directive 2004/39/EC before 3 January 2018, in accordance with the correlation table in Annex IV of Directive 2014/65/EU insofar as the provisions in the correlation table refer to Directive 2004/39/EC. Where in this brochure reference is made to OTFs, SME growth markets, emission allowances or auctioned products based thereon, these provisions do not apply to OTFs, SME growth markets, emission allowances or auctioned products based thereon until 3 January 2018.

<sup>7</sup> „regulated market”: a regulated market as described in paragraph 21 of article 4(1) of Directive 2014/65/EU;

- b) financial instruments traded on an MTF<sup>8</sup>, 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<sup>9</sup>;
- 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.

A derivative traded outside a trading venue<sup>10</sup> is in scope of MAR insofar as its price or value depends on, or has an effect on the price or value of a financial instrument admitted to trading on a regulated market, MTF or OTF. Therefore, firms are responsible for conducting their own assessment on a case by case basis as to whether a recommendation on a given derivative traded solely outside a trading venue is in scope of article 20 of MAR and subject to the transparency requirements for investment recommendations.

#### *Issuer*

“Issuer<sup>11</sup>” 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.

#### *Investment recommendations do not have to be disseminated solely in writing*

When determining whether a communication is an "investment recommendation", an assessment should be made based on the substance of the communication, irrespective of its name or label and the format, form, or the medium through which it is delivered (whether electronically, orally or otherwise). As such, whether a specific oral or electronic communication, or a communication labelled as “morning notes” or “sales notes”, may be considered an investment recommendation within the meaning of MAR, it should be established on a case-by-case basis.

Where a standardised communication, including oral or electronic communication, is structured and pre-planned for distribution channels and it implicitly or explicitly suggests an investment strategy in relation to a financial instrument or issuer, it should be regarded as "investment recommendation".

#### *Explicit recommendation*

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8 MTF or Multilateral Trading Facility”: a multilateral system as described in paragraph 22 of article 4(1) of Directive 2014/65/EU;

9 OTF or Organised Trading Facility”: a multilateral system as described in paragraph 23 of article 4(1) of Directive 2014/65/EU;

<sup>10</sup> OTC: Over The Counter, or outside a regulated market, MTF or OTF.

<sup>11</sup> See paragraph 21 of article 3(1) of MAR

An 'explicit recommendation' is equivalent to directly disseminate an investment recommendation or directly propose a particular investment decision, and includes the use of 'buy', 'hold', 'sell' or equivalent terms<sup>12</sup>. In such situations, the investor interprets the recommendation as an advice to buy, hold or sell. An 'implicit recommendation' means to indirectly disseminate an investment recommendation or indirectly propose a particular investment decision, and includes for instance a reference to a target price, 'fair value', out- or underperformance or otherwise. It contains a statement about the value of these financial instruments.

Any communication containing purely factual information on one or several financial instruments or issuers would not constitute an investment recommendation under MAR provided that it does not explicitly or implicitly recommend or suggest an investment strategy. In this context, factual information might, among other things, include recent events or news relating to one or several financial instruments or issuers.

#### *Recommendation referring to several issuers or financial instruments*

When a recommendation refers to several issuers or financial instruments independently, for example as part of sectorial research, the requirements would apply independently to every issuer respectively each financial instrument that is the subject of the recommendation. If a recommendation relates to a derivative referencing an index of financial instruments, the derivative itself should be treated as a financial instrument and not the individual instruments that comprise the index.

Communication relating solely to spot currency rates, sectors, interest rates, loans, commodities, macroeconomic variables or industry sectors and not referring to a financial instrument or an issuer would be considered as investment recommendation where it contains information assessed as allowing a reasonable investor to deduce that the communication is implicitly recommending specific financial instruments or issuers and provided that the other criteria of the definition of "investment recommendation" are met. For example, an opinion on a specific sector that is composed of a very limited number of issuers may be considered an investment recommendation regarding those issuers.

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<sup>12</sup> See article 6(3) of Commission Delegated Regulation (EU) 2016/958 of 9 March 2016

## 2. Who is subject to obligations relating to investment recommendations?

If a communication qualifies as an investment recommendation, a number of obligations will apply.

### 2.1 Producers or disseminators of investment recommendations

Persons who produce or disseminate investment recommendations or other information recommending or suggesting an investment strategy 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.

'Persons'<sup>13</sup> as mentioned in the previous paragraph could be:

- an independent analyst,
- an investment firm,
- a credit institution,
- any other person whose main business is to produce investment recommendations,
- a natural person working for them under a contract of employment or otherwise,
- other persons, who directly propose a particular investment decision in respect of a financial instrument;

An example of this last category is for instance the "expert"<sup>14</sup>. An 'expert' means a person who repeatedly proposes investment decisions in respect of financial instruments and who:

- (i) presents himself as having financial expertise or experience; or
- (ii) puts forward his recommendation in such a way that other persons would reasonably believe he has financial expertise or experience.

Non-exhaustive indicators to be considered in relation to the identification of such experts include the frequency with which they produce recommendations; the number of followers they have when they propose recommendations; their personal work's history, including whether they have been professionally producing recommendations in the past; and whether their previous recommendations are or have been relayed by third parties, such as the media.

A group<sup>15</sup> means a parent undertaking and all its subsidiary undertakings.

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<sup>13</sup> 'Person' in MAR (paragraph 13 of article 3(1) of Regulation (EU) No 596/2014) means a natural or legal person

<sup>14</sup> Commission Delegated Regulation (EU) 2016/958 of 9 March 2016, paragraph a of article 1

<sup>15</sup> Commission Delegated Regulation (EU) 2016/958 of 9 March 2016, paragraph b of article 1: a group as defined in article 2(11) of Directive 2013/34/EU of the European Parliament and of the Council.

## 2.2 Exemption for journalistic purposes

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

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

### 3. Obligations for producers of investment recommendations

If a communication qualifies as an investment recommendation, a number of obligations apply for the producer or disseminator of the recommendation. The level of transparency depends on the capacity of the producer of the recommendation. These obligations are presented in this chapter.

In short, persons who produce or disseminate investment recommendations or other information recommending or suggesting an investment strategy shall disclose their identity, must take care to ensure that such information is objectively presented and disclose their interests or indicate conflicts of interest regarding the financial instruments concerned.

#### 3.1 Identity of producers of recommendations (article 2<sup>16</sup>)

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

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

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

For any other person who produces recommendations and is subject to self-regulatory standards or codes of conduct for the production of recommendations, that person shall, in addition to the information laid down in the first paragraph, state a reference to those standards or codes in the recommendation.

#### 3.2 Objective presentation of recommendations (article 3<sup>17</sup>)

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

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

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<sup>16</sup> Commission Delegated Regulation (EU) 2016/958 of 9 March 2016, article 2

<sup>17</sup> Commission Delegated Regulation (EU) 2016/958 of 9 March 2016, article 3

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

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

### 3.3 Additional obligations relating to objective presentation of recommendations (article 4<sup>18</sup>)

In addition to the information laid down in paragraph 3.2, an independent analyst, an investment firm, a credit institution, any other person whose main business is to produce investment recommendations or a natural person working for them under a contract of employment or otherwise, but also experts<sup>19</sup> shall include in the recommendation the following information in a clear and prominent manner:

- (a) if the recommendation has been disclosed to the issuer to which the recommendation, directly or indirectly, relates and it has been subsequently amended, a statement to that effect;
- (b) a summary of any basis of valuation or methodology and the underlying assumptions used to either evaluate a financial instrument or an issuer, or to set a price target for a financial instrument, as well as an indication and a summary of any changes in the valuation, methodology or underlying assumptions;
- (c) an indication of the place where detailed information about the valuation or methodology and the underlying assumptions is directly and easily accessible, in the event that the person who produces recommendations has not used proprietary models;
- (d) an indication of the place where material information about the proprietary models used is directly and easily accessible, in the event that the person who produces recommendations has used proprietary models;

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<sup>18</sup> Commission Delegated Regulation (EU) 2016/958 of 9 March 2016, article 4

<sup>19</sup> See paragraph 2.1.

- (e) the meaning of any recommendation made, such as the recommendations to 'buy', 'sell' or 'hold', and the length of time of the investment to which the recommendation relates are adequately explained and any appropriate risk warning, which shall include a sensitivity analysis of the assumptions, is indicated;
- (f) a reference to the planned frequency of updates to the recommendation;
- (g) an indication of the relevant date and time for any price of financial instruments mentioned in the recommendation;
- (h) where a recommendation differs from any of their previous recommendations concerning the same financial instrument or issuer that has been disseminated during the preceding 12-month period, the change(s) and the date of that previous recommendation are indicated; in case of derivatives: where a unique identifier exists for the concerned derivative, such identifier has to be used to determine whether there has been a change in a previous recommendation given by the producer on the same financial instrument. For as long as a unique identifier does not exist for a derivative instrument, all reasonable efforts should be made to identify such a financial instrument by other means. For example, these efforts may include establishing a proprietary taxonomy. In determining recommendations on the same financial instrument, common features of a given derivative contract, including but not limited to strike, underlying or maturity could be identified. Such an approach should allow producers of recommendations to provide meaningful disclosures to recipients and still comply with the requirements; and
- (i) a list of all their recommendations on any financial instrument or issuer that were disseminated during the preceding 12-month period, containing for each recommendation: the date of dissemination, the identity of the natural person(s) involved in the production of the recommendation, the price target and the relevant market price at the time of dissemination, the direction of the recommendation and the validity time period of the price target or of the recommendation.

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

### 3.4 Disclosure of (conflicts of) interests (article 5<sup>20</sup>)

Persons who produce recommendations shall disclose in their recommendations all relationships and circumstances that may reasonably be expected to impair the objectivity of the recommendation, including interests or conflicts of interest, on their part or on the part of any natural or legal person working for them under a contract, including a contract of employment, or

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<sup>20</sup> Commission Delegated Regulation (EU) 2016/958 of 9 March 2016, article 5

otherwise, who was involved in producing the recommendation, concerning any financial instrument or the issuer to which the recommendation directly or indirectly relates.

Where a person who produces recommendations is a legal person, the information to be disclosed shall also include any interests or conflicts of interest of any person belonging to the same group that are:

- (a) known, or reasonably expected to be known, to the persons involved in the production of the recommendation; or
- (b) known to persons who, although not involved in the production of the recommendation, have or could reasonably be expected to have, access to the recommendation prior to its completion.

Where a person who produces recommendations is a natural person, the information to be disclosed shall also include any interests or conflicts of interest of any person closely associated with him.

### 3.5 Additional obligations relating to disclosure of (conflicts of) interests (article 6<sup>21</sup>)

There are several additional obligations for an independent analyst, an investment firm, a credit institution, any other person whose main business is to produce investment recommendations or a natural person working for them under a contract of employment or otherwise, and for experts.

In addition to the information required in paragraph 3.4., these persons shall include in the recommendation the following information on their interests and conflicts of interest concerning the issuer to which the recommendation, directly or indirectly, relates:

- (a) if the person or expert owns a net long or short position exceeding the threshold of 0,5% of the total issued share capital of the issuer<sup>22</sup>, a statement to that effect specifying whether the net position is long or short;
- (b) if the holdings of the issuer in the total issued share capital of the person or expert exceed 5%, a statement to that effect;
- (c) if the person producing the recommendation or any other person belonging to the same group with that person:
  - (i) is a market maker or liquidity provider in the financial instruments of the issuer, a statement to that effect;
  - (ii) has been lead manager or co-lead manager over the previous 12 months of any publicly disclosed offer of financial instruments of the issuer, a statement to that effect;

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<sup>21</sup> Commission Delegated Regulation (EU) 2016/958 of 9 March 2016, article 6

<sup>22</sup> Calculated in accordance with article 3 of Regulation (EU) No. 236/2012 and chapters III and IV of Delegated Regulation (EU) No. 918/2012 of the Commission.

- (iii) is party to an agreement with the issuer relating to the provision of investment services, investment activities or ancillary services of investment firms<sup>23</sup>, a statement to that effect, provided that this would not entail the disclosure of any confidential commercial information and that the agreement has been in effect over the previous 12 months or has given rise during the same period to the obligation to pay or receive compensation;
- (iv) is party to an agreement with the issuer relating to the production of the recommendation, a statement to that effect.

Where this person is an investment firm, a credit institution, or a natural or a legal person working for an investment firm or credit institution under a contract, including a contract of employment, or otherwise, that person shall also include the following information in the recommendation:

- (a) a description of the effective internal organisational and administrative arrangements and of any information barrier it has set up for the prevention and avoidance of conflicts of interest with respect to the recommendations;
- (b) if the remuneration of natural or legal persons working for it under a contract of employment or otherwise, and who were involved in producing the recommendation, is directly tied to transactions in investment services, investment activities or ancillary services of investment firms or other type of transactions it or any legal person part of the same group performs, or to trading fees it or any legal person that is part of the same group receives, a statement to that effect;
- (c) information on the price and date of acquisition of shares where natural persons working for the person referred to in the first subparagraph under a contract of employment or otherwise, and who were involved in producing the recommendation, receive or purchase the shares of the issuer to which the recommendation, directly or indirectly, relates, prior to a public offering of such shares.
- (d) on a quarterly basis, the proportion of all recommendations that are 'buy', 'hold', 'sell' or equivalent terms over the previous 12 months, and the proportion of issuers corresponding to each of those categories to which such person has supplied material investment services, investment activities or ancillary services of investment firms over the previous 12 months.

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

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<sup>23</sup> Services of investment firms, listed in sections A and B of Annex I of Directive 2014/65/EU of the European Parliament and the Council

## 4. Obligations for disseminators of recommendations

Investment recommendations may be disseminated unchanged, summarised or substantially altered by another person than the producer of the recommendation. The way the disseminators of investment recommendations treat the recommendation can have a significant impact on the assessment thereof by investors. For investors it is important to know the identity of the person who disseminates the recommendation and to know if and how the original recommendation has been changed in order to make investment decisions. Therefore, a number of obligations apply to disseminators of investment recommendations.

### 4.1 Dissemination of recommendations by the producer (article 7<sup>24</sup>)

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

### 4.2 Dissemination of recommendations produced by third parties (article 8<sup>25</sup>)

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

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

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

- (a) the identity of the relevant competent authority;
- (b) its own interests or indication of conflicts of interest<sup>26</sup>, unless that person is acting as the disseminating channel of the recommendations produced within the same group<sup>27</sup> without exercising any discretion as to the selection of the recommendation to disseminate.

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<sup>24</sup> Commission Delegated Regulation (EU) 2016/958 of 9 March 2016, article 7

<sup>25</sup> Commission Delegated Regulation (EU) 2016/958 of 9 March 2016, article 8

<sup>26</sup> as laid down in Commission Delegated Regulation (EU) 2016/958 of 9 March 2016, article 5 and article 6(1) and (2)

<sup>27</sup> As defined in paragraph 2.1: a parent undertaking and all its subsidiary undertakings.

### 4.3 Additional obligations for dissemination of summary or extract of recommendations (article 9<sup>28</sup>)

In addition to the information specified in paragraph 4.2, persons who disseminate a summary or an extract of a recommendation produced by a third party shall ensure that such summary or extract:

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

These persons shall also ensure that the information, specified in paragraph 3.1. to 3.5 (identity, objective presentation and interest) regarding the producer of the recommendation is made available either directly, in the summary or in the extract itself, or through reference to the place where that information can be accessed by the persons receiving the summary or extract of the recommendation free of charge.

### 4.4 Additional obligations for dissemination of substantially altered recommendations (article 10<sup>29</sup>)

In addition to the information specified in paragraph 4.2, persons who disseminate a recommendation produced by a third party that is substantially altered, shall ensure that the recommendation clearly indicates the substantial alteration in detail.

They shall also meet the requirements specified in paragraph 3.1 to 3.4 (identity, objective presentation and interests) to the extent of the substantial alteration and include in the substantially altered recommendation a reference to the place where the information, specified in paragraph 3.1 to 3.5<sup>30</sup> regarding the producer of the original recommendation can be accessed by the persons receiving the substantially altered recommendation free of charge.

If a communication reports or refers to a former investment recommendation but contains either confirmation of the previous opinion or valuation or new elements of opinion or valuation, which may be based on new facts or events concerning the issuer which are considered in the valuation, it will be viewed as a new investment recommendation.

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<sup>28</sup> Commission Delegated Regulation (EU) 2016/958 of 9 March 2016, article 9

<sup>29</sup> Commission Delegated Regulation (EU) 2016/958 of 9 March 2016, article 10

<sup>30</sup> Set out in Commission Delegated Regulation (EU) 2016/958 of 9 March 2016, in articles 2 to 6

## 5. Enforcement by the AFM

The AFM is the competent authority regarding the obligations related to investment recommendations. The AFM ensures that the provisions of MAR, including those relating to investment recommendations are adhered to on Dutch territory. With regard to investment recommendations, the AFM supervises all actions carried out on its territory in relation to financial instruments and issuers admitted to Dutch and European platforms, and actions carried out abroad relating to financial instruments and issuers admitted to trading on a regulated market, for which a request for admission to trading on such market has been made, auctioned on an auction platform or which are traded on an MTF or an OTF or for which a request for admission to trading has been made on an MTF operating within its territory.

As mentioned in the introduction, the AFM proactively tracks conduct, orders and transactions by investors in the market. If there is reason to do so, the AFM investigates whether the market abuse rules are adhered to, including those relating to investment recommendations, but also rules relating to the prohibition of market manipulation and the prohibition of insider dealing.

Just as before, MAR considers<sup>31</sup> that research and estimates based on publicly available data, should not per se be regarded as inside information and the mere fact that a transaction is carried out on the basis of research or estimates should not therefore be deemed to constitute use of inside information. However, for example, where the publication or distribution of information is routinely expected by the market and where such publication or distribution contributes to the price-formation process of financial instruments, or the information provides views from a recognised market commentator or institution which may inform the prices of related financial instruments, the information may constitute inside information. Market actors must therefore consider the extent to which the information is non-public and the possible effect on financial instruments traded in advance of its publication or distribution, to establish whether they would be trading on the basis of inside information. In such circumstances, persons who are aware of this information are prohibited to (attempt to) trade in these instruments, prior to the publication of the investment recommendation. It is also forbidden for them to unlawfully disclose this information or to recommend or induce another person to engage in insider dealing.

The transparency obligations described in this brochure aim to prevent market manipulation. Market manipulation comprises for instance disseminating information through the media, including the internet, or by any other means, which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument, or is likely to secure the price of one or several financial instruments at an abnormal or artificial level, including the dissemination of rumours, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading.

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<sup>31</sup> See recital 28 MAR (Regulation (EU) No 596/2014);

A large number of professional market participants must file with the AFM a suspicion of market abuse, such as market manipulation and insider dealing. Further information about this notification obligation can be found on [www.afm.nl](http://www.afm.nl) in the brochure 'Obligation to notify market abuse'<sup>32</sup>. In addition, other market participants and private investors are also invited to notify the AFM.

Within the framework of its supervision, the AFM can request information from anybody who, as may reasonably be assumed, possesses information that is relevant for this supervision.

With regard to the supervision of adherence to the obligations regarding investment recommendations, the AFM disposes of a large number of supervision measures, such as issuing a direction. The AFM can also impose an order for incremental penalty payments or a fine, or refer a case to the Public Prosecutor. Which measure is taken, will be judged on a case-by-case basis.

The AFM is the primary contact for questions about investment recommendations. You can send your questions to [marketsupervision@afm.nl](mailto:marketsupervision@afm.nl) or contact the Monitoring team at telephone number: +31 20 797 3777. If you receive an investment recommendations and you hesitate whether it meets all transparency requirements, please notify the AFM.

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<sup>32</sup><https://www.afm.nl/en/professionals/onderwerpen/marktmisbruik/meldingsplicht>

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