

ITALMOBILIARE Società per Azioni

Market Sounding Procedure

Market Sounding Procedure

July 31, 2018

Contents

- 1. Introduction**
- 2. Definition of market sounding**
- 3. General Principles**
- 4. Rules to be followed when performing market sounding**
- 5. Rules to be followed when receiving a market sounding**
- 6. Monitoring compliance with the Procedure**
- 7. Failure to comply with the rules of conduct envisaged in the Procedure**
- 8. Amendments and additions to the Procedure**
- 9. Subsidiaries**
- 10. Legal and regulatory references**

Annexes

- Annex 1:** **Template for recording the notification issued to inform the person in receipt of the sounding of the fact that the information disclosed is no longer inside information**
- Annex 2:** **Template for the written minutes or notes when inside information is disclosed**
- Annex 3:** **Template for the written minutes or notes when inside information is not disclosed**

1. Introduction

This procedure (**Procedure**), adopted by Italmobiliare S.p.A. (**Company**) in compliance with art. 11 of Regulation (EU) No 596/2014 (**Regulation (EU) No 596/2014**) and related implementing technical standards, defines the rules with which the Company must comply when performing market soundings, or participation in soundings conducted by third parties it may receive.

The rules of conduct and principles envisaged in this Procedure aim to:

- **guarantee** maximum confidentiality of the **Inside Information** or information susceptible to becoming such (**Confidential Information**);
- **protect** investors and the integrity of the market, preventing situations of information asymmetry and preventing certain parties from using non-public information to operate on the markets;
- **protect** the Company in relation to any responsibility it might incur as a result of unlawful conduct involving market abuse adopted by persons traceable to the Company.

The Procedure is also an integral part of the Company's internal control and risk management system and of the overall system of preventing offences referred to in Italian Legislative Decree no. 231 of 8 June 2001, in particular in the Organisational Model adopted by the Company for this purpose.

For all aspects not specifically covered in this Code, the legal and regulatory provisions in force *pro tempore* will apply.

2. Definition of market sounding

A market sounding (**sounding**) consists of an interaction between a financial instruments seller and one or more potential investors and, in particular, the disclosure of information to such investors prior to announcing a transaction, with a view to assessing the interest in a potential transaction and the related terms, such as the potential extent, price and structure of the transaction (the actual implementation of which is not definite but depends on the feedback from the market sounding of potential investors).

Pursuant to recital (33) of Regulation (EU) No 596/2014, examples of market soundings include situations in which the sell-side firm has been in discussions with an issuer about a potential transaction, and it has decided to gauge potential investor interest in order to determine the terms of the transaction, where an issuer intends to announce a debt issuance or additional equity offering and key investors are contacted by a sell-side firm and given the full terms of the deal to obtain a financial commitment to participate in the transaction, or where the sell-side firm is seeking to sell a large amount of securities on behalf of an investor and seeks to gauge potential interest in those securities from other potential investors.

A particular case of market sounding is one in which inside information is disclosed by a person intending to launch a takeover bid on the securities of a company or propose a merger with a company entitled to the securities, provided that:

- the information is necessary to allow those entitled to the securities to form an opinion as to their willingness to offer their securities;
- the willingness of those entitled to the securities to offer their securities is reasonably necessary for the decision to present the acquisition or merger proposal.

3. General Principles

In compliance with the provisions of Delegated Regulation (EU) No 960/2016 (**Regulation (EU) No 960/2016**), for the purpose of a market sounding the information can be disclosed orally, in physical meetings, in audio or video telephone calls, or in writing by mail, fax or electronic communications.

The telephone conversations or meetings with potential investors must take place in access-controlled areas to ensure that no third party without authority to possess the significant information is able to learn of its contents, even by accident.

For market soundings conducted by phone, recorded telephone lines must be used, subject to consent being obtained from the person being sounded for the conversation to be recorded.

In addition, persons acting on behalf of the person conducting the market sounding must only use devices provided by said person for the sending and receiving telephone and electronic communications, as the use of personal devices is prohibited.

In order to minimise the risks associated with the selective disclosure of information, it is necessary to:

- limit the number of persons involved in such activity;
- not disclose any information on the market sounding to parties not directly concerned;
- inform potential investors only of information that is strictly necessary;
- reduce to a minimum the time between launching the market sounding and starting the transaction.

As the person contacted can state his or her wish not to participate in the sounding and, in any event, must give consent to receiving inside information, on initial contact with the potential investor it is important to avoid providing descriptive details that could give rise to the transfer of any inside information.

Personnel appointed to perform or receive market soundings must be clearly identified and have received suitable training in order to carry out the related activities.

The Company's Head of Corporate Affairs must be constantly informed of any intention to perform a market sounding, or in relation to the Company's involvement in a sounding performed by a third party.

4. Rules to be followed when performing market sounding

Subject to a decision taken by the CEO - General Manager, the Company may perform market soundings - also through third parties acting on its behalf - in compliance with art. 11 of Regulation (EU) No 596/2014 and the related implementing regulations.

Disclosure of inside information during a sounding is deemed to occur in the normal course of employment or performance of a profession or function, and therefore does not qualify as unlawful disclosure of inside information, provided that the provisions of this paragraph are complied with in performing the sounding.

The Company officer appointed to arrange any market soundings is the Finance Manager (the "**Market Sounding Manager**" or "**Manager**").

Before performing a sounding, the Manager analyses the information he intends to make available to potential investors and, with support from the relevant departments¹, assesses whether or not the market sounding will involve the disclosure of Inside Information.²

The Market Sounding Manager provides a written report on the considerations and

¹ See the "Procedure for the management of confidential and inside information".

² For a detailed definition of "Inside Information", again see the "Procedure for the management of confidential and inside information".

conclusions drawn in this respect, together with related justifications, and makes these available at the request of the competent authority.

This obligation applies to every notification of Inside Information for the entire duration of the market sounding. The Market Sounding Manager arranges for such records to be updated.

Before issuing the market sounding report pursuant to art. 11, paragraph 5 of Regulation (EU) No 596/2014, the Market Sounding Manager must:

- a) obtain consent from the persons contacted for the sounding (the “**sounding recipients**”, or “**recipients**”) to receive Inside Information;
- b) inform the sounding recipients of the ban on using such information for the direct or indirect purchase or disposal, on their own account or on behalf of third parties, of financial instruments referred to in the information;
- c) inform recipients of the ban on using such information for the cancellation or amendment of an order already placed involving a financial instrument referred to in the information;
- d) inform sounding recipients that, by agreeing to receive the information, they are subject to a non-disclosure obligation and are required to maintain strict confidentiality.

The Market Sounding Manager must record and store all information provided to sounding recipients in compliance with points a) to d) above, as well as the identity of potential investors to whom the information was disclosed, including legal entities or natural persons acting on behalf of the potential investor, as well as the date and time of each communication. The Market Sounding Manager submits these records to the competent authority on request.

Before each market sounding, the Manager must define the list of potential investors to be contacted, and establish the standard set of information to be used with all sounding recipients.

If the market sounding involves the disclosure of Inside Information, the standard set of information provided (also for the purpose of related feedback from the potential investor) must include and be limited to the following information, in the order stated³:

- (a) a statement clarifying that the communication takes place for the purposes of a market sounding;
- (b) where the market sounding is conducted by recorded telephone lines, or audio or video recording is being used, a statement indicating that the conversation is recorded (to obtain the consent of the person receiving the market sounding to be recorded);
- (c) a request addressed to the person contacted to confirm that the contact is taking place with the person appointed by the potential investor to receive the market sounding (in order to obtain the related confirmation);
- (d) a statement clarifying that, if the contacted person agrees to receive the market sounding, that person will receive information that the disclosing party considers

³ See art. 3, subsection 3, Regulation (EU) No 960/2016.

to be inside information and a reference to the obligation laid down in art. 11, subsection 7 of Regulation (EU) No 596/2014, according to which the person receiving the market sounding is obliged to independently assess whether he comes into possession of inside information or ceases to be in possession of inside information;

- (e) where possible, an estimation of when the information will cease to be inside information, the factors that may alter that estimation and, in any case, information about the manner in which the person receiving the market sounding will be informed of any change in such estimation;
- (f) a statement informing the person receiving the market sounding of the obligations and prohibitions of art. 11, subsection 5, subparagraph 1, points b), c) and d) of Regulation (EU) No 596/2014 provided above;
- (g) a request addressed to the person receiving the market sounding to consent to receiving Inside Information, pursuant to art. 11, subsection 5, first subparagraph, letter a), of Regulation (EU) No 596/2014, shown above (in order to obtain the response given to such a request);
- (h) if such consent is given, the information disclosed for market sounding purposes, with an indication of any deemed to be Inside Information.

If the market sounding does not involve the disclosure of Inside Information, the standard set of information provided must only include the following information, in the order indicated⁴:

- (a) a statement clarifying that the communication takes place for the purposes of a market sounding;
- (b) where the market sounding is conducted by recorded telephone lines, or audio or video recording is being used, a statement indicating that the conversation is recorded (to obtain the consent of the person receiving the market sounding to be recorded);
- (c) a request addressed to the person contacted to confirm that the contact is taking place with the person appointed by the potential investor to receive the market sounding (in order to obtain the related confirmation);
- (d) a statement clarifying that, if the contacted person agrees to receive the market sounding, that person will receive information that the disclosing party does not consider to be Inside Information and a reference to the obligation laid down in art. 11, subsection 7 of Regulation (EU) No 596/2014, according

⁴ See art. 3, subsection 4, Regulation (EU) No 960/2016

- to which the person receiving the market sounding is obliged to independently assess whether he comes into possession of inside information or ceases to be in possession of inside information;
- (e) the request addressed to the person receiving the market sounding to give their consent to launching the market sounding (in order to obtain the response given to such a request);
 - (f) if such consent is given, the information notified for market sounding purposes.

The Market Sounding Manager ensures that every recipient is provided with the same set of information relating to that market sounding.

When the Inside Information disclosed during a market sounding ceases to qualify as such, the Market Sounding Manager informs the sounding recipients as soon as possible, providing the following information (of which a record is kept in accordance with the template attached as Annex 1 to this Procedure):

- (a) the identity of the Company disclosing the information;
- (b) an indication of the transaction subject to market sounding;
- (c) the date and time of the market sounding;
- (d) the fact that the information disclosed has ceased to be Inside Information;
- (e) the date on which the information ceased to be Inside Information.

For each market sounding, the Market Sounding Manager draws up a list containing the following information:

- (a) the names of all natural persons and legal entities to which information was disclosed as part of the market sounding;
- (b) the date and time of every notification of information issued as part of and following the market sounding;
- (c) the contact details of persons receiving the market sounding, used for market sounding purposes.

The Market Sounding Manager also draws up a single list of all the potential investors who have stated they do not wish to receive market soundings (in relation to all or certain types of transaction), in order to avoid contacting such persons in future market soundings.

The Market Sounding Manager must ensure that the records of the following data and elements of information are stored in digital format, on a durable medium, that guarantees accessibility and readability for at least five years:

- a) the procedures followed to perform the market soundings;
- b) the standard set of information established for each market sounding;
- c) details of the persons contacted for market sounding purposes;
- d) all information disclosures taking place between the Market Sounding Manager and the persons contacted, including any documentation provided;

- e) the information that allowed the conclusion to be drawn that the information disclosed as part of the market sounding had ceased to be Inside Information, and the related notification.

The Market Sounding Manager must arrange storage:

- a) when the information disclosure is via a recorded phone line, the recordings of the conversations;
- b) when the information disclosure is in writing, a copy of the correspondence;
- c) when the information disclosure is during video- or audio-recorded meetings, the recordings of the meetings;
- d) when the information disclosure is during meetings or telephone conversations that are not recorded, the written notes of the telephone conversations and minutes of the meetings.

The written notes or minutes of meetings are prepared in electronic format by the Market Sounding Manager in a manner consistent with the templates provided in Annexes I⁵ and II⁶ of Regulation (EU) No 959/2016 (**Regulation (EU) No 959/2016**), and must be duly signed by the Manager and by the market sounding recipient.

Such documents must indicate:

- a) the date and time of the meeting or telephone conversations, as well as the identity of the participants;
- b) full details of the market sounding information exchanged between the Market Sounding Manager and the persons contacted;
- c) all documentation and material provided by the Market Sounding Manager to the persons contacted as part of the market sounding.

If within five business days after the market sounding, the Manager and the person contacted fail to reach an agreement on the contents of the notes or minutes, the Manager will store both the version personally prepared and signed and the version prepared by the sounding recipient. If within five business days after the sounding the person receiving the sounding has not submitted his signed version of the written notes or minutes to the Manager, the Manager will store only his own personal version.

The Market Sounding Manager provides CONSOB with the recordings and documents relating to the market soundings, if requested to do so by CONSOB.

To perform market soundings, the Market Sounding Manager can also make use of third parties acting on behalf of the Company. In this case, by means of special contractual arrangements, the Manager ensures that all regulatory measures and the provisions of this Procedure are complied with by the person appointed. This is without prejudice to the document storage obligations relating to each sounding, in accordance with the methods envisaged in this Procedure.

⁵ See "Template for the written minutes or notes pursuant to art. 6, subsection 2 d) of Delegated Regulation (EU) 2016/960 when inside information is disclosed", Annex 2 to this Procedure.

⁶ See "Template for the written minutes or notes pursuant to art. 6, subsection 2 d) of Delegated Regulation (EU) 2016/960 when inside information is not disclosed", Annex 3 to this Procedure.

5. Rules to be followed when receiving a market sounding

Even the mere receipt of market soundings involves the obligation to comply with specific rules which aim, on the one hand, to limit the risk of disclosure of inside information and, on the other, to provide the competent authorities with adequate means to conduct investigations if necessary ⁷.

The Market Sounding Manager is also the person appointed by the Company to receive market soundings conducted by third parties. The name of the Market Sounding Manager is made available by the Company to parties interested in conducting market soundings.

If an employee or other person performing or appointed to perform another activity on behalf of the Company should be contacted, by any means, for a market sounding, he or she must promptly interrupt the contact before information is imparted and invite the person performing the sounding to contact the Manager.

The Manager informs persons performing market soundings of any decision to no longer be contacted in relation to any future transaction or particular types of transaction.

The Manager must ensure that the information received is disclosed within the Company, on a strictly confidential basis, only to persons potentially interested in assessing the transaction in accordance with the “need to know rule”.

The Manager must control the flow of inside information within the Company and maintain a written trace of individual persons with access to such information for each market sounding, in order that they can operate in compliance with the regulations.

Without prejudice to the obligation of the person performing the market sounding to communicate the nature of any inside information he intends to impart, the Manager receiving that sounding must in any event, based on all information at his disposal (including that deriving from sources other than the person performing the sounding) and with support from the competent company departments⁸, arrange an independent assessment of the nature of the information received⁹.

Once the information is acquired, the Manager must also independently assess the permanence or otherwise of the inside information over time.

In conducting his assessments, the Manager must in any event avoid overstepping any information barriers existing within the Company to guarantee correct management and protection of the information.

Once he has assessed that inside information has come into his possession, the Manager must identify the issuers and the financial instruments associated with the inside information in order to avoid committing market abuse¹⁰.

⁷ See ESMA Guidelines/2016/1477 of 20 October 2016.

⁸ See the “Procedure for the management of confidential and inside information”.

⁹ See art. 7, subsection 7, Regulation (EU) No 596/2014.

¹⁰ See in particular art. 8, subsection 10, Regulation (EU) No 596/2014.

If, in compliance with Regulation (EU) No 960/2016, the person performing the market sounding has prepared written notes or minutes of meetings or telephone conversations that were not recorded, within five business days of receipt of the sounding the Manager must:

- sign the aforementioned notes and minutes, when the related contents are agreed; or, if not agreed,
- provide the person performing the sounding with their personal notes on the report, duly signed.

The Manager is required to arrange storage on a durable medium that guarantees accessibility and readability of the following for a period of at least five years:

- the procedures adopted for the correct management of soundings and for training the personnel involved;
- notifications stating the wish not to receive future market soundings;
- the assessments as to whether or not the information is inside information and of the issuers and financial instruments associated with the information;
- a list in chronological order, for each market sounding, of persons who had access to the information.

6. Monitoring compliance with the Procedure

Supervision of the correct application of this Procedure is assigned to the Company's supervisory and control bodies, each of which will perform the controls to the extent of their respective responsibilities.

In any event, the Supervisory Board receives information on cases of non-compliance with this Procedure.

7. Failure to comply with the rules of conduct envisaged in the Procedure

All conduct adopted by Company personnel of their own initiative - beyond the authorisation procedure and rules of conduct predefined in this Procedure - not only constitutes an infringement of company rules, but exposes the risk of committing a serious infringement of market abuse regulations, with associated consequences for the perpetrator and also for the Company, including the implications of sanctions envisaged by law.

In the event of failure to comply with this Procedure, the disciplinary and sanctioning measures covered by the Company's Organisation, Management and Control Model will apply.

Company employees can also be subject to disciplinary action in accordance with the applicable collective bargaining agreement.

The Company in any event reserves the right, by the methods of and within the limits

permitted by current legal and regulatory provisions, to take action against the offenders for any damages and/or liability claimed against the Company as a result of conduct adopted in violation of this Procedure or of applicable regulations.

8. Amendments and additions to the Procedure

Any amendments and/or additions to this Procedure are approved by the Board of Directors, except amendments triggered by changes to current regulations, changes in the organisation and in market practices, which call for immediate application and are not open to discretionary implementation, and which can therefore be applied by the CEO with immediate effect and later promptly submitted to the Board of Directors for information.

9. Subsidiaries

The Subsidiaries ¹¹ are made aware of this Procedure by means of special notification to the company boards which must:

- acknowledge the notification from the Company;
- in a manner compatible with its organisational structure, size and business activities, adopt suitable measures to ensure compliance with the regulations on performing and/or receiving market soundings.

10. Legal and regulatory references

Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse 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 (**Regulation (EU) No 596/2014**)

Commission Implementing Regulation (EU) 2016/959 of 17 May 2016, laying down implementing technical standards for market soundings with regard to the systems and notification templates to be used by disclosing market participants and the format of the records in accordance with Regulation (EU) No 596/2014 (**Regulation (EU) No 959/2016**)

Commission Delegated Regulation (EU) 2016/960 of 17 May 2016, supplementing Regulation (EU) No 596/2014 with regard to regulatory technical standards for the appropriate arrangements, systems and procedures for disclosing market participants conducting market soundings (**Regulation (EU) No 960/2016**)

ESMA/2016/1477 Guidelines of 20 October 2016 (**ESMA Guidelines**).

Italian Legislative Decree 231 of 8 June 2001, "Provisions on administrative liability of legal entities, companies and associations with or without legal status, pursuant to art. 11, Italian Law 300 of 29 September 2000" (**Italian Legislative Decree 231/01**).

¹¹ For the definition of subsidiaries, see the "Procedure on the management of confidential and inside information".

ANNEX 1

Template for recording the communication given in accordance with the first subparagraph of Article 11(6) of Regulation (EU) No 596/2014 to inform the person having received the market sounding that the information disclosed has ceased to be inside information

Item	Text field
i. Identity of the disclosing market participant	<i>Full names of the disclosing market participant and of the person within the disclosing market participant providing the information and the contact details used for the communication.</i>
ii. Identity of the person receiving the communication	<i>Full name of the person receiving the communication and the contact details used for the communication.</i>
iii. Date and time of the communication	<i>Date and time(s) of the communication specifying the time zone.</i>
iv. Identification of the transaction	<i>Information to identify the transaction that was subject to the market sounding. It may include information about the type of transaction, e.g. IPO, secondary offer, merger, block trade, private placement, share capital increase.</i>
v. Date and time of the market sounding	<i>Information about the date and time when the inside information was disclosed as part of the market sounding.</i>
vi. Communication that the information has ceased to be inside information	<i>Statement to inform the market sounding recipient of the fact that the information disclosed has ceased to be inside information.</i>
vii. Date when the information ceased to be inside information	<i>The date when the information disclosed as part of the market sounding ceased to be inside information.</i>

ANNEX 2

Template for the written minutes and notes referred to in Article 6(2)(d) of Delegated Regulation (EU) 2016/960 where inside information is disclosed

Item	Text field
i. Identity of the disclosing market participant	<i>Full names of the disclosing market participant and of the person within the disclosing market participant providing the information and the contact details used for the communication.</i>
ii. Identity of the person receiving the communication	<i>Full name of the person receiving the communication and the contact details used for the communication.</i>
iii. Date and time of the communication	<i>Date and time(s) of the communication specifying the time zone.</i>
iv. Clarification of the nature of the conversation in accordance with Article 3(3)(a) of Delegated Regulation (EU) 2016/960	<i>Record of the statement that the communication takes place for the purposes of a market sounding.</i>
v. Confirmation of the identity of the person receiving the market sounding in accordance with Article 3(3)(c) of Delegated Regulation (EU) 2016/960	<i>Record of the information about the confirmation from the contacted person that the disclosing market participant is communicating with the person entrusted by the potential investor to receive the market sounding.</i>
vi. Clarification in accordance with Article 3(3)(d) of Delegated Regulation (EU) 2016/960 that inside information will be communicated	<i>Record of the statement clarifying that, if agreeing to receive the market sounding, the person receiving the communication of information will receive information which the disclosing market participant considers to be inside information and a reference to the obligation set forth in Article 11(7) of Regulation (EU) No 596/2014.</i>
vii. Information on the estimation of when the information ceases to be inside information, in accordance with Article 3(3)(e) of Delegated Regulation (EU) 2016/960	<i>Record of the information given, if any, on the estimated time when the information is expected to be made public or the transaction launched, with an explanation of why this may be subject to change and how the person receiving the market sounding will be informed in case the estimated time is no longer valid.</i>
viii. Statement regarding the obligations of the person receiving the communication in accordance with Article 3(3)(f) of Delegated Regulation (EU) 2016/960	<i>Record of the statement explaining to the person receiving the communication the obligations that apply to the possession of inside information, in accordance with points (b), (c) and (d) of subparagraph 1 of Article 11(5) of Regulation (EU) No 596/2014.</i>
ix. Confirmation of consent in accordance with Article 3(3)(g) of Delegated Regulation (EU) 2016/960	<i>Record of the information about the consent of the person receiving the market sounding to receive the inside information, as referred to in point (a) of subparagraph 1 of Article 11(5) of Regulation (EU) No 596/2014 (request and reply).</i>
x. Disclosure of information in accordance with Article 3(3)(h) of Delegated Regulation (EU) 2016/960	<i>Description of the information disclosed for the purposes of the market sounding, identifying the information considered to be inside information.</i>

Annex 3

Template for the written minutes and notes referred to in Article 6(2)(d) of Delegated Regulation (EU) 2016/960 where no inside information is disclosed

Item	Text field
i. Identity of the disclosing market participant	<i>Full names of the disclosing market participant and of the person within the disclosing market participant providing the information and the contact details used for the communication.</i>
ii. Identity of the person receiving the communication	<i>Full name of the person receiving the communication and the contact details used for the communication.</i>
iii. Date and time of the communication	<i>Date and time(s) of the communication specifying the time zone.</i>
iv. Clarification of the nature of the conversation in accordance with Article 3(4)(a) of Delegated Regulation (EU) 2016/960	<i>Record of the statement that the communication takes place for the purposes of a market sounding.</i>
v. Confirmation of identity in accordance with Article 3(4)(c) of Delegated Regulation (EU) 2016/960	<i>Record of the information about the confirmation from the contacted person that the disclosing market participant is communicating with the person entrusted by the potential investor to receive the market sounding.</i>
vi. Clarification in accordance with Article 3(4)(d) of Delegated Regulation (EU) 2016/960 that no inside information will be communicated	<i>Record of the statement clarifying that, if agreeing to receive the market sounding, the person receiving the communication of information will receive information which the disclosing market participant does not consider inside information and a reference to the obligation set forth in Article 11(7) of Regulation (EU) No 596/2014.</i>
vii. Confirmation of consent in accordance with Article 3(4)(e) of Delegated Regulation (EU) 2016/960	<i>Record of the information about the consent of the person receiving the market sounding to proceed with the market sounding (request and reply).</i>
viii. Disclosure of information in accordance with Article 3(4)(f) of Delegated Regulation (EU) 2016/960	<i>Description of the information disclosed for the purposes of the market sounding.</i>