Regulatory technical and implementing standards – Annex I

MiFID II / MiFIR
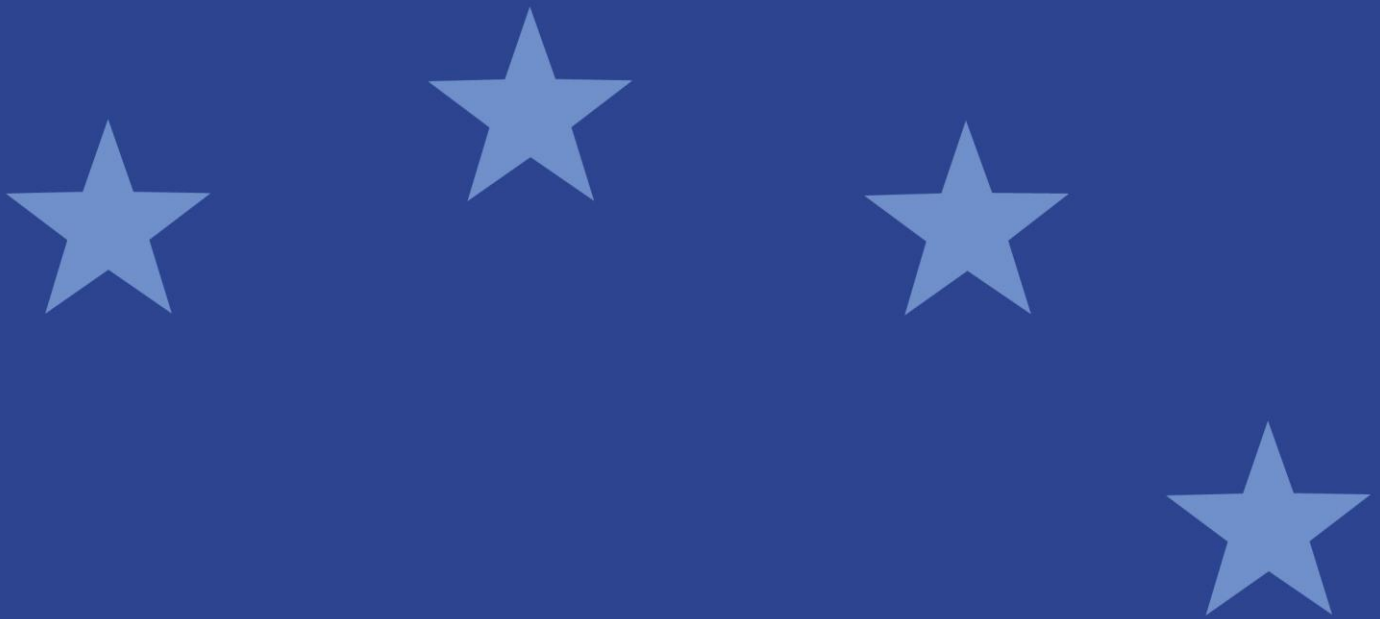
Table of Contents

CHAPTER 2: TRANSPARENCY

RTS 1: Draft regulatory technical standards on transparency requirements in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments

EUROPEAN COMMISSION

Brussels, XXX
[…](2012) XXX draft

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

[…]

COMMISSION DELEGATED REGULATION (EU) …/..

of [date]

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and the obligation for investment firms to execute transactions in certain shares on a trading venue or a systematic internaliser

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012[1], and in particular Articles 4(6), 7(2), 14(7), 20(3), 22(4) and 23(3) thereof,

Whereas:

(1)   A high degree of transparency is essential to ensure that investors are adequately informed as to the true level of actual and potential transactions in shares, depositary receipts, exchange-traded funds (ETFs), certificates and other similar financial instruments irrespective of whether those transactions take place on regulated markets, multilateral trading facilities (MTFs), systematic internalisers, or outside those facilities. This high degree of transparency should also establish a level playing field between trading venues so that the price discovery process in respect of particular financial instruments is not impaired by the fragmentation of liquidity, and investors are not thereby penalised.

(2)   At the same time, it is essential to recognise that there may be circumstances where exemptions from pre-trade transparency or deferrals from post-trade transparency obligations should be provided to avoid the impairment of liquidity as an unintended consequence of obligations to disclose orders and transactions and thereby to make public risk positions. Therefore, it is appropriate to specify the precise circumstances

---

1 OJ L 173, 12.6.2014, p. 84.

under which waivers from pre-trade transparency and deferrals from post-trade transparency may be granted.

(3)   The provisions in this Regulation are closely linked, since they deal with the transparency requirements applicable to trading venues and investment firms in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments. To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view and efficient access for stakeholders, in particular those subject to the obligations, it is desirable to include these regulatory technical standards in a single Regulation.

(4)   Where competent authorities grant waivers in relation to pre-trade transparency requirements or authorise the deferral of post-trade transparency obligations, they should treat all regulated markets, multilateral trading facilities and investment firms trading outside of trading venues equally and in a non-discriminatory manner.

(5)   It is appropriate to provide for clarification of a limited number of technical terms. Those technical definitions are necessary to ensure the uniform application in the Union of the provisions contained in this Regulation and, hence, contribute to the establishment of a single rulebook for financial markets in the Union. Those definitions are purely functional for the purpose of setting out the transparency obligations for equity and equity-like financial instruments and should be strictly limited to understanding this Regulation.

(6)   Regulation (EU) No 600/2014 brings within the scope of the transparency regime equity-like instruments such as depositary receipts, ETFs and certificates, as well as shares and other equity-like instruments only traded on a MTF. It is necessary, in order to establish a comprehensive and uniform transparency regime, to update Commission Regulation (EC) No 1287/2006 of 10 August 2006[2] by calibrating the content of the pre-trade information to be made public by trading venues.

(7)   A trading venue operating a request for quote (RFQ) system should at least make public all the firm bid and offer prices or actionable indications of interest and the depth attached to those prices no later than at the time when the requester is able to execute a transaction under the system's rules. This is to ensure that members or participants who are providing their quotes to the requester first are not put at a disadvantage.

(8)   While this Regulation sets out the specific methodology and data necessary to perform calculations for the purpose of specifying the transparency regime applicable to equity

---

2 Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards recordkeeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive (OJ L 241, 2.9.2006, p. 1).

and equity-like financial instruments, it should be applied in conjunction with Regulation (EU) No [RTS on Article 22 and Double Volume Cap] which specifies in more general terms, the common elements with regard to the content and frequency of data requests to be addressed to trading venues, Approved Publication Arrangements (APAs) and Consolidated Tape Providers (CTPs) for the purposes of transparency and other calculations.

(9)   This Regulation should ensure that the pre-trade and post-trade transparency regime established by Regulation (EU) No 600/2014 is appropriately calibrated to the market. In particular, a static determination of the most relevant markets in terms of liquidity, the sizes of orders that are large in scale and standard market sizes would not adequately capture regular modifications of trading patterns affecting equity and equity-like instruments. Therefore, it is essential that this Regulation lays down the necessary calculations to be performed, including their periods and methods as well as the identification of the competent authority responsible for making the calculations in accordance with the determination of the relevant competent authority for the purpose of Article 26 Regulation (EU) No 600/2014 specified in Article xx of Commission Delegated Regulation (EU) [insert reference to Article 18 of RTS on reporting obligations under Article 26 of MiFIR]. In this respect, to avoid market distorting effects, the calculation periods specified in this Regulation should ensure that the relevant thresholds of the regime are updated at appropriate intervals to reflect market conditions. It is also appropriate to provide for the centralised publication of the results of the calculations so that they are made available to all financial market participants and competent authorities in the Union in a single place and in a user-friendly manner. To that end, competent authorities should notify ESMA of the results of their calculations and then ESMA should publish those calculations on its website.

(10)   It is also appropriate to ensure that the pre-trade and post-trade transparency regime established by Regulation (EU) No 600/201 is applied in a uniform manner throughout the Union. In order to carry out the calculations for determining the requirements for the pre-trade and post-trade transparency in accordance with Article 22(1) of Regulation (EU) No 600/2014, the content, frequency of data requests and the formats and timeframe in which trading venues, APAs and CTPs must respond to such requests in accordance with Article 22(4) of Regulation (EU) No 600/2014 should be developed. The results of the calculations made on the basis of the data collected according to Article 22(1) of Regulation (EU) No 600/2014 need to be published in order to inform market participants and achieve pre- and post-trade transparency in practice. It is also appropriate to provide for the possibility of centralised publication of the results of the calculations so that they are made available to all financial market participants and competent authorities in the Union in a single place and in a user-friendly manner. To that end, competent authorities should notify European Securities and Markets Authority (ESMA) of the results of their calculations and then ESMA should publish those calculations on its website.

(11) For ETFs, and contrary to shares, depositary receipts, certificates and other similar financial instruments, the average daily turnover does not appear as an appropriate proxy for the calibration of the large in scale thresholds. For these instruments, the measure of actual liquidity is not adequately captured by the average daily turnover since the creation and redemption mechanisms inherent to ETFs allow to access additional and non-displayed liquidity. In order to reduce the risk of circumvention, it is also important that two ETFs on the same underlying have the same large in scale thresholds regardless of whether they have similar average daily turnover or not. Therefore, this Regulation should establish a single large in scale threshold for all ETFs which should apply regardless of their underlying or of their liquidity.

(12) Information which is required to be made available as close to real time as possible should be made available as instantaneously as technically possible, assuming a reasonable level of efficiency and of expenditure on systems on the part of the person concerned. The information should only be published close to the prescribed maximum time limit in exceptional cases where the systems available do not allow for publication in a shorter period of time.

(13) Investment firms should make public the details of transactions executed outside a trading venue through an APA. This Regulation should set out the way investment firms report the details of the transactions to APAs and should apply in conjunction with the Regulation on [RTS 13 on DRSP] where the specific requirements applicable to APAs are specified.

(14) The transparency requirements aim to ensure that investors have reliable and timely information about the level of trading interest in financial instruments. Information on certain types of transactions such as the transfer of financial instruments as collateral would not provide meaningful information to investors in respect of the level of genuine trading interest in a financial instrument. Requiring investment firms to make public those transactions would cause significant operational challenges and costs without improving the price formation process. Therefore, post-trade transparency obligations in respect of transactions executed outside a trading venue should only apply in the case of a purchase or sale of a share, depositary receipt, ETF, certificate or other similar financial instrument. It is essential that certain transactions such as those involving the use of any such instruments for collateral lending or other purposes where the exchange is determined by factors other than the current market valuation should not be published as they do not contribute to the price discovery process, would only blur the picture for investors and be a hindrance to achieving best execution.

(15) Pursuant to Regulation (EU) No 600/2014, transactions executed on a trading venue should be made public by market operators and investment firms operating a trading venue. In respect of transactions executed outside the rules of a trading venue, it is essential to clarify which investment firm should make public a transaction in cases where both parties to the transaction are investment firms established in the Union to ensure the publication of transactions without duplication. Therefore, the

responsibility to make a transaction public should always fall on the selling investment firm unless only one of the counterparties is a systematic internaliser and it is the buying firm.

(16)   Where only one of the counterparties is a systematic internaliser in a given financial instrument and it is also the buying firm for that instrument, it should be responsible for making the transaction public as its clients would expect it to do so and it is better placed to fill in the reporting field mentioning its status of systematic internaliser. To ensure that a transaction is only published once, the systematic internaliser should inform the other party that it is making the transaction public.

(17)   It is important to maintain current standards for the publication of transactions carried out as back-to-back trades to avoid the publication of a single transaction as multiple trades and to provide legal certainty on which investment firm is responsible for publishing a transaction. Therefore, two matching trades entered at the same time and for the same price with a single party interposed should be published as a single transaction.

(18)   The new legislation of the European Parliament and of the Council on markets in financial instruments set out in Directive 2014/65/EU and Regulation (EU) No 600/2014 applies from 3 January 2017. To ensure consistency and legal certainty, this Regulation should apply from the same date. However, to ensure that the new transparency regulatory regime can operate effectively from 3 January 2017, and that market participants have sufficient time to implement the new requirements by that date, it is necessary for certain transitional provisions to apply from the date of entry into force of this Regulation. These transitional provisions should enable the collection of data for the calculations and provide for an earlier publication of the most relevant markets in terms of liquidity, the sizes of orders that are large in scale, the deferred publication thresholds and standard market sizes.

(19)   This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(20)   ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[3],

---

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

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL

Article 1

Definitions

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

(1)   'portfolio trade' means transactions in five or more different financial instruments where those transactions are traded at the same time by the same client and as a single lot against a specific reference price;

(2)   'give-up' or 'give-in' means a transaction where an investment firm passes a client trade to, or receives a client trade from, another investment firm for the purpose of post-trade processing;

(3)   'securities financing transaction' means a securities financing transaction as defined in (EU) Regulation [Article 3(6) of Regulation on reporting and transparency of securities financing transactions];

Article 2

(Article 23(1) of Regulation (EU) No 600/2014)

Transactions not contributing to the price discovery process

A transaction in shares does not contribute to the price discovery process if any of the following circumstances apply:

(a)   the transaction is executed by reference to a price that is calculated over multiple time instances according to a given benchmark, including transactions executed by reference to a volume-weighted average price or a time-weighted average price;

(b)   the transaction is part of a portfolio trade which includes five or more different shares;

(c)   the transaction is contingent on the purchase, sale, creation or redemption of a derivative contract or other financial instrument where all the components of the trade are to be executed only as a single lot such as exchanges for related positions;

(d)   the transaction is executed by a management company as defined in Article 2(1)(b) of Directive 2009/65/EC or an alternative investment fund manager as defined in Article 4(1)(b) of Directive 2011/61/EU which transfers the beneficial ownership of shares

from one collective investment undertaking to another and where no investment firm is a party to the transaction;

(e) the transaction is a give-up or a give-in;

(f) the transaction has as its purpose the transferring of shares as collateral in bilateral transactions or in the context of central counterparty margin or collateral requirements or as part of the default management process of a central counterparty;

(g) the transaction results in the delivery of shares in the context of the exercise of convertible bonds, options, covered warrants or other similar derivatives;

(h) the transaction is a securities financing transaction;

(i) the transaction is carried out under the rules or procedures of a trading venue, a central counterparty or a central securities depository to effect a buy-in of unsettled transactions in accordance with Regulation (EU) No 909/2014.

CHAPTER II

PRE-TRADE TRANSPARENCY

SECTION 1

Pre-trade transparency for trading venues

Article 3

(Article 3(1) and (2) of Regulation (EU) No 600/2014)

Pre-trade transparency obligations

1. Market operators and investment firms operating a trading venue shall make public the range of bid and offer prices and the depth of trading interest at those prices in accordance with the type of trading system they operate and the information requirements set out in Table 1 of Annex I.

2. The transparency requirements referred to in paragraph 1 shall also apply to any 'actionable indication of interest' as defined in Article 2(1)(33) of Regulation (EU) No 600/2014.

Article 4

(Article 4(1)(a) of Regulation (EU) No 600/2014)

Most relevant market in terms of liquidity

1.   The most relevant market in terms of liquidity for a share, depositary receipt, ETF, certificate or other similar financial instrument shall be the trading venue with the highest turnover within the Union for that financial instrument.

2.   For the purpose of determining the most relevant markets in terms of liquidity, competent authorities shall calculate the turnover as specified in Article 17(4) in respect of each financial instrument for which they are the competent authority and for each trading venue where that financial instrument is traded.

3.   The calculation referred to in paragraph 2 shall have the following characteristics:

  (a) it shall include, for each trading venue, transactions executed under the rules of that trading venue excluding reference price and negotiated transactions as set out in Table 4 of Annex I and transactions executed on the basis of at least one order that has benefitted from a large in scale waiver and where the transactions' size is above the applicable large in scale threshold as determined in accordance with Article 7;

  (b) it shall cover the period in the preceding year beginning on 1 January and ending on 31 December or, where applicable, that part of the year during which the financial instrument was admitted to trading or traded on a trading venue and was not suspended from trading.

This paragraph and paragraph 2 shall not apply to shares, depositary receipts, ETFs, certificates and other similar financial instruments that were first admitted to trading or first traded on a trading venue later than 30 November of the preceding year.

4.   Until the most relevant market in terms of liquidity for a specific financial instrument is determined in accordance with the procedure specified in paragraphs 1 to 3, the most relevant market in terms of liquidity shall be the trading venue where that financial instrument is first admitted to trading or first traded.

Article 5

(Article 4(1)(b) of Regulation (EU) No 600/2014)

Specific characteristics of negotiated transactions

A negotiated transaction in a share, depositary receipt, ETF, certificate or other similar financial instrument shall be a transaction which is negotiated privately but reported under the rules of a trading venue and where any one of the following circumstances applies:

  (a) two members or participants of that trading venue are involved in any one of the following capacities:

     (i) one is dealing on own account when the other is acting on behalf of a client;

(ii) both are dealing on own account;

(iii) both are acting on behalf of a client.

(b) one member or participant of that trading venue is either of the following:

(i) acting on behalf of both the buyer and seller;

(ii) dealing on own account against a client order.

Article 6

(Article 4(1)(b) of Regulation (EU) No 600/2014)

Negotiated transactions subject to conditions other than the current market price

A negotiated transaction in shares, depositary receipts, ETFs, certificates and other similar financial instruments is subject to conditions other than the current market price if any of the following circumstances applies:

(a) the transaction is executed in reference to a price that is calculated over multiple time instances according to a given benchmark, including transactions executed by reference to a volume-weighted average price or a time-weighted average price;

(b) the transaction is part of a portfolio trade;

(c) the transaction is contingent on the purchase, sale, creation or redemption of a derivative contract or other financial instrument where all the components of the trade are meant to be executed only as a single lot such as exchanges for related positions;

(d) the transaction is executed by a management company as defined in Article 2(1)(b) of Directive 2009/65/EC or an alternative investment fund manager as defined in Article 4(1)(b) of Directive 2011/61/EU of the European Parliament and of the Council[4] which transfers the beneficial ownership of financial instruments from one collective investment undertaking to another and where no investment firm is a party to the transaction;

(e) the transaction is a give-up or a give-in;

---

4 Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010, OJ L 174, 1.7.2011, p.16

(f) the transaction has as its purpose the transferring of financial instruments as collateral in bilateral transactions or in the context of a central counterparty margin or collateral requirements or as part of the default management process of a central counterparty;

(g) the transaction results in the delivery of financial instruments in the context of the exercise of convertible bonds, options, covered warrants or other similar financial derivative;

(h) the transaction is a securities financing transaction;

(i) the transaction is carried out under the rules or procedures of a trading venue, a central counterparty or a central securities depository to effect buy-in of unsettled transactions in accordance with Regulation (EU) No 909/2014;

(j) any other transaction equivalent to those described in points (a) to (i) and which is contingent on technical characteristics which are unrelated to the current market valuation of the financial instrument traded.

Article 7

(Article 4(1)(c) of Regulation (EU) No 600/2014)

Size of orders which are large in scale

1.   An order in respect of a share, depositary receipt, certificate or other similar financial instrument shall be considered to be large in scale compared with normal market size if, on the basis of the average daily turnover for that financial instrument, the order is equal to or larger than the minimum size of orders set out in Tables 1 and 2 of Annex II.

2.   An order in respect of an ETF shall be considered to be large in scale compared with normal market size if the order is equal to or larger than EUR 1,000,000.

3.   For the purpose of determining sizes of orders that are large in scale, competent authorities shall calculate the average daily turnover in respect of shares, depositary receipts, certificates and other similar financial instruments traded on a trading venue.

4.   The calculation referred to in paragraph 3 shall have the following characteristics:

 (a) it shall include transactions executed in the Union in respect of the financial instrument, whether traded on or outside a trading venue;

 (b) it shall cover the period in the preceding year beginning on 1 January and ending on 31 December or, where applicable, that part of the year during which the financial instrument was admitted to trading or traded on a trading venue and was not suspended from trading.

This paragraph and paragraph 3 shall not apply to shares, depositary receipts, certificates and other similar financial instruments first admitted to trading or first traded on a trading venue after 30 November of the preceding year.

5.   Unless the price or other relevant conditions for the execution of an order are amended, the waiver from the obligation referred to in Article 3(1) of Regulation (EU) No 600/2014 shall continue to apply in respect of an order that is large in scale compared with normal market size when entered into an order book but that, following partial execution, falls below the threshold applicable for that financial instrument as determined in accordance with paragraphs 1 and 2.

6.   Before a share, depositary receipt, certificate or other similar financial instrument is traded for the first time on a trading venue in the Union, the competent authority shall estimate and publish the average daily turnover for that financial instrument. In doing so, the competent authority shall take into account any previous trading history of that financial instrument and of other financial instruments that are considered to have similar characteristics.

7.   The estimated average daily turnover laid down in paragraph 6 shall apply during a six-week period following the date that the share, depositary receipt, certificate or other similar financial instrument was admitted to trading or first traded on a trading venue.

8.   Before the end of the six-week period, the competent authority shall calculate and publish the average daily turnover based on the first four weeks of trading.

9.   The average daily turnover referred to in paragraph 8 shall apply immediately after its publication and until an average daily turnover calculated in accordance with paragraph 3 applies.

10. For the purposes of this Article, the average daily turnover shall be calculated by dividing the total turnover for a particular financial instrument as specified in Article 17(4) by the number of trading days in the period considered on the most relevant market in terms of liquidity for that financial instrument as determined in accordance with Article 4.

Article 8

(Article 4(1)(d) of Regulation (EU) No 600/2014)

Type and minimum size of orders held in an order management facility

1.   The type of order held in an order management facility of a trading venue pending disclosure for which pre-trade transparency obligations may be waived is an order which:

(a) is intended to be disclosed to the order book operated by the trading venue and is contingent on objective conditions that are defined in advance by the system's protocol;

(b) cannot interact with other trading interest prior to disclosure to the order book operated by the trading venue;

(c) once disclosed to the order book, interacts with other orders in accordance with the rules applicable to orders of that kind at the time of disclosure.

2. Orders held in an order management facility of a trading venue pending disclosure for which pre-trade transparency obligations may be waived shall, at the point of entry and following any amendment, have one of the following sizes:

(a) in the case of a reserve order, a size that is greater than or equal to EUR 10,000;

(b) for all other orders, a size that is greater than or equal to the minimum tradable quantity set in advance by the system operator under its rules and protocols.

3. A reserve order as referred to in paragraph 2(a) is to be considered a limit order consisting of a disclosed order relating to a portion of a quantity and a non-disclosed order relating to the remainder of the quantity, where the non-disclosed quantity is capable of execution only after its release to the order book as a new disclosed order.

SECTION 2

Pre-trade transparency for systematic internalisers and investment firms trading outside a trading venue

Article 9

(Article 14(1) of Regulation (EU) No 600/2014)

Arrangements for the publication of a firm quote

Any arrangement that a systematic internaliser adopts in order to comply with the obligation to make public firm quotes shall satisfy the following conditions:

(a) it includes all reasonable steps necessary to ensure that the information to be published is reliable, monitored continuously for errors, and corrected as soon as errors are detected;

(b) it complies with technical arrangements equivalent to those specified for APAs in Article 15 of Commission Delegated Regulation (EU) [insert reference to RTS DRSP authorisation, organisational requirement and publication of transactions] that facilitate the consolidation of the data with similar data from other sources;

(c) it makes the information available to the public on a non-discriminatory basis;

(d) it includes the publication of the time the quotes have been entered or amended in accordance with Article 50 of Directive 2014/65/EU of the European Parliament and of

the Council[5] as specified in Commission Delegated Regulation (EU) [insert reference to RTS on clock synchronisation].

<div align="center">

Article 10

(Article 14(3) of Regulation (EU) No 600/2014)

Prices reflecting prevailing market conditions

</div>

The prices published by a systematic internaliser reflect prevailing market conditions where they are close in price to quotes of equivalent sizes for the same financial instrument on the most relevant market in terms of liquidity as determined in accordance with Article 4 for that financial instrument at the time of publication.

<div align="center">

Article 11

(Article 14(2) and (4) of Regulation (EU) 600/2014)

Standard market size

</div>

1. The standard market size for shares, depositary receipts, ETFs, certificates and other similar financial instruments for which there is a liquid market shall be determined on the basis of the average value of transactions for each financial instrument and in accordance with Table 3 of Annex II.

2. For the purpose of determining the standard market size which is applicable to a specific financial instrument as set out in paragraph 1, competent authorities shall calculate the average value of transactions in respect of all the shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on a trading venue for which there is a liquid market and for which they are the competent authority.

3. The calculation referred to in paragraph 2 shall have the following characteristics:

 (a) it shall take into account the transactions executed in the Union in respect of the financial instrument concerned whether executed on or outside a trading venue ;

 (b) it shall cover the period in the preceding year beginning on 1 January and ending on 31 December or, where applicable, that part of the year during which the financial instrument was traded on a trading venue and was not suspended from trading;

---

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

(c) it shall exclude reference price, negotiated and post-trade large in scale transactions as set out in Table 4 of Annex I.

This paragraph and paragraph 2 shall not apply to shares, depositary receipts, ETFs, certificates and other similar financial instruments first admitted to trading or first traded on a trading venue after 30 November of the preceding year.

4.   Before a share, depositary receipt, ETF, certificate or other similar financial instrument is traded for the first time on a trading venue in the Union, the competent authority shall estimate and publish the average value of transactions for that financial instrument. In doing so, the competent authority shall take into account any previous trading history of that financial instrument as well as that of other financial instruments considered to have similar characteristics.

5.   The estimated average value of transactions laid down in paragraph 4 shall apply during a six-week period following the date that the share, depositary receipt, ETF, certificate or other similar financial instrument was first admitted to trading or first traded on a trading venue.

6.   Before the end of the six-week period, the competent authority shall calculate and publish the average value of transactions based on the first four weeks of trading.

7.   The average value of transactions in paragraph 6 shall apply immediately after its publication and until a new average value of transactions calculated in accordance with paragraphs 2 and 3 applies.

8.   For the purposes of this Article, the average value of transactions shall be calculated dividing the total turnover for a particular financial instrument as set out in Article 17(4) by the total number of transactions executed for that financial instrument in the period considered.

CHAPTER III

POST-TRADE TRANSPARENCY FOR TRADING VENUES AND INVESTMENT FIRMS TRADING OUTSIDE A TRADING VENUE

Article 12

(Article 6(1) and Article 20(1) and (2) of Regulation (EU) No 600/2014)

Post-trade transparency obligations

1.   Investment firms trading outside the rules of a trading venue and market operators and investment firms operating a trading venue shall make public, by reference to each transaction, the details set out in Tables 2 and 3 of Annex I and use each applicable flag listed in Table 4 of Annex I.

2.   Where a previously published trade report is cancelled, investment firms trading outside a trading venue and market operators and investment firms operating a trading venue shall make public a new trade report which contains all the details of the original trade report and the cancellation flag as specified in Table 4 of Annex I.

3.   Where a previously published trade report is amended, investment firms trading outside a trading venue and market operators and investment firms operating a trading venue shall make the following information public:

(a) a new trade report that contains all the details of the original trade report and the cancellation flag as specified in Table 4 of Annex I;

(b) a new trade report that contains all the details of the original trade report with all necessary details corrected and the amendment flag as specified in Table 4 of Annex I.

4.   Where a transaction between two investment firms is concluded outside the rules of a trading venue, either on own account or on behalf of clients, only the investment firm that sells the financial instrument concerned shall make the transaction public through an APA.

5.   By way of derogation to paragraph 4, if only one of the investment firms party to the transaction is a systematic internaliser in the given financial instrument and it is acting as the buying firm, only that firm shall make the transaction public through an APA, informing the seller of the action taken.

6.   Investment firms shall take all reasonable steps to ensure that the transaction is made public as a single transaction. For that purpose, two matching trades entered at the same time and for the same price with a single party interposed shall be considered to be a single transaction.

Article 13

(Article 20(1) of Regulation (EU) No 600/2014)

Application of post-trade transparency to certain types of transactions executed outside a trading venue

The obligation in Article 20(1) of Regulation (EU) 600/2014 shall not apply to the following:

(a) excluded transactions listed under Article 3(5) of Commission Delegated Regulation (EU) No xxx/20xx [insert reference to RTS on obligation to report transactions] where applicable;

(b) transactions executed by a management company as defined in Article 2(1)(b) of Directive 2009/65/EC or an alternative investment fund manager as defined in Article 4(1)(b) of Directive 2011/61/EU which transfers the beneficial ownership of financial

instruments from one collective investment undertaking to another and where no investment firm is a party to the transaction;

(c) give-ups and give-ins;

(d) transfers of financial instruments as collateral in bilateral transactions or in the context of a central counterparty margin or collateral requirements or as part of the default management process of a central counterparty.

Article 14

(Article 6(1) of Regulation (EU) No 600/2014)

Real time publication of transactions

1.   For transactions that take place on a given trading venue, post-trade information shall be made public:

(a) if the transaction takes place during the daily trading hours of the trading venue, as close to real-time as is technically possible and in any case within one minute of the relevant transaction;

(b) if the transaction takes place outside the daily trading hours of the trading venue, before the opening of the next trading day for that trading venue.

2.   For transactions that take place outside a trading venue, post-trade information shall be made public in the following circumstances:

(a) if the transaction takes place during the daily trading hours of the most relevant market in terms of liquidity determined in accordance with Article 4 for the share, depositary receipt, ETF, certificate or other similar financial instrument concerned, or during the investment firm's daily trading hours, as close to real-time as is technically possible and in any case within one minute of the relevant transaction;

(b) in any case not covered by point (a), immediately upon the commencement of the investment firm's daily trading hours and at the latest before the opening of the next trading day of the most relevant market in terms of liquidity determined in accordance with Article 4.

3.   Information relating to a portfolio trade shall be made available with respect to each constituent transaction as close to real-time as is technically possible, having regard to the need to allocate prices to particular shares, depositary receipts, ETFs, certificates and other similar financial instruments. Each constituent transaction shall be assessed separately for the purposes of determining whether deferred publication in respect of that transaction is applicable pursuant to Article 14.

Article 15

(Article 7(1) and 20(1) and (2) of Regulation (EU) No 600/2014)

Deferred publication of transactions

1. Where a competent authority authorises the deferred publication of the details of transactions, investment firms trading outside a trading venue and market operators and investment firms operating a trading venue shall make public each transaction no later than at the end of the relevant period set out in Tables 4, 5 and 6 of Annex II provided that the following criteria are satisfied:

  (a) the transaction is between an investment firm dealing on own account other than through matched principal trading and another counterparty;

  (b) the size of the transaction is equal to or exceeds the relevant minimum qualifying size, as specified in Tables 4 to 6 of Annex II as appropriate.

2. The relevant minimum qualifying size for the purposes of point (b) in paragraph 1 shall be determined in accordance with the average daily turnover calculated as set out in Article 7.

3. For transactions for which deferred publication is permitted until the end of the trading day, investment firms trading outside a trading venue and market operators and investment firms operating a trading venue shall make public the details of those transactions:

  (a) as close to real-time as possible after the end of the trading day which includes the closing auction, if applicable, for transactions executed more than two hours before the end of the trading day;

  (b) no later than noon local time on the next trading day for transactions not covered in point (a).

For transactions that take place outside a trading venue, references to trading days and closing auctions shall be those of the most relevant market in terms of liquidity as determined in accordance with Article 4.

4. Where a transaction between two investment firms is executed outside the rules of a trading venue, the competent authority for the purpose of determining the applicable deferral regime shall be the competent authority of the investment firm responsible for making the trade public through an APA in accordance with paragraphs 5 and 6 of Article 12.

Article 16

References to trading day and daily trading hours

1.   A reference to a trading day in relation to a trading venue shall be a reference to any day during which that trading venue is open for trading.

2.   A reference to daily trading hours of a trading venue or an investment firm shall be a reference to the hours which the trading venue or investment firm establishes in advance and makes public as its trading hours.

3.   A reference to the opening of the trading day at a given trading venue shall be a reference to the commencement of the daily trading hours of that trading venue.

4.   A reference to the end of the trading day at a given trading venue shall be a reference to the end of the daily trading hours of that trading venue.

CHAPTER IV

PROVISIONS COMMON TO PRE-TRADE AND POST-TRADE TRANSPARENCY CALCULATIONS

Article 17

(Article 22(1) of Regulation (EU) No 600/2014)

Methodology, date of publication and date of application of the transparency calculations

1.   By 1 March 2018 and by 1 March of each year thereafter, competent authorities shall, in relation to each financial instrument for which they are the competent authority, collect the data, calculate and ensure publication of the following information:

(a)   the trading venue which is the most relevant market in terms of liquidity as set out in Article 4(2);

(b)   the average daily turnover for the purpose of identifying the size of orders that are large in scale as set out in Article 7(3);

(c)   the average value of transactions for the purpose of determining the standard market size as set out in Article 11(2).

2.   The information published in accordance with paragraph 1 shall apply from 1 April following its publication.

3.   During the course of a calendar year, competent authorities shall ensure that the information made public as set out in paragraph 1 remains updated and appropriate for the purposes of Regulation (EU) No 600/2014. Updated calculations shall be provided whenever there is a change in relation to a specific share, depositary receipt, ETF, certificate or other similar financial instrument which significantly affects the previous calculations and the published information on an on-going basis.

4.   For the purposes of the calculations referred to in paragraph 1, the turnover in relation to a financial instrument shall be calculated by summing the results of multiplying, for each transaction executed during a defined period of time, the number of units of that instrument exchanged between the buyers and sellers by the unit price applicable to such transaction.

5.   After the end of the trading day but before the end of the day, trading venues shall submit to competent authorities the details included in Annex III for performing the calculations referred to in paragraph 1 whenever the financial instrument is admitted to trading or first traded on that trading venue or whenever the details previously provided have changed.

Article 18

(Article 22(1) of Regulation (EU) No 600/2014)

Reference to competent authorities

The competent authority for a specific financial instrument responsible for performing the calculations and making public the information referred to in Articles 4, 7, 11 and 17 shall be the competent authority of the most relevant market in terms of liquidity as defined in Article 26 Regulation (EU) No 600/2014 and specified in Article xx of Commission Delegated Regulation (EU) [insert reference to Article 18 of RTS on reporting obligations under Article 26 of MiFIR].

Article 19

Transitional provisions

1.   Competent authorities shall collect the necessary data, calculate and ensure the first publication of the information referred to in points (a) to (c) of Article 17(1):

 (a) by 1 December 2016 for financial instruments traded for the first time on a trading venue in the Union before 21 October 2016;

 (b) by 3 January 2017 for financial instruments traded for the first time on a trading venue in the Union between 21 October 2016 and 2 January 2017.

2.   The calculations referred to in paragraph 1 shall be based on:

 (a) available data for the reference period of 1 January 2016 to 30 September 2016 for financial instruments traded for the first time on a trading venue in the Union before 1 September 2016;

 (b) available data for the first four weeks of trading for financial instruments traded for the first time on a trading venue in the Union between 1 September 2016 and 20 October 2016;

(c) previous trading history of that financial instrument or of other financial instruments considered to have similar characteristics for financial instruments traded for the first time on a trading venue in the Union between 21 October 2016 and 2 January 2017.

3. The information published in accordance with paragraphs 1 and 2 shall apply from 3 January 2017 until 31 March 2018. During that period, for the financial instrument referred to in points (b) and (c) of paragraph 2, competent authorities shall ensure that the information made public remains appropriate for the purposes of Regulation (EU) No 600/2014 and, where necessary, update the information previously published on the basis of longer and more comprehensive trading history data.

Article 20

Entry into force and application

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

It shall apply from 3 January 2017, except Article 19 which shall apply immediately following the entry into force of this Regulation.

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

Done at Brussels,

For the Commission
The President

[For the Commission
On behalf of the President

[Position]

Annex I: Information to be made public

Table 1

Description of the type of trading systems and the related information to be made public in accordance with Article 3

Type of trading system	Description of the trading system	Information to be made public
Continuous auction order book trading system	A system that by means of an order book and a trading algorithm operated without human intervention matches sell orders with buy orders on the basis of the best available price on a continuous basis.	The aggregate number of orders and the shares, depositary receipts, ETFs, certificates and other similar financial instruments that they represent at each price level for at least the five best bid and offer price levels.
Quote-driven trading system	A system where transactions are concluded on the basis of firm quotes that are continuously made available to participants, which requires the market makers to maintain quotes in a size that balances the needs of members and participants to deal in a commercial size and the risk to which the market maker exposes itself.	The best bid and offer by price of each market maker in shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on the trading system, together with the volumes attaching to those prices. The quotes made public shall be those that represent binding commitments to buy and sell the financial instruments and which indicate the price and volume of financial instruments in which the registered market makers are prepared to buy or sell. In exceptional market conditions, however, indicative or one-way prices may be allowed for a limited time.
Periodic auction trading system	A system that matches orders on the basis of a periodic auction and a trading algorithm operated without human intervention.	The price at which the auction trading system would best satisfy its trading algorithm in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on the trading system and the volume that would potentially be executable at that price by participants in that system.
Request for quote trading system	A trading system where a quote or quotes are provided in response to a request for quote submitted by one or more members or participants. The quote is executable exclusively by the requesting member or participant. The requesting member or participant may conclude a transaction by accepting the quote or quotes provided to it on request.	The quotes and the attached volumes from any member or participant which, if accepted, would lead to a transaction under the system's rules. All submitted quotes in response to a request for quote may be published at the same time but not later than when they become executable.

Any other trading system	Any other type of trading system, including a hybrid system falling into two or more of the types of trading systems referred to in this table.	Adequate information as to the level of orders or quotes and of trading interest in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on the trading system; in particular, the five best bid and offer price levels and/or two-way quotes of each market maker in that instrument, if the characteristics of the price discovery mechanism so permit.

Table 2

Symbol table for Table 3

Symbol	Data type	Definition
{ALPHANUM-n}	Up to n alphanumerical characters	Free text field.
{CURRENCYCODE_3}	3 alphanumerical characters	3 letter currency code, as defined by ISO 4217 currency codes
{DATE_TIME_FORMAT}	ISO 8601 date and time format	Date and time in the following format: YYYY-MM-DDThh:mm:ss.ddddddZ. - 'YYYY' is the year; - 'MM' is the month; - 'DD' is the day; - 'T' – means that the letter 'T' shall be used - 'hh' is the hour; - 'mm' is the minute; - 'ss.dddddd' is the second and its fraction of a second; - Z is UTC time. Dates and times shall be reported in UTC.
{DECIMAL-n/m}	Decimal number of up to n digits in total of which up to m digits can be fraction digits	Numerical field for both positive and negative values. - decimal separator is '.' (full stop); - negative numbers are prefixed with '-' (minus); Where applicable, values shall be rounded and not truncated.
{ISIN}	12 alphanumerical characters	ISIN code, as defined in ISO 6166
{MIC}	4 alphanumerical characters	Market identifier as defined in ISO 10383

Table 3

List of details for the purpose of post-trade transparency

Field identifier	Description and details to be published	Type of execution or publication venue	Format to be populated as defined in Table 2
Trading date and time	Date and time when the transaction was executed. For transactions executed on a trading venue, the level of granularity shall be in accordance with the requirements set out in Article 3 of [RTS 25 on clock synchronization under article 50 of Directive 2014/65/EU]. For transactions not executed on a trading venue, the date and time when the parties agree the content of the following fields: quantity, price, currencies in fields 31,34 and 44 as specified in Table 2 of Annex 1 of [Commission Regulation (EU) on reporting obligations under Article 26 of Regulation (EU) No 600/2014)], instrument identification code, instrument classification and underlying instrument code, where applicable. For transactions not executed on a trading venue the time reported shall be granular to at least the nearest second. Where the transaction results from an order transmitted by the executing firm on behalf of a client to a third party where the conditions for transmission set out in Article 5 of [draft RTS on reporting obligations under Article 26 of MiFIR] were not satisfied, this shall be the date and time of the transaction rather than the time of the order transmission.	Regulated Market (RM), Multilateral Trading Facility (MTF) ,Organised Trading Facility (OTF) Approved Publication Arrangement (APA) Consolidated tape provider (CTP)	{DATE_TIME_FORMAT}
Instrument identification code	Code used to identify the financial instrument	RM, MTF APA CTP	{ISIN}
Price	Traded price of the transaction excluding, where applicable, commission and accrued interest. Where price is reported in monetary terms, it shall be provided in the major currency unit. Where price is currently not available but pending, the value should be 'PNDG'. Where price is not applicable the field shall not be populated. .	RM, MTF APA CTP	{DECIMAL-18/13} in case the price is expressed as monetary value {DECIMAL-11/10} in case the price is expressed as percentage or yield 'PNDG' in case the price is not available

	The information reported in this field shall be consistent with the values provided in field Quantity.		
Price currency	Currency in which the price is expressed (applicable if the price is expressed as monetary value).	RM, MTF APA CTP	{CURRENCYCODE_3}
Quantity	Number of units of the financial instruments. The nominal or monetary value of the financial instrument. The information reported in this field shall be consistent with the values provided in field Price.	RM, MTF APA CTP	{DECIMAL-18/17} in case the quantity is expressed as number of units {DECIMAL-18/5} in case the quantity is expressed as monetary or nominal value
Venue of execution	Identification of the venue where the transaction was executed. Use the ISO 10383 segment MIC for transactions executed on a trading venue, . Where the segment MIC does not exist, use the operating MIC. Use MIC code 'XOFF' for financial instruments admitted to trading or traded on a trading venue, where the transaction on that financial instrument is not executed on a trading venue, systematic internaliser or organised trading platform outside of the Union,. Use SINT for financial instruments admitted to trading or traded on a trading venue, where the transaction on that financial instrument is executed on a Systematic Internaliser.	RM, MTF APA CTP	trading venues: {MIC} Systematic internalisers: 'SINT'
Publication date and time	Date and time when the transaction was published by a trading venue or APA. For transactions executed on a trading venue, the level of granularity shall be in accordance with the requirements set out in Article 5 of [RTS 25 on clock synchronization under article 50 of Directive 2014/65/EU]. For transactions not executed on a trading venue, the date and time shall be when the parties agree the content of the following fields: quantity, price, currencies in fields 31, 34 and 44 as specified in Table 2 of Annex 1 of [RTS Transaction Reporting], instrument identification code, instrument classification and underlying instrument code, where applicable. For transactions not executed on a trading venue the time reported shall be granular to at least the nearest second.	RM, MTF APA CTP	{DATE_TIME_FORMAT}

	Where the transaction results from an order transmitted by the executing firm on behalf of a client to a third party where the conditions for transmission set out in Article 5 of [RTS Transaction Reporting] were not satisfied, this shall be the date and time of the transaction rather than the time of the order transmission.		
Venue of Publication	Code used to identify the trading venue or APA publishing the transaction.	CTP	trading venue: {MIC} APA: ISO 10383 segment MIC (4 characters) where available. Otherwise, 4 character code as published in the list of data reporting services providers on ESMA's website.
Transaction identification code	Alphanumerical code assigned by trading venues (pursuant to Article 12 of Regulation (EU) on [the maintenance of relevant data relating to orders in financial instruments under Article 25 of MiFIR]] and APAs and used in any subsequent reference to the specific trade. The transaction identification code shall be unique, consistent and persistent per ISO10383 segment MIC and per trading day. Where the trading venue does not use segment MICs, the transaction identification code shall be unique, consistent and persistent per operating MIC per trading day. Where the APA does not use MICs, it should be unique, consistent and persistent per 4-character code used to identify the APA per trading day. The components of the transaction identification code shall not disclose the identity of the counterparties to the transaction for which the code is maintained	RM, MTF APA CTP	{ALPHANUMERICAL-52}

Table 4

List of flags for the purpose of post-trade transparency

Flag	Name	Type of execution or publication venue	Description
'BENC'	Benchmark transactions flag	RM, MTF APA CTP	Transactions executed in reference to a price that is calculated over multiple time instances according to a given benchmark, such as volume-weighted average price or time-weighted average price.
'ACTX'	Agency cross transactions flag	RM, MTF APA CTP	Transactions where an investment firm has brought together clients' orders with the purchase and the sale conducted as one transaction and involving the same volume and price.
'NPFT'	Non-price forming transactions flag	RM, MTF CTP	Transactions where the exchange of financial instruments is determined by factors other than the current market valuation of the financial instrument as listed under Article 13.
'TNCP'	Transactions not contributing to the price discovery process for the purposes of Article 23 of Regulation (EU) No 600/2014 flag	RM, MTF APA CTP	Transaction not contributing to the price discovery process for the purposes of Article 23 of Regulation (EU) No 600/2014 and as set out in Article 2.
'SDIV'	Special dividend transaction flag	RM, MTF APA CTP	Transactions that are either: executed during the ex-dividend period where the dividend or other form of distribution accrues to the buyer instead of the seller; or executed during the cum-dividend period where the dividend or other form of distribution accrues to the seller instead of the buyer.
"LRGS"	Post-trade large in scale transaction flag	RM, MTF APA CTP	Transactions that are large in scale compared with normal market size for which deferred publication is permitted under Article 14.

'RFPT'	Reference price transaction flag	RM, MTF CTP	Transactions which are executed under systems operating in accordance with Article 4(1)(a) of Regulation (EU) No 600/2014.
'NLIQ'	Negotiated transaction in liquid financial instruments flag	RM, MTF CTP	Transactions executed in accordance with Article 4(1)(b)(i) of Regulation (EU) No 600/2014.
'OILQ'	Negotiated transaction in illiquid financial instruments flag	RM, MTF CTP	Transactions executed in accordance with Article 4(1)(b)(ii) of Regulation (EU) No 600/2014.
'PRIC'	Negotiated transaction subject to conditions other than the current market price flag	RM, MTF CTP	Transactions executed in accordance with Article 4(1)(b)(iii) of Regulation (EU) No 600/2014 and as set out in Article 6.
'ALGO'	Algorithmic transaction flag	RM, MTF CTP	Transactions executed as a result of an investment firm engaging in algorithmic trading as defined in Article 4(1)(39) of Directive 2014/65/EU.
'SIZE'	Transaction above the standard market size flag	APA CTP	Transactions executed on a systematic internaliser where the size of the incoming order was above the standard market size as determined in accordance with Article 11.
'ILQD'	Illiquid instrument transaction flag	APA CTP	Transactions in illiquid instruments as determined in accordance with Articles 1 to 9 of Commission Delegated Regulation [MiFIR Level 2] executed on a systematic internaliser.
'RPRI'	Transactions which have received price improvement flag	APA CTP	Transactions executed on a systematic internaliser with a price improvement in accordance with Article 15(2) of Regulation (EU) No 600/2014.
'CANC'	Cancellation flag	RM, MTF APA CTP	When a previously published transaction is cancelled.
'AMND'	Amendment flag	RM, MTF APA CTP	When a previously published transaction is amended.

'DUPL'	Duplicative trade reports flag	APA	When a transaction is reported to more than one APA in accordance with Article 17(1) of Commission Delegated Regulation (EU) on [DRSP RTS}

Annex II: Orders large in scale compared with normal market size, standard market sizes and deferred publications and delays

Table 1

Orders large in scale compared with normal market size for shares and depositary receipts

Average daily turnover (ADT) in EUR	ADT < 50 000	50 000 ≤ ADT < 100 000	100 000 ≤ ADT < 500 000	500 000 ≤ ADT < 1 000 000	1 000 000 ≤ ADT < 5 000 000	5 000 000 ≤ ADT < 25 000 000	25 000 000 ≤ ADT < 50 000 000	50 000 000 ≤ ADT < 100 000 000	ADT ≥ 100 000 000
Minimum size of orders qualifying as large in scale compared with normal market size in EUR	15 000	30 000	60 000	100 000	200 000	300 000	400 000	500 000	650 000

Table 2

Orders large in scale compared with normal market size certificates and other similar financial instruments

Average daily turnover (ADT) in EUR	ADT < 50 000	ADT ≥ 50 000
Minimum size of orders qualifying as large in scale compared with normal market size in EUR	15 000	30 000

Table 3

Standard market sizes

Average value of transactions (AVT) in EUR	AVT< 20 000	20 000 ≤ AVT < 40 000	40 000 ≤ AVT < 60 000	60 000 ≤ AVT < 80 000	80 000 ≤ AVT < 100 000	100 000 ≤ AVT < 120 000	120 000 ≤ AVT < 140 000	Etc.
Standard market size	10 000	30 000	50 000	70 000	90 000	110 000	130 000	Etc.

Table 4

Deferred publication thresholds and delays for shares and depositary receipts

Average daily turnover (ADT) in EUR	Minimum qualifying size of transaction for permitted delay in EUR	Timing of publication after the transaction
> 100m	10,000,000	60 minutes
	20,000,000	120 minutes
	35,000,000	End of the trading day
50m – 100m	7,000,000	60 minutes
	15,000,000	120 minutes
	25,000,000	End of the trading day
25m – 50m	5,000,000	60 minutes
	10,000,000	120 minutes
	12,000,000	End of the trading day
5m – 25m	2,500,000	60 minutes
	4,000,000	120 minutes
	5,000,000	End of the trading day
1m – 5m	450,000	60 minutes
	750,000	120 minutes
	1,000,000	End of the trading day
500,000 – 1m	75,000	60 minutes
	150,000	120 minutes
	225,000	End of the trading day
100,000 – 500,000	30,000	60 minutes
	80,000	120 minutes
	120,000	End of the trading day
50,000 – 100,000	15,000	60 minutes
	30,000	120 minutes
	50,000	End of the trading day
< 50,000	7,500	60 minutes
	15,000	120 minutes
	25,000	End of the next trading day

Table 5

Deferred publication thresholds and delays for ETFs

Minimum qualifying size of transaction for permitted delay in EUR	Timing of publication after the transaction
10 000 000	60 minutes
50 000 000	End of the trading day

Table 6

Deferred publication thresholds and delays for certificates and other similar financial instruments

Average daily turnover (ADT) in EUR	Minimum qualifying size of transaction for permitted delay in EUR	Timing of publication after the transaction
ADT < 50 000	15 000	120 minutes
	30 000	End of the trading day
ADT ≥ 50 000	30 000	120 minutes
	60 000	End of the trading day

Annex III: Reference data to be provided for the purpose of transparency calculations

Table 1

Symbol table

Symbol	Data Type	Definition
{ALPHANUM-n}	Up to n alphanumerical characters	Free text field.
{ISIN}	12 alphanumerical characters	ISIN code, as defined in ISO 6166
{MIC}	4 alphanumerical characters	Market identifier as defined in ISO 10383

Table 2

Details of the reference data to be provided for the purpose of transparency calculations

#	Field	Details to be reported	Format and standards for reporting
1	Instrument identification code	Code used to identify the financial instrument	{ISIN}
2	Instrument full name	Full name of the financial instrument	{ALPHANUM-350}
3	Trading venue	Segment MIC for the trading venue or systematic internaliser, where available, otherwise operational MIC.	{MIC}
4	MiFIR identifier	Identification of equity financial instruments **Shares** as referred to in Article 4(44)(a) of Directive 2014/65/EU; **Depositary receipts** as defined in Article 4(45) of Directive 2014/65/EU; **ETF** 'as defined in Article 4(46) of Directive 2014/65/EU; **Certificates** as defined in Article 2(1)(27) of Regulation (EU) No 600/2014; **Other equity-like financial instrument** is a transferable security which is an equity instrument similar to a share, ETF, depositary receipt or certificate but other than a share, ETF, depositary receipt or certificate.	Equity financial instruments: SHRS = shares ETFS = ETFs DPRS = depositary receipts CRFT = certificates OTHE = other equity-like financial instruments

RTS 2: Draft regulatory technical standards on transparency requirements in respect of bonds, structured finance products, emission allowances and derivatives

EUROPEAN COMMISSION

Brussels, XXX
[…](2012) XXX draft

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

[…]
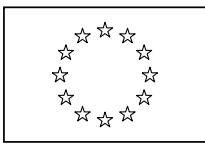
COMMISSION DELEGATED REGULATION (EU) No …/..

of [date]

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012[1], and in particular Article 1(8), Article 9(5), Article 11(4), Article 21(5) and Article 22(4) thereof,

Whereas:

(1)   A high degree of transparency is essential to ensure that investors are adequately informed as to the true level of actual and potential transactions in bonds, structured finance products, emission allowances and derivatives irrespective of whether those transactions take place on regulated markets, multilateral trading facilities (MTFs), organised trading facilities, systematic internalisers, or outside those facilities. This high degree of transparency should also establish a level playing field between trading venues so that the price discovery process in respect of particular financial instruments is not impaired by the fragmentation of liquidity, and investors are not thereby penalised.

(2)   At the same time, it is essential to recognise that there may be circumstances where exemptions from pre-trade transparency or deferrals of post-trade transparency obligations should be provided to avoid the impairment of liquidity as an unintended consequence of obligations to disclose transactions and thereby to make public risk positions. Therefore, it is appropriate to specify the precise circumstances under which waivers from pre-trade transparency and deferrals from post-trade transparency may be granted.

---

[1] OJ L 173, 12.6.2014, p.84.

(3)   The provisions in this Regulation are closely linked, since they deal with specifying the pre-trade and post-trade transparency requirements that apply to trading in non-equity financial instruments. To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view for stakeholders and, in particular, those subject to the obligations it is necessary to include these regulatory technical standards in a single Regulation.

(4)   Where competent authorities grant waivers in relation to pre-trade transparency requirements or authorise the deferral of post-trade transparency obligations, they should treat all regulated markets, multilateral trading facilities, organised trading facilities and investment firms trading outside of trading venues equally and in a non-discriminatory manner.

(5)   It is appropriate to provide for clarification of a limited number of technical terms. Those technical definitions are necessary to ensure the uniform application in the Union of the provisions contained in this Regulation and, hence, contribute to the establishment of a single rulebook for Union financial markets. Those definitions are purely functional for the purpose of setting out the transparency obligations for non-equity financial instruments and should be strictly limited to understanding this Regulation.

(6)   Exchange-traded-commodities (ETCs) and exchange-traded notes (ETNs) subject to this Regulation should be considered as debt instruments due to their legal structure. However, since they are traded in a similar fashion to ETFs a similar transparency regime as that of ETFs should be applied.

(7)   In accordance with Regulation (EU) No 600/2014, a number of instruments should be considered to be eligible for a pre-trade transparency waiver for instruments for which there is not a liquid market. This includes in particular derivatives subject to the clearing obligation but for which ESMA has determined that they shall not be subject to the trading obligation as well as bonds, derivatives, structured finance products and emission allowances which are not liquid.

(8)   A trading venue operating a request for quote (RFQ) system should at least make public all the firm bid and offer prices or actionable indications of interest and the depth attached to those prices no later than at the time when the requester is able to execute a transaction under the system's rules. This is to ensure that members or participants who are providing their quotes to the requester first are not put at a disadvantage.

(9)   The majority of liquid covered bonds are mortgage bonds issued to grant loans for financing private individuals' purchase of a home and the average value of which is directly related to the value of the loan. In this market, liquidity providers ensure that professional investors trading in large sizes are matched with home owners trading in small sizes. To avoid disruption of this function and contingent detrimental

consequences for home owners, the size specific to the instrument above which liquidity providers may benefit from a pre-trade transparency waiver should be set at a the trade size below which lie 40 percent of the transactions since this trade size is deemed reflective of the average price of a home.

(10)   Information which is required to be made available as close to real time as possible should be made available as instantaneously as technically possible, assuming a reasonable level of efficiency and of expenditure on systems on the part of the person concerned. The information should only be published close to the prescribed maximum time limit in exceptional cases where the systems available do not allow for a publication in a shorter period of time.

(11)   Investment firms should make public the details of transactions executed outside a trading venue through an Approved Publication Arrangement (APA). This Regulation should set out the way investment firms report their transactions to APAs and should apply in conjunction with Regulation (EU) XXX on [RTS 13 on DRSP] where the specific requirements applicable to APAs are specified.

(12)   Regulation (EU) No 600/2014 provides for the possibility to specify the application of the obligation of post-trade disclosure of transactions executed between two investment firms, including systematic internalisers, in bonds, structured finance products, emission allowances and derivatives which are determined by factors other than the current market valuation, such as the transfer of financial instruments as collateral. Since such transactions do not contribute to the price discovery process, risk to blur the picture for investors and hinder achieving best execution, this Regulation specifies the transactions determined by factors other than the current market valuation which should not be made public.

(13)   Investment firms often conduct, on own account or on behalf of clients, transactions in derivatives and other financial instruments or assets that are composed by a number of interlinked, contingent trades. Such package transactions enable investment firms and their clients to better manage their risks with the price of each component of the package transaction reflecting the overall risk profile of the package rather than the prevailing market price of each component. Package transactions can take various forms, such as exchange for physicals, trading strategies executed on trading venues or bespoke package transactions and it is important to take those specificities into account when calibrating the applicable transparency regime. It is therefore appropriate to specify for the purpose of this Regulation the conditions for applying deferrals from post-trade transparency to package transactions. Such arrangements should not be available for transactions which hedge financial instruments conducted in the normal course of the business.

(14)   Exchange for physicals are an integral part of financial markets, allowing market participants to organise and execute exchange-traded derivatives transactions which are linked directly to a transaction in the underlying physical market. They are widely

used and they involve a multitude of actors, such as farmers, producers, manufacturers and processors of commodities. Typically an exchange for physical transaction will take place when a seller of a physical asset seeks to close out his corresponding hedging position in a derivative contract with the buyer of the physical asset, when the latter happens to also hold a corresponding hedge in the same derivative contract. They therefore facilitate the efficient closing out of hedging positions which are not necessary anymore.

(15) Pursuant to Regulation (EU) No 600/2014, transactions executed on a trading venue should be made public by market operators and investment firms operating a trading venue. In respect of transactions concluded outside the rules of a trading venue, it is essential to clarify which investment firm should make public a transaction in cases where both parties to the transaction are investment firms established in the Union to ensure the publication of transactions without duplication. Therefore, the responsibility to make a transaction public should always fall on the selling investment firm unless only one of the counterparties is a systematic internaliser and it is the buying firm.

(16) Where only one of the counterparties is a systematic internaliser in a given financial instrument and it is also the buying firm for that instrument, it should be responsible for making the transaction public as its clients would expect it to do so and it is better placed to fill in the reporting field mentioning its status of systematic internaliser. To ensure that a transaction is only published once, the systematic internaliser should inform the other party that it is making the transaction public.

(17) It is important to maintain current standards for the publication of transactions carried out as back-to-back trades to avoid the publication of a single transaction as various trades and to provide legal certainty on which investment firm is responsible for publishing a transaction. Therefore, two matching trades entered at the same time and for the same price with a single party interposed should be published as a single transaction.

(18) Regulation (EU) 600/2014 allows competent authorities to require the publication of supplementary details when publishing information benefitting from a deferral, or to allow deferrals for an extended time period. In order to contribute to the uniform application of these provisions across the Union, it is necessary to frame the condition and criteria under which supplementary deferrals may be allowed by competent authorities.

(19) Trading in many non-equity financial instruments, and in particular derivatives, is episodic, variable and subject to regular modifications of trading patterns. Static determinations of financial instruments which do not have a liquid market and of the various thresholds for the purpose of calibrating pre-trade and post-trade transparency obligations without providing for the possibility to adapt the liquidity status and the thresholds in light of changes in trading patterns would therefore not be suitable. It is

appropriate to set out the methodology and parameters which are necessary to perform the liquidity assessment and the calculation of the thresholds for the application of pre-trade transparency waivers and deferral of post-trade transparency on a periodic basis.

(20) In order to ensure consistent application of the waivers to pre-trade transparency and the post-trade deferrals it is necessary to create uniform rules regarding the content and frequency of data competent authorities may request from trading venues, APAs and Consolidated Tape Providers (CTPs) for transparency purposes as well as the methodology for calculating the respective thresholds and for publishing the information across the Union. Rules on the specific methodology and data necessary to perform calculations for the purpose of specifying the transparency regime applicable to non-equity financial instruments should be applied in conjunction with Regulation (EU) No [RTS 3 on Article 22 and DVC] which specifies in more general terms, the common elements with regard to the content and frequency of data requests to be addressed to trading venues, APAs and CTPs for the purposes of transparency and other calculations.

(21) For bonds, except ETCs and ETNs, transactions below EUR 100,000 should be excluded from the calculations of pre-trade and post-trade transparency thresholds, as those are considered to be of a retail size in accordance with Article 3(2) of Directive 2003/71/EC of the European Parliament and of the Council [2]. Those retail-sized transactions should in all cases benefit from the new transparency regime and any threshold giving rise to a waiver or deferral from transparency should be set above that level.

(22) The purpose of the exemption from transparency obligations set out in Regulation (EU) No 600/2014 is to ensure that the effectiveness of operations conducted by the Eurosystem in the performance of primary tasks as set out in the Statute of the European System of Central Banks and of the European Central Bank annexed to the Treaty on the European Union (the Statute), and under equivalent national provisions for members of the European System of Central Banks (ESCB) in Member States whose currency is not the euro, which relies on the timeliness and confidentiality of transactions, should not be compromised by disclosure of information on such transactions. It is crucial for central banks to be able to control whether, when and how information about their actions is disclosed so as to maximise the intended impact and limit any unintended impact on the market. Therefore, legal certainty should be provided for the members of the ESCB and their respective counterparties as to the scope of the exemption from transparency requirements.

---

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

(23) One of the primary ESCB tasks under the Treaty on the Functioning of the EU (TFEU) and the Statute and under equivalent national provisions for members of the ESCB in Member States whose currency is not the euro, appears to be the performance of foreign exchange policy, which entails holding and managing foreign reserves to ensure that, whenever needed, there is a sufficient amount of liquid resources available for its foreign exchange policy operations. The application of transparency requirements to foreign reserve management operations may result in unintended signals to the market, which could interfere with the foreign exchange policy of the Eurosystem and of members of the ESCB in Member States whose currency is not the euro. Similar considerations may also apply to foreign reserve management operations in the performance of monetary and financial stability policy on a case-by-case basis.

(24) The exemption from transparency obligations for transactions where the counterparty is a member of the ESCB should not apply in respect of transactions entered into by any member of the ESCB in performance of their investment operations. This should include operations conducted for administrative purposes or for the staff of the member of the ESCB, including transactions conducted in the capacity as an administrator of a pension scheme in accordance with Article 24 of the Statute.

(25) The temporary suspension of liquidity obligations should only be imposed in exceptional situations which represent a significant decline in liquidity across a class of financial instruments based on objective and measurable factors. It is necessary to differentiate between classes initially determined as having or not having a liquid market as a further significant decline in relative terms in a class already determined as illiquid is likely to occur more easily. Therefore, a suspension of transparency requirements in instruments determined as not having a liquid market should be imposed only if a decline by a higher relative threshold has occurred.

(26) This Regulation should ensure that the pre-trade and post-trade transparency regime established by Regulation (EU) No 600/2014 is appropriately calibrated to the market and is applied in a uniform manner throughout the Union. It is therefore essential that this Regulation lays down the necessary calculations to be performed, including their periods and methods. In this respect, to avoid market distorting effects, the calculation periods specified in this Regulation should ensure that the relevant thresholds of the regime are updated at appropriate intervals to reflect market conditions. It is also appropriate to provide for the centralised publication of the results of the calculations so that they are made available to all financial market participants and competent authorities in the Union in a single place and in a user-friendly manner. To that end, competent authorities should notify ESMA of the results of their calculations and then ESMA should publish those calculations on its website.

(27) For the purpose of the transparency calculations, reference data is necessary as to determine unequivocally to which sub-asset class each financial instrument belongs. Therefore, this Regulation requires trading venues to provide additional reference data

to that established by Regulation (EU) No. xx/xxxx [RTS on Art 27 MiFIR – Reference data].

(28) For the purpose of the determination of the sub-classes of financial instruments not having a liquid market for the asset-class of foreign exchange derivatives, the lack of data allowing a comprehensive analysis of the entire market permitted the definition of the qualitative liquidity criteria to be considered for the segmentation of the asset class but prevented the determination of the liquidity thresholds. As a result, until data of better quality is available, the asset class of foreign exchange derivatives should be considered not to have a liquid market.

(29) The new legislation of the European Parliament and of the Council on markets in financial instruments set out in Directive 2014/65/EU and Regulation (EU) No 600/2014 applies from 3 January 2017. To ensure consistency and legal certainty, this Regulation should apply from the same date. However, to ensure that the new transparency regulatory regime can operate effectively from 3 January 2017, and that market participants have sufficient time to implement the new requirements by that date, it is necessary for certain transitional provisions to apply from the date of entry into force of this Regulation. These transitional provisions should enable the collection of data on a best effort basis for the transparency purposes and provide for an earlier publication of instruments or classes of instruments for which there is not a liquid market and of the thresholds for pre-trade waivers and deferrals to post-trade transparency.

(30) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(31) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[3],

HAS ADOPTED THIS REGULATION:

CHAPTER I

DEFINITIONS

Article 1

---

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

Definitions

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

(1)   'Exchange for physical' (EFP) means a transaction in a derivative contract or other financial instrument contingent on the simultaneous execution of an equivalent quantity of an underlying physical asset.

(2)   'Package transaction' means:

  (a) an EFP; or

  (b) a transaction involving the execution of two or more: component transactions in financial instruments:

       (i)   which is executed between two or more counterparties;

       (ii) where each component bears meaningful economic or financial risk which is related with all the other components;

       (iii) where the execution of each component is simultaneous and contingent upon the execution of all other components.

CHAPTER II

PRE-TRADE TRANSPARENCY FOR REGULATED MARKETS, MULTILATERAL TRADING FACILITIES AND ORGANISED TRADING FACILITIES

Article 2

(Article 8(1) and (2) of Regulation (EU) No 600/2014)

Pre-trade transparency obligations

Market operators and investment firms operating a trading venue shall make public the range of bid and offer prices and the depth of trading interest at those prices, in accordance with the type of trading system they operate and the information requirements set out in Annex I.

Article 3

(Article 9(1)(a) of Regulation (EU) No 600/2014)

Size of orders which are large in scale

An order is large in scale compared with normal market size if, at the point of entry or following any amendment, it is equal to or larger than the minimum size of order which shall be determined in accordance with the procedure set out in Article 13.

Article 4

(Article 9(1)(a) of Regulation (EU) No 600/2014)

Type and minimum size of orders held in an order management facility

1.   The type of order held in an order management facility of a trading venue pending disclosure for which pre-trade transparency obligations may be waived is an order which:

(a) is intended to be disclosed to the order book operated by the trading venue and is contingent on objective conditions that are defined in advance by the system's protocol;

(b) cannot interact with other trading interest prior to disclosure to the order book operated by the trading venue;

(c) once disclosed to the order book it interacts with other orders in accordance with the rules applicable to orders of that kind at the time of disclosure.

2.   Orders held in an order management facility of a trading venue pending disclosure for which pre-trade transparency obligations may be waived shall, at the point of entry and following any amendment, have one of the following sizes:

(a) in the case of a reserve order, a size that is greater than or equal to EUR10,000;

(b) for all other orders, a size that is greater than or equal to the minimum tradable quantity set in advance by the system operator under its rules and protocols.

3.   A reserve order as referred to in paragraph 2(a) is to be considered a limit order consisting of a disclosed order relating to a portion of the quantity and a non-disclosed order relating to the remainder of the quantity, where the non-disclosed quantity is capable of execution only after its release to the order book as a new disclosed order.

Article 5

(Articles 8(4) and 9(1)(b) of Regulation (EU) No 600/2014)

Size specific to the financial instrument and definitions of request-for-quote and voice-trading systems

1.   An actionable indication of interest is above the size specific to the financial instrument if, at the point of entry or following any amendment, it is equal to or larger than the minimum size of an actionable indication of interest which shall be determined in accordance with the procedure set out in Article 13.

2.   Indicative pre-trade prices for actionable indications of interest that are above the size specific to the financial instrument determined in accordance with paragraph 1 and smaller

than the relevant large in scale size determined in accordance with Article 3 shall be considered close to the price of the trading interests if the trading venue makes public any of the following:

(a) the best available price;

(b) a simple average of prices;

(c) an average price weighted on the basis of the volume, price, time or the number of actionable indications of interest.

3. Market operators and investment firms operating a trading venue shall make public the methodology for calculating and the time of publication when entering and updating indicative pre-trade prices.

4. A 'request-for-quote system' means a trading system where the following conditions are met:

(a) a quote or quotes by a member or participant are provided in response to a request for a quote submitted by one or more other members or participants;

(b) the quote is executable exclusively by the requesting member or participant;

(c) the requesting member or market participant may conclude a transaction by accepting the quote or quotes provided to it on request.

5. A 'voice trading system' means a trading system where transactions between members are arranged through voice negotiation.

Article 6

(Articles 9(1)(c) of Regulation (EU) No 600/2014)

The classess of financial instruments for which there is not a liquid market

A financial instrument or a class of financial instruments shall be considered not to have a liquid market if so specified in accordance with the procedure set out in Article 13.

CHAPTER II

POST-TRADE TRANSPARENCY FOR TRADING VENUES AND INVESTMENT FIRMS TRADING OUTSIDE A TRADING VENUE

Article 7

(Articles 10(1) and Article 21(1) of Regulation (EU) No 600/2014)

Post-trade transparency obligations

1.   Investment firms trading outside the rules of a trading venue and market operators and investment firms operating a trading venue shall make public by reference to each transaction the details set out in Tables 1 and 2 of Annex II and use each applicable flag listed in Table 3 of Annex II.

2.   Where a previously published trade report is cancelled, investment firms trading outside a trading venue and market operators and investment firms operating a trading venue shall make public a new trade report which contains all the details of the original trade report and the cancellation flag as specified in Table 3 of Annex II.

3.   Where a previously published trade report is amended, investment firms trading outside a trading venue and market operators and investment firms operating a trading venue shall make the following information public:

   (a)   a new trade report that contains all the details of the original trade report and the cancellation flag as specified in Table 3 of Annex II;

   (b)   a new trade report that contains all the details of the original trade report with all necessary details corrected and the amendment flag as specified in Table 3 of Annex II.

4.   Post-trade information shall be made available as close to real time as is technically possible and in any case:

   (a)   within 15 minutes after the execution of the relevant transaction from 3 January 2017 until 1 January 2020;

   (b)   within 5 minutes after the execution of the relevant transaction after 1 January 2020.

5.   Where a transaction between two investment firms is concluded outside the rules of a trading venue, either on own account or on behalf of clients, only the investment firm that sells the financial instrument concerned shall make the transaction public through an APA.

6.   By way of derogation to paragraph 5, if only one of the investment firms party to the transaction is a systematic internaliser in the given financial instrument and it is acting as the buying firm, only that firm shall make the transaction public through an APA, informing the seller of the action taken.

7.   Investment firms shall take all reasonable steps to ensure that the transaction is made public as a single transaction. For that purpose, two matching trades entered at the same time and for the same price with a single party interposed shall be considered to be a single transaction.

8.   Information relating to a package transaction shall be made available with respect to each component as close to real-time as is technically possible, having regard to the need to

allocate prices to particular financial instruments and including the package transaction flag or the exchange for physicals transaction flag as specified in Table 3 of Annex II. Where the package transaction is eligible for deferred publication, information on all components shall be made available after the deferral period for the transaction has lapsed.

Article 8

(Article 11(1) and (3) and Article 21(4) of Regulation (EU) No 600/2014)

Deferred publication of transactions

1. Where a competent authority authorises the deferred publication of the details of transactions, investment firms trading outside a trading venue and market operators and investment firms operating a trading venue shall make public each transaction no later than 19:00 local time on the second working day after the date of the transaction, provided one of the following conditions is satisfied:

(a) The transaction is large in scale compared with the normal market size as specified in Article 9;

(b) The transaction is in a financial instrument or a class of financial instruments for which there is not a liquid market as specified in accordance with the procedure set out in Article 13;

(c) The transaction is executed between an investment firm dealing on own account other than on a matched principal basis as per article 4(1)(38) of Directive 2014/65/EU and another counterparty and is above a size specific to the instrument as specified in Article 10;

(d) It is a package transaction which meets one of the following criteria:

(i) one or more of its components are financial instruments which do not have a liquid market;

(ii) one or more of its components are transactions in financial instruments that are large in scale compared with the normal market size as specified in Article 9;

(iii) the transaction is executed between an investment firm dealing on own account other than on a matched principal basis as per Article 4(1)(38) of Directive 2014/65/EU and another counterparty and one or more of its components are transactions in financial instruments that are above the size specific to the instrument as specified in Article 10.

2. When the time limit of deferral set out in paragraph 1 has lapsed, all the details of the transaction on an individual basis shall be published unless an extended or an indefinite time period of deferral is granted in accordance with Article 11.

3. Where a transaction between two investment firms, either on own account or on behalf of clients, is executed outside the rules of a trading venue, the relevant competent authority for the purposes of determining the applicable deferral regime shall be the competent authority of the investment firm responsible for making the trade public through an APA in accordance with paragraphs 5, 6 and 7 of Article 7.

Article 9

(Article 11(1)(a) of Regulation (EU) No 600/2014)

Size of transactions which are large in scale

A transaction is large in scale compared with normal market size if it is equal to or larger than the minimum size of transaction which shall be determined in accordance with the procedure set out in Article 13.

Article 10

(Article 11(1)(c) of Regulation (EU) No 600/2014)

The size specific to the financial instrument

A transaction is above a size specific to the financial instrument if it is equal to or larger than the minimum size of transaction which shall be determined in accordance with the procedure set out in Article 13.

Article 11

(Article 11(3) of Regulation (EU) No 600/2014)

Transparency requirements in conjunction with deferred publication at the discretion of the competent authorities

1. Where competent authorities exercise their rights in conjunction with an authorisation of deferred publication pursuant to Article 11(3) of Regulation (EU) No 600/2014 the following shall apply:

   (a) Where Article 11(3)(a) of Regulation (EU) No 600/2014 applies, competent authorities shall request the publication of any of the following information during the full time period of the deferral as set out in Article 8:

      (i) all the details of a transaction laid down in Tables 1 and 2 of Annex II with the exception of details relating to volume;

     (ii) transactions in a daily aggregated form for a minimum number of 5 transactions executed on the same day, to be made public the following working day before 09.00 local time.

(b) Where Article 11(3)(b) of Regulation (EU) No 600/2014 applies, competent authorities shall allow the omission of the publication of the volume of an individual transaction for an extended time period of deferral of four weeks.

(c) In respect of non-equity instruments that are not sovereign debt and where Article 11(3)(c) of Regulation (EU) No 600/2014 applies, competent authorities shall allow the aggregation of several transactions executed over the course of one calendar week to be published on the following Tuesday before 09:00 local time for an extended time period of deferral of four weeks.

(d) In respect of sovereign debt instruments and where Article 11(3)(d) of Regulation (EU) No 600/2014 applies, competent authorities shall allow the aggregation of several transactions executed over the course of one calendar week to be published on the following Tuesday before 09.00 local time for an indefinite period of time.

2.   When the extended time period set out in paragraph 1(b) has lapsed, competent authorities shall request the following information:

(a) in respect of all instruments that are not sovereign debt, the full details of all individual transactions to be published on the next working day before 09.00 local time;

(b) in respect of sovereign debt instruments where competent authorities decide not to use the options provided for in Article 11(3)(b) and (d) of Regulation (EU) No 600/2014 consecutively pursuant to the second subparagraph of Article 11(3) of Regulation (EU) No 600/2014, the full details of all individual transactions to be published on the next working day before 09.00 local time;

(c) in respect of sovereign debt instruments, where competent authorities apply the options provided for in Article 11(3)(b) and (d) of Regulation (EU) No 600/2014 consecutively pursuant to the second subparagraph of Article 11(3) of Regulation (EU) No 600/2014, several transactions executed in the same calendar week to be published in an aggregated form on the Tuesday following the expiry of the extended period of deferral of four weeks counting from the last day of that calendar week before 09:00 local time.

3.   In respect of all instruments that are not sovereign debt, all the details of the transactions on an individual basis shall be published four weeks after the publication of the aggregated details in accordance with paragraph 1(c) before 09:00 local time.

4.   The aggregated daily or weekly data referred to in paragraphs 1 and 2 shall contain the following information for bonds, structured finance products, derivatives and emission allowances in respect of each day or week of the calendar period concerned:

(a) the weighted average price;

(b) the total volume traded as referred to in Table 4 of Annex II;

(c) the total number of transactions.

5. Transactions shall be aggregated per ISIN-code. Where the ISIN code is not available, transactions shall be aggregated at the level of the class of financial instruments to which the liquidity test is applied.

6. Where the weekday foreseen for the publications set out in points (c) and (d) of paragraph 1, and paragraphs 2 and 3, is not a working day, the publications shall be effected on the following working day before 09:00 local time.

Article 12

(Article 21(1) of Regulation (EU) No 600/2014)

Application of post-trade transparency to certain transactions executed outside a trading venue

The obligation to make public the volume and price of transactions and the time at which they were concluded as set out in Article 21(1) of Regulation (EU) No 600/2014 shall not apply to any of the following:

(a) transactions listed in Article 3(5) of Commission Delegated Regulation (EU) No [RTS 22 on obligation to report transactions];

(b) transactions executed by a management company as defined in Article 2(1)(b) of Directive 2009/65/EC or an alternative investment fund manager as defined in Article 4(1)(b) of Directive 2011/61/EU which transfer the beneficial ownership of financial instruments from one collective investment undertaking to another and where no investment firm is a party to the transaction;

(c) 'give-up' or 'give-in' defined as a transaction where an investment firm passes a client trade to, or receives a client trade from, another investment firm for the purpose of post-trade processing;

(d) transfers of financial instruments such as collateral in bilateral transactions or in the context of a central counterparty (CCP) margin or collateral requirements or as part of the default management process of a central counterparty.

CHAPTER III

PROVISIONS COMMON TO PRE-TRADE AND POST-TRADE TRANSPARENCY

Article 13

(Article 9(1) and (2), Article 11(1) and Article 22(1) of Regulation (EU) No 600/2014)

Methodology to perform the transparency calculations

1. For determining financial instruments or classes of financial instruments for which there is not a liquid market for the purposes of Articles 6 and 8(1)(b) the following methodologies shall be applied across asset classes:

(a) Static determination of liquidity for:

  (i) the asset class of securitised derivatives as defined in Table 4.1 of Annex III;

  (ii) the following sub-asset classes of equity derivatives: stock index options, stock index futures/forwards, stock options, stock futures/forwards, stock dividend options, stock dividend futures/forwards, dividend index options, dividend index futures/forwards, volatility index options, volatility index futures/forwards, ETF options, ETF futures/forwards and other equity derivatives as defined in Table 6.1 of Annex III;

  (iii) the asset class of foreign exchange derivatives as defined in Table 8.1 of Annex III;

  (iv) the sub-asset classes of other interest rate derivatives, other commodity derivatives, other credit derivatives, other C10 derivatives, other contracts for difference (CFDs), other emission allowances and other emission allowance derivatives as defined in Tables 5.1, 7.1, 9.1, 10.1, 11.1, 12.1 and 13.1 of Annex III.

(b) Periodic assessment based on quantitative and, where applicable, qualitative liquidity criteria for:

  (i) all bond types except ETCs and ETNs as defined in Table 2.1 of Annex III;

  (ii) ETC and ETN bond types as defined in Table 2.4 of Annex III;

  (iii) the asset-class of interest rate derivatives except the sub-asset class of other interest rate derivatives as defined in Table 5.1of Annex III;

  (iv) the following sub-asset classes of equity derivatives: swaps and portfolio swaps as defined in Table 6.1 of Annex III;

  (v) the asset-class of commodity derivatives except the sub-asset class of other commodity derivatives as defined in Table 7.1 of Annex III;

  (vi) the following sub-asset classes of credit derivatives: index credit default swaps and single name credit default swaps as defined in Table 9.1 of Annex III;

(vii) the asset-class of C10 derivatives except the sub-asset class of other C10 derivatives as defined in Table 10.1 of Annex III;

(viii) the following sub-asset classes of contracts for difference (CFDs): currency CFDs and commodity CFDs as defined in Table 11.1 of Annex III;

(ix) the asset-class of emission allowances except the sub-asset class of other emission allowances as defined in Table 12.1 of Annex III;

(x) the asset-class of emission allowance derivatives except the sub-asset class of other emission allowance derivatives as defined in Table 13.1 of Annex III.

(c) Periodic assessment based on qualitative liquidity criteria for:

(i) the following sub-asset classes of credit derivatives: CDS index options and single name CDS options as defined in Table 9.1 of Annex III;

(ii) the following sub-asset classes of contracts for difference (CFDs): equity CFDs, bond CFDs, CFDs on an equity future/forward and CFDs on an equity option as defined in Table 11.1 of Annex III.

(d) Periodic assessment based on a two tests procedure for structured finance products as defined in Table 3.1 of Annex III.

2.   For determining the size specific to the financial instrument referred to in Article 5 and the size of orders large in scale compared with normal market size referred to in Article 3, the following methodologies shall be applied:

(a) the threshold value for:

(i) ETC and ETN bond types as defined in Table 2.5 of Annex III;

(ii) the asset class of securitised derivatives as defined in Table 4.2 of Annex III;

(iii) each sub-class of equity derivatives as defined in Tables 6.2 and 6.3 of Annex III;

(iv) each sub-class of foreign exchange derivatives as defined in Table 8.2 of Annex III;

(v) each sub-class considered not to have a liquid market for the asset classes of interest rate derivatives, commodity derivatives, credit derivatives, C10 derivatives and contracts for difference (CFDs) as defined in Tables 5.3, 7.3, 9.3, 10.3 and 11.3 of Annex III;

(vi) each sub-asset class considered not to have a liquid market for the asset classes of emission allowances and emission allowance derivatives as defined in Tables 12.3 and 13.3 of Annex III;

(vii) each structured finance product where Test-1 under paragraph 1(d) is not passed as defined in Table 3.2 of Annex III;

(viii) each structured finance product considered not to have a liquid market where only Test-1 under paragraph 1(d) is passed as defined in Table 3.3 of Annex III.

(b) the trade size below which lies the percentage of the transactions corresponding to the trade percentile for each bond type, except ETCs and ETNs, as defined in Table 2.3 of Annex III.

(c) the greater of the trade size below which lies the percentage of the transactions corresponding to the trade percentile and the threshold floor for:

(i) each sub-class having a liquid market for the asset classes of interest rate derivatives, commodity derivatives, credit derivatives, C10 derivatives and CFDs as defined in Tables 5.2, 7.2, 9.2, 10.2 and 11.2 of Annex III;

(ii) each sub-asset class having a liquid market for the asset classes of emission allowances and emission allowance derivatives as defined in Tables 12.2 and 13.2 of Annex III;

(iii) each structured finance product considered to have a liquid market where Test-1 and Test-2 under paragraph 1(d) are passed as defined in Table 3.3 of Annex III.

3.   For the determination of the size specific to the financial instrument referred to in Article 8(1)(c) and the size of transactions large in scale compared with normal market size referred to in Article 8(1)(a), the following methodologies shall be applied:

(a) The threshold value for:

(i)   ETC and ETN bond types as defined in Table 2.5 of Annex III;

(ii) the asset class of securitised derivatives as defined in Table 4.2 of Annex III;

(iii) each sub-class of equity derivatives as defined in Tables 6.2 and 6.3 of Annex III;

(iv) each sub-class of foreign exchange derivatives as defined in Table 8.2 of Annex III;

(v) each sub-class considered not to have a liquid market for the asset classes of interest rate derivatives, commodity derivatives, credit derivatives, C10

derivatives and contracts for difference (CFDs) as defined in Tables 5.3, 7.3, 9.3, 10.3, 11.3 of Annex III;

(vi) each sub-asset class considered not to have a liquid market for the asset class of emission allowances and emission allowance derivatives as defined in Tables 12.3 and 13.3 of Annex III;

(vii) each structured finance product where Test-1 under paragraph 1(d) is not passed as defined in Table 3.2 of Annex III;

(viii) each structured finance product considered not to have a liquid market where only Test-1 under paragraph 1(d) is passed as defined in Table 3.3 of Annex III.

(b) the trade size below which lies the percentage of the transactions corresponding to the trade percentile for each bond type, except ETCs and ETNs, as defined in Table 2.3 of Annex III;

(c) the greatest of the trade size below which lies the percentage of the transactions corresponding to the trade percentile, the trade size below which lies the percentage of volume corresponding to the volume percentile and the threshold floor for:

(i) each sub-class considered to have a liquid market for the asset classes of interest rate derivatives, commodity derivatives, credit derivatives, C10 derivatives and CFDs as provided in Tables 5.2, 7.2, 9.2, 10.2 and 11.2 of Annex III.

(d) the greater of the trade size below which lies the percentage of the transactions corresponding to the trade percentile and the threshold floor for:

(i) each sub-asset class considered to have a liquid market for the asset classes of emission allowances and emission allowance derivatives as provided in Tables 12.2 and 13.2 of Annex III;

(ii) each structured finance product considered to have a liquid market where the Test-1 and Test-2 under paragraph 1(d) are passed as defined in Table 3.3 of Annex III.

4. For the purpose of paragraph 3(c) where the trade size corresponding to the volume percentile for the determination of the transaction that is large in scale compared with normal market size is higher than the 97.5 trade percentile, the trade volume shall not be taken into consideration and the size specific to the financial instrument referred to in Article 8(1)(c) and the size of transactions large in scale compared with normal market size referred to in Article 8(1)(a) shall be determined as the greater of the trade size below which lies the percentage of the transactions corresponding to the trade percentile and the threshold floor.

5. In accordance with Regulation (EU) No [RTS on Art 22 and DVC] competent authorities shall collect on a daily basis the data from trading venues, APAs and CTPs which is necessary to perform the calculations to determine:

(a) the financial instruments and classes of financial instruments not having a liquid market as set out in paragraph 1;

(b) the sizes large in scale compared to normal market size and the size specific to the instrument as set out in paragraphs 2 and 3.

6. Competent authorities for performing the calculations for a class of financial instruments shall establish cooperation arrangements between each other as to ensure the aggregation of the data across the Union necessary for the calculations.

7. For the purpose of paragraphs 1(b) and (d), 2(b) and (c) and 3(b), (c) and (d), competent authorities shall take into account transactions executed in the Union between 1 January and 31 December of the preceding year.

8. The trade size for the purpose of paragraphs 2(b) and (c) and 3(b), (c) and (d) shall be determined according to the measure of volume as defined in Table 4 of Annex II. Whenever, the trade size defined for the purpose of paragraphs 2 and 3 is expressed in monetary value and the financial instrument is not denominated in Euros, the trade size shall be converted to the currency in which that financial instrument is denominated by applying the European Central Bank Euro foreign exchange reference rate as of 31 December of the preceding year.

9. Market operators and investment firms operating a trading venue may convert the trade sizes determined according to paragraphs 2 and 3 to the corresponding number of lots as defined in advance by that trading venue for the respective sub-class or sub-asset class. Market operators and investment firms operating a trading venue may maintain such trade sizes until application of the results of the next calculations performed in accordance to paragraph 17.

10. The calculations referred to in paragraphs 2(b) and 3(b) shall exclude transactions with a size equal to or smaller than EUR 100,000.

11. For the purpose of the determinations referred to in paragraphs 2 and 3, sub-paragraphs (b) and (c) of paragraph 2 and sub-paragraphs (b), (c) and (d) of paragraph 3 shall not apply whenever the number of transactions considered for calculations is smaller than 1000 and the following thresholds shall be applied:

(a) EUR 100,000 for all bond types except ETCs and ETNs;

(b) the threshold floors defined in paragraphs 2(a) and 3(a) for all financial instruments not covered in sub-paragraph (a).

12. The calculations referred to in paragraphs 2(b) and (c) and 3(b), (c) and (d) shall be rounded up to the next:

   (a) 100,000 if the threshold value is smaller than 1 million;

   (b) 500,000 if the threshold value is equal to or greater than 1 million but smaller than 10 million;

   (c) 5 million if the threshold value is equal to or greater than 10 million but smaller than 100 million;

   (d) 25 million if the threshold value is equal to or greater than 100 million.

13. For the purpose of paragraph 1, the quantitative liquidity criteria specified for each asset class in Annex III shall be determined according to Section 1 of Annex III of this Regulation.

14. For equity derivatives that are admitted to trading or first traded on a trading venue, that do not belong to a sub-class for which the size specific to the financial instrument referred to in Articles 5 and 8(1)(c) and the size of orders and transactions large in scale compared with normal market size referred to in Articles 3 and 8(1)(a) have been published and which belong to one of the sub-asset classes specified in paragraph 1(a)(ii), the size specific to the financial instrument and the size of orders and transactions large in scale compared with normal market size shall be those applicable to the smallest average daily notional amount (ADNA) band of the sub-asset class to which the equity derivative belongs.

15. Financial instruments admitted to trading or first traded on a trading venue which do not belong to any sub-class for which the size specific to the financial instrument referred to in Articles 5 and 8(1)(c) and the size of orders and transactions large in scale compared with normal market size referred to in Articles 3 and 8(1)(a) have been published shall be considered not to have a liquid market until application of the results of the calculations performed in accordance to paragraph 17. The applicable size specific to the financial instrument referred to in Articles 5 and 8(1)(c) and the size of orders and transactions large in scale compared with normal market size referred to in Articles 3 and 8(1)(a) shall be those of the sub-classes determined not to have a liquid market belonging to the same sub-asset class.

16. After the end of the trading day but before the end of the day, trading venues shall submit to competent authorities the details included in Annex IV for performing the calculations referred to in paragraph 5 whenever the financial instrument is admitted to trading or first traded on that trading venue or whenever the details previously provided have changed.

17. Competent authorities shall ensure the publication of the results of the calculations referred to under paragraph 5 for each financial instrument and class of financial instrument by 30 April 2018 and by 30 April of each year thereafter. The results of the calculations shall apply from 1 June following publication.

18. By derogation of paragraphs 7, 15 and 17, for the purpose of the calculations in paragraph 1(b)(i) competent authorities shall, in respect of bonds, except for ETCs and ETNs, ensure the publication of the calculations referred to under paragraph 5(a) on a quarterly basis, on the first day of February, May, August and November. The calculations shall include transactions executed in the Union during the preceding calendar quarter and shall apply for the 3-month period starting on the sixteenth day of February, May, August and November.

Bonds, except for ETCs and ETNs, that are admitted to trading or first traded on a trading venue during the first two months of a quarter shall be considered to have a liquid market as specified in Table 2.2 of Annex III until the application of the results of the calculation of the calendar quarter.

Bonds, except for ETCs and ETNs, that are admitted to trading or first traded on a trading venue during the last month of a quarter shall be considered to have a liquid market as specified in Table 2.2 of Annex III until the application of the results of the calculation of the following calendar quarter.

Article 14

(Article 1(6) of Regulation (EU) No 600/2014)

Transactions to which the exemption in Article 1(6) of Regulation (EU) No 600/2014 shall apply

A transaction shall be considered to be entered into by a member of the ESCB in performance of monetary, foreign exchange and financial stability policy if that transaction meets any of the following requirements:

(a) it is carried out for the purposes of monetary policy, including an operation carried out in accordance with Articles 18 and 20 of the Statute of the European System of Central Banks and of the European Central Bank annexed to the Treaty on European Union or an operation carried out under equivalent national provisions for members of the ESCB in Member States whose currency is not the euro;

(b) it is a foreign-exchange operation, including operations carried out to hold or manage official foreign reserves of the Member States or the reserve management service provided by a member of the ESCB to central banks in other countries to which the exemption has been extended in accordance with Article 1(9) of Regulation (EU) No 600/2014;

(c) it is carried out for the purposes of financial stability policy.

Article 15

(Article 1(7) of Regulation (EU) No 600/2014)

Transactions to which the exemption in Article 1(6) of Regulation (EU) No 600/2014 shall not apply

A transaction entered into by a member of the ESCB for the performance of an investment operation that is unconnected with that member's performance of one of the tasks referred to in Article 14 shall not be covered by the exemption pursuant to Article 1(6) of Regulation (EU) No 600/2014. For this purpose, transactions for the performance of investment operations shall include transactions entered into:

(a) for the management of its own funds;

(b) for administrative purposes or for the staff of the member of the ESCB which include transactions conducted in the capacity as administrator of a pension scheme for its staff;

(c) for its investment portfolio pursuant to obligations under national law.

Article 16

(Article 9(5)(a) of Regulation (EU) No 600/2014)

Temporary suspension of transparency obligations

1.   For financial instruments for which there is a liquid market in accordance with the procedure set out in Article 13, a competent authority may temporarily suspend the obligations referred to in Articles 8 and 10 Regulation (EU) No 600/2014 when for a class of bonds, structured finance products, emission allowances or derivatives, the total volume as defined in Table 4 of Annex II calculated for the previous 30 calendar days represents less than 40% of the average monthly volume calculated for the 12 full calendar months preceding those 30 calendar days.

2.   For financial instruments for which there is not a liquid market in accordance with the procedure set out in Article 13, a competent authority may temporarily suspend the obligations referred to in Articles 8 and 10 of Regulation (EU) No 600/2014 when for a class of bonds, structured finance products, emission allowances or derivatives, the total volume as defined in Table 4 of Annex II calculated for the previous 30 calendar days represents less than 20% of the average monthly volume calculated for the 12 full calendar months preceding those 30 calendar days.

3.   To perform the calculations referred to in paragraphs 1 and 2, competent authorities shall take into account the transactions executed on all venues in the Union for the class of bonds, structured finance products, emission allowances or derivatives concerned. The calculations shall be performed at the level of the class of financial instruments to which a liquidity test is applied.

4. Before competent authorities decide to suspend transparency obligations, they shall ensure that the significant decline in liquidity across all venues is not the result of seasonal effects of the relevant class of financial instruments on liquidity.

Article 17

Transitional provisions

1. By 3 July 2016, competent authorities shall collect the necessary data, calculate and ensure the first publication of the details referred to in paragraph 5 (a) and (b) of Article 13.

2. For the purposes of paragraph 1:

(a) The calculations shall be based on the reference period 1 July 2015 to 31 December 2015;

(b) The information in the first publication shall apply from 3 January 2017 to 31 May 2018.

3. By derogation to paragraph 1, for all bonds, except ETCs and ETNs, competent authorities shall ensure the first publication of the results of the transparency calculations specified in Article 1(b)(i) by 1 December 2016, based on the reference period 1 August 2016 to 31 October 2016. The results of the calculations shall apply from 3 January 2017 to 15 May 2017.

4. Bonds, except for ETCs and ETNs, which are admitted to trading or first traded on a trading venue in the period from 1 October 2016 until 2 January 2017 shall be considered not to have a liquid market as set out in Table 2.2 of Annex III until 15 May 2017.

Article 18

Entry into force and application

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

It shall apply from 3 January 2017, except

(a) Article 17 which shall apply immediately following the entry of force of this Regulation;

(b) Paragraphs 7, 17 and 18 of Article 13 which shall apply from 1 January 2018.

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

Done at Brussels,

For the Commission
The President

[For the Commission
On behalf of the President

[Position]

Annex I: Description of the type of system and the related information to be made public in accordance with Article 2

Table 1

Information to be made public in accordance with Article 2

Type of system	Description of system	Information to be made public
Continuous auction order book trading system	A system that by means of an order book and a trading algorithm operated without human intervention matches sell orders with buy orders on the basis of the best available price on a continuous basis.	For each financial instrument, the aggregate number of orders and the volume they represent at each price level, for at least the five best bid and offer price levels.
Quote-driven trading system	A system where transactions are concluded on the basis of firm quotes that are continuously made available to participants, which requires the market makers to maintain quotes in a size that balances the needs of members and participants to deal in a commercial size and the risk to which the market maker exposes itself.	For each financial instrument, the best bid and offer by price of each market maker in that instrument, together with the volumes attaching to those prices. The quotes made public shall be those that represent binding commitments to buy and sell the financial instruments and which indicate the price and volume of financial instruments in which the registered market makers are prepared to buy or sell. In exceptional market conditions, however, indicative or one-way prices may be allowed for a limited time.
Periodic auction trading system	A system that matches orders on the basis of a periodic auction and a trading algorithm operated without human intervention.	For each financial instrument, the price at which the auction trading system would best satisfy its trading algorithm and the volume that would potentially be executable at that price by participants in that system.
Request-for-quote trading system	A trading system where a quote or quotes are provided in response to a request for a quote submitted by one or more other members or participants. The quote is executable exclusively by the requesting member or market participant. The requesting member or participant may conclude a transaction by accepting the quote or quotes provided to it on request.	The quotes and the attaching volumes from any member or participant which, if accepted, would lead to a transaction under the system's rules. All submitted quotes in response to a request for quote may be published at the same time but not later than when they become executable.
Voice trading system	A trading system where transactions between members are arranged through voice negotiation.	The bids and offers and the attaching volumes from any member or participant which, if accepted, would lead to a transaction under the system's rules
Trading system not covered by first 5 rows	A hybrid system falling into two or more of the first five rows or a system where the price determination process is of a different nature than that applicable to the types of system covered by first five rows.	Adequate information as to the level of orders or quotes and of trading interest; in particular, the five best bid and offer price levels and/or two-way quotes of each market maker in the instrument, if the characteristics of the price discovery mechanism so permit.

Annex II: Details of transactions to be made available to the public

Table 1

Symbol table for Table 2

SYMBOL	DATA TYPE	DEFINITION
{ALPHANUM-n}	Up to n alphanumerical characters	Free text field.
{CURRENCYCODE_3}	3 alphanumerical characters	3 letter currency code, as defined by ISO 4217 currency codes
{DATE_TIME_FORMAT}	ISO 8601 date and time format	Date and time in the following format: YYYY-MM-DDThh:mm:ss.ddddddZ. Where ': - 'YYYY' is the year; - 'MM' is the month; - 'DD' is the day; - 'T' – means that the letter 'T' shall be used - 'hh' is the hour; - 'mm' is the minute; - 'ss.dddddd' is the second and its fraction of a second; - Z is UTC time. Dates and times shall be reported in UTC.
{DECIMAL-n/m}	Decimal number of up to n digits in total of which up to m digits can be fraction digits	Numerical field for both positive and negative values: - deecimal separator is '.' (full stop); - negative numbers are prefixed with '-' (minus). Where applicable, values shall be rounded and not truncated.
{ISIN}	12 alphanumerical characters	ISIN code, as defined in ISO 6166
{MIC}	4 alphanumerical characters	Market identifier as defined in ISO 10383

Table 2

List of details for the purpose of post-trade transparency

Details	Financial instruments	Description/Details to be published	Type of execution/publication venue	Format to be populated as defined in Table 1
Trading date and time	For all financial instruments,	Date and time when the transaction was executed. For transactions executed on a trading venue, the level of granularity shall be in accordance with the requirements set out in Article 3 of [RTS 25 on clock synchronization under article 50 of Directive 2014/65/EU]. For transactions not executed on a trading venue, the date and time shall be when the parties agree the	Regulated Market (RM), Multilateral Trading Facility (MTF) ,Organised Trading Facility (OTF) Approved Publication Arrangement (APA) Consolidated tape provider (CTP)	{DATE_TIME_FORMAT}

| | | content of the following fields: quantity, price, currencies (in fields 31, 34 and 40 as specified in Table 2 of Annex I of [RTS Transaction Reporting], instrument identification code, instrument classification and underlying instrument code, where applicable. For transactions not executed on a trading venue the time reported shall be granular to at least the nearest second.

Where the transaction results from an order transmitted by the executing firm on behalf of a client to a third party where the conditions for transmission set out in Article 5 of [RTS Transaction Reporting] were not satisfied, this shall be the date and time of the transaction rather than the time of the order transmission. | | |
|---|---|---|---|---|
| Instrument identification code type | For all financial instruments, | Code type used to identify the financial instrument | RM, MTF, OTF

APA

CTP | 'ISIN' = ISIN-code, where ISIN is available

'OTHR' = other identifier |
| Instrument identification code | For all financial instruments, | Code used to identify the financial instrument | RM, MTF, OTF

APA

CTP | {ISIN}

Where Instrument identification code is not an ISIN, an identifier that identifies the derivative instrument based on the fields 3 to 5 and 10 to 40 as specified in Annex IV and fields 13 and 24 to 48 as specified in the Annex of [RTS on reference data] and the grouping of derivative instruments as set out in Annex III. |
| Price | For all financial instruments, | Traded price of the transaction excluding, where applicable, commission and accrued interest.

In the case of option contracts, it shall be the premium of the derivative contract per underlying security or index point.

In the case of spread bets it shall be the reference price of the underlying instrument.

For credit default swaps (CDS) it shall be the coupon in basis points.

Where price is reported in monetary terms, it shall be provided in the major currency unit.

Where price is currently not available but pending, the value should be 'PNDG'.

Where price is not applicable the field shall not be populated.

The information reported in this field shall be consistent with the value provided in field Quantity. | RM, MTF, OTF

APA

CTP | {DECIMAL-18/13} in case the price is expressed as monetary value

{DECIMAL-11/10} in case the price is expressed as percentage or yield

'PNDG' in case the price is not available |
| Venue of execution | For all financial instruments, | Identification of the venue where the transaction was executed. | RM, MTF, OTF

APA | {MIC} –trading venues |

		Use the ISO 10383 segment MIC for transactions executed on a trading venue. Where the segment MIC does not exist, use the operating MIC. Use MIC code 'XOFF' for financial instruments admitted to trading or traded on a trading venue, where the transaction on that financial instrument is not executed on a trading venue or systematic internaliser or organised trading platform outside of the Union. Use SINT for financial instrument submitted to trading or traded on a trading venue, where the transaction on that financial instrument is executed on a Systematic Internaliser.	CTP	'SINT' – systematic internaliser
Price notation	For all financial instruments	Indication as to whether the price and the strike price is expressed in monetary value, in percentage or in yield	RM, MTF, OTF APA CTP	'MONE' – Monetary value: 'PERC' – Percentage: 'YIEL' – Yield:
Price Currency	For all financial instruments	Currency in which the price is expressed (applicable if the price is expressed as monetary value)	RM, MTF, OTF APA CTP	{CURRENCYCODE_3}
Notation of the quantity in measurement unit	For commodity derivatives, emission allowance derivatives and emission allowances except in the cases described under Article 11(1) letters (a) and (b) of this Regulation.	Indication of measurement units in which the quantity in measurement unit is expressed	RM, MTF, OTF APA CTP	'TOCD' – tons of carbon dioxide Or {ALPHANUM-25} otherwise
Quantity in measurement unit	For commodity derivatives, emission allowance derivatives and emission allowances except in the cases described under Article 11(1) letters (a) and (b) of this Regulation.	The equivalent amount of commodity traded expressed in measurement unit	RM, MTF, OTF APA CTP	{DECIMAL-18/17}
Quantity	For all financial instruments except in the cases described under Article 11(1) letters (a) and (b) of this Regulation.	The number of units of the financial instrument, or the number of derivative contracts in the transaction.	RM, MTF, OTF APA CTP	{DECIMAL-18/17}
Notional amount	For all financial instruments except in the cases described under Article 11(1) letters (a) and (b) of this Regulation.	Nominal amount or notional amount For spread bets, the notional amount shall be the monetary value wagered per point movement in the underlying financial instrument. For credit default swaps, it shall be the notional amount for which the protection is acquired or disposed of. The information reported in this field shall be consistent with the value provided in field Price	RM, MTF, OTF APA CTP	{DECIMAL-18/5}

Notional currency	For all financial instruments except in the cases described under Article 11(1) letters (a) and (b) of the Regulation.	Currency in which the notional is denominated	RM, MTF, OTF APA CTP	{CURRENCYCODE_3}
Reference period	For emission allowances and emission allowance derivatives only	This field is only applicable for emission allowances.	RM, MTF, OTF APA CTP	The period specified in the Directive 2003/87/CE (e.g. 2013-2020 or subsequent trading periods)
Type	For emission allowances and emission allowance derivatives only	This field is only applicable for emission allowances.	RM, MTF, OTF APA CTP	'EUAE' – EUA 'CERE' - CER 'ERUE' - ERU 'EUAA' - EUAA
Publication Date and Time	For all financial instruments	Date and time when the transaction was published by a trading venue or APA. For transactions executed on a trading venue, the level of granularity shall be in accordance with the requirements set out in Article 3 of [RTS 25 on clock synchronization under article 50 of Directive 2014/65/EU]. For transactions not executed on a trading venue, the date and time shall be when the parties agree the content of the following fields: quantity, price, currencies in fields 31,34 and 44 as specified in Table 1b of Annex 1 of [RTS Transaction Reporting], instrument identification code, instrument classification and underlying instrument code, where applicable. For transactions not executed on a trading venue the time reported shall be granular to at least the nearest second. Where the transaction results from an order transmitted by the executing firm on behalf of a client to a third party where the conditions for transmission set out in Article 5 of [RTS Transaction Reporting] were not satisfied, this shall be the date and time of the transaction rather than the time of the order transmission.	RM, MTF, OTF APA CTP	{DATE_TIME_FORMAT}
Venue of publication	For all financial instruments	Code used to identify the trading venue and APA publishing the transaction.	CTP	Trading venue: {MIC} APA: {MIC} where available. Otherwise, 4 character code as published in the list of data reporting services providers on ESMA's website.
Transaction Identification Code	For all financial instruments	Alphanumerical code assigned by trading venues (pursuant to Article 12 of Regulation (EU) on the maintenance of relevant data relating to orders in financial instruments under Article 25 of MiFIR) and APAs and used in any subsequent	RM, MTF, OTF APA CTP	{ALPHANUMERICAL-52}

		reference to the specific trade. The transaction identification code shall be unique, consistent and persistent per ISO10383 segment MIC and per trading day. Where the trading venue does not use segment MICs, the transaction identification code shall be unique, consistent and persistent per operating MIC per trading day. Where the APA does not use MICs, it should be unique, consistent and persistent per 4-character code used to identify the APA per trading day. The components of the transaction identification code shall not disclose the identity of the counterparties to the transaction for which the code is maintained		
Transaction to be cleared	For derivatives	Code to identify whether the transaction will be cleared.	RM, MTF, OTF APA CTP	'true' - transaction to be cleared 'false' - transaction not to be cleared

Table 3

List of flags for the purpose of post-trade transparency

	Flag	Name of Flag	Type of execution/publication venue	Description
	'BENC'	Benchmark transaction flag	RM, MTF, OTF APA CTP	All kinds of volume weighted average price transactions and all other trades where the price is calculated over multiple time instances according to a given benchmark.
	'ACTX'	Agency cross transaction flag	APA CTP	Transactions where an investment firm has brought together two clients' orders with the purchase and the sale conducted as one transaction and involving the same volume and price.
	'NPFT'	Non-price forming transaction flag	RM, MTF, OTF CTP	All types of transactions listed under Article 11 of this Regulation and which do not contribute to the price formation.
	'LRGS'	Post-trade LIS transaction flag	RM, MTF, OTF APA CTP	Transactions executed under the post-trade large in scale deferral.
	'ILQD'	Illiquid instrument transaction flag	RM, MTF, OTF APA CTP	Transactions executed under the deferral for instruments for which there is not a liquid market.
	'SIZE'	Post-trade SSTI transaction flag	RM, MTF, OTF APA CTP	Transactions executed under the post-trade size specific to the instrument deferral.
	'TPAC'	Package transaction flag	RM, MTF, OTF APA CTP	Package transactions which are not exchange for physicals as defined in Article 1.
	'XFPH'	Exchange for physicals transaction flag	RM, MTF, OTF APA CTP	Exchange for physicals as defined in Article 1
	'CANC'	Cancellation flag	RM, MTF, OTF APA CTP	When a previously published transaction is cancelled.
	'AMND'	Amendment flag	RM, MTF, OTF APA CTP	When a previously published transaction is amended.
		SUPPLEMENTARY DEFERRAL FLAGS		
Article 11(1)(a)(i).	'LMTF'	Limited details flag	RM, MTF, OTF APA CTP	First report with publication of limited details in accordance with Article 11(1)(a)(i).
	'FULF'	Full details flag		Transaction for which limited details have been previously published in accordance with Article 11(1)(a)(i).
Article 11(1)(a)(ii).	'DATF'	Daily aggregated transaction flag	RM, MTF, OTF APA CTP	Publication of daily aggregated transaction in accordance with Article 11(1)(a)(ii).
	'FULA'	Full details flag	RM, MTF, OTF APA CTP	Individual transactions for which aggregated details have been previously published in accordance with Article 11(1)(a)(ii).

Article 11(1)(b)	'VOLO'	Volume omission flag	RM, MTF, OTF APA CTP	Transaction for which limited details are published in accordance with Article 11(1)(b).
	'FULV'	Full details flag	RM, MTF, OTF APA CTP	Transaction for which limited details have been previously published in accordance with Article 11(1)(b)
Article 11(1)(c	'FWAF'	Four weeks aggregation flag	RM, MTF, OTF APA CTP	Publication of aggregated transactions in accordance with Article 11(1)(c).
	'FULJ'	Full details flag	RM, MTF, OTF APA CTP	Individual transactions which have previously benefited from aggregated publication in accordance with Article 11(1)(c).
Article 11(1)(d)	'IDAF'	Indefinite aggregation flag	RM, MTF, OTF APA CTP	Transactions for which the publication of several transactions in aggregated form for an indefinite period of time has been allowed in accordance with Article 11(1)(d).
Consecutive use of Article 11(1)(b) and Article 11(2)(c) for sovereign debt instruments	'VOLW'	Volume omission flag	RM, MTF, OTF APA CTP	Transaction for which limited are published in accordance with Article 11(1)(b) and for which the publication of several transactions in aggregated form for an indefinite period of time will be consecutively allowed in accordance with Article 11(2)(c).
	'COAF'	Consecutive aggregation flag (post volume omission for sovereign debt instruments)	RM, MTF, OTF APA CTP	Transactions for which limited details have been previously published in accordance with Article 11(1)(b) and for which the publication of several transactions in aggregated form for an indefinite period of time has consecutively been allowed in accordance with Article 11(2)(c).

Table 4

Measure of volume

Type of instrument	Volume
All bonds except ETCs and ETNs and structured finance products	Total nominal value of debt instruments traded
ETCs and ETNs bond types	Number of units traded * price per unit
Securitised derivatives	Number of units traded * price per unit
Interest rate derivatives	Notional amount of traded contracts
Foreign Exchange Derivatives	Notional amount of traded contracts
Equity derivatives	Notional amount of traded contracts
Commodity derivatives	Notional amount of traded contracts
Credit derivatives	Notional amount of traded contracts
Contract for differences	Notional amount of traded contracts
C10 derivatives	Notional amount of traded contracts
Emission allowance derivatives	Tons of Carbon Dioxide
Emission allowances	Tons of Carbon Dioxide

Annex III: Liquidity assessment, LIS and SSTI thresholds for non-equity financial instruments

1. Instructions for the purpose of this annex

1.   A reference to an 'asset class' means a reference to the following classes of financial instruments: bonds, structured finance products, securitised derivatives, interest rate derivatives, equity derivatives, commodity derivatives, foreign exchange derivatives, credit derivatives, C10 derivatives, CFDs, emission allowances and emission allowance derivatives.

2.   A reference to a 'sub-asset class' means a reference to an asset class segmented to a more granular level on the basis of the contract type and/or the type of underlying.

3.   A reference to a 'sub-class' means a reference to a sub-asset class segmented to a more granular level on basis of further qualitative segmentation criteria as set out in Tables 2.1 to 13.3 of this Annex.

4.   'Average daily turnover (ADT)' means the total turnover for a particular financial instrument determined according to the volume measure set out in Table 4 of Annex II and executed in the period set out in Article 13(7), divided by the number of trading days in that period or, where applicable, that part of the year during which the financial instrument was admitted to trading or traded on a trading venue and was not suspended from trading.

5.   'Average daily notional amount (ADNA)' means the total notional amount for a particular financial instrument determined according to the volume measure set out in Table 4 of Annex II and executed in the period set out in Article 13(18) for all bonds except ETCs and ETNs and in Article 13(7) for all the other financial instruments, divided by the number of trading days in that period or, where applicable, that part of the year during which the financial instrument was admitted to trading or traded on a trading venue and was not suspended from trading.

6.   'Percentage of days traded over the period considered' means the number of days in the period set out in Article 13(18) for all bonds except ETCs and ETNs and in Article 13(7) for structured finance products, on which at least one transaction has been executed for that financial instrument, divided by the number of trading days in that period or, where applicable, that part of the year during which the financial instrument was admitted to trading or traded on a trading venue and was not suspended from trading.

7. 'Average daily number of trades' means the total number of transactions executed for a particular financial instrument in the period set out in Article 13(18) for all bonds except ETCs and ETN and in Article 13(7) all the other financial instruments, divided by the number of trading days in that period or, where applicable, that part of the year during which the financial instrument was admitted to trading or traded on a trading venue and was not suspended from trading.

8. 'Future' means a contract to buy or sell a commodity or financial instrument in a designated future date at a price agreed upon at the initiation of the contract by the buyer and seller. Every futures contract has standard terms that dictate the minimum quantity and quality that can be bought or sold, the smallest amount by which the price may change, delivery procedures, maturity date and other characteristics related to the contract.

9. 'Option' means a contract that gives the owner the right, but not the obligation, to buy (call) or sell (put) a specific financial instrument or commodity at a predetermined price, strike or exercise price, at or up to a certain future date or exercise date.

10. 'Swap' means a contract in which two parties agree to exchange cash flows in one financial instrument for another at a certain future date.

11. 'Portfolio Swap' means a contract by which end-users can trade multiple swaps.

12. 'Forward' or 'Forward agreement' means a private agreement between two parties to buy or sell a commodity or financial instrument at a designated future date at a price agreed upon at the initiation of the contract by the buyer and seller.

13. 'Swaption' means a contract that gives the owner the right, but not the obligation, to enter a swap at or up to a certain future date or exercise date.

14. 'Future on a swap' means a future contract that gives the owner the obligation, to enter a swap at or up to a certain future date.

15. 'Forward on a swap' means a forward contract that gives the owner the obligation, to enter a swap at or up to a certain future date.

2. Bonds

Table 2.1

Bonds (all bond types except ETCs and ETNs) - classes not having a liquid market

Asset class - Bonds (all bond types except ETCs and EINs)		
Each individual financial instrument shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria on a cumulative basis		
Average daily notional amount [quantitative liquidity criteria 1]	Average daily number of trades [quantitative liquidity criteria 2]	Percentage of days traded over the period considered [quantitative liquidity criteria 3]
EUR 100,000	2	80%

Table 2.2

Bonds (all bond types except ETCs and ETNs) - classes not having a liquid market

Asset class - Bonds (all bond types except ETCs and ETNs)		
Each individual bond shall be determined not to have a liquid market as per Article13(18) if it is characterised by a specific combination of bond type and issuance size as specified in each row of the table		
Bond Type		**Issuance size**
Sovereign Bond	means a bond issued by a sovereign issuer which is either: (a) the Union; (b) a Member State including a government department, an agency or a special purpose vehicle of a Member State; (c) a sovereign entity which is not listed under points (a) and (b).	smaller than € 1,000,000,000
Other Public Bond	means a bond issued by any of the following public issuers: (a) in the case of a federal Member State, a member of that federation; (b) a special purpose vehicle for several Member States; (c) an international financial institution established by two or more Member States which have the purpose of mobilising funding and providing financial assistance to the benefit of its members that are experiencing or are threatened by severe financial problems;	smaller than € 500,000,000
Convertible Bond	means an instrument consisting of a bond or a securitised debt instrument with an embedded derivative, such as an option to buy the underlying equity	smaller than € 500,000,000
Covered Bond	means bonds as referred to in Article 52(4) of Directive 2009/65/EC	smaller than € 500,000,000
Corporate Bond	means a bond that is issued by a Societas Europaea established in accordance with Directive 2001/2157/EC or a type of company listed in Article 1 of Directive 2009/101/EC or equivalent in third countries	smaller than € 500,000,000
Bond Type	**For the purpose of the determination of the financial instruments considered not to have a liquid market as per Article 13(18), the following methodology shall be applied**	
Other Bond	A bond that does not belong to any of the above bond types is considered not to have a liquid market	

Table 2.3

Bonds (all bond types except ETCs and ETNs) - pre-trade and post-trade SSTI and LIS thresholds

Asset class - Bonds (all bond types except ETCs and ETNs)					
		Percentiles to be applied for the calculation of the pre-trade and post-trade SSTI and LIS thresholds for each bond type			
Bond Type	Transactions to be considered for the calculation of the thresholds per bond type	SSTI pre-trade	LIS pre-trade	SSTI post-trade	LIS post-trade
		Trade - percentile	Trade - percentile	Trade - percentile	Trade - percentile
Sovereign Bond	transactions executed on Sovereign Bonds following the exclusion of transactions as specified in Article 13(10)	60	70	80	90
Other Public Bond	transactions executed on Other Public Bonds following the exclusion of transactions as specified in Article 13(10)	60	70	80	90
Convertible Bond	transactions executed on Convertible Bonds following the exclusion of transactions as specified in Article 13(10)	60	70	80	90
Covered Bond	transactions executed on Covered Bonds following the exclusion of transactions as specified in Article 13(10)	40	70	80	90
Corporate Bond	transactions executed on Corporate Bonds following the exclusion of transactions as specified in Article 13(10)	60	70	80	90
Other Bonds	transactions executed on Other Bonds following the exclusion of transactions as specified in Article 13(10)	60	70	80	90

Table 2.4

Bonds (ETC and ETN bond types) - classes not having a liquid market

Asset class - Bonds (ETC and EIN bond types)		
Bond type	**Each individual financial instrument shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria**	
	Average daily turnover (ADT) [quantitative liquidity criterion 1]	**Average daily number of trades** [quantitative liquidity criterion 2]
Exchange Traded Commodities (ETCs) a debt instrument issued against a direct investment by the issuer in commodities or commodities derivative contracts. The price of an ETC is directly or indirectly linked to the performance of the underlying. An ETC passively tracks the performance of the commodity or commodity indices to which it refers.	EUR 500,000	10
Exchange Traded Notes (EINs) a debt instrument issued against a direct investment by the issuer in the underlying or underlying derivative contracts. The price of an ETN is directly or indirectly linked to the performance of the underlying. An ETN passively tracks the performance of the underlying to which it refers.	EUR 500,000	10

Table 2.5

Bonds (ETC and ETN bond types) - pre-trade and post-trade SSTI and LIS thresholds

Asset class - Bonds (ETC and EIN bond types)				
Pre-trade and post-trade SSTI and LIS thresholds for each individual instrument determined to have a liquid market				
Bond type	**SSTI pre-trade**	**LIS pre-trade**	**SSTI post-trade**	**LIS post-trade**
	Threshold value	**Threshold value**	**Threshold value**	**Threshold value**
ETCs	EUR 1,000,000	EUR 1,000,000	EUR 50,000,000	EUR 50,000,000
ETNs	EUR 1,000,000	EUR 1,000,000	EUR 50,000,000	EUR 50,000,000
Pre-trade and post-trade SSTI and LIS thresholds for each individual instrument determined not to have a liquid market				
Bond type	**SSTI pre-trade**	**LIS pre-trade**	**SSTI post-trade**	**LIS post-trade**
	Threshold value	**Threshold value**	**Threshold value**	**Threshold value**
ETCs	EUR 900,000	EUR 900,000	EUR 45,000,000	EUR 45,000,000
ETNs	EUR 900,000	EUR 900,000	EUR 45,000,000	EUR 45,000,000

3. Structured Finance Products (SFPs)

Table 3.1

SFPs - classes not having a liquid market

Asset class - Structured Finance Products (SFPs)		
Test 1 - SFPs asset-class assessment		
SFPs asset-class assessment for the purpose of the determination of the financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b)		
Transactions to be considered for the calculations of the values related to the quantitative liquidity criteria for the purpose of the SFPs asset-class assessment	**The SFPs asset-class shall be assessed by application of the following thresholds of the quantitative liquidity criteria**	
	Average daily notional amount (ADNA) [quantitative liquidity criterion 1]	**Average daily number of trades** [quantitative liquidity criterion 2]
Transactions executed in all SFPs	EUR 300,000,000	500
Test 2 - SFPs not having a liquid market		
If the values related to the quantitative liquidity criteria are both above the quantitative liquidity thresholds set for the purpose of the SFPs asset-class assessment, then Test 1 is passed and Test-2 shall be performed. Each individual financial instrument shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria		
Average daily notional amount (ADNA) [quantitative liquidity criterion 1]	**Average daily number of trades** [quantitative liquidity criterion 2]	**Percentage of days traded over the period considered** [quantitative liquidity criteria 3]
EUR 100,000	2	80%

Table 3.2

SFPs - pre-trade and post-trade SSTI and LIS thresholds if Test 1 is not passed

Asset class - Structured Finance Products (SFPs)			
Pre-trade and post-trade SSTI and LIS thresholds for all SFPs if Test 1 is not passed			
SSTI pre-trade	LIS pre-trade	SSTI post-trade	LIS post-trade
Threshold value	Threshold value	Threshold value	Threshold value
EUR 100,000	EUR 250,000	EUR 500,000	EUR 1,000,000

Table 3.3

SFPs - pre-trade and post-trade SSTI and LIS thresholds if Test 1 is passed

Asset class - Structured Finance Products (SFPs)								
Transactions to be considered for the calculation of the thresholds	**Percentiles and threshold floors to be applied for the calculation of the pre-trade and post-trade SSTI and LIS thresholds for SFPs determined to have a liquid market if Test 1 is passed**							
	SSTI pre-trade		**LIS pre-trade**		**SSTI post-trade**		**LIS post-trade**	
	Trade - percentile	**Threshold floor**	**Trade - percentile**	**Threshold floor**	**Trade - percentile**	**Threshold floor**	**Trade - percentile**	**Threshold floor**
Transactions executed in all SFPs determined to have a liquid market	60	EUR 100,000	70	EUR 250,000	80	EUR 500,000	90	EUR 1,000,000

Pre-trade and post-trade SSTI and LIS thresholds for SFPs determined not to have a liquid market if Test 1 is passed			
SSTI pre-trade	**LIS pre-trade**	**SSTI post-trade**	**LIS post-trade**
Threshold value	**Threshold value**	**Threshold value**	**Threshold value**
EUR 100,000	EUR 250,000	EUR 500,000	EUR 1,000,000

4. Securitised derivatives

Table 4.1

Securitised derivatives – classes not having a liquid market

Asset class - Securitised Derivatives
means a transferable security as defined in Article 4(1)(44)(c) of Directive 2014/65/EU different from structured finance products and should include at least: (a) plain vanilla covered warrants means securities giving the holder the right, but not the obligation, to purchase (sell), at or by the expiry date, a specific amount of the underlying asset at a predetermined strike price or, in case cash settlement has been fixed, the payment of the positive difference between the current market price (the strike price) and the strike price (the current market price); (b) leverage certificates means certificates that track the performance of the underlying asset with leverage effect; (c) exotic covered warrants means covered warrants whose main component is a combination of options; (d) negotiable rights; (e) investment certificates means certificates that track the performance of the underlying asset without leverage effect.
For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b) the following methodology shall be applied
all securitised derivatives are considered to have a liquid market

Table 4.2

Securitised derivatives – pre-trade and post-trade SSTI and LIS thresholds

Asset class - Securitised Derivatives			
Pre-trade and post-trade SSTI and LIS thresholds			
SSTI pre-trade	LIS pre-trade	SSTI post-trade	LIS post-trade
Threshold value	Threshold value	Threshold value	Threshold value
EUR 50,000	EUR 60,000	EUR 90,000	EUR 100,000

5. *Interest rate derivatives*

Table 5.1

Interest rate derivatives – classes not having a liquid market

Asset class - Interest Rate Derivatives				
any contract as defined in Annex I, Section C(4) of Directive 2014/65/EU whose ultimate underlying is an interest rate, a bond, a loan, any basket, portfolio or index including an interest rate, a bond, a loan or any other product representing the performance of an interest rate, a bond, a loan.				
Sub-asset class	**For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b), each sub-asset class shall be further segmented into sub-classes as defined below**	**Each sub-class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria. For sub-classes determined to have a liquid market the additional qualitative liquidity criterion, where applicable, shall be applied**		
		Average daily notional amount (ADNA) [quantitative liquidity criterion 1]	**Average daily number of trades** [quantitative liquidity criterion 2]	**Additional qualitative liquidity criterion**
Bond futures/forwards	a bond future/forward sub-class is defined by the following segmentation criteria: **Segmentation criterion 1** - issuer of the underlying **Segmentation criterion 2** - term of the underlying deliverable bond defined as follows: **Short-term**: the underlying deliverable bond with a term between 1 and 4 years shall be considered to have a short-term **Medium-term**: the underlying deliverable bond with a term between 4 and 8 years shall be considered to have a medium-term **Long-term**: the underlying deliverable bond with a term between 8 and 15 years shall be considered to have a long-term **Ultra-long-term**: the underlying deliverable bond with a term longer than 15 years shall be considered to have an ultra-long-term **Segmentation criterion 3** - time to maturity bucket of the future defined as follows: **Maturity bucket 1**: 0 < time to maturity ≤ 3 months **Maturity bucket 2**: 3 months < time to maturity ≤ 6 months **Maturity bucket 3**: 6 months < time to maturity ≤ 1 year **Maturity bucket 4**: 1 year < time to maturity ≤ 2 years **Maturity bucket 5:** 2 years < time to maturity ≤ 3 years … **Maturity bucket m:** (n-1) years < time to maturity ≤ n years	EUR 5,000,000	10	whenever a sub-class is determined to have a liquid market with respect to a specific time to maturity bucket and the sub-class defined by the next time to maturity bucket is determined not to have a liquid market, the first back month contract is determined to have a liquid market 2 weeks before expiration of the front month

Asset class - Interest Rate Derivatives				
		Each sub-class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria. For sub-classes determined to have a liquid market the additional qualitative liquidity criterion, where applicable, shall be applied		
Sub-asset class	**For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b), each sub-asset class shall be further segmented into sub-classes as defined below**	**Average daily notional amount (ADNA)** [quantitative liquidity criterion 1]	**Average daily number of trades** [quantitative liquidity criterion 2]	**Additional qualitative liquidity criterion**
Bond options	a bond option sub-class is defined by the following segmentation criteria: **Segmentation criterion 1** - underlying bond or underlying bond future/forward **Segmentation criterion 2** - time to maturity bucket of the option defined as follows: **Maturity bucket 1:** 0 < time to maturity ≤ 3 months **Maturity bucket 2:** 3 months < time to maturity ≤ 6 months **Maturity bucket 3:** 6 months < time to maturity ≤ 1 year **Maturity bucket 4:** 1 year < time to maturity ≤ 2 years **Maturity bucket 5:** 2 years < time to maturity ≤ 3 years … **Maturity bucket m:** (n-1) years < time to maturity ≤ n years	EUR 5,000,000	10	
IR futures and FRA	an interest rate future sub-class is defined by the following segmentation criteria: **Segmentation criterion 1 -** underlying interest rate **Segmentation criterion 2** - term of the underlying interest rate **Segmentation criterion 3** - time to maturity bucket of the future defined as follows: **Maturity bucket 1:** 0 < time to maturity ≤ 3 months **Maturity bucket 2:** 3 months < time to maturity ≤ 6 months **Maturity bucket 3:** 6 months < time to maturity ≤ 1 year **Maturity bucket 4:** 1 year < time to maturity ≤ 2 years **Maturity bucket 5:** 2 years < time to maturity ≤ 3 years … **Maturity bucket m:** (n-1) years < time to maturity ≤ n years	EUR 500,000,000	10	whenever a sub-class is determined to have a liquid market with respect to a specific time to maturity bucket and the sub-class defined by the next time to maturity bucket is determined not to have a liquid market, the first back month contract is determined to have a liquid market 2 weeks before expiration of the front month

Asset class - Interest Rate Derivatives				
Sub-asset class	**For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b), each sub-asset class shall be further segmented into sub-classes as defined below**	**Each sub-class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria. For sub-classes determined to have a liquid market the additional qualitative liquidity criterion, where applicable, shall be applied**		
		Average daily notional amount (ADNA) [quantitative liquidity criterion 1]	**Average daily number of trades** [quantitative liquidity criterion 2]	**Additional qualitative liquidity criterion**
IR options	an interest rate option sub-class is defined by the following segmentation criteria: **Segmentation criterion 1 -** underlying interest rate or underlying interest rate future or FRA **Segmentation criterion 2** - term of the underlying interest rate **Segmentation criterion 3** - time to maturity bucket of the option defined as follows: **Maturity bucket 1:** 0 < time to maturity ≤ 3 months **Maturity bucket 2:** 3 months < time to maturity ≤ 6 months **Maturity bucket 3:** 6 months < time to maturity ≤ 1 year **Maturity bucket 4:** 1 year < time to maturity ≤ 2 years **Maturity bucket 5:** 2 years < time to maturity ≤ 3 years … **Maturity bucket m:** (n-1) years < time to maturity ≤ n years	EUR 500,000,000	10	

Asset class - Interest Rate Derivatives				
Sub-asset class	**For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b), each sub-asset class shall be further segmented into sub-classes as defined below**	Each sub-class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria. For sub-classes determined to have a liquid market the additional qualitative liquidity criterion, where applicable, shall be applied		
		Average daily notional amount (ADNA) [quantitative liquidity criterion 1]	**Average daily number of trades** [quantitative liquidity criterion 2]	**Additional qualitative liquidity criterion**
Swaptions	a swaption sub-class is defined by the following segmentation criteria: **Segmentation criterion 1 -** underlying swap type defined as follows: fixed-to-fixed single currency swap, futures/forwards on fixed-to-fixed single currency swap, fixed-to-float single currency swap, futures/forwards on fixed-to-float single currency swap, float-to-float single currency swap, futures/forwards on float-to-float single currency swap, inflation single currency swap, futures/forwards on inflation single currency swap, OIS single currency swap, futures/forwards on OIS single currency swap, fixed-to-fixed multi currency swap, futures/forwards on fixed-to-fixed multi currency swap, fixed-to-float multi currency swap, futures/forwards on fixed-to-float multi currency swap, float-to-float multi currency swap, futures/forwards on float-to-float multi currency swap, inflation multi currency swap, futures/forwards on inflation multi currency swap, OIS multi currency swap, futures/forwards on OIS multi currency swap **Segmentation criterion 2 -** notional currency defined as the currency in which the notional amount of the option is denominated **Segmentation criterion 3 -** inflation index if the underlying swap type is either an inflation single currency swap or an inflation multi currency swap **Segmentation criterion 4 -** time to maturity bucket of the swap defined as follows: **Maturity bucket 1:** 0 < time to maturity ≤ 1 month **Maturity bucket 2:** 1 month < time to maturity ≤ 3 months **Maturity bucket 3:** 3 months < time to maturity ≤ 6 months **Maturity bucket 4:** 6 months < time to maturity ≤ 1 year **Maturity bucket 5:** 1 year < time to maturity ≤ 2 years **Maturity bucket 6**: 2 years < time to maturity ≤ 3 years … **Maturity bucket m:** (n-1) years < time to maturity ≤ n years **Segmentation criterion 5 -** time to maturity bucket of the option defined as follows: **Maturity bucket 1:** 0 < time to maturity ≤ 6 months **Maturity bucket 2**: 6 months < time to maturity ≤ 1 year **Maturity bucket 3:** 1 year < time to maturity ≤ 2 years **Maturity bucket 4:** 2 years < time to maturity ≤ 5 years **Maturity bucket 5:** 5 years < time to maturity ≤ 10 years **Maturity bucket 6:** over 10 years	EUR 500,000,000	10	

Asset class - Interest Rate Derivatives				
Sub-asset class	For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b), each sub-asset class shall be further segmented into sub-classes as defined below	Each sub-class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria. For sub-classes determined to have a liquid market the additional qualitative liquidity criterion, where applicable, shall be applied		
		Average daily notional amount (ADNA) [quantitative liquidity criterion 1]	Average daily number of trades [quantitative liquidity criterion 2]	Additional qualitative liquidity criterion
Fixed-to-Float 'multi currency swaps' or 'cross-currency swaps' and futures/forwards on Fixed-to-Float 'multi currency swaps' or 'cross-currency swaps' a swap or a future/forward on a swap where two parties exchange cash flows denominated in different currencies and the cash flows of one leg are determined by a fixed interest rate while those of the other leg are determined by a floating interest rate	a fixed-to-float multi currency sub-class is defined by the following segmentation criteria: **Segmentation criterion 1 -** notional currency pair defined as combination of the two currencies in which the two legs of the swap are denominated **Segmentation criterion 2 -** time to maturity bucket of the swap defined as follows: **Maturity bucket 1:** 0 < maturity ≤ 1 month **Maturity bucket 2:** 1 month < maturity ≤ 3 months **Maturity bucket 3:** 3 months < maturity ≤ 6 months **Maturity bucket 4:** 6 months < maturity ≤ 1 year **Maturity bucket 5:** 1 year < maturity ≤ 2 years **Maturity bucket 6:** 2 years < maturity ≤ 3 years … **Maturity bucket m**: (n-1) years < time to maturity ≤ n years	EUR 50,000,000	10	
Float-to-Float 'multi currency swaps' or 'cross-currency swaps' and futures/forwards on Float-to-Float 'multi currency swaps' or 'cross-currency swaps' a swap or a future/forward on a swap where two parties exchange cash flows denominated in different currencies and where the cash flows of both legs are determined by floating interest rates	a float-to-float multi currency sub-class is defined by the following segmentation criteria: **Segmentation criterion 1 -** notional currency pair defined as combination of the two currencies in which the two legs of the swap are denominated **Segmentation criterion 2 -** time to maturity bucket of the swap defined as follows: **Maturity bucket 1:** 0 < maturity ≤ 1 month **Maturity bucket 2**: 1 month < maturity ≤ 3 months **Maturity bucket 3:** 3 months < maturity ≤ 6 months **Maturity bucket 4:** 6 months < maturity ≤ 1 year **Maturity bucket 5:** 1 year < maturity ≤ 2 years **Maturity bucket 6:** 2 years < maturity ≤ 3 years … **Maturity bucket m:** (n-1) years < time to maturity ≤ n years	EUR 50,000,000	10	

Asset class - Interest Rate Derivatives				
		Each sub-class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria. For sub-classes determined to have a liquid market the additional qualitative liquidity criterion, where applicable, shall be applied		
Sub-asset class	For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b), each sub-asset class shall be further segmented into sub-classes as defined below	Average daily notional amount (ADNA) [quantitative liquidity criterion 1]	Average daily number of trades [quantitative liquidity criterion 2]	Additional qualitative liquidity criterion
Fixed-to-Fixed 'multi currency swaps' or 'cross-currency swaps' and futures/forwards on Fixed-to-Fixed 'multi currency swaps' or 'cross-currency swaps' a swap or a future/forward on a swap where two parties exchange cash flows denominated in different currencies and where the cash flows of both legs are determined by fixed interest rates	a fixed-to-fixed multi currency sub-class is defined by the following segmentation criteria: **Segmentation criterion 1 -** notional currency pair defined as combination of the two currencies in which the two legs of the swap are denominated **Segmentation criterion 2** - time to maturity bucket of the swap defined as follows: **Maturity bucket 1:** 0 < time to maturity ≤ 1 month **Maturity bucket 2**: 1 month < time to maturity ≤ 3 months **Maturity bucket 3:** 3 months < time to maturity ≤ 6 months **Maturity bucket 4:** 6 months < time to maturity ≤ 1 year **Maturity bucket 5:** 1 year < time to maturity ≤ 2 years **Maturity bucket 6:** 2 years < time to maturity ≤ 3 years … **Maturity bucket m**: (n-1) years < time to maturity ≤ n years	EUR 50,000,000	10	
Overnight Index Swap (OIS) 'multi currency swaps' or 'cross-currency swaps' and futures/forwards on Overnight Index Swap (OIS) 'multi currency swaps' or 'cross-currency swaps' a swap or a future/forward on a swap where two parties exchange cash flows denominated in different currencies and where the cash flows of at least one leg are determined by an Overnight Index Swap (OIS) rate	an overnight index swap (OIS) multi currency sub-class is defined by the following segmentation criteria: **Segmentation criterion 1 -** notional currency pair defined as combination of the two currencies in which the two legs of the swap are denominated **Segmentation criterion 2** - time to maturity bucket of the swap defined as follows: **Maturity bucket 1:** 0 < time to maturity ≤ 1 month **Maturity bucket 2**: 1 month < time to maturity ≤ 3 months **Maturity bucket 3:** 3 months < time to maturity ≤ 6 months **Maturity bucket 4:** 6 months < time to maturity ≤ 1 year **Maturity bucket 5:** 1 year < time to maturity ≤ 2 years **Maturity bucket 6:** 2 years < time to maturity ≤ 3 years … **Maturity bucket m**: (n-1) years < time to maturity ≤ n years	EUR 50,000,000	10	

Asset class - Interest Rate Derivatives				
Sub-asset class	**For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b), each sub-asset class shall be further segmented into sub-classes as defined below**	**Each sub-class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria. For sub-classes determined to have a liquid market the additional qualitative liquidity criterion, where applicable, shall be applied**		
		Average daily notional amount (ADNA) [quantitative liquidity criterion 1]	**Average daily number of trades** [quantitative liquidity criterion 2]	**Additional qualitative liquidity criterion**
Inflation 'multi currency swaps' or 'cross-currency swaps' and futures/forwards on Inflation 'multi currency swaps' or 'cross-currency swaps' a swap or a future/forward on a swap where two parties exchange cash flows denominated in different currencies and where the cash flows of at least one leg are determined by an inflation rate	an inflation multi currency sub-class is defined by the following segmentation criteria: **Segmentation criterion 1 -** notional currency pair defined as combination of the two currencies in which the two legs of the swap are denominated **Segmentation criterion 2** - time to maturity bucket of the swap defined as follows: **Maturity bucket 1:** 0 < time to maturity ≤ 1 month **Maturity bucket 2**: 1 month < time to maturity ≤ 3 months **Maturity bucket 3:** 3 months < time to maturity ≤ 6 months **Maturity bucket 4:** 6 months < time to maturity ≤ 1 year **Maturity bucket 5:** 1 year < time to maturity ≤ 2 years **Maturity bucket 6:** 2 years < time to maturity ≤ 3 years … **Maturity bucket m**: (n-1) years < time to maturity ≤ n years	EUR 50,000,000	10	
Fixed-to-Float 'single currency swaps' and futures/forwards on Fixed-to-Float 'single currency swaps' a swap or a future/forward on a swap where two parties exchange cash flows denominated denominated in the same currency and the cash flows of one leg are determined by a fixed interest rate while those of the other leg are determined by a floating interest rate	a fixed-to-float single currency sub-class is defined by the following segmentation criteria: **Segmentation criterion 1 -** notional currency in which the two legs of the swap are denominated **Segmentation criterion 2** - time to maturity bucket of the swap defined as follows: **Maturity bucket 1:** 0 < time to maturity ≤ 1 month **Maturity bucket 2**: 1 month < time to maturity ≤ 3 months **Maturity bucket 3:** 3 months < time to maturity ≤ 6 months **Maturity bucket 4:** 6 months < time to maturity ≤ 1 year **Maturity bucket 5:** 1 year < time to maturity ≤ 2 years **Maturity bucket 6:** 2 years < time to maturity ≤ 3 years … **Maturity bucket m**: (n-1) years < time to maturity ≤ n years	EUR 50,000,000	10	

Asset class - Interest Rate Derivatives				
		Each sub-class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria. For sub-classes determined to have a liquid market the additional qualitative liquidity criterion, where applicable, shall be applied		
Sub-asset class	For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b), each sub-asset class shall be further segmented into sub-classes as defined below	Average daily notional amount (ADNA) [quantitative liquidity criterion 1]	Average daily number of trades [quantitative liquidity criterion 2]	Additional qualitative liquidity criterion
Float-to-Float 'single currency swaps' and futures/forwards on Float-to-Float 'single currency swaps' a swap or a future/forward on a swap where two parties exchange cash flows denominated in the same currency and where the cash flows of both legs are determined by floating interest rates	a float-to-float single currency sub-class is defined by the following segmentation criteria: **Segmentation criterion 1 -** notional currency in which the two legs of the swap are denominated **Segmentation criterion 2** - time to maturity bucket of the swap defined as follows: **Maturity bucket 1:** 0 < time to maturity ≤ 1 month **Maturity bucket 2**: 1 month < time to maturity ≤ 3 months **Maturity bucket 3**: 3 months < time to maturity ≤ 6 months **Maturity bucket 4:** 6 months < time to maturity ≤ 1 year **Maturity bucket 5:** 1 year < time to maturity ≤ 2 years **Maturity bucket 6:** 2 years < time to maturity ≤ 3 years … **Maturity bucket m**: (n-1) years < time to maturity ≤ n years	EUR 50,000,000	10	
Fixed-to-Fixed 'single currency swaps' and futures/forwards on Fixed-to-Fixed 'single currency swaps' a swap or a future/forward on a swap where two parties exchange cash flows denominated in the same currency and where the cash flows of both legs are determined by fixed interest rates	a fixed-to-fixed single currency sub-class is defined by the following segmentation criteria: **Segmentation criterion 1 -** notional currency in which the two legs of the swap are denominated **Segmentation criterion 2** - time to maturity bucket of the swap defined as follows: **Maturity bucket 1:** 0 < time to maturity ≤ 1 month **Maturity bucket 2**: 1 month < time to maturity ≤ 3 months **Maturity bucket 3**: 3 months < time to maturity ≤ 6 months **Maturity bucket 4:** 6 months < time to maturity ≤ 1 year **Maturity bucket 5:** 1 year < time to maturity ≤ 2 years **Maturity bucket 6:** 2 years < time to maturity ≤ 3 years … **Maturity bucket m**: (n-1) years < time to maturity ≤ n years	EUR 50,000,000	10	

Asset class - Interest Rate Derivatives				
		Each sub-class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria. For sub-classes determined to have a liquid market the additional qualitative liquidity criterion, where applicable, shall be applied		
Sub-asset class	For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b), each sub-asset class shall be further segmented into sub-classes as defined below	Average daily notional amount (ADNA) [quantitative liquidity criterion 1]	Average daily number of trades [quantitative liquidity criterion 2]	Additional qualitative liquidity criterion
Overnight Index Swap (OIS) 'single currency swaps' and futures/forwards on Overnight Index Swap (OIS) 'single currency swaps' a swap or a future/forward on a swap where two parties exchange cash flows denominated in the same currency and where the cash flows of at least one leg are determined by an Overnight Index Swap (OIS) rate	an overnight index swap (OIS) single currency sub-class is defined by the following segmentation criteria: **Segmentation criterion 1 -** notional currency in which the two legs of the swap are denominated **Segmentation criterion 2** - time to maturity bucket of the swap defined as follows: **Maturity bucket 1:** 0 < time to maturity ≤ 1 month **Maturity bucket 2**: 1 month < time to maturity ≤ 3 months **Maturity bucket 3**: 3 months < time to maturity ≤ 6 months **Maturity bucket 4:** 6 months < time to maturity ≤ 1 year **Maturity bucket 5:** 1 year < time to maturity ≤ 2 years **Maturity bucket 6:** 2 years < time to maturity ≤ 3 years … **Maturity bucket m**: (n-1) years < time to maturity ≤ n years	EUR 50,000,000	10	
Inflation 'single currency swaps' and futures/forwards on Inflation 'single currency swaps' a swap or a future/forward on a swap where two parties exchange cash flows denominated in the same currency and where the cash flows of at least one leg are determined by an inflation rate	an inflation single currency sub-class is defined by the following segmentation criteria: **Segmentation criterion 1 -** notional currency in which the two legs of the swap are denominated **Segmentation criterion 2** - time to maturity bucket of the swap defined as follows: **Maturity bucket 1:** 0 < time to maturity ≤ 1 month **Maturity bucket 2**: 1 month < time to maturity ≤ 3 months **Maturity bucket 3**: 3 months < time to maturity ≤ 6 months **Maturity bucket 4:** 6 months < time to maturity ≤ 1 year **Maturity bucket 5:** 1 year < time to maturity ≤ 2 years **Maturity bucket 6:** 2 years < time to maturity ≤ 3 years … **Maturity bucket m**: (n-1) years < time to maturity ≤ n years	EUR 50,000,000	10	

Asset class - Interest Rate Derivatives	
Sub-asset class	For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b), the following methodology shall be applied
Other Interest Rate Derivatives an interest rate derivative that does not belong to any of the above sub-asset classes	any other interest rate derivative is considered not to have a liquid market

Table 5.2

Interest rate derivatives – pre-trade and post-trade SSTI and LIS thresholds for sub-classes determined to have a liquid market

	Asset class - Interest Rate Derivatives										
	Percentiles and threshold floors to be applied for the calculation of the pre-trade and post-trade SSTI and LIS thresholds for each sub-class determined to have a liquid market										
Sub-asset class	Transactions to be considered for the calculations of the thresholds	SSTI pre-trade		LIS pre-trade		SSTI post-trade			LIS post-trade		
		Trade - percentile	Threshold floor	Trade - percentile	Threshold floor	Trade - percentile	Volume - percentile	Threshold floor	Trade - percentile	Volume - percentile	Threshold floor
Bond futures/forwards	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	60	EUR 4,000,000	70	EUR 5,000,000	80	60	EUR 20,000,000	90	70	EUR 25,000,000
Bond options	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	60	EUR 4,000,000	70	EUR 5,000,000	80	60	EUR 20,000,000	90	70	EUR 25,000,000
IR futures and FRA	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	60	EUR 5,000,000	70	EUR 10,000,000	80	60	EUR 20,000,000	90	70	EUR 25,000,000

Asset class - Interest Rate Derivatives										
Sub-asset class	Transactions to be considered for the calculations of the thresholds	Percentiles and threshold floors to be applied for the calculation of the pre-trade and post-trade SSTI and LIS thresholds for each sub-class determined to have a liquid market								
		SSTI pre-trade		LIS pre-trade		SSTI post-trade			LIS post-trade		
		Trade - percentile	Threshold floor	Trade - percentile	Threshold floor	Trade - percentile	Volume - percentile	Threshold floor	Trade - percentile	Volume - percentile	Threshold floor
IR options	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	60	EUR 5,000,000	70	EUR 10,000,000	80	60	EUR 20,000,000	90	70	EUR 25,000,000
Swaptions	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	60	EUR 4,000,000	70	EUR 5,000,000	80	60	EUR 9,000,000	90	70	EUR 10,000,000
Fixed-to-Float 'multi currency swaps' or 'cross-currency swaps' and futures/forwards on Fixed-to-Float 'multi currency swaps' or 'cross-currency swaps'	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	60	EUR 4,000,000	70	EUR 5,000,000	80	60	EUR 9,000,000	90	70	EUR 10,000,000

Asset class - Interest Rate Derivatives										
	Percentiles and threshold floors to be applied for the calculation of the pre-trade and post-trade SSTI and LIS thresholds for each sub-class determined to have a liquid market									
Sub-asset class	Transactions to be considered for the calculations of the thresholds	SSTI pre-trade		LIS pre-trade		SSTI post-trade			LIS post-trade		
		Trade - percentile	Threshold floor	Trade - percentile	Threshold floor	Trade - percentile	Volume - percentile	Threshold floor	Trade - percentile	Volume - percentile	Threshold floor
Float-to-Float 'multi currency swaps' or 'cross-currency swaps' and futures/forwards on Float-to-Float 'multi currency swaps' or 'cross-currency swaps'	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	60	EUR 4,000,000	70	EUR 5,000,000	80	60	EUR 9,000,000	90	70	EUR 10,000,000
Fixed-to-Fixed 'multi currency swaps' or 'cross-currency swaps' and futures/forwards on Fixed-to-Fixed 'multi currency swaps' or 'cross-currency swaps'	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	60	EUR 4,000,000	70	EUR 5,000,000	80	60	EUR 9,000,000	90	70	EUR 10,000,000
Overnight Index Swap (OIS) 'multi currency swaps' or 'cross-currency swaps' and futures/forwards on Overnight Index Swap (OIS) 'multi currency swaps' or 'cross-currency swaps'	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	60	EUR 4,000,000	70	EUR 5,000,000	80	60	EUR 9,000,000	90	70	EUR 10,000,000

<table>
<tr>
<td colspan="12" align="center">Asset class - Interest Rate Derivatives</td>
</tr>
<tr>
<td rowspan="3">Sub-asset class</td>
<td colspan="11" align="center">Percentiles and threshold floors to be applied for the calculation of the pre-trade and post-trade SSTI and LIS thresholds for each sub-class determined to have a liquid market</td>
</tr>
<tr>
<td rowspan="2">Transactions to be considered for the calculations of the thresholds</td>
<td colspan="2" align="center">SSTI pre-trade</td>
<td colspan="2" align="center">LIS pre-trade</td>
<td colspan="3" align="center">SSTI post-trade</td>
<td colspan="3" align="center">LIS post-trade</td>
</tr>
<tr>
<td>Trade - percentile</td>
<td>Threshold floor</td>
<td>Trade - percentile</td>
<td>Threshold floor</td>
<td>Trade - percentile</td>
<td>Volume - percentile</td>
<td>Threshold floor</td>
<td>Trade - percentile</td>
<td>Volume - percentile</td>
<td>Threshold floor</td>
</tr>
<tr>
<td>Inflation 'multi currency swaps' or 'cross-currency swaps' and futures/forwards on Inflation 'multi currency swaps' or 'cross-currency swaps'</td>
<td>calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class</td>
<td>60</td>
<td>EUR 4,000,000</td>
<td>70</td>
<td>EUR 5,000,000</td>
<td>80</td>
<td>60</td>
<td>EUR 9,000,000</td>
<td>90</td>
<td>70</td>
<td>EUR 10,000,000</td>
</tr>
<tr>
<td>Fixed-to-Float 'single currency swaps' and futures/forwards on Fixed-to-Float 'single currency swaps'</td>
<td>calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class</td>
<td>60</td>
<td>EUR 4,000,000</td>
<td>70</td>
<td>EUR 5,000,000</td>
<td>80</td>
<td>60</td>
<td>EUR 9,000,000</td>
<td>90</td>
<td>70</td>
<td>EUR 10,000,000</td>
</tr>
<tr>
<td>Float-to-Float 'single currency swaps' and futures/forwards on Float-to-Float 'single currency swaps'</td>
<td>calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class</td>
<td>60</td>
<td>EUR 4,000,000</td>
<td>70</td>
<td>EUR 5,000,000</td>
<td>80</td>
<td>60</td>
<td>EUR 9,000,000</td>
<td>90</td>
<td>70</td>
<td>EUR 10,000,000</td>
</tr>
</table>

Asset class - Interest Rate Derivatives											
Sub-asset class	**Transactions to be considered for the calculations of the thresholds**	Percentiles and threshold floors to be applied for the calculation of the pre-trade and post-trade SSTI and LIS thresholds for each sub-class determined to have a liquid market									
		SSTI pre-trade		LIS pre-trade		SSTI post-trade			LIS post-trade		
		Trade - percentile	**Threshold floor**	**Trade - percentile**	**Threshold floor**	**Trade - percentile**	**Volume - percentile**	**Threshold floor**	**Trade - percentile**	**Volume - percentile**	**Threshold floor**
Fixed-to-Fixed 'single currency swaps' and futures/forwards on Fixed-to-Fixed 'single currency swaps'	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	60	EUR 4,000,000	70	EUR 5,000,000	80	60	EUR 9,000,000	90	70	EUR 10,000,000
Overnight Index Swap (OIS) 'single currency swaps' and futures/forwards on Overnight Index Swap (OIS) 'single currency swaps'	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	60	EUR 4,000,000	70	EUR 5,000,000	80	60	EUR 9,000,000	90	70	EUR 10,000,000
Inflation 'single currency swaps' and futures/forwards on Inflation 'single currency swaps'	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	60	EUR 4,000,000	70	EUR 5,000,000	80	60	EUR 9,000,000	90	70	EUR 10,000,000

Table 5.3

Interest rate derivatives – pre-trade and post-trade SSTI and LIS thresholds for sub-classes determined not to have a liquid market

Asset class - Interest Rate Derivatives				
Sub-asset class	Pre-trade and post-trade SSTI and LIS thresholds for each sub-class determined not to have a liquid market			
	SSTI pre-trade	**LIS pre-trade**	**SSTI post-trade**	**LIS post-trade**
	Threshold value	**Threshold value**	**Threshold value**	**Threshold value**
Bond futures/forwards	EUR 4,000,000	EUR 5,000,000	EUR 20,000,000	EUR 25,000,000
Bond options	EUR 4,000,000	EUR 5,000,000	EUR 20,000,000	EUR 25,000,000
IR futures and FRA	EUR 5,000,000	EUR 10,000,000	EUR 20,000,000	EUR 25,000,000
IR options	EUR 5,000,000	EUR 10,000,000	EUR 20,000,000	EUR 25,000,000
Swaptions	EUR 4,000,000	EUR 5,000,000	EUR 9,000,000	EUR 10,000,000

Asset class - Interest Rate Derivatives				
Sub-asset class	Pre-trade and post-trade SSTI and LIS thresholds for each sub-class determined not to have a liquid market			
	SSTI pre-trade	LIS pre-trade	SSTI post-trade	LIS post-trade
	Threshold value	Threshold value	Threshold value	Threshold value
Fixed-to-Float 'multi currency swaps' or 'cross-currency swaps' and futures/forwards on Fixed-to-Float 'multi currency swaps' or 'cross-currency swaps'	EUR 4,000,000	EUR 5,000,000	EUR 9,000,000	EUR 10,000,000
Float-to-Float 'multi currency swaps' or 'cross-currency swaps' and futures/forwards on Float-to-Float 'multi currency swaps' or 'cross-currency swaps'	EUR 4,000,000	EUR 5,000,000	EUR 9,000,000	EUR 10,000,000
Fixed-to-Fixed 'multi currency swaps' or 'cross-currency swaps' and futures/forwards on Fixed-to-Fixed 'multi currency swaps' or 'cross-currency swaps'	EUR 4,000,000	EUR 5,000,000	EUR 9,000,000	EUR 10,000,000
Overnight Index Swap (OIS) 'multi currency swaps' or 'cross-currency swaps' and futures/forwards on Overnight Index Swap (OIS) 'multi currency swaps' or 'cross-currency swaps'	EUR 4,000,000	EUR 5,000,000	EUR 9,000,000	EUR 10,000,000

Asset class - Interest Rate Derivatives				
Sub-asset class	Pre-trade and post-trade SSTI and LIS thresholds for each sub-class determined not to have a liquid market			
	SSTI pre-trade	LIS pre-trade	SSTI post-trade	LIS post-trade
	Threshold value	Threshold value	Threshold value	Threshold value
Inflation 'multi currency swaps' or 'cross-currency swaps' and futures/forwards on Inflation 'multi currency swaps' or 'cross-currency swaps'	EUR 4,000,000	EUR 5,000,000	EUR 9,000,000	EUR 10,000,000
Fixed-to-Float 'single currency swaps' and futures/forwards on Fixed-to-Float 'single currency swaps'	EUR 4,000,000	EUR 5,000,000	EUR 9,000,000	EUR 10,000,000
Float-to-Float 'single currency swaps' and futures/forwards on Float-to-Float 'single currency swaps'	EUR 4,000,000	EUR 5,000,000	EUR 9,000,000	EUR 10,000,000
Fixed-to-Fixed 'single currency swaps' and futures/forwards on Fixed-to-Fixed 'single currency swaps'	EUR 4,000,000	EUR 5,000,000	EUR 9,000,000	EUR 10,000,000

Asset class - Interest Rate Derivatives				
Sub-asset class	Pre-trade and post-trade SSTI and LIS thresholds for each sub-class determined not to have a liquid market			
	SSTI pre-trade	LIS pre-trade	SSTI post-trade	LIS post-trade
	Threshold value	Threshold value	Threshold value	Threshold value
Overnight Index Swap (OIS) 'single currency swaps' and futures/forwards on Overnight Index Swap (OIS) 'single currency swaps'	EUR 4,000,000	EUR 5,000,000	EUR 9,000,000	EUR 10,000,000
Inflation 'single currency swaps' and futures/forwards on Inflation 'single currency swaps'	EUR 4,000,000	EUR 5,000,000	EUR 9,000,000	EUR 10,000,000
Other Interest Rate Derivatives	EUR 4,000,000	EUR 5,000,000	EUR 9,000,000	EUR 10,000,000

6. Equity derivatives

Table 6.1

Equity derivatives – classes not having a liquid market

Asset class - Equity Derivatives	
any contract as defined Annex I, Section C(4) of Directive 2014/65/EU related to: (a) one or more shares, depositary receipts, ETFs, certificates, other similar financial instruments, cash-flows or other products related to the performance of one or more shares, depositary receipts, ETFs, certificates, or other similar financial instruments; (b) an index of shares, depositary receipts, ETFs, certificates, other similar financial instruments, cash-flows or other products related to the performance of one or more shares, depositary receipts, ETFs, certificates, or other similar financial instruments	
Sub-asset class	**For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b) the following methodology shall be applied**
Stock index options an option whose underlying is an index composed of shares	all index options are considered to have a liquid market
Stock index futures/ forwards a future whose underlying is an index composed of shares	all index futures/ forwards are considered to have a liquid market
Stock options an option whose underlying is a share or a basket of shares resulting from a corporate action	all stock options are considered to have a liquid market
Stock futures/ forwards a future whose underlying is a share or a basket of shares resulting from a corporate action	all stock futures/ forwards are considered to have a liquid market

Asset class - Equity Derivatives	
Sub-asset class	**For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b) the following methodology shall be applied**
Stock dividend options an option on the dividend of a specific share	all stock dividend options are considered to have a liquid market
Stock dividend futures/ forwards a future on the dividend of a specific share	all stock dividend futures/ forwards are considered to have a liquid market
Dividend index options an option on an index composed of dividends of more than one share	all dividend index options are considered to have a liquid market
Dividend index futures/ forwards a future on an index composed of dividends of more than one share	all dividend index futures/ forwards are considered to have a liquid market
Volatility index options an option whose underlying is a volatility index defined as an index relating to the volatility of a specific underlying index of equity instruments	all volatility index options are considered to have a liquid market

Asset class - Equity Derivatives	
Sub-asset class	**For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b) the following methodology shall be applied**
Volatility index futures/ forwards a future whose underlying is a volatility index defined as an index relating to the volatility of a specific underlying index of equity instruments	all volatility index futures/ forwards are considered to have a liquid market
EIF options an option whose underlying is an ETF	all ETF options are considered to have a liquid market
EIF futures/ forwards a future whose underlying is an ETF	all ETF futures/ forwards are considered to have a liquid market

Asset class - Equity Derivatives				
Sub-asset class	**For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b), each sub-asset class shall be further segmented into sub-classes as defined below**		**Each sub-class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria**	
			Average daily notional amount (ADNA) [quantitative liquidity criterion 1]	**Average daily number of trades** [quantitative liquidity criterion 2]
Swaps	a swap sub-class is defined by the following segmentation criteria: **Segmentation criterion 1 -** underlying type: single name, index, basket **Segmentation criterion 2** - underlying single name, index, basket **Segmentation criterion 3 -** parameter: price return basic performance parameter, parameter return dividend, parameter return variance, parameter return volatility **Segmentation criterion 4** - time to maturity bucket of the swap defined as follows: <table><tr><td>**Price return basic performance parameter**</td><td>**Parameter return variance/volatility**</td><td>**Parameter return dividend**</td></tr><tr><td>**Maturity bucket 1**: 0 < time to maturity ≤ 1 month **Maturity bucket 2:** 1 month < time to maturity ≤ 3 months **Maturity bucket 3:** 3 months < time to maturity ≤ 6 months **Maturity bucket 4:** 6 months < time to maturity ≤ 1 year **Maturity bucket 5:** 1 year < time to maturity ≤ 2 years **Maturity bucket 6:** 2 years < time to maturity ≤ 3 years … **Maturity bucket m:** (n-1) years < time to maturity ≤ n years</td><td>**Maturity bucket 1**: 0 < time to maturity ≤ 3 months **Maturity bucket 2:** 3 months < time to maturity ≤ 6 months **Maturity bucket 3:** 6 months < time to maturity ≤ 1 year **Maturity bucket 4:** 1 year < time to maturity ≤ 2 years **Maturity bucket 5:** 2 years < time to maturity ≤ 3 years … **Maturity bucket m:** (n-1) years < time to maturity ≤ n years</td><td>**Maturity bucket 1:** 0 < time to maturity ≤ 1 year **Maturity bucket 2:** 1 year < time to maturity ≤ 2 years **Maturity bucket 3:** 2 years < time to maturity ≤ 3 years … **Maturity bucket m:** (n-1) years < time to maturity ≤ n years</td></tr></table>		EUR 50,000,000	15

Asset class - Equity Derivatives			
Sub-asset class	**For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b), each sub-asset class shall be further segmented into sub-classes as defined below**	**Each sub-class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria**	
		Average daily notional amount (ADNA) [quantitative liquidity criterion 1]	**Average daily number of trades** [quantitative liquidity criterion 2]
Portfolio Swaps	a portfolio swap sub-class is defined by a specific combination of: **Segmentation criterion 1 -** underlying type: single name, index, basket **Segmentation criterion 2** - underlying single name, index, basket **Segmentation criterion 3 -** parameter: price return basic performance parameter, parameter return dividend, parameter return variance, parameter return volatility **Segmentation criterion 4** - time to maturity bucket of the portfolio swap defined as follows: **Maturity bucket 1:** 0 < time to maturity ≤ 1 month **Maturity bucket 2:** 1 month < time to maturity ≤ 3 months **Maturity bucket 3:** 3 months < time to maturity ≤ 6 months **Maturity bucket 4:** 6 months < time to maturity ≤ 1 year **Maturity bucket 5:** 1 year < time to maturity ≤ 2 years **Maturity bucket 6:** 2 years < time to maturity ≤ 3 years … **Maturity bucket m:** (n-1) years < time to maturity ≤ n years	EUR 50,000,000	15

Asset class - Equity Derivatives	
Sub-asset class	**For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b) the following methodology shall be applied**
Other equity derivatives an equity derivative that does not belong to any of the above sub-asset classes	any other equity derivative is considered not to have a liquid market

Table 6.2

Equity derivatives – pre-trade and post-trade SSTI and LIS thresholds for sub-classes determined to have a liquid market

Asset class - Equity Derivatives							
Sub-asset class	For the purpose of the determination of the pre-trade and post-trade SSTI and LIS thresholds each sub-asset class shall be further segmented into sub-classes as defined below	Transactions to be considered for the calculations of the thresholds	Pre-trade and post-trade SSTI and LIS threshold values determined for the sub-classes determined to have a liquid market on the basis of the average daily notional amount (ADNA) band to which the sub-class belongs				
			Average daily notional amount (ADNA)	SSTI pre-trade	LIS pre-trade	SSTI post-trade	LIS post-trade
				Threshold value	Threshold value	Threshold value	Threshold value
Stock index options	a stock index option sub-class is defined by the following segmentation criteria: **Segmentation criterion 1 -** underlying stock index	calculation of thresholds should be performed for each sub-class considering the transactions executed on financial instruments belonging to the sub-class	< EUR 100m ADNA	EUR 20,000	EUR 25,000	EUR 1,000,000	EUR 1,500,000
			EUR 100m <= ADNA < EUR 200m	EUR 2,500,000	EUR 3,000,000	EUR 25,000,000	EUR 30,000,000
			EUR 200m <= ADNA < EUR 600m	EUR 5,000,000	EUR 5,500,000	EUR 50,000,000	EUR 55,000,000
			ADNA >= EUR 600m	EUR 15,000,000	EUR 20,000,000	EUR 150,000,000	EUR 160,000,000
Stock index futures/ forwards	a stock index future/forward sub-class is defined by the following segmentation criteria: **Segmentation criterion 1 -** underlying stock index	calculation of thresholds should be performed for each sub-class considering the transactions executed on financial instruments belonging to the sub-class	< EUR 100m ADNA	EUR 20,000	EUR 25,000	EUR 1,000,000	EUR 1,500,000
			EUR 100m <= ADNA < EUR 1bn	EUR 500,000	EUR 550,000	EUR 5,000,000	EUR 5,500,000
			EUR 1bn <= ADNA < EUR 3bn	EUR 5,000,000	EUR 5,500,000	EUR 50,000,000	EUR 55,000,000
			EUR 3bn <= ADNA < EUR 5bn	EUR 15,000,000	EUR 20,000,000	EUR 150,000,000	EUR 160,000,000
			ADNA >= EUR 5bn	EUR 25,000,000	EUR 30,000,000	EUR 250,000,000	EUR 260,000,000

Asset class - Equity Derivatives							
Sub-asset class	For the purpose of the determination of the pre-trade and post-trade SSTI and LIS thresholds each sub-asset class shall be further segmented into sub-classes as defined below	Transactions to be considered for the calculations of the thresholds	Pre-trade and post-trade SSTI and LIS threshold values determined for the sub-classes determined to have a liquid market on the basis of the average daily notional amount (ADNA) band to which the sub-class belongs				
			Average daily notional amount (ADNA)	SSTI pre-trade	LIS pre-trade	SSTI post-trade	LIS post-trade
				Threshold value	Threshold value	Threshold value	Threshold value
Stock options	a stock option sub-class is defined by the following segmentation criteria: **Segmentation criterion 1 -** underlying share	calculation of thresholds should be performed for each sub-class considering the transactions executed on financial instruments belonging to the sub-class	< EUR 5m ADNA	EUR 20,000	EUR 25,000	EUR 1,000,000	EUR 1,250,000
			EUR 5m <= ADNA < EUR 10m	EUR 250,000	EUR 300,000	EUR 1,250,000	EUR 1,500,000
			EUR 10m <= ADNA < EUR 20m	EUR 500,000	EUR 550,000	EUR 2,500,000	EUR 3,000,000
			ADNA >= EUR 20m	EUR 1,000,000	EUR 1,500,000	EUR 5,000,000	EUR 5,500,000
Stock futures/ forwards	an stock future/forward sub-class is defined by the following segmentation criteria: **Segmentation criterion 1 -** underlying share	calculation of thresholds should be performed for each sub-class considering the transactions executed on financial instruments belonging to the sub-class	< EUR 5m ADNA	EUR 20,000	EUR 25,000	EUR 1,000,000	EUR 1,250,000
			EUR 5m <= ADNA < EUR 10m	EUR 250,000	EUR 300,000	EUR 1,250,000	EUR 1,500,000
			EUR 10m <= ADNA < EUR 20m	EUR 500,000	EUR 550,000	EUR 2,500,000	EUR 3,000,000
			ADNA >= EUR 20m	EUR 1,000,000	EUR 1,500,000	EUR 5,000,000	EUR 5,500,000
Stock dividend options	a stock dividend option sub-class is defined by the following segmentation criteria: **Segmentation criterion 1 -** underlying share entitling to dividends	calculation of thresholds should be performed for each sub-class considering the transactions executed on financial instruments belonging to the sub-class	< EUR 5m ADNA	EUR 20,000	EUR 25,000	EUR 400,000	EUR 450,000
			EUR 5m <= ADNA < EUR 10m	EUR 25,000	EUR 30,000	EUR 500,000	EUR 550,000
			EUR 10m <= ADNA < EUR 20m	EUR 50,000	EUR 100,000	EUR 1,000,000	EUR 1,500,000
			ADNA >= EUR 20m	EUR 100,000	EUR 150,000	EUR 2,000,000	EUR 2,500,000

Asset class - Equity Derivatives							
Sub-asset class	For the purpose of the determination of the pre-trade and post-trade SSTI and LIS thresholds each sub-asset class shall be further segmented into sub-classes as defined below	Transactions to be considered for the calculations of the thresholds	Pre-trade and post-trade SSTI and LIS threshold values determined for the sub-classes determined to have a liquid market on the basis of the average daily notional amount (ADNA) band to which the sub-class belongs				
			Average daily notional amount (ADNA)	SSTI pre-trade	LIS pre-trade	SSTI post-trade	LIS post-trade
				Threshold value	Threshold value	Threshold value	Threshold value
Stock dividend futures/ forwards	a stock dividend future/forward sub-class is defined by the following segmentation criteria: **Segmentation criterion 1 -** underlying share entitling to dividends	calculation of thresholds should be performed for each sub-class considering the transactions executed on financial instruments belonging to the sub-class	< EUR 5m ADNA	EUR 20,000	EUR 25,000	EUR 400,000	EUR 450,000
			EUR 5m <= ADNA < EUR 10m	EUR 25,000	EUR 30,000	EUR 500,000	EUR 550,000
			EUR 10m <= ADNA < EUR 20m	EUR 50,000	EUR 100,000	EUR 1,000,000	EUR 1,500,000
			ADNA >= EUR 20m	EUR 100,000	EUR 150,000	EUR 2,000,000	EUR 2,500,000
Dividend index options	a dividend index option sub-class is defined by the following segmentation criteria: **Segmentation criterion 1 -** underlying dvidend index	calculation of thresholds should be performed for each sub-class considering the transactions executed on financial instruments belonging to the sub-class	< EUR 100m ADNA	EUR 20,000	EUR 25,000	EUR 1,000,000	EUR 1,500,000
			EUR 100m <= ADNA < EUR 200m	EUR 2,500,000	EUR 3,000,000	EUR 25,000,000	EUR 30,000,000
			EUR 200m <= ADNA < EUR 600m	EUR 5,000,000	EUR 5,500,000	EUR 50,000,000	EUR 55,000,000
			ADNA >= EUR 600m	EUR 15,000,000	EUR 20,000,000	EUR 150,000,000	EUR 160,000,000

Asset class - Equity Derivatives						
Sub-asset class	For the purpose of the determination of the pre-trade and post-trade SSTI and LIS thresholds each sub-asset class shall be further segmented into sub-classes as defined below	Transactions to be considered for the calculations of the thresholds	Pre-trade and post-trade SSTI and LIS threshold values determined for the sub-classes determined to have a liquid market on the basis of the average daily notional amount (ADNA) band to which the sub-class belongs			
			Average daily notional amount (ADNA)	SSTI pre-trade	LIS pre-trade	SSTI post-trade	LIS post-trade
			Threshold value	Threshold value	Threshold value	Threshold value
Dividend index futures/ forwards	a dividend index future/forward sub-class is defined by the following segmentation criteria: **Segmentation criterion 1 -** underlying dvidend index	calculation of thresholds should be performed for each sub-class considering the transactions executed on financial instruments belonging to the sub-class	**< EUR 100m ADNA**	EUR 20,000	EUR 25,000	EUR 1,000,000	EUR 1,500,000
			EUR 100m <= ADNA < EUR 1bn	EUR 500,000	EUR 550,000	EUR 5,000,000	EUR 5,500,000
			EUR 1bn <= ADNA < EUR 3bn	EUR 5,000,000	EUR 5,500,000	EUR 50,000,000	EUR 55,000,000
			EUR 3bn <= ADNA < EUR 5bn	EUR 15,000,000	EUR 20,000,000	EUR 150,000,000	EUR 160,000,000
			ADNA >= EUR 5bn	EUR 25,000,000	EUR 30,000,000	EUR 250,000,000	EUR 260,000,000
Volatility index options	a volatility index option sub-class is defined by the following segmentation criteria: **Segmentation criterion 1 -** underlying volatility index	calculation of thresholds should be performed for each sub-class considering the transactions executed on financial instruments belonging to the sub-class	**< EUR 100m ADNA**	EUR 20,000	EUR 25,000	EUR 1,000,000	EUR 1,500,000
			EUR 100m <= ADNA < EUR 200m	EUR 2,500,000	EUR 3,000,000	EUR 25,000,000	EUR 30,000,000
			EUR 200m <= ADNA < EUR 600m	EUR 5,000,000	EUR 5,500,000	EUR 50,000,000	EUR 55,000,000
			ADNA >= EUR 600m	EUR 15,000,000	EUR 20,000,000	EUR 150,000,000	EUR 160,000,000

Asset class - Equity Derivatives							
Sub-asset class	For the purpose of the determination of the pre-trade and post-trade SSTI and LIS thresholds each sub-asset class shall be further segmented into sub-classes as defined below	Transactions to be considered for the calculations of the thresholds	Pre-trade and post-trade SSTI and LIS threshold values determined for the sub-classes determined to have a liquid market on the basis of the average daily notional amount (ADNA) band to which the sub-class belongs				
			Average daily notional amount (ADNA)	SSTI pre-trade	LIS pre-trade	SSTI post-trade	LIS post-trade
				Threshold value	Threshold value	Threshold value	Threshold value
Volatility index futures/ forwards	a volatility index future/forward sub-class is defined by the following segmentation criteria: **Segmentation criterion 1 -** underlying volatility index	calculation of thresholds should be performed for each sub-class considering the transactions executed on financial instruments belonging to the sub-class	**< EUR 100m ADNA**	EUR 20,000	EUR 25,000	EUR 1,000,000	EUR 1,500,000
			EUR 100m <= ADNA < EUR 1bn	EUR 500,000	EUR 550,000	EUR 5,000,000	EUR 5,500,000
			EUR 1bn <= ADNA < EUR 3bn	EUR 5,000,000	EUR 5,500,000	EUR 50,000,000	EUR 55,000,000
			EUR 3bn <= ADNA < EUR 5bn	EUR 15,000,000	EUR 20,000,000	EUR 150,000,000	EUR 160,000,000
			ADNA >= EUR 5bn	EUR 25,000,000	EUR 30,000,000	EUR 250,000,000	EUR 260,000,000
ETF options	an ETF option sub-class is defined by the following segmentation criteria: **Segmentation criterion 1 -** underlying ETF	calculation of thresholds should be performed for each sub-class considering the transactions executed on financial instruments belonging to the sub-class	**< EUR 5m ADNA**	EUR 20,000	EUR 25,000	EUR 1,000,000	EUR 1,250,000
			EUR 5m <= ADNA < EUR 10m	EUR 250,000	EUR 300,000	EUR 1,250,000	EUR 1,500,000
			EUR 10m <= ADNA < EUR 20m	EUR 500,000	EUR 550,000	EUR 2,500,000	EUR 3,000,000
			ADNA >= EUR 20m	EUR 1,000,000	EUR 1,500,000	EUR 5,000,000	EUR 5,500,000

Asset class - Equity Derivatives							
Sub-asset class	For the purpose of the determination of the pre-trade and post-trade SSTI and LIS thresholds each sub-asset class shall be further segmented into sub-classes as defined below	Transactions to be considered for the calculations of the thresholds	Pre-trade and post-trade SSTI and LIS threshold values determined for the sub-classes determined to have a liquid market on the basis of the average daily notional amount (ADNA) band to which the sub-class belongs				
			Average daily notional amount (ADNA)	SSTI pre-trade	LIS pre-trade	SSTI post-trade	LIS post-trade
				Threshold value	Threshold value	Threshold value	Threshold value
ETF futures/ forwards	an ETF future/forward sub-class is defined by the following segmentation criteria: **Segmentation criterion 1 -** underlying ETF	calculation of thresholds should be performed for each sub-class considering the transactions executed on financial instruments belonging to the sub-class	**< EUR 5m ADNA**	EUR 20,000	EUR 25,000	EUR 1,000,000	EUR 1,250,000
			EUR 5m <= ADNA < EUR 10m	EUR 250,000	EUR 300,000	EUR 1,250,000	EUR 1,500,000
			EUR 10m <= ADNA < EUR 20m	EUR 500,000	EUR 550,000	EUR 2,500,000	EUR 3,000,000
			ADNA >= EUR 20m	EUR 1,000,000	EUR 1,500,000	EUR 5,000,000	EUR 5,500,000

Asset class - Equity Derivatives								
Sub-asset class	For the purpose of the determination of the pre-trade and post-trade SSTI and LIS thresholds each sub-asset class shall be further segmented into sub-classes as defined below			Transactions to be considered for the calculations of the thresholds	Pre-trade and post-trade SSTI and LIS threshold values determined for the sub-classes determined to have a liquid market on the basis of the average daily notional amount (ADNA) band to which the sub-class belongs			
					Average daily notional amount (ADNA)	SSTI pre-trade	LIS pre-trade	SSTI post-trade	LIS post-trade
						Threshold value	Threshold value	Threshold value	Threshold value
Swaps	a swap sub-class is defined by the following segmentation criteria: **Segmentation criterion 1 -** underlying type: single name, index, basket **Segmentation criterion 2 -** underlying single name, index, basket **Segmentation criterion 3 -** parameter: price return basic performance parameter, parameter return dividend, parameter return variance, parameter return volatility **Segmentation criterion 4 -** time to maturity bucket of the swap defined as follows:			calculation of thresholds should be performed for each sub-class considering the transactions executed on financial instruments belonging to the sub-class	**EUR 50m <= ADNA < EUR 100m**	EUR 250,000	EUR 300,000	EUR 1,250,000	EUR 1,500,000
					EUR 100m <= ADNA < EUR 200m	EUR 500,000	EUR 550,000	EUR 2,500,000	EUR 3,000,000
					ADNA >= EUR 200m	EUR 1,000,000	EUR 1,500,000	EUR 5,000,000	EUR 5,500,000
	Price return basic performance parameter **Maturity bucket 1:** 0 < time to maturity ≤ 1 month **Maturity bucket 2:** 1 month < time to maturity ≤ 3 months **Maturity bucket 3:** 3 months < time to maturity ≤ 6 months **Maturity bucket 4:** 6 months < time to maturity ≤ 1 year **Maturity bucket 5:** 1 year < time to maturity ≤ 2 years **Maturity bucket 6:** 2 years < time to maturity ≤ 3 years … **Maturity bucket m:** (n-1) years < time to maturity ≤ n years	**Parameter return variance/volatility** **Maturity bucket 1:** 0 < time to maturity ≤ 3 months **Maturity bucket 2:** 3 months < time to maturity ≤ 6 months **Maturity bucket 3:** 6 months < time to maturity ≤ 1 year **Maturity bucket 4:** 1 year < time to maturity ≤ 2 years **Maturity bucket 5:** 2 years < time to maturity ≤ 3 years … **Maturity bucket m:** (n-1) years < time to maturity ≤ n years	**Parameter return dividend** **Maturity bucket 1:** 0 < time to maturity ≤ 1 year **Maturity bucket 2:** 1 year < time to maturity ≤ 2 years **Maturity bucket 3:** 2 years < time to maturity ≤ 3 years … **Maturity bucket m:** (n-1) years < time to maturity ≤ n years						

Asset class - Equity Derivatives							
			Pre-trade and post-trade SSTI and LIS threshold values determined for the sub-classes determined to have a liquid market on the basis of the average daily notional amount (ADNA) band to which the sub-class belongs				
Sub-asset class	For the purpose of the determination of the pre-trade and post-trade SSTI and LIS thresholds each sub-asset class shall be further segmented into sub-classes as defined below	Transactions to be considered for the calculations of the thresholds	Average daily notional amount (ADNA)	SSTI pre-trade	LIS pre-trade	SSTI post-trade	LIS post-trade
				Threshold value	Threshold value	Threshold value	Threshold value
Porfolio Swaps	a portfolio swap sub-class is defined by a specific combination of: **Segmentation criterion 1 -** underlying type: single name, index, basket **Segmentation criterion 2** - underlying single name, index, basket **Segmentation criterion 3 -** parameter: price return basic performance parameter, parameter return dividend, parameter return variance, parameter return volatility **Segmentation criterion 4** - time to maturity bucket of the portfolio swap defined as follows: **Maturity bucket 1:** 0 < time to maturity ≤ 1 month **Maturity bucket 2:** 1 month < time to maturity ≤ 3 months **Maturity bucket 3:** 3 months < time to maturity ≤ 6 months **Maturity bucket 4:** 6 months < time to maturity ≤ 1 year **Maturity bucket 5:** 1 year < time to maturity ≤ 2 years **Maturity bucket 6:** 2 years < time to maturity ≤ 3 years … **Maturity bucket m:** (n-1) years < time to maturity ≤ n years	calculation of thresholds should be performed for each sub-class considering the transactions executed on financial instruments belonging to the sub-class	**EUR 50m <= ADNA < EUR 100m**	EUR 250,000	EUR 300,000	EUR 1,250,000	EUR 1,500,000
			EUR 100m <= ADNA < EUR 200m	EUR 500,000	EUR 550,000	EUR 2,500,000	EUR 3,000,000
			ADNA >= EUR 200m	EUR 1,000,000	EUR 1,500,000	EUR 5,000,000	EUR 5,500,000

Table 6.3

Equity derivatives – pre-trade and post-trade SSTI and LIS thresholds for sub-classes determined not to have a liquid market

Asset class - Equity Derivatives				
Sub-asset class	Pre-trade and post-trade SSTI and LIS thresholds for the sub-classes determined not to have a liquid market			
	SSTI pre-trade	LIS pre-trade	SSTI post-trade	LIS post-trade
	Threshold value	Threshold value	Threshold value	Threshold value
Swaps	EUR 20,000	EUR 25,000	EUR 100,000	EUR 150,000
Porfolio Swaps	EUR 20,000	EUR 25,000	EUR 100,000	EUR 150,000
Other equity derivatives	EUR 20,000	EUR 25,000	EUR 100,000	EUR 150,000

7. Commodity derivatives

Table 7.1

Commodity derivatives – classes not having a liquid market

	Asset class - Commodity Derivatives			
Sub-asset class	For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b), each sub-asset class shall be further segmented into sub-classes as defined below		**Each sub-class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria**	
			Average daily notional amount (ADNA) [quantitative liquidity criterion 1]	**Average daily number of trades** [quantitative liquidity criterion 2]
Metal commodity futures/forwards	a metal commodity future/forward sub-class is defined by the following segmentation criteria: **Segmentation criterion 1** - metal type: precious metal, non-precious metal **Segmentation criterion 2** - underlying metal **Segmentation criterion 3 -** notional currency defined as the currency in which the notional amount of the future/forward is denominated **Segmentation criterion 4 -** time to maturity bucket of the future/forward defined as follows: **Precious metals** **Maturity bucket 1:** $0 < \text{time to maturity} \leq 3$ months **Maturity bucket 2:** $3 \text{ months} < \text{time to maturity} \leq 1 \text{ year}$ **Maturity bucket 3:** $1 \text{ year} < \text{time to maturity} \leq 2 \text{ years}$ **Maturity bucket 4:** $2 \text{ years} < \text{time to maturity} \leq 3 \text{ years}$ … **Maturity bucket m:** $(n-1) \text{ years} < \text{time to maturity} \leq n \text{ years}$	**Non-precious metals** **Maturity bucket 1:** $0 < \text{time to maturity} \leq 1$ year **Maturity bucket 2:** $1 \text{ year} < \text{time to maturity} \leq 2 \text{ years}$ **Maturity bucket 3:** $2 \text{ years} < \text{time to maturity} \leq 3 \text{ years}$ … **Maturity bucket m:** $(n-1) \text{ years} < \text{time to maturity} \leq n \text{ years}$	EUR 10,000,000	10

Asset class - Commodity Derivatives				
Sub-asset class	**For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b), each sub-asset class shall be further segmented into sub-classes as defined below**		**Each sub-class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria**	
			Average daily notional amount (ADNA) [quantitative liquidity criterion 1]	**Average daily number of trades** [quantitative liquidity criterion 2]
Metal commodity options	a metal commodity option sub-class is defined by the following segmentation criteria: **Segmentation criterion 1** - metal type: precious metal, non-precious metal **Segmentation criterion 2** - underlying metal **Segmentation criterion 3 -** notional currency defined as the currency in which the notional amount of the option is denominated **Segmentation criterion 4 -** time to maturity bucket of the option defined as follows:		EUR 10,000,000	10
	Precious metals **Maturity bucket 1:** 0 < time to maturity ≤ 3 months **Maturity bucket 2:** 3 months < time to maturity ≤ 1 year **Maturity bucket 3:** 1 year < time to maturity ≤ 2 years **Maturity bucket 4:** 2 years < time to maturity ≤ 3 years … **Maturity bucket m:** (n-1) years < time to maturity ≤ n years	**Non-precious metals** **Maturity bucket 1:** 0 < time to maturity ≤ 1 year **Maturity bucket 2:** 1 year < time to maturity ≤ 2 years **Maturity bucket 3:** 2 years < time to maturity ≤ 3 years … **Maturity bucket m:** (n-1) years < time to maturity ≤ n years		

Asset class - Commodity Derivatives				
Sub-asset class	**For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b), each sub-asset class shall be further segmented into sub-classes as defined below**		**Each sub-class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria**	
			Average daily notional amount (ADNA) [quantitative liquidity criterion 1]	**Average daily number of trades** [quantitative liquidity criterion 2]
Metal commodity swaps	a metal commodity swap sub-class is defined by the following segmentation criteria: **Segmentation criterion 1** - metal type: precious metal, non-precious metal **Segmentation criterion 2** - underlying metal **Segmentation criterion 3 -** notional currency defined as the currency in which the notional amount of the swap is denominated **Segmentation criterion 4 -** settlement type defined as cash, physical or other **Segmentation criterion 5 -** time to maturity bucket of the swap defined as follows:		EUR 10,000,000	10
	Precious metals **Maturity bucket 1:** 0 < time to maturity ≤ 3 months **Maturity bucket 2:** 3 months < time to maturity ≤ 1 year **Maturity bucket 3:** 1 year < time to maturity ≤ 2 years **Maturity bucket 4:** 2 years < time to maturity ≤ 3 years … **Maturity bucket m:** (n-1) years < time to maturity ≤ n years	**Non-precious metals** **Maturity bucket 1:** 0 < time to maturity ≤ 1 year **Maturity bucket 2:** 1 year < time to maturity ≤ 2 years **Maturity bucket 3:** 2 years < time to maturity ≤ 3 years … **Maturity bucket m:** (n-1) years < time to maturity ≤ n years		

Asset class - Commodity Derivatives			
Sub-asset class	**For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b), each sub-asset class shall be further segmented into sub-classes as defined below**	**Each sub-class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria**	
		Average daily notional amount (ADNA) [quantitative liquidity criterion 1]	**Average daily number of trades** [quantitative liquidity criterion 2]
Energy commodity futures/forwards	an energy commodity future/forward sub-class is defined by the following segmentation criteria: **Segmentation criterion 1** - energy type: oil, oil distillates, coal, oil light ends, natural gas, electricity, inter-energy **Segmentation criterion 2** - underlying energy **Segmentation criterion 3 -** notional currency defined as the currency in which the notional amount of the future/forward is denominated **Segmentation criterion 4 -** load type defined as baseload, peakload, off-peak or others, applicable to energy type: electricity **Segmentation criterion 5 -** delivery/ cash settlement location applicable to energy types: oil, oil distillates, oil light ends, electricity, inter-energy **Segmentation criterion 6 -** time to maturity bucket of the future/forward defined as follows: **Oil/ Oil Distillates/ Oil Light ends** **Maturity bucket 1:** $0 <$ time to maturity ≤ 4 months **Maturity bucket 2:** 4 months $<$ time to maturity ≤ 8 months **Maturity bucket 3:** 8 months $<$ time to maturity ≤ 1 year **Maturity bucket 4:** 1 year $<$ time to maturity ≤ 2 years … **Maturity bucket m:** (n-1) years $<$ time to maturity $\leq$ n years **Coal** **Maturity bucket 1:** $0 <$ time to maturity ≤ 6 months **Maturity bucket 2:** 6 months $<$ time to maturity ≤ 1 year **Maturity bucket 3:** 1 year $<$ time to maturity ≤ 2 years … **Maturity bucket m:** (n-1) years $<$ time to maturity $\leq$ n years **Natural Gas/'Electricity/Inter-energy** **Maturity bucket 1:** $0 <$ time to maturity ≤ 1 month **Maturity bucket 2:** 1 month $<$ time to maturity ≤ 1 year **Maturity bucket 3:** 1 year $<$ time to maturity ≤ 2 years … **Maturity bucket m:** (n-1) years $<$ time to maturity $\leq$ n years	EUR 10,000,000	10

Asset class - Commodity Derivatives				
Sub-asset class	**For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b), each sub-asset class shall be further segmented into sub-classes as defined below**		**Each sub-class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria**	
			Average daily notional amount (ADNA) [quantitative liquidity criterion 1]	**Average daily number of trades** [quantitative liquidity criterion 2]
Energy commodity options	an energy commodity option sub-class is defined by the following segmentation criteria: **Segmentation criterion 1** - energy type: oil, oil distillates, coal, oil light ends, natural gas, electricity, inter-energy **Segmentation criterion 2** - underlying energy **Segmentation criterion 3 -** notional currency defined as the currency in which the notional amount of the option is denominated **Segmentation criterion 4 -** load type defined as baseload, peakload, off-peak or others, applicable to energy type: electricity **Segmentation criterion 5 -** delivery/ cash settlement location applicable to energy types: oil, oil distillates, oil light ends, electricity, inter-energy **Segmentation criterion 6 -** time to maturity bucket of the option defined as follows:		EUR 10,000,000	10
	Oil/ Oil Distillates/ Oil Light ends **Maturity bucket 1:** 0 < time to maturity ≤ 4 months **Maturity bucket 2:** 4 months < time to maturity ≤ 8 months **Maturity bucket 3:** 8 months < time to maturity ≤ 1 year **Maturity bucket 4:** 1 year < time to maturity ≤ 2 years … **Maturity bucket m:** (n-1) years < time to maturity ≤ n years	**Coal** **Maturity bucket 1:** 0 < time to maturity ≤ 6 months **Maturity bucket 2:** 6 months < time to maturity ≤ 1 year **Maturity bucket 3:** 1 year < time to maturity ≤ 2 years … **Maturity bucket m:** (n-1) years < time to maturity ≤ n years		
		Natural Gas/'Electricity/Inter-energy **Maturity bucket 1:** 0 < time to maturity ≤ 1 month **Maturity bucket 2:** 1 month < time to maturity ≤ 1 year **Maturity bucket 3:** 1 year < time to maturity ≤ 2 years … **Maturity bucket m:** (n-1) years < time to maturity ≤ n years		

Asset class - Commodity Derivatives			
Sub-asset class	**For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b), each sub-asset class shall be further segmented into sub-classes as defined below**	**Each sub-class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria**	
		Average daily notional amount (ADNA) [quantitative liquidity criterion 1]	**Average daily number of trades** [quantitative liquidity criterion 2]
Energy commodity swaps	an energy commodity swap sub-class is defined by the following segmentation criteria: **Segmentation criterion 1** - energy type: oil, oil distillates, coal, oil light ends, natural gas, electricity, inter-energy **Segmentation criterion 2** - underlying energy **Segmentation criterion 3 -** notional currency defined as the currency in which the notional amount of the swap is denominated **Segmentation criterion 4 -** settlement type defined as cash, physical or other **Segmentation criterion 5 -** load type defined as baseload, peakload, off-peak or others, applicable to energy type: electricity **Segmentation criterion 6 -** delivery/ cash settlement location applicable to energy types: oil, oil distillates, oil light ends, electricity, inter-energy **Segmentation criterion 7 -** time to maturity bucket of the swap defined as follows:	EUR 10,000,000	10

Oil/ Oil Distillates/ Oil Light ends	**Coal**	**Natural Gas/'Electricity/Inter-energy**
Maturity bucket 1: $0 <$ time to maturity ≤ 4 months	**Maturity bucket 1:** $0 <$ time to maturity ≤ 6 months	**Maturity bucket 1:** $0 <$ time to maturity ≤ 1 month
Maturity bucket 2: 4 months $<$ time to maturity ≤ 8 months	**Maturity bucket 2:** 6 months $<$ time to maturity ≤ 1 year	**Maturity bucket 2:** 1 month $<$ time to maturity ≤ 1 year
Maturity bucket 3: 8 months $<$ time to maturity ≤ 1 year	**Maturity bucket 3:** 1 year $<$ time to maturity ≤ 2 years	**Maturity bucket 3:** 1 year $<$ time to maturity ≤ 2 years
Maturity bucket 4: 1 year $<$ time to maturity ≤ 2 years	…	…
…	**Maturity bucket m:** (n-1) years $<$ time to maturity $\leq$ n years	**Maturity bucket m:** (n-1) years $<$ time to maturity $\leq$ n years
Maturity bucket m: (n-1) years $<$ time to maturity $\leq$ n years		

Asset class - Commodity Derivatives			
Sub-asset class	**For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b), each sub-asset class shall be further segmented into sub-classes as defined below**	**Each sub-class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria**	
		Average daily notional amount (ADNA) [quantitative liquidity criterion 1]	**Average daily number of trades** [quantitative liquidity criterion 2]
Agricultural commodity futures/forwards	an agricultural commodity future/forward sub-class is defined by the following segmentation criteria: **Segmentation criterion 1** - underlying agricultural commodity **Segmentation criterion 2** - notional currency defined as the currency in which the notional amount of the future/forward is denominated **Segmentation criterion 3** - time to maturity bucket of the future/forward defined as follows: **Maturity bucket 1:** 0 < time to maturity ≤ 3 months **Maturity bucket 2:** 3 months < time to maturity ≤ 6 months **Maturity bucket 3:** 6 months < time to maturity ≤ 1 year **Maturity bucket 4:** 1 year < time to maturity ≤ 2 years … **Maturity bucket m:** (n-1) years < time to maturity ≤ n years	EUR 10,000,000	10
Agricultural commodity options	an agricultural commodity option sub-class is defined by the following segmentation criteria: **Segmentation criterion 1** - underlying agricultural commodity **Segmentation criterion 2** - notional currency defined as the currency in which the notional amount of the option is denominated **Segmentation criterion 3** - time to maturity bucket of the option defined as follows: **Maturity bucket 1:** 0 < time to maturity ≤ 3 months **Maturity bucket 2:** 3 months < time to maturity ≤ 6 months **Maturity bucket 3:** 6 months < time to maturity ≤ 1 year **Maturity bucket 4:** 1 year < time to maturity ≤ 2 years … **Maturity bucket m:** (n-1) years < time to maturity ≤ n years	EUR 10,000,000	10

Asset class - Commodity Derivatives			
Sub-asset class	**For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b), each sub-asset class shall be further segmented into sub-classes as defined below**	**Each sub-class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria**	
		Average daily notional amount (ADNA) [quantitative liquidity criterion 1]	**Average daily number of trades** [quantitative liquidity criterion 2]
Agricultural commodity swaps	an agricultural commodity swap sub-class is defined by the following segmentation criteria: **Segmentation criterion 1** - underlying agricultural commodity **Segmentation criterion 2 -** notional currency defined as the currency in which the notional amount of the swap is denominated **Segmentation criterion 3 -** settlement type defined as cash, physical or other **Segmentation criterion 4 -** time to maturity bucket of the swap defined as follows: **Maturity bucket 1:** 0 < time to maturity ≤ 3 months **Maturity bucket 2:** 3 months < time to maturity ≤ 6 months **Maturity bucket 3:** 6 months < time to maturity ≤ 1 year **Maturity bucket 4:** 1 year < time to maturity ≤ 2 years … **Maturity bucket m:** (n-1) years < time to maturity ≤ n years	EUR 10,000,000	10
Sub-asset class	**For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b) the following methodology shall be applied**		
Other commodity derivatives a commodity derivative that does not belong to any of the above sub-asset classes	any other commodity derivative is considered not to have a liquid market		

Table 7.2

Commodity derivatives – pre-trade and post-trade SSTI and LIS thresholds for sub-classes determined to have a liquid market

Asset class - Commodity Derivatives											
	Percentiles and threshold floors to be applied for the calculation of the pre-trade and post-trade SSTI and LIS thresholds for the sub-classes determined to have a liquid market										
Sub-asset class	Transactions to be considered for the calculations of the thresholds	SSTI pre-trade		LIS pre-trade		SSTI post-trade			LIS post-trade		
		Trade - percentile	Threshold floor	Trade - percentile	Threshold floor	Trade - percentile	Volume - percentile	Threshold floor	Trade - percentile	Volume - percentile	Threshold floor
Metal commodity futures/forwards	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	60	EUR 250,000	70	EUR 500,000	80	60	EUR 750,000	90	70	EUR 1,000,000
Metal commodity options	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	60	EUR 250,000	70	EUR 500,000	80	60	EUR 750,000	90	70	EUR 1,000,000
Metal commodity swaps	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	60	EUR 250,000	70	EUR 500,000	80	60	EUR 750,000	90	70	EUR 1,000,000

Asset class - Commodity Derivatives											
	Percentiles and threshold floors to be applied for the calculation of the pre-trade and post-trade SSTI and LIS thresholds for the sub-classes determined to have a liquid market										
Sub-asset class	Transactions to be considered for the calculations of the thresholds	SSTI pre-trade		LIS pre-trade		SSTI post-trade			LIS post-trade		
		Trade - percentile	Threshold floor	Trade - percentile	Threshold floor	Trade - percentile	Volume - percentile	Threshold floor	Trade - percentile	Volume - percentile	Threshold floor
Energy commodity futures/forwards	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	60	EUR 250,000	70	EUR 500,000	80	60	EUR 750,000	90	70	EUR 1,000,000
Energy commodity options	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	60	EUR 250,000	70	EUR 500,000	80	60	EUR 750,000	90	70	EUR 1,000,000
Energy commodity swaps	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	60	EUR 250,000	70	EUR 500,000	80	60	EUR 750,000	90	70	EUR 1,000,000
Agricultural commodity futures/forwards	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	60	EUR 250,000	70	EUR 500,000	80	60	EUR 750,000	90	70	EUR 1,000,000

Asset class - Commodity Derivatives											
	Percentiles and threshold floors to be applied for the calculation of the pre-trade and post-trade SSTI and LIS thresholds for the sub-classes determined to have a liquid market										
Sub-asset class	Transactions to be considered for the calculations of the thresholds	SSTI pre-trade		LIS pre-trade		SSTI post-trade			LIS post-trade		
		Trade - percentile	Threshold floor	Trade - percentile	Threshold floor	Trade - percentile	Volume - percentile	Threshold floor	Trade - percentile	Volume - percentile	Threshold floor
Agricultural commodity options	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	60	EUR 250,000	70	EUR 500,000	80	60	EUR 750,000	90	70	EUR 1,000,000
Agricultural commodity swaps	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	60	EUR 250,000	70	EUR 500,000	80	60	EUR 750,000	90	70	EUR 1,000,000

Table 7.3

Commodity derivatives – pre-trade and post-trade SSTI and LIS thresholds for sub-classes determined not to have a liquid market

Asset class - Commodity Derivatives				
	Pre-trade and post-trade SSTI and LIS thresholds for the sub-classes determined not to have a liquid market			
Sub-asset class	SSTI pre-trade	LIS pre-trade	SSTI post-trade	LIS post-trade
	Threshold value	Threshold value	Threshold value	Threshold value
Metal commodity futures/forwards	EUR 250,000	EUR 500,000	EUR 750,000	EUR 1,000,000
Metal commodity options	EUR 250,000	EUR 500,000	EUR 750,000	EUR 1,000,000
Metal commodity swaps	EUR 250,000	EUR 500,000	EUR 750,000	EUR 1,000,000
Energy commodity futures/forwards	EUR 250,000	EUR 500,000	EUR 750,000	EUR 1,000,000
Energy commodity options	EUR 250,000	EUR 500,000	EUR 750,000	EUR 1,000,000

Asset class - Commodity Derivatives				
	Pre-trade and post-trade SSTI and LIS thresholds for the sub-classes determined not to have a liquid market			
Sub-asset class	SSTI pre-trade	LIS pre-trade	SSTI post-trade	LIS post-trade
	Threshold value	Threshold value	Threshold value	Threshold value
Energy commodity swaps	EUR 250,000	EUR 500,000	EUR 750,000	EUR 1,000,000
Agricultural commodity futures/forwards	EUR 250,000	EUR 500,000	EUR 750,000	EUR 1,000,000
Agricultural commodity options	EUR 250,000	EUR 500,000	EUR 750,000	EUR 1,000,000
Agricultural commodity swaps	EUR 250,000	EUR 500,000	EUR 750,000	EUR 1,000,000
Other commodity derivatives	EUR 250,000	EUR 500,000	EUR 750,000	EUR 1,000,000

8. *Foreign exchange derivatives*

Table 8.1

Foreign exchange derivatives – classes not having a liquid market

Asset class - Foreign Exchange Derivatives				
a financial instrument relating to currencies as defined in Section C(4) of Annex I of Directive 2014/65/EU				
Sub-asset class	**For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b), each sub-asset class shall be further segmented into sub-classes as defined below**		**Each sub-class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria**	
			Average daily notional amount (ADNA) [quantitative liquidity criterion 1]	**Average daily number of trades** [quantitative liquidity criterion 2]
Non-deliverable forward (NDF) means a forward that, by its terms, is cash-settled between its counterparties, where the settlement amount is determined by the difference in the exchange rate of two currencies as between the trade date and the valuation date. On the settlement date, one party will owe the other party the net difference between (i) the exchange rate set at the trade date; and (ii) the exchange rate on the valuation date, based upon the notional amount, with such net amount payable in the settlement currency stipulated in the contract.	a non-deliverable FX forward sub-class is defined by the following segmentation criteria: **Segmentation criterion 1 -** underlying currency pair defined as combination of the two currencies underlying the derivative contract **Segmentation criterion 2** - time to maturity bucket of the forward defined as follows: **Maturity bucket 1:** 0 < time to maturity ≤ 1 week **Maturity bucket 2:** 1 week < time to maturity ≤ 3 months **Maturity bucket 3:** 3 months < time to maturity ≤ 1 year **Maturity bucket 4:** 1 year < time to maturity ≤ 2 years **Maturity bucket 5:** 2 years < time to maturity ≤ 3 years … **Maturity bucket m:** (n-1) years < time to maturity ≤ n years		Non-deliverable forward (NDF) are considered not to have a liquid market	

Asset class - Foreign Exchange Derivatives			
Sub-asset class	**For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b), each sub-asset class shall be further segmented into sub-classes as defined below**	**Each sub-class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria**	
		Average daily notional amount (ADNA) [quantitative liquidity criterion 1]	**Average daily number of trades** [quantitative liquidity criterion 2]
Deliverable forward (DF) means a forward that solely involves the exchange of two different currencies on a specific future contracted settlement date at a fixed rate agreed upon on the inception of the contract covering the exchange.	a deliverable FX forward sub-class is defined by the following segmentation criteria: **Segmentation criterion 1 -** underlying currency pair defined as combination of the two currencies underlying the derivative contract **Segmentation criterion 2** - time to maturity bucket of the forward defined as follows: **Maturity bucket 1:** 0 < time to maturity ≤ 1 week **Maturity bucket 2:** 1 week < time to maturity ≤ 3 months **Maturity bucket 3:** 3 months < time to maturity ≤ 1 year **Maturity bucket 4:** 1 year < time to maturity ≤ 2 years **Maturity bucket 5:** 2 years < time to maturity ≤ 3 years … **Maturity bucket m:** (n-1) years < time to maturity ≤ n years	Deliverable forward (DF) are considered not to have a liquid market	
Non-Deliverable FX options (NDO) means an option that, by its terms, is cash-settled between its counterparties, where the settlement amount is determined by the difference in the exchange rate of two currencies as between the trade date and the valuation date. On the settlement date, one party will owe the other party the net difference between (i) the exchange rate set at the trade date; and (ii) the exchange rate on the valuation date, based upon the notional amount, with such net amount payable in the settlement currency stipulated in the contract.	a non-deliverable FX option sub-class is defined by the following segmentation criteria: **Segmentation criterion 1 -** underlying currency pair defined as combination of the two currencies underlying the derivative contract **Segmentation criterion 2** - time to maturity bucket of the option defined as follows: **Maturity bucket 1:** 0 < time to maturity ≤ 1 week **Maturity bucket 2:** 1 week < time to maturity ≤ 3 months **Maturity bucket 3:** 3 months < time to maturity ≤ 1 year **Maturity bucket 4:** 1 year < time to maturity ≤ 2 years **Maturity bucket 5:** 2 years < time to maturity ≤ 3 years … **Maturity bucket m:** (n-1) years < time to maturity ≤ n years	Non-Deliverable FX options (NDO) are considered not to have a liquid market	

Asset class - Foreign Exchange Derivatives				
			Each sub-class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria	
Sub-asset class	For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b), each sub-asset class shall be further segmented into sub-classes as defined below		**Average daily notional amount (ADNA)** [quantitative liquidity criterion 1]	**Average daily number of trades** [quantitative liquidity criterion 2]
Deliverable FX options (DO) means an option that solely involves the exchange of two different currencies on a specific future contracted settlement date at a fixed rate agreed upon on the inception of the contract covering the exchange.	a deliverable FX option sub-class is defined by the following segmentation criteria: **Segmentation criterion 1 -** underlying currency pair defined as combination of the two currencies underlying the derivative contract **Segmentation criterion 2** - time to maturity bucket of the option defined as follows: **Maturity bucket 1:** 0 < time to maturity ≤ 1 week **Maturity bucket 2:** 1 week < time to maturity ≤ 3 months **Maturity bucket 3:** 3 months < time to maturity ≤ 1 year **Maturity bucket 4:** 1 year < time to maturity ≤ 2 years **Maturity bucket 5:** 2 years < time to maturity ≤ 3 years … **Maturity bucket m:** (n-1) years < time to maturity ≤ n years		Deliverable FX options (DO) are considered not to have a liquid market	
Non-Deliverable FX swaps (NDS) means a swap that, by its terms, is cash-settled between its counterparties, where the settlement amount is determined by the difference in the exchange rate of two currencies as between the trade date and the valuation date. On the settlement date, one party will owe the other party the net difference between (i) the exchange rate set at the trade date; and (ii) the exchange rate on the valuation date, based upon the notional amount, with such net amount payable in the settlement currency stipulated in the contract.	a non-deliverable FX swap sub-class is defined by the following segmentation criteria: **Segmentation criterion 1 -** underlying currency pair defined as combination of the two currencies underlying the derivative contract **Segmentation criterion 2** - time to maturity bucket of the swap defined as follows: **Maturity bucket 1:** 0 < time to maturity ≤ 1 week **Maturity bucket 2:** 1 week < time to maturity ≤ 3 months **Maturity bucket 3:** 3 months < time to maturity ≤ 1 year **Maturity bucket 4:** 1 year < time to maturity ≤ 2 years **Maturity bucket 5:** 2 years < time to maturity ≤ 3 years … **Maturity bucket m:** (n-1) years < time to maturity ≤ n years		Non-Deliverable FX swaps (NDS) are considered not to have a liquid market	

Asset class - Foreign Exchange Derivatives				
			Each sub-class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria	
Sub-asset class	For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b), each sub-asset class shall be further segmented into sub-classes as defined below		**Average daily notional amount (ADNA)** [quantitative liquidity criterion 1]	**Average daily number of trades** [quantitative liquidity criterion 2]
Deliverable FX swaps (DS) means a swap that solely involves the exchange of two different currencies on a specific future contracted settlement date at a fixed rate agreed upon on the inception of the contract covering the exchange.	a deliverable FX swap sub-class is defined by the following segmentation criteria: **Segmentation criterion 1 -** underlying currency pair defined as combination of the two currencies underlying the derivative contract **Segmentation criterion 2** - time to maturity bucket of the swap defined as follows: **Maturity bucket 1:** 0 < time to maturity ≤ 1 week **Maturity bucket 2:** 1 week < time to maturity ≤ 3 months **Maturity bucket 3:** 3 months < time to maturity ≤ 1 year **Maturity bucket 4:** 1 year < time to maturity ≤ 2 years **Maturity bucket 5:** 2 years < time to maturity ≤ 3 years … **Maturity bucket m:** (n-1) years < time to maturity ≤ n years		Deliverable FX swaps (DS) are considered not to have a liquid market	
FX futures	an FX future sub-class is defined by the following segmentation criteria: **Segmentation criterion 1 -** underlying currency pair defined as combination of the two currencies underlying the derivative contract **Segmentation criterion 2** - time to maturity bucket of the future defined as follows: **Maturity bucket 1:** 0 < time to maturity ≤ 1 week **Maturity bucket 2:** 1 week < time to maturity ≤ 3 months **Maturity bucket 3:** 3 months < time to maturity ≤ 1 year **Maturity bucket 4:** 1 year < time to maturity ≤ 2 years **Maturity bucket 5:** 2 years < time to maturity ≤ 3 years … **Maturity bucket m:** (n-1) years < time to maturity ≤ n years		FX futures are considered not to have a liquid market	

Asset class - Foreign Exchange Derivatives	
Sub-asset class	**For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b) the following methodology shall be applied**
Other Foreign Exchange Derivatives an FX derivative that does not belong to any of the above sub-asset classes	any other FX derivative is considered not to have a liquid market

Table 8.2

Foreign exchange derivatives – pre-trade and post-trade SSTI and LIS thresholds for sub-classes determined not to have a liquid market

Asset class - Foreign Exchange Derivatives				
	Pre-trade and post-trade SSTI and LIS thresholds for the sub-classes determined not to have a liquid market			
Sub-asset class	SSTI pre-trade	LIS pre-trade	SSTI post-trade	LIS post-trade
	Threshold value	Threshold value	Threshold value	Threshold value
Non-deliverable forward (NDF)	EUR 4,000,000	EUR 5,000,000	EUR 20,000,000	EUR 25,000,000
Deliverable forward (DF)	EUR 4,000,000	EUR 5,000,000	EUR 20,000,000	EUR 25,000,000
Non-Deliverable FX options (NDO)	EUR 4,000,000	EUR 5,000,000	EUR 20,000,000	EUR 25,000,000
Deliverable FX options (DO)	EUR 4,000,000	EUR 5,000,000	EUR 20,000,000	EUR 25,000,000
Non-Deliverable FX swaps (NDS)	EUR 4,000,000	EUR 5,000,000	EUR 20,000,000	EUR 25,000,000
Deliverable FX swaps (DS)	EUR 4,000,000	EUR 5,000,000	EUR 20,000,000	EUR 25,000,000
FX futures	EUR 4,000,000	EUR 5,000,000	EUR 20,000,000	EUR 25,000,000
Other Foreign Exchange Derivatives	EUR 4,000,000	EUR 5,000,000	EUR 20,000,000	EUR 25,000,000

9. Credit derivatives

Table 9.1

Credit derivatives – classes not having a liquid market

Asset class - Credit Derivatives				
		Each sub-class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria. For sub-classes determined to have a liquid market the additional qualitative liquidity criterion, where applicable, shall be applied		
Sub-asset class	For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b), each sub-asset class shall be further segmented into sub-classes as defined below	Average daily notional amount (ADNA) [quantitative liquidity criterion 1]	Average daily number of trades [quantitative liquidity criterion 2]	On-the-run status of the index [Additional qualitative liquidity criterion]
Index credit default swap (CDS) a swap whose exchange of cash flows is linked to the creditworthiness of several issuers of financial instruments composing an index and the occurrence of credit events	an index credit default swap sub-class is defined by the following segmentation criteria: **Segmentation criterion 1** - underlying index **Segmentation criterion 2** - notional currency defined as the currency in which the notional amount of the derivative is denominated **Segmentation criterion 3** - time maturity bucket of the CDS defined as follows: **Maturity bucket 1:** 0 < time to maturity ≤ 1 year **Maturity bucket 2:** 1 year < time to maturity ≤ 2 years **Maturity bucket 3:** 2 years < time to maturity ≤ 3 years … **Maturity bucket m:** (n-1) years < time to maturity ≤ n years	EUR 200,000,000	10	The underlying index is considered to have a liquid market: (1) during the whole period of its 'on-the-run status' (2) for the first 30 working days of its '1x off-the-run status' 'on-the-run' index means the rolling most recent version (series) of the index created on the date on which the composition of the index is effective and ending one day prior to the date on which the composition of the next version (series) of the index is effective. '1x off-the-run status' means the version (series) of the index which is immediately prior to the current 'on-the-run' version (series) at a certain point in time. A version (series) ceases being 'on-the-run' and acquires its '1x off-the-run' status when the latest version (series) of the index is created.

Asset class - Credit Derivatives				
Sub-asset class	For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b), each sub-asset class shall be further segmented into sub-classes as defined below	Each sub-class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria. For sub-classes determined to have a liquid market the additional qualitative liquidity criterion, where applicable, shall be applied		
		Average daily notional amount (ADNA) [quantitative liquidity criterion 1]	Average daily number of trades [quantitative liquidity criterion 2]	On-the-run status of the index [Additional qualitative liquidity criterion]
Single name credit default swap (CDS) a swap whose exchange of cash flows is linked to the creditworthiness of one issuer of financial instruments and the occurrence of credit events	a single name credit default swap sub-class is defined by the following segmentation criteria: **Segmentation criterion 1** - underlying reference entity **Segmentation criterion 2** - underlying reference entity type defined as follows: "Issuer of sovereign and public type" means an issuer entity which is either: (a) the Union; (b) a Member State including a government department, an agency or a special purpose vehicle of a Member State; (c) a sovereign entity which is not listed under points (a) and (b). in the case of a Federal Member State, a member of the federation; (d) in the case of a federal Member State, a member of that federation; (e) a special purpose vehicle for several Member States; (f) an international financial institution established by two or more Member States which have the purpose of mobilising funding and providing financial assistance to the benefit of its members that are experiencing or are threatened by severe financial problems; (g) the European Investment Bank; (h) a public entity which is not an issuer of a sovereign issuer as specified in the points (a) to (c). "Issuer of corporate type" means an issuer entity which is not an issuer of sovereign and public type. **Segmentation criterion 3** - notional currency defined as the currency in which the notional amount of the derivative is denominated **Segmentation criterion 4** - time maturity bucket of the CDS defined as follows: **Maturity bucket 1:** 0 < time to maturity ≤ 1 year **Maturity bucket 2:** 1 year < time to maturity ≤ 2 years **Maturity bucket 3:** 2 years < time to maturity ≤ 3 years … **Maturity bucket m:** (n-1) years < time to maturity ≤ n years	EUR 10,000,000	10	

Asset class - Credit Derivatives		
Sub-asset class	**For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b), each sub-asset class shall be further segmented into sub-classes as defined below**	**Each sub-class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet the following qualitative liquidity criterion**
CDS index options an option whose underlying is a CDS index	a CDS index option sub-class is defined by the following segmentation criteria: **Segmentation criterion 1 -** CDS index sub-class as specified for the sub-asset class of index credit default swap (CDS) **Segmentation criterion 2** - time maturity bucket of the option defined as follows: **Maturity bucket 1:** 0 < time to maturity ≤ 6 months **Maturity bucket 2:** 6 months < time to maturity ≤ 1 year **Maturity bucket 3:** 1 year < time to maturity ≤ 2 years **Maturity bucket 4:** 2 years < time to maturity ≤ 3 years … **Maturity bucket m:** (n-1) years < time to maturity ≤ n years	a CDS index option whose underlying CDS index is a sub-class determined to have a liquid market and whose time to maturity bucket is 0-6 months is considered to have a liquid market a CDS index option whose underlying CDS index is a sub-class determined to have a liquid market and whose time to maturity bucket is not 0-6 months is not considered to have a liquid market a CDS index option whose underlying CDS index is a sub-class determined not to have a liquid market is not considered to have a liquid market for any given time to maturity bucket
Single name CDS options an option whose underlying is a single name CDS	a single name CDS option sub-class is defined by the following segmentation criteria: **Segmentation criterion 1** - single name CDS sub-class as specified for the sub-asset class of single name CDS **Segmentation criterion 2** - time maturity bucket of the option defined as follows: **Maturity bucket 1:** 0 < time to maturity ≤ 6 months **Maturity bucket 2:** 6 months < time to maturity ≤ 1 year **Maturity bucket 3:** 1 year < time to maturity ≤ 2 years **Maturity bucket 4:** 2 years < time to maturity ≤ 3 years … **Maturity bucket m:** (n-1) years < time to maturity ≤ n years	a single name CDS option whose underlying single name CDS is a sub-class determined to have a liquid market and whose time to maturity bucket is 0-6 months is considered to have a liquid market a single name CDS option whose underlyingsingle name CDS is a sub-class determined to have a liquid market and whose time to maturity bucket is not 0-6 months is not considered to have a liquid market a single name CDS option whose underlying single name CDS is a sub-class determined not to have a liquid market is not considered to have a liquid market for any given time to maturity bucket

Asset class - Credit Derivatives

Sub-asset class	For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b) the following methodology shall apply
Other credit derivatives a credit derivative that does not belong to any of the above sub-asset classes	any other credit derivatives is considered not to have a liquid market

Table 9.2

Credit derivatives – pre-trade and post-trade SSTI and LIS thresholds for sub-classes determined to have a liquid market

Asset class - Credit Derivatives											
	Percentiles and threshold floors to be applied for the calculation of the pre-trade and post-trade SSTI and LIS thresholds for the sub-classes determined to have a liquid market										
Sub-asset class	Transactions to be considered for the calculations of the thresholds	SSTI pre-trade		LIS pre-trade		SSTI post-trade			LIS post-trade		
		Trade - percentile	Threshold floor	Trade - percentile	Threshold floor	Trade - percentile	Volume - percentile	Threshold floor	Trade - percentile	Volume - percentile	Threshold floor
Index credit default swap (CDS)	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	60	EUR 2,500,000	70	EUR 5,000,000	80	60	EUR 7,500,000	90	70	EUR 10,000,000
Single name credit default swap (CDS)	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	60	EUR 2,500,000	70	EUR 5,000,000	80	60	EUR 7,500,000	90	70	EUR 10,000,000
Bespoke basket credit default swap (CDS)	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	60	EUR 2,500,000	70	EUR 5,000,000	80	60	EUR 7,500,000	90	70	EUR 10,000,000

Asset class - Credit Derivatives										
Sub-asset class	Percentiles and threshold floors to be applied for the calculation of the pre-trade and post-trade SSTI and LIS thresholds for the sub-classes determined to have a liquid market									
	Transactions to be considered for the calculations of the thresholds	SSTI pre-trade		LIS pre-trade		SSTI post-trade			LIS post-trade		
		Trade - percentile	Threshold floor	Trade - percentile	Threshold floor	Trade - percentile	Volume - percentile	Threshold floor	Trade - percentile	Volume - percentile	Threshold floor
CDS index options	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	60	EUR 2,500,000	70	EUR 5,000,000	80	60	EUR 7,500,000	90	70	EUR 10,000,000
Single name CDS options	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	60	EUR 2,500,000	70	EUR 5,000,000	80	60	EUR 7,500,000	90	70	EUR 10,000,000

Table 9.3

Credit derivatives – pre-trade and post-trade SSTI and LIS thresholds for sub-classes determined not to have a liquid market

Asset class - Credit Derivatives				
	Pre-trade and post-trade SSTI and LIS thresholds for the sub-classes determined not to have a liquid market			
Sub-asset class	SSTI pre-trade	LIS pre-trade	SSTI post-trade	LIS post-trade
	Threshold value	Threshold value	Threshold value	Threshold value
Index credit default swap (CDS)	EUR 2,500,000	EUR 5,000,000	EUR 7,500,000	EUR 10,000,000
Single name credit default swap (CDS)	EUR 2,500,000	EUR 5,000,000	EUR 7,500,000	EUR 10,000,000
Bespoke basket credit default swap (CDS)	EUR 2,500,000	EUR 5,000,000	EUR 7,500,000	EUR 10,000,000
CDS index options	EUR 2,500,000	EUR 5,000,000	EUR 7,500,000	EUR 10,000,000
Single name CDS options	EUR 2,500,000	EUR 5,000,000	EUR 7,500,000	EUR 10,000,000
Other credit derivatives	EUR 2,500,000	EUR 5,000,000	EUR 7,500,000	EUR 10,000,000

10. C10 derivatives

Table 10.1

C10 derivatives – classes not having a liquid market

Asset class - C10 Derivatives			
Sub-asset class	**For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Article 6 and 8(b), each sub-asset class shall be further segmented into sub-classes as defined below**	**Each sub-class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria**	
		Average daily notional amount (ADNA) [quantitative liquidity criterion 1]	**Average daily number of trades** [quantitative liquidity criterion 2]
Freight derivatives a financial instrument relating to freight rates as defined in Section C(10) of Annex I of Directive 2014/65/EU	a freight derivative sub-class is defined by the following segmentation criteria: **Segmentation criterion 1** - contract type: Forward Freight Agreements (FFAs) or options **Segmentation criterion 2** - freight type: wet freight, dry freight **Segmentation criterion 3** - freight sub-type: dry bulk carriers, tanker, containership **Segmentation criterion 4** - specification of the size related to the freight sub-type **Segmentation criterion 5** - specific route or time charter average **Segmentation criterion 6** - time maturity bucket of the derivative defined as follows: **Maturity bucket 1:** 0 < time to maturity ≤ 1 month **Maturity bucket 2:** 1 month < time to maturity ≤ 3 months **Maturity bucket 3:** 3 months < time to maturity ≤ 6 months **Maturity bucket 4:** 6 months < time to maturity ≤ 9 months **Maturity bucket 5:** 9 months < time to maturity ≤ 1 year **Maturity bucket 6:** 1 year < time to maturity ≤ 2 years **Maturity bucket 7:** 2 years < time to maturity ≤ 3 years … **Maturity bucket m:** (n-1) years < time to maturity ≤ n years	EUR 10,000,000	10

Asset class - C10 Derivatives	
Sub-asset class	**For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b) the following methodology shall be applied**
Other C10 derivatives a financial instrument as defined in Section C(10) of Annex I of Directive 2014/65/EU which is not a 'Freight derivative', any of the following interest rate derivatives sub-asset classes: 'Inflation multi currency swap or cross-currency swap', a 'Future/forward on inflation multi currency swaps or cross-currency swaps', an 'Inflation sinlgle currency swap', a 'Future/forward on inflation sinlgle currency swap' and any of the following equity derivatives sub-asset classes: a 'Volatility index option', a 'Volatility index future/forward', a swap with parameter return variance, a swap with parameter return volatility, a portfolio swap with parameter return variance, a portfolio swap with parameter return volatility	any other C10 derivatives is considered not to have a liquid market

Table 10.2

C10 derivatives – pre-trade and post-trade SSTI and LIS thresholds for sub-classes determined to have a liquid market

Asset class - C10 Derivatives											
Sub-asset class	Percentiles and threshold floors to be applied for the calculation of the pre-trade and post-trade SSTI and LIS thresholds for the sub-classes determined to have a liquid market										
	Transactions to be considered for the calculations of the thresholds	SSTI pre-trade		LIS pre-trade		SSTI post-trade			LIS post-trade		
		Trade - percentile	Threshold floor	Trade - percentile	Threshold floor	Trade - percentile	Volume - percentile	Threshold floor	Trade - percentile	Volume - percentile	Threshold floor
Freight derivatives	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	60	EUR 25,000	70	EUR 50,000	80	60	EUR 75,000	90	70	EUR 100,000

Table 10.3

C10 derivatives – pre-trade and post-trade SSTI and LIS thresholds for sub-classes determined not to have a liquid market

Asset class - C10 Derivatives				
Sub-asset class	Pre-trade and post-trade SSTI and LIS thresholds for the sub-classes determined not to have a liquid market			
	SSTI pre-trade	LIS pre-trade	SSTI post-trade	LIS post-trade
	Threshold value	Threshold value	Threshold value	Threshold value
Freight derivatives	EUR 25,000	EUR 50,000	EUR 75,000	EUR 100,000
Other C10 derivatives	EUR 25,000	EUR 50,000	EUR 75,000	EUR 100,000

11. Financial contracts for differences (CFDs)

Table 11.1

CFDs – classes not having a liquid market

Asset class - Financial contracts for differences (CFDs)				
a derivative contract that gives the holder an exposure, which can be long or short, to the difference between the price of an underlying asset at the start of the contract and the price when the contract is closed				
Sub-asset class	For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b), each sub-asset class shall be further segmented into sub-classes as defined below	Each sub-class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria or, where applicable, if it does not meet the qualitative liquidity criterion as defined below		
		Qualitative liquidity criterion	Average daily notional amount (ADNA) [quantitative liquidity criterion 1]	Average daily number of trades [quantitative liquidity criterion 2]
Currency CFDs	a currency CFD sub-class is defined by the underlying currency pair defined as combination of the two currencies underlying the CFD/spread betting contract		EUR 50,000,000	100
Commodity CFDs	a commodity CFD sub-class is defined by the underlying commodity of the CFD/spread betting contract		EUR 50,000,000	100

Asset class - Financial contracts for differences (CFDs)				
Sub-asset class	For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b), each sub-asset class shall be further segmented into sub-classes as defined below	Each sub-class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria or, where applicable, if it does not meet the qualitative liquidity criterion as defined below		
		Qualitative liquidity criterion	Average daily notional amount (ADNA) [quantitative liquidity criterion 1]	Average daily number of trades [quantitative liquidity criterion 2]
Equity CFDs	an equity CFD sub-class is defined by the underlying equity security of the CFD/spread betting contract	an equity CFD sub-class is considered to have a liquid market if the underlying is an equity security for which there is a liquid market as determined in accordance with Article 2(1)(17)(b) of Regulation 600/2014		
Bond CFDs	a bond CFD sub-class is defined by the underlying bond or bond future of the CFD/spread betting contract	a bond CFD sub-class is considered to have a liquid market if the underlying is a bond or bond future for which there is a liquid market as determined in accordance with Articles 6 and 8(1)(b).		
CFDs on an equity future/forward	a CFD on an equity future/forward sub-class is defined by the underlying future/forward on an equity of the CFD/spread betting contract	a CFD on an equity future/forward sub-class is considered to have a liquid market if the underlying is an equity future/forward for which there is a liquid market as determined in accordance with Articles 6 and 8(1)(b).		
CFDs on an equity option	a CFD on an equity option sub-class is defined by the underlying option on an equity of the CFD/spread betting contract	a CFD on an equity option sub-class is considered to have a liquid market if the underlying is an equity option for which there is a liquid market as determined in accordance with Articles 6 and 8(1)(b).		

Asset class - Financial contracts for differences (CFDs)	
Sub-asset class	**For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b) the following methodology shall be applied**
Other CFDs a CFD/spread betting that does not belong to any of the above sub-asset classes	any other CFD/spread betting is considered not to have a liquid market

Table 11.2

CFDs– pre-trade and post-trade SSTI and LIS thresholds for sub-classes determined to have a liquid market

Asset class - Financial contracts for differences (CFDs)											
	Percentiles and threshold floors to be applied for the calculation of the pre-trade and post-trade SSTI and LIS thresholds for the sub-classes determined to have a liquid market										
Sub-asset class	Transactions to be considered for the calculations of the thresholds	SSTI pre-trade		LIS pre-trade		SSTI post-trade			LIS post-trade		
		Trade - percentile	Threshold floor	Trade - percentile	Threshold floor	Trade - percentile	Volume - percentile	Threshold floor	Trade - percentile	Volume - percentile	Threshold floor
Currency CFDs	transactions executed on currency CFDs considered to have a liquid market as per Articles 6 and 8(1)(b)	60	EUR 50,000	70	EUR 60,000	80	60	EUR 90,000	90	70	EUR 100,000
Commodity CFDs	transactions executed on commodity CFDs considered to have a liquid market as per Articles 6 and 8(1)(b)	60	EUR 50,000	70	EUR 60,000	80	60	EUR 90,000	90	70	EUR 100,000
Equity CFDs	transactions executed on equity CFDs considered to have a liquid market as per Articles 6 and 8(1)(b)	60	EUR 50,000	70	EUR 60,000	80	60	EUR 90,000	90	70	EUR 100,000
Bond CFDs	transactions executed on equity CFDs considered to have a liquid market as per Articles 6 and 8(1)(b)	60	EUR 50,000	70	EUR 60,000	80	60	EUR 90,000	90	70	EUR 100,000

	Asset class - Financial contracts for differences (CFDs)										
	Percentiles and threshold floors to be applied for the calculation of the pre-trade and post-trade SSTI and LIS thresholds for the sub-classes determined to have a liquid market										
Sub-asset class	Transactions to be considered for the calculations of the thresholds	SSTI pre-trade		LIS pre-trade		SSTI post-trade			LIS post-trade		
		Trade - percentile	Threshold floor	Trade - percentile	Threshold floor	Trade - percentile	Volume - percentile	Threshold floor	Trade - percentile	Volume - percentile	Threshold floor
CFDs on an equity future/forward	transactions executed on CFDs on future on an equity considered to have a liquid market as per Articles 6 and 8(1)(b)	60	EUR 50,000	70	EUR 60,000	80	60	EUR 90,000	90	70	EUR 100,000
CFDs on an equity option	transactions executed on CFDs on option on an equity considered to have a liquid market as per Articles 6 and 8(1)(b)	60	EUR 50,000	70	EUR 60,000	80	60	EUR 90,000	90	70	EUR 100,000

Table 11.3

CFDs– pre-trade and post-trade SSTI and LIS thresholds for sub-classes determined not to have a liquid market

Asset class - Financial contracts for differences (CFDs)			
Pre-trade and post-trade SSTI and LIS thresholds for the sub-classes determined not to have a liquid market			
SSTI pre-trade	LIS pre-trade	SSTI post-trade	LIS post-trade
Sub-asset class Threshold value	Threshold value	Threshold value	Threshold value
Currency CFDs EUR 50,000	EUR 60,000	EUR 90,000	EUR 100,000
Commodity CFDs EUR 50,000	EUR 60,000	EUR 90,000	EUR 100,000
Equity CFDs EUR 50,000	EUR 60,000	EUR 90,000	EUR 100,000
Bond CFDs EUR 50,000	EUR 60,000	EUR 90,000	EUR 100,000
CFDs on an equity future/forward EUR 50,000	EUR 60,000	EUR 90,000	EUR 100,000
CFDs on an equity option EUR 50,000	EUR 60,000	EUR 90,000	EUR 100,000
Other CFDs/ spread betting EUR 50,000	EUR 60,000	EUR 90,000	EUR 100,000

12. Emission allowances

Table 12.1

Emission allowances – classes not having a liquid market

Asset class - Emission Allowances		
Sub-asset class	**Each sub-asset class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria**	
	Average daily notional amount (ADNA) [quantitative liquidity criterion 1]	**Average daily number of trades** [quantitative liquidity criterion 2]
European Union Allowances (EUA) any unit recognised for compliance with the requirements of Directive 2003/87/EC (Emissions Trading Scheme) which represents the right to emit the equivalent to one tonne of carbon dioxide equivalent (tCO2e)	150,000 tons of Carbon Dioxide	5
European Union Aviation Allowances (EUAA) any unit recognised for compliance with the requirements of Directive 2003/87/EC (Emissions Trading Scheme) which represents the right to emit the equivalent to one tonne of carbon dioxide equivalent (tCO2e) from aviation	150,000 tons of Carbon Dioxide	5
Certified Emission Reductions (CER) any unit recognised for compliance with the requirements of Directive 2003/87/EC (Emissions Trading Scheme) which represents the emissions reduction equivalent to one tonne of carbon dioxide equivalent (tCO2e)	150,000 tons of Carbon Dioxide	5
Emission Reduction Units (ERU) any unit recognised for compliance with the requirements of Directive 2003/87/EC (Emissions Trading Scheme) which represents the emissions reduction equivalent to one tonne of carbon dioxide equivalent (tCO2e)	150,000 tons of Carbon Dioxide	5

Asset class - Emission Allowances	
Sub-asset class	**For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b) the following methodology shall be applied**
Other Emission Allowances an emission allowance that does not belong to any of the above sub-asset classes	any other emission allowance is considered not to have a liquid market

Table 12.2

Emission allowances – pre-trade and post-trade SSTI and LIS thresholds for sub-asset classes determined to have a liquid market

		Asset class - Emission Allowances							
		Percentiles and threshold floors to be applied for the calculation of the pre-trade and post-trade SSTI and LIS thresholds for the sub-asset classes determined to have a liquid market							
Sub-asset class	Transactions to be considered for the calculation of the thresholds	SSTI pre-trade		LIS pre-trade		SSTI post-trade		LIS post-trade	
		Trade - percentile	Threshold floor	Trade - percentile	Threshold floor	Trade - percentile	Threshold floor	Trade - percentile	Threshold floor
European Union Allowances (EUA)	transactions executed on all European Union Allowances (EUA)	60	40,000 tons of Carbon Dioxide	70	50,000 tons of Carbon Dioxide	80	90,000 tons of Carbon Dioxide	90	100,000 tons of Carbon Dioxide
European Union Aviation Allowances (EUAA)	transactions executed on all European Union Aviation Allowance (EUAA)	60	20,000 tons of Carbon Dioxide	70	25,000 tons of Carbon Dioxide	80	40,000 tons of Carbon Dioxide	90	50,000 tons of Carbon Dioxide
Certified Emission Reductions (CER)	transactions executed on all Certified Emission Reductions (CER)	60	20,000 tons of Carbon Dioxide	70	25,000 tons of Carbon Dioxide	80	40,000 tons of Carbon Dioxide	90	50,000 tons of Carbon Dioxide
Emission Reduction Units (ERU)	transactions executed on all Emission Reduction Units (ERU)	60	20,000 tons of Carbon Dioxide	70	25,000 tons of Carbon Dioxide	80	40,000 tons of Carbon Dioxide	90	50,000 tons of Carbon Dioxide

Table 12.3

Emission allowances – pre-trade and post-trade SSTI and LIS thresholds for sub-asset classes determined not to have a liquid market

	Asset class - Emission Allowances			
	Pre-trade and post-trade SSTI and LIS thresholds for the sub-classes determined not to have a liquid market			
Sub-asset class	SSTI pre-trade	LIS pre-trade	SSTI post-trade	LIS post-trade
	Threshold value	Threshold value	Threshold value	Threshold value
European Union Allowances (EUA)	40,000 tons of Carbon Dioxide	50,000 tons of Carbon Dioxide	90,000 tons of Carbon Dioxide	100,000 tons of Carbon Dioxide
European Union Aviation Allowances (EUAA)	20,000 tons of Carbon Dioxide	25,000 tons of Carbon Dioxide	40,000 tons of Carbon Dioxide	50,000 tons of Carbon Dioxide
Certified Emission Reductions (CER)	20,000 tons of Carbon Dioxide	25,000 tons of Carbon Dioxide	40,000 tons of Carbon Dioxide	50,000 tons of Carbon Dioxide
Emission Reduction Units (ERU)	20,000 tons of Carbon Dioxide	25,000 tons of Carbon Dioxide	40,000 tons of Carbon Dioxide	50,000 tons of Carbon Dioxide
Other Emission Allowances	20,000 tons of Carbon Dioxide	25,000 tons of Carbon Dioxide	40,000 tons of Carbon Dioxide	50,000 tons of Carbon Dioxide

13. Emission allowance derivatives

Table 13.1

Emission allowance derivatives – classes not having a liquid market

Asset class - Emission Allowance Derivatives		
Sub-asset class	**Each sub-asset class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria**	
	Average daily notional amount (ADNA) [quantitative liquidity criterion 1]	**Average daily number of trades** [quantitative liquidity criterion 2]
Emission allowance derivatives whose underlying is of the type European Union Allowances (EUA) a financial instrument relating to emission allowances of the type European Union Allowances (EUA) as defined in Section C(4) of Annex I of Directive 2014/65/EU	150,000 tons of Carbon Dioxide	5
Emission allowance derivatives whose underlying is of the type European Union Aviation Allowances (EUAA) a financial instrument relating to emission allowances of the type European Union Aviation Allowances (EUAA) as defined in Section C(4) of Annex I of Directive 2014/65/EU	150,000 tons of Carbon Dioxide	5
Emission allowance derivatives whose underlying is of the type Certified Emission Reductions (CER) a financial instrument relating to emission allowances of the type Certified Emission Reductions (CER) as defined in Section C(4) of Annex I of Directive 2014/65/EU	150,000 tons of Carbon Dioxide	5
Emission allowance derivatives whose underlying is of the type Emission Reduction Units (ERU) a financial instrument relating to emission allowances of the type Emission Reduction Units (ERU) as defined in Section C(4) of Annex I of Directive 2014/65/EU	150,000 tons of Carbon Dioxide	5

Asset class - Emission Allowance Derivatives	
Sub-asset class	**For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b) the following methodology shall be applied**
Other Emission allowance derivatives an emission allowance derivative whose underlying is not a European Union Allowances (EUA), a European Union Aviation Allowances (EUAA), a Certified Emission Reductions (CER) and an Emission Reduction Units (ERU)	any other emission allowance derivative is considered not to have a liquid market

Table 13.2

Emission allowance derivatives – pre-trade and post-trade SSTI and LIS thresholds for sub-asset classes determined to have a liquid market

Asset class - Emission Allowance Derivatives									
Sub-asset class	Transactions to be considered for the calculation of the thresholds	Percentiles and threshold floors to be applied for the calculation of the pre-trade and post-trade SSTI and LIS thresholds for the sub-asset classes determined to have a liquid market							
		SSTI pre-trade		LIS pre-trade		SSTI post-trade		LIS post-trade	
		Trade - percentile	Threshold floor	Trade - percentile	Threshold floor	Trade - percentile	Threshold floor	Trade - percentile	Threshold floor
Emission allowance derivatives whose underlying is of the type European Union Allowances (EUA)	transactions executed on all emission allowance derivatives whose underlying is of the type European Union Allowances (EUA)	60	40,000 tons of Carbon Dioxide	70	50,000 tons of Carbon Dioxide	80	90,000 tons of Carbon Dioxide	90	100,000 tons of Carbon Dioxide
Emission allowance derivatives whose underlying is of the type European Union Aviation Allowances (EUAA)	transactions executed on all emission allowance derivatives whose underlying is of the type European Union Aviation Allowances (EUAA)	60	20,000 tons of Carbon Dioxide	70	25,000 tons of Carbon Dioxide	80	40,000 tons of Carbon Dioxide	90	50,000 tons of Carbon Dioxide

Asset class - Emission Allowance Derivatives									
Sub-asset class	Transactions to be considered for the calculation of the thresholds	Percentiles and threshold floors to be applied for the calculation of the pre-trade and post-trade SSTI and LIS thresholds for the sub-asset classes determined to have a liquid market							
		SSTI pre-trade		LIS pre-trade		SSTI post-trade		LIS post-trade	
		Trade - percentile	Threshold floor	Trade - percentile	Threshold floor	Trade - percentile	Threshold floor	Trade - percentile	Threshold floor
Emission allowance derivatives whose underlying is of the type Certified Emission Reductions (CER)	transactions executed on all emission allowance derivatives whose underlying is of the type Certified Emission Reductions (CER)	60	20,000 tons of Carbon Dioxide	70	25,000 tons of Carbon Dioxide	80	40,000 tons of Carbon Dioxide	90	50,000 tons of Carbon Dioxide
Emission allowance derivatives whose underlying is of the type Emission Reduction Units (ERU)	transactions executed on all emission allowance derivatives whose underlying is of the type Emission Reduction Units (ERU)	60	20,000 tons of Carbon Dioxide	70	25,000 tons of Carbon Dioxide	80	40,000 tons of Carbon Dioxide	90	50,000 tons of Carbon Dioxide

Table 13.3

Emission allowance derivatives – pre-trade and post-trade SSTI and LIS thresholds for sub-asset classes determined not to have a liquid market

Asset class - Emission Allowance Derivatives				
	Pre-trade and post-trade SSTI and LIS thresholds for the sub-asset classes determined not to have a liquid market			
Sub-asset class	SSTI pre-trade	LIS pre-trade	SSTI post-trade	LIS post-trade
	Threshold value	Threshold value	Threshold value	Threshold value
Emission allowance derivatives whose underlying is of the type European Union Allowances (EUA)	40,000 tons of Carbon Dioxide	50,000 tons of Carbon Dioxide	90,000 tons of Carbon Dioxide	100,000 tons of Carbon Dioxide
Emission allowance derivatives whose underlying is of the type European Union Aviation Allowances (EUAA)	20,000 tons of Carbon Dioxide	25,000 tons of Carbon Dioxide	40,000 tons of Carbon Dioxide	50,000 tons of Carbon Dioxide
Emission allowance derivatives whose underlying is of the type Certified Emission Reductions (CER)	20,000 tons of Carbon Dioxide	25,000 tons of Carbon Dioxide	40,000 tons of Carbon Dioxide	50,000 tons of Carbon Dioxide
Emission allowance derivatives whose underlying is of the type Emission Reduction Units (ERU)	20,000 tons of Carbon Dioxide	25,000 tons of Carbon Dioxide	40,000 tons of Carbon Dioxide	50,000 tons of Carbon Dioxide
Other Emission allowance derivatives	20,000 tons of Carbon Dioxide	25,000 tons of Carbon Dioxide	40,000 tons of Carbon Dioxide	50,000 tons of Carbon Dioxide

Annex IV: Reference data to be provided for the purpose of transparency calculations

Table 1

Symbol table for Table 2

SYMBOL	DATA TYPE	DEFINITION
{ALPHANUM-n}	Up to n alphanumerical characters	Free text field.
{DECIMAL-n/m}	Decimal number of up to n digits in total of which up to m digits can be fraction digits	Numerical field for both positive and negative values: - decimal separator is '.' (full stop); - the number may be prefixed with '-' (minus) to indicate negative numbers. Where applicable, values shall be rounded and not truncated.
{COUNTRYCODE_2}	2 alphanumerical characters	2 letter country code, as defined by ISO 3166-1 alpha-2 country code
{CURRENCYCODE_3}	3 alphanumerical characters	3 letter currency code, as defined by ISO 4217 currency codes
{DATEFORMAT}	ISO 8601 date format	Dates should be formatted by the following format: YYYY-MM-DD.
{ISIN}	12 alphanumerical characters	ISIN code, as defined in ISO 6166
{LEI}	20 alphanumerical characters	Legal entity identifier as defined in ISO 17442
{MIC}	4 alphanumerical characters	Market identifier as defined in ISO 10383
{INDEX}	4 alphabetic characters	'EONA' – EONIA 'EONS' - EONIA SWAP 'EURI' - EURIBOR 'EUUS' - EURODOLLAR 'EUCH' - EuroSwiss 'GCFR' - GCF REPO 'ISDA' - ISDAFIX 'LIBI' - LIBID 'LIBO' - LIBOR 'MAAA' – Muni AAA 'PFAN' - Pfandbriefe 'TIBO' - TIBOR 'STBO' - STIBOR 'BBSW' - BBSW 'JIBA' - JIBAR 'BUBO' - BUBOR 'CDOR' - CDOR 'CIBO' - CIBOR 'MOSP' - MOSPRIM 'NIBO' - NIBOR 'PRBO' - PRIBOR 'TLBO' - TELBOR

		'WIBO' – WIBOR
		'TREA' – Treasury
		'SWAP' – SWAP
		'FUSW' – Future SWAP

Table 2

Details of the reference data to be provided for the purpose of transparency calculations

#	FIELD	DETAILS TO BE REPORTED	FORMAT FOR REPORTING
1	Instrument identification code	Code used to identify the financial instrument	{ISIN}
2	Instrument full name	Full name of the financial instrument	{ALPHANUM-350}
3	MiFIR identifier	**Identification of non-equity financial instruments:** **Securitised derivatives** as defined in Table 4.1 in Section 4 of Annex III **Structured Finance Products (SFPs)** as defined in Article 2(1)(28) of Regulation (EU) No 600/2014 **Bonds** (for all bonds except ETCs and ETNs) as defined in Article 4(44)(b) of Directive 2014/65/EU **ETCs** as defined in in Article 4(44)(b) of Directive 2014/65/EU and further specified in Table 2.4 of Section 2 of Annex III **ETNs** as defined in in Article 4(44)(b) of Directive 2014/65/EU and further specified in Table 2.4 of Section 2 of Annex III **Emission allowances** as defined in Table 12.1 of Section 12 of Annex III **Derivative** as defined in Annex I, Section C (4) to (10) of Regulation (EU) No 600/2014	**Non-equity financial instruments:** 'SDRV' - Securitised derivatives 'SFPS' - Structured Finance Products (SFPs) 'BOND' - Bonds 'ETCS' - ETCs 'ETNS' - ETNs 'EMAL' - Emission Allowances 'DERV' - Derivative
4	Asset class of the underlying	To be populated when the MiFIR identifier is a securitised derivative or a derivative.	'INTR' - Interest rate 'EQUI' - Equity 'COMM' - Commodity 'CRDT' - Credit 'CURR' - Currency
5	Contract type	To be populated when the MiFIR identifier is a derivative.	'OPTN' - Options 'FUTR' - Futures 'FRAS' - Forward Rate Agreement (FRA) 'FORW' - Forwards 'SWAP' – Swaps

			'PSWP' – Portfolio Swaps
			'SWPT' - Swaptions
			'FONS' - Futures on a swap
			'FWOS' - Forwards on a swap
			'FFAS' - Forward Freight Agreements (FFAs)
			'SPDB' - Spread betting
			'CFDS' - CFD
			'OTHR' - Other

Venue related fields			
6	Trading Venue	Segment MIC for the trading venue where available, otherwise operational MIC.	{MIC}

Bonds (all bond types except ETCs and ETNs) related fields			
7	Bond type	Bond type as specified in Table 2.2 of Section 2 of Annex III. To be populated only when the MiFIR identifier is equal to bonds. Sovereign Bond Other Public Bond Convertible Bond Covered Bond Corporate Bond	'EUSB' - Sovereign Bond 'OEPB' - Other Public Bond 'CVTB' - Convertible Bond 'CVDB' - Covered Bond 'CRPB' - Corporate Bond 'OTHR' - Other
8	Issuance date	Date on which a bond is issued and begins to accrue interest.	{DATEFORMAT}

Emission Allowances related fields The fields in this section should only be populated for emission allowances as defined in Table 13.1 of Section 13 of Annex III			
9	Emissions Allowances sub type	Emissions Allowances	'CERE' - CER 'ERUE' - ERU 'EUAE' - EUA 'EUAA' - EUAA 'OTHR' - Other

Derivatives related fields			

10	Maturity	Maturity of the financial instrument. Field applicable for the asset classes of bonds, interest rate derivatives, equity derivatives, commodity derivatives, foreign exchange derivatives, credit derivatives C10 derivatives and derivatives on emission allowances.	{DATEFORMAT}
Commodity derivatives			
11	Specification of the size related to the freight sub-type	Field to be populated when the base product specified in field 35 in Table 2 of the Annex in [RTS on Reference data] is equal to freight.	{ALPHANUM-25}
12	Specific route or time charter average	Field to be populated when the base product specified in field 35 in Table 2 of the Annex in [RTS on Reference data] is equal to freight.	{ALPHANUM-25}
13	Delivery/ cash settlement location	Field to be populated when the base product specified in field 35 in Table 2 of the Annex in [RTS on Reference data] is equal to energy.	{ALPHANUM-25}
14	Notional currency	Currency in which the notional is denominated.	{CURRENCYCODE_3}
Interest rate derivatives The fields in this section should only be populated for interest rate derivatives as defined in Table 5.1 of Section 5 of Annex III			
15	Underlying type	To be populated for contract type different from swaps, swaptions, futures on a swap and forwards on a swap with one of the following alternatives	'BOND' - Bond 'BNDF' - Bond Futures 'INRT' - Interest rate 'OTHR' - Other
		To be populated for the contract types of swaps, swaptions, futures on a swap and forwards on a swap with regard to the underlying swap with one of the following alternatives	'FFMC' - FLOAT TO FLOAT MULTI-CURRENCY SWAPS 'XFMC' - FIXED TO FLOAT MULTI-CURRENCY SWAPS 'XXMC' - FIXED TO FIXED MULTI-CURRENCY SWAPS 'OSMC' - OIS MULTI-CURRENCY SWAPS 'IFMC' - INFLATION MULTI-CURRENCY SWAPS 'FFSC' - FLOAT TO FLOAT SINGLE-CURRENCY SWAPS 'XFSC' - FIXED TO FLOAT SINGLE-CURRENCY SWAPS 'XXSC' - FIXED TO FIXED SINGLE-CURRENCY SWAPS 'OSSC' - OIS SINGLE-CURRENCY SWAPS 'IFSC' - INFLATION SINGLE-CURRENCY SWAPS
16	Issuer of the underlying bond	Field to be populated when the underlying type is a bond or a bond future with the legal entity identifier code (LEI) of the issuer of the direct or ultimate underlying bond.	{LEI}

17	Maturity date of the underlying bond	Field to be populated whenever the underlying bond is not admitted to trading or traded on a trading venue with the date of maturity of the underlying bond. The field applies to debt instruments with defined maturity.	{DATEFORMAT}
18	Notional currency of the swaption	Field to be populated for swaptions.	{CURRENCYCODE_3}
19	Maturity of the underlying swap	To be populated for swaptions, futures on swaps and forwards on a swap only.	{DATEFORMAT}
20	Inflation index ISIN code	In case of swaptions on one of the following underlying swap types: inflation single currency swap, futures/forwards on inflation single currency swap, inflation multi-currency swap, futures/forwards on inflation multi-currency swap; whenever the inflation index has an ISIN, the field has to be populated with the ISIN code for that index.	{ISIN}
21	Inflation index name	To be populated with standardised name of the index in case of swaptions on one of the following underlying swap types: inflation single currency swap, futures/forwards on inflation single currency swap, inflation multi-currency swap, futures/forwards on inflation multi-currency swap.	{ALPHANUM-25}
22	Reference rate	Name of the reference rate.	{INDEX} or {ALPHANUM-25}- if the reference rate is not included in the {INDEX} list
23	IR Term of contract	This field states the term of the contract. The term shall be expressed in days, weeks, months or years.	{INTEGER-3}+'DAYS' - days {INTEGER-3}+'WEEK' - weeks {INTEGER-3}+'MNTH' - months {INTEGER-3}+'YEAR' - years
Foreign exchange derivatives The fields in this section should only be populated for foreign exchange derivatives as defined in Table 8.1 of Section 8 of Annex III			
24	Contract sub-type	Field should be populated as to differentiate deliverable and non-deliverable forwards, options and swaps as defined in Table 8.1 of Section 8 of Annex III.	'DLVB' - Deliverable 'NDLV' - Non-deliverable
Equity derivatives The fields should only be populated for equity derivatives as defined in Table 6.1 of Section 6 of Annex III			
25	Underlying type	To be populated when the MiFIR identifier is a derivative, the asset class of the underlying is equity and the sub-asset class is neither swaps nor portfolio swaps the field should be populated with one of the following alternatives:	'STIX' - Stock Index 'SHAR' – Share/Stock 'DIVI' - Dividend Index 'DVSE' - Stock dividend 'BSKT' - Basket of shares resulting from a corporate action

			'ETFF' - ETFT 'VOLI' - Volatility Index 'OTHE' - Other (including depositary receipts, certificates and other equity like financial instrument)
		To be populated when the MiFIR identifier is a derivative, the asset class of the underlying is equity, the sub-asset class is either swaps or portfolio swaps and the segmentation criterion 2 as defined in Table 6.1 of Section 6 of Annex III is a single name the field should be populated with one of the following alternatives:	'SHAR' – Share/Stock 'DVSE' - Stock dividend 'ETFF' - ETFT 'OTHE' - Other (including depositary receipts, certificates and other equity like financial instrument)
		To be populated when the MiFIR identifier is a derivative, the asset class of the underlying is equity, the sub-asset class is either swaps or portfolio swaps and the segmentation criterion 2 as defined in Table 6.1 of Section 6 of Annex III is an index the field should be populated with one of the following alternatives:	'STIX' - Stock Index 'DIVI' - Dividend Index 'VOLI' - Volatility Index 'OTHE' - Other
		To be populated when the MiFIR identifier is a derivative, the asset class of the underlying is equity, the sub-asset class is either swaps or portfolio swaps and the segmentation criterion 2 as defined in Table 6.1 of Section 6 of Annex III is a basket the field should be populated with one of the following alternatives:	'BSKT' - Basket
26	Parameter	To be populated when the MiFIR identifier is a derivative, the asset class of the underlying is equity and the sub-asset class is one of the following: swaps, portfolio swaps.	'PRBP' - Price return basic performance parameter 'PRDV' - Parameter return dividend 'PRVA' - Parameter return variance 'PRVO' - Parameter return volatility
Contracts for difference (CFDs) The fields should only be populated when the contract type is equal to contract for difference or spread betting			
27	Underlying type	To be populated when the MiFIR identifier is a derivative and the contract type is equal to contract for difference or spread betting.	'CURR' - Currency 'EQUI' - Equity 'BOND' - Bonds 'FTEQ' - Futures on an equity 'OPEQ' - Options on an equity 'COMM' - Commodity 'OTHR' - Other
28	Notional currency 1	Currency 1 of the underlying currency pair. This field is applicable when the underlying type is currency.	{CURRENCYCODE_3}
29	Notional currency 2	Currency 2 of the underlying currency pair. This field is applicable when the underlying type is currency.	{CURRENCYCODE_3}
Credit derivatives			
30	ISIN code of the underlying credit default	To be populated for derivatives on a credit default swaps	{ISIN}

31	Underlying Index code	To be populated for derivatives on a CDS index with the ISIN code of the index.	{ISIN}
	swap	with the ISIN code of the underlying swap.	
31	Underlying Index code	To be populated for derivatives on a CDS index with the ISIN code of the index.	{ISIN}
32	Underlying Index name	To be populated for derivatives on a CDS index with the standardised name of the index.	{ALPHANUM-25}
33	Series	The series number of the composition of the index if applicable. To be populated for a CDS Index or a derivative on a CDS Index with the series of the CDS Index.	{DECIMAL-18/17}
34	Version	A new version of a series is issued if one of the constituents defaults and the index has to be re-weighted to account for the new number of total constituents within the index. To be populated for a CDS Index or a derivative on a CDS Index with the version of the CDS Index.	{DECIMAL-18/17}
35	Roll months	All months when the roll is expected as established by the index provider for a given year. Field should be repeated for each month in the roll. To be populated for a CDS Index or a derivative on a CDS Index.	'01', '02', '03', '04', '05', '06', '07', '08', '09', '10', '11', '12'
36	Next roll date	To be populated in the case of a CDS Index or a derivative on a CDS Index with the next roll date of the index as established by the index provider.	{DATEFORMAT}
37	Issuer of sovereign and public type	To be populated when the reference entity of a single name CDS or a derivative on single name CDS is a sovereign issuer as defined in Table 9.1 Section 9 of Annex III.	'TRUE' – the reference entity is an issuer of sovereign and public type 'FALSE' – the reference entity is not an issuer of sovereign and public type
38	Reference obligation	To be populated for a derivative on a single name credit default swap with the ISIN of the reference obligation.	{ISIN}
39	Reference entity	To be populated with the reference entity of a single name CDS or a derivative on single name CDS.	{COUNTRYCODE_2} or ISO 3166-2 - 2 character country code followed by dash "-" and up to 3 alphanumeric character country subdivision code or {LEI}
40	Notional currency	Currency in which the notional is denominated.	{CURRENCYCODE_3}

RTS 3: Draft regulatory technical standards on the volume cap mechanism and the provision of information for the purposes of transparency and other calculations

EUROPEAN COMMISSION

Brussels, XXX
[…](2012) XXX draft

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

[…]

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the volume cap mechanism and the provision of information for the purposes of transparency and other calculations

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012[1], and in particular Articles 5(9) and 22(4),

Whereas:

(1)   Regulation (EU) No 600/2014 requires competent authorities and the European Securities and Markets Authority (ESMA) to perform a significant number of calculations in order to calibrate the applicability of the pre-trade and post- trade transparency regime and the trading obligation for derivatives as well as to determine whether an investment firm is a systematic internaliser.

(2)   In order to perform the necessary calculations, both competent authorities and ESMA need to be able to obtain robust and high quality data for each asset class to which Regulation (EU) No 600/2014 applies. The provisions in this Regulation will improve both the accessibility and the quality of data available to competent authorities and ESMA in accordance with Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU[2] and Regulation (EU) No 600/2014 so that the classification of financial instruments, including the thresholds for the purposes of pre-trade and post-trade transparency, and, where necessary, re-calibrations of these thresholds, can be calculated on a more informed basis after the regime has been applied for a certain period of time.

---

[1] OJ L 173, 12.06.2014, p. 84.
[2] OJ L 173, 12.06.2014, p. 349.

(3)   This Regulation sets out the provisions specifying, in general terms, the common elements with regard to the content and format of data to be submitted by trading venues, approved publication arrangements (APAs) and consolidated tape providers (CTPs) for the purposes of transparency and other calculations. It should be read in conjunction with Commission Delegated Regulation (EU) No xx/xxxx [Transparency for equity and equity-like instruments], Commission Delegated Regulation (EU) No xx/xxxx [Transparency for non-equity instruments], Commission Delegated Regulation (EU) No xx/xxxx [Liquid Market for equity and equity-like], Commission Delegated Regulation (EU) No xx/xxx [Definition of SI] and Commission Delegated Regulation (EU) xx/xxxx [Trading obligation 32(6) TS] in which the methodology and data necessary to perform the relevant calculations are described and which specify the content and scope of the data necessary to perform the transparency calculations. Therefore, the content, format and quality of the data submitted should be consistent with the applicable methodology prescribed when performing such calculations.

(4)   With the exception of potential ad-hoc data requests and calculations to be performed for the purposes of the Volume cap mechanism, this Regulation should require trading venues, APAs and CTPs to submit reports on a daily basis. Considering the broad scope of financial instruments covered and the large amount of data to be processed, this daily submission enables competent authorities to more accurately process files of manageable sizes and ensures an efficient and timely management of the data submission, data quality check and data processing. Collecting data on a daily basis also simplifies the data provision obligation on trading venues, APAs and CTPs by alleviating them from the burden of calculating the number of trading days in the cases where that quantitative liquidity criterion is applicable, and of aggregating data for the same financial instrument across different time maturity buckets in the cases where the time to maturity has to be considered. Centralising that calculation also ensures a consistent use of the criteria across financial instruments and trading venues.

(5)   Trading venues should store data that is comprehensive and allows competent authorities and ESMA to perform accurate calculations. While the required information is usually provided in the post-trade reports, in some cases, the information necessary for the calculations goes beyond the information available in those reports. This includes, for example, information on transactions executed on the basis of orders that benefitted from the large in scale waiver. This information should not be included in trade reports since it could expose such transactions to adverse market impact. However, since that information might be necessary for competent authorities to perform accurate calculations, it should be stored appropriately by trading venues and CTPs and communicated to competent authorities and ESMA where necessary. Trading venues should ensure that they adequately disseminate the information to be provided to competent authorities and ESMA. Transactions executed on the basis of large in scale orders should be appropriately identified in their report to CTPs.

(6)   Data should be collected from a variety of sources since a single source may not always hold a complete data set for an asset class or even a particular instrument. Therefore, to allow competent authorities and ESMA to obtain and consolidate high quality data from various sources, trading venues, APAs and CTPs should use, where available, pre-set specifications in terms of content and format in order to make the data collection easier and more cost efficient. This should also facilitate the automation to the extent possible of any future re-classifications of financial instruments and any recalibrations of thresholds.

(7)   Considering the sensitivity of the necessary calculations and the potential commercial consequences for trading venues, issuers and other market participants of publishing incorrect information which could lead, in the case of the volume cap mechanism, to the suspension of the use of the waivers for one particular venue or across the Union for one particular financial instrument, it is crucial to clarify the format of the data to be submitted to competent authorities and ESMA in order to set up efficient communication channels with trading venues and CTPs and ensure timely and correct publication of the required data.

(8)   Regulation (EU) No 600/2014 requires ESMA to publish, for financial instruments to which the volume cap mechanism applies, measurements of the total volume of trading in the previous 12 months and of the percentages of trading under both the negotiated trade and reference price waivers across the Union and on each trading venue in the previous 12 months. In case of financial instruments traded in more than one currency, it is hence necessary to convert the volumes executed in different currencies into one common currency so as to enable the computation of those volumes and make the required calculations. Therefore, this Regulation should set out the methodology and exchange rates to be used to convert, where necessary, trading volumes.

(9)   For the purpose of the volume cap mechanism, this Regulation requires trading venues to report the volumes of trading executed under the reference price waiver and, for liquid instruments, the negotiated trade waiver. Given that the waivers apply to orders and not to transactions, it is important to clarify that the volumes to be reported should include all transactions flagged with "RFPT" or "NLIQ" for the purpose of the post-trade publication of transactions and as specified in Commission Delegated Regulation (EU) No xx/xxxx[Transparency for equity and equity-like instruments]. Where a transaction was executed on the basis of two orders benefitting from the large in scale waiver, this transaction should not count towards the volumes calculated under the reference price waiver and the negotiated trade waiver.

(10)   For the purpose of the volume cap mechanism, trading venues and CTPs should ensure that the trading venue on which the transaction was executed is identified with sufficient granularity to allow ESMA to perform all calculations set out under Regulation (EU) No 600/2014. In particular, the trading venue identifier used should be unique for that trading venue and not shared with any other trading venue operated

by the same market operator. Trading venue identifiers should allow ESMA to distinguish in an unequivocal manner all trading venues for which the market operator has received a specific authorisation under Directive 2014/65/EU.

(11)   Under Regulation (EU) No 600/2014, the period for which trading under the reference price waiver and, for liquid financial instruments, negotiated transaction waiver is to be monitored starts on 3 January 2016. To this end, it is necessary to establish in this Regulation a provision requiring trading venues to submit a first report on 3 January 2017 with trading volumes for the year 2016. To ensure a proportionate application of this requirement, trading venues should, for that purpose, base their report on the adjusted volumes of trading executed under equivalent waivers existing under Directive 2004/39/EC of the European Parliament and of the Council [3] and Commission Regulation (EC) No 1287/2006[4].

(12)   In order to provide competent authorities and ESMA with accurate data, trading venues, APAs and CTPs should ensure that their reports include single-counted transactions only.

(13)   The provisions in this Regulation are closely linked, since they deal with specifying the content, frequency, format of data requests, the method to be used to process this data and other specifications relating to the publication of information for the purposes of transparency as defined under Regulation (EU) No 600/2014. To ensure coherence between those provisions, which will enter into force at the same time, and to facilitate a comprehensive view for stakeholders, and in particular those subject to the obligations, it is desirable to include these regulatory technical standards in a single Regulation.

(14)   The new legislation of the European Parliament and of the Council on markets in financial instruments set out in Directive 2014/65/EU and Regulation (EU) No 600/2014 applies from 3 January 2017. To ensure consistency and legal certainty, this Regulation should apply from the same date.

(15)   This Regulation is based on the draft regulatory technical standards submitted by the ESMA to the Commission.

(16)   ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and

---

[3] Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, OJ L 145, 30.4.2004, p. 1.
[4] Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive (OJ L 241, 2.9.2006, p. 1).

benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[5],

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

1.   This Regulation sets out, interalia, the details of the data requests to be sent by competent authorities and of the reply to those requests to be sent by trading venues, APAs and CTPs for the purposes of calculating and adjusting the pre-trade and post-trade transparency and trading obligation regimes and in particular the following factors:

(a)   whether equity, equity-like and non-equity financial instruments have a liquid market;

(b)   the thresholds for pre-trade transparency waivers for equity, equity-like and non-equity financial instruments;

(c)   the thresholds for post-trade transparency deferrals for equity, equity-like and non-equity financial instruments;

(d)   when the liquidity of a class of financial instruments falls below a specified threshold;

(e)   whether an investment firm is a systematic internaliser;

(f)   the standard market size applicable to systematic internalisers dealing in equity and equity-like instruments, and the size specific to the instrument applicable to systematic internalisers dealing in non-equity instruments;

(g)   for equity and equity-like instruments, the total volume of trading for the previous 12 months and of the percentages of trading carried out under both the negotiated trade and reference price waivers across the Union and on each trading venue in the previous 12 months;

(h)   whether derivatives are sufficiently liquid for the purposes of implementing the trading obligation for derivatives.

Article 2

Content of the data requests and information to be reported

1.   For the purpose of carrying out calculations that occur at pre-set dates or in pre-defined frequencies, trading venues, APAs and CTPs shall provide their competent authorities with all the data required to perform the calculations set out in the following Regulations:

   (a) Commission Delegated Regulation (EU) No xx/xxxx [Transparency for equity and equity-like instruments];

   (b) Commission Delegated Regulation (EU) No xx/xxxx [Transparency for non-equity instruments];

   (c) Commission Delegated Regulation (EU) No xx/xxxx [Liquid Market for equity and equity-like]; and

   (d) Commission Delegated Regulation (EU) No xx/xxx [Definition of SI].

2.   Competent authorities shall be able to request from trading venues, APAs and CTPs, where necessary, additional information needed for the purpose of monitoring and adjusting the thresholds and parameters referred to in points (a) to (f) and (h) of Article 1. Competent authorities shall, in particular, be able to request for non-equity financial instruments all the data ESMA is required to take into consideration in accordance with Commission Delegated Regulation (EU) xx/xxxx [Trading obligation 32(6) TS] including data on the following:

   (a) the average frequency of trades;

   (b) the average size and distribution of trades;

   (c) the number and type of market participants;

   (d) the average size of spreads.

Article 3

Frequency of data requests and response times for trading venues, APAs and CTPs

1.   Trading venues, APAs and CTPs shall submit the data referred to in Article 2(1) each day.

2.   Trading venues, APAs and CTPs shall submit the data in response to an ad hoc request as referred to in Article 2(2) within four weeks of receipt of that request unless exceptional circumstances require a response within a shorter time period specified in the request.

3. By way of derogation to paragraphs 1 and 2, trading venues and CTPs shall submit data to be used for the purpose of the volume cap mechanism as set out in paragraphs 6 to 9 of Article 6.

Article 4

Format of the data requests

Trading venues, APAs and CTPs shall submit the data referred to in Article 2 in a common XML format and, where available, in compliance with any other specifications in terms of content and format defined to facilitate an efficient and automated process of data delivery as well as its consolidation with similar data from other sources.

Article 5

Type of data that must be stored and the minimum period of time trading venues, APAs and CTPs shall store data

1. Trading venues, APAs and CTPs shall store all data required to calculate, monitor or adjust the thresholds and parameters set out in Article 2 regardless whether this information has been made public or not.

2. Trading venues, APAs and CTPs shall store the data referred to in paragraph 1 for at least three years.

Article 6

Reporting requirements for trading venues and CTPs for the purpose of the volume cap mechanism

1. For each financial instrument subject to the transparency requirements in Article 3 of Regulation (EU) No 600/2014, trading venues shall submit to the competent authority the following data:

  (a) the total volume of trading in the financial instrument executed on that trading venue;

  (b) the total volumes of trading in the financial instrument executed on that trading venue falling under the waivers of Article 4(1)(a) or Article 4(1)(b)(i) of Regulation (EU) No 600/2014 respectively with total volumes reported separately for each waiver.

2. For each financial instrument subject to the transparency requirements in Article 3 of Regulation (EU) No 600/2014 and where requested by the competent authority, CTPs shall submit to the competent authority the following data:

(a) the total volumes of trading in the financial instrument executed on all trading venues in the Union with total volumes reported separately for each trading venue;

(b) the total volumes of trading executed on all trading venues in the Union falling under the waivers of Article 4(1)(a) or 4(1)(b)(i) of Regulation (EU) No 600/2014 respectively with total volumes reported separately for each waiver and for each trading venue.

3. Trading venues and CTPs shall report the data set out in paragraphs 1 and 2 using the formats provided in the Annex. They shall, in particular, ensure that the trading venue identifiers they provide are sufficiently granular to enable the competent authority and ESMA to identify the volumes of trading executed under the reference price waiver and, for liquid financial instruments, under the negotiated trade waiver of each trading venue and allow for the calculation of the ratio set out under Article 5(1)(a) of Regulation (EU) No 600/2014.

4. For the purposes of the calculation of the volumes referred to in paragraphs 1 and 2:

(a) the volume of an individual transaction shall be determined by multiplying the price of the financial instrument by the number of units traded;

(b) the total volume of trading in each financial instrument set out in paragraphs 1(a) and 2(a) shall be determined by aggregating the volume of all individual and single-counted transactions for that financial instrument.

(c) the trading volumes set out in paragraphs 1(b) and 2(b) shall be determined by aggregating the volumes of individual and single-counted transactions for that financial instrument reported under the flags "reference price" and "negotiated transactions in liquid financial instruments" in accordance with Table 4 of Annex I of Commission Delegated Regulation (EU) No xx/xxxx [Equity transparency].

5. Trading venues and CTPs shall only aggregate transactions executed in the same currency and shall report separately each aggregated volume in the currency used for the transactions.

6. Trading venues shall submit the data referred to in paragraphs 1 to 5 on the first and the sixteenth day of each calender month byt 13:00 CET to the competent authority. If the first or the sixteenth day of the calendar month is a non-working day for the trading venue, the trading venue shall report the data to the competent authority by 13:00 CET on the following working day.

7. Trading venues shall submit the total volume determined in accordance with paragraphs 1 to 5 and executed in respect of the following time periods:

(a) for the reports to be submitted on the sixteenth day of each calendar month, the execution period is from the first day to the fifteenth day of the same calendar month;

(b) for the reports to be submitted on the first day of each calendar month, the execution period is from the sixteenth day to the last day of the previous calendar month.

8. By way of derogation to paragraphs 6 and 7, trading venues shall submit the first report per financial instrument on 3 January 2017 by 13:00 CET and shall include the trading volumes referred to in paragraph 1 from 3 January 2016 to 31 December 2016. For this purpose, trading venues shall report separately, for each calendar month:

(a) the trading volumes during the period from the first day to the fifteenth day of each calendar month;

(b) the trading volumes during the period from the sixteenth day to the last day of each calendar month.

9. Trading venues and CTPs shall respond to any ad hoc request from competent authorities on the volume of trading in relation to the calculation to be performed for monitoring the use of the reference price or negotiated trade waivers by close of business on the next working day following the request.

Article 7

Reporting requirements for competent authorities to ESMA for the purposes of the volume cap mechanism and the trading obligation for derivatives

1. Competent authorities shall provide ESMA with the data received from a trading venue or a CTP in accordance with Article 6 by 13:00 CET on the next working day following its receipt.

2. Competent authorities shall provide ESMA with the data received from a trading venue, APA or CTP for the purpose of determining whether derivatives are sufficiently liquid as referred to in Article 1(h) without undue delay and no later than three working days following its receipt.

Article 8

Reporting requirements for ESMA for the purpose of the volume cap mechanism

1. ESMA's publication, in accordance with Article 5(4), (5) and (6) of Regulation (EU) No 600/2014, of measurements of the total volume of trading for each financial instrument in the previous 12 months and of the percentages of trading under both the negotiated trade and reference price waivers across the Union and on each trading venue in the previous 12 months, shall be made no later than 22.00 CET on the fifth working day following the end of the reporting periods set out in Article 6(6).

2. The publication referred to under paragraph 1 shall be made by ESMA, free of charge and in a machine-readable and human-readable format as defined in Article 17(6) and (7) of [European Comission Delegated Regulation on definitions, transparency, derivatives and supervisory measures on product intervention and positions (MiFIR)].

3. Where a financial instrument is traded in more than one currency across the Union, ESMA shall convert all volumes into EUR using average exchange rates calculated on the basis of the daily euro foreign exchange reference rates published by the European Central Bank on its website in the previous 12 months. Those converted volumes shall be used for the calculation and publication of the total volume of trading and of the percentages of trading under both the negotiated trade and reference price waivers across the Union and on each trading venue as referred to in paragraph 1.

Article 9

Entry into force and application

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

It shall apply from 3 January 2017.

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

Done at Brussels,

For the Commission
The President

[For the Commission
On behalf of the President

[Position]

Annex

Table 1

Symbol table for Table 2

SYMBOL	DATA TYPE	DEFINITION
{ALPHANUM-n}	Up to n alphanumerical characters	Free text field.
{DECIMAL-n/m}	Decimal number of up to n digits in total of which up to m digits can be fraction digits	Numerical field for both positive and negative values. - decimal separator is '.' (full stop); - the number may be prefixed with '-' (minus) to indicate negative numbers. Where applicable, values shall be rounded and not truncated.
{CURRENCYCODE_3}	3 alphanumerical characters	3 letter currency code, as defined by ISO 4217 currency codes
{DATEFORMAT}	ISO 8601 date format	Dates should be formatted by the following format: YYYY-MM-DD.
{ISIN}	12 alphanumerical characters	ISIN code, as defined in ISO 6166
{MIC}	4 alphanumerical characters	Market identifier as defined in ISO 10383

Table 2

Formats of the report for the purpose of the volume cap mechanism

Data field name	Format
Reporting period	{DATEFORMAT}/{DATEFORMAT} where the first date is the beginning of the reporting period and the second date is the end of the reporting period.
Reporting entity identification	Where the reporting entity is a trading venue: {MIC} (segment MIC or, where appropriate, operational MIC) or {ALPHANUM-50} if the reporting entity is a CTP.
Trading venue identifier	{MIC} (segment MIC, where available, otherwise operational MIC).
Instrument identifier	{ISIN}
Currency of the transactions	{CURRENCYCODE_3}
Total volume of trading (per currency)	{DECIMAL-18/5}
Total volume of trading under Reference Price waiver as defined under Article 4(1)(a) of MiFIR (per currency)	{DECIMAL-18/5}
Total volume of trading under Negotiated Transactions waiver as defined under Article 4(1)(b)(i) of MiFIR (per currency)	{DECIMAL-18/5}

RTS 4: Draft regulatory technical standards on criteria for determining whether derivatives should be subject to the trading obligation (Article 32(6) of MiFIR)

EUROPEAN COMMISSION

Brussels, XXX
[…](2012) XXX draft

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

[…]

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

[…]

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on criteria for determining whether derivatives subject to the clearing obligation should be subject to the trading obligation

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012[1], and in particular Article 32(6) thereof,

Whereas:

(1)   This Regulation contributes to the specification of the criteria for the determination of sufficient third-party buying and selling interest in a class of derivatives or a relevant subset of a class of derivatives. Where European Securities and Markets Authority (ESMA) has established that a class of derivatives should be subject to the clearing obligation under Regulation (EU) No 648/2012 of the European Parliament and of the Council[2] and that they are admitted to trading or traded on a trading venue, ESMA should follow the criteria in this Regulation to determine whether the derivatives or subset thereof is considered sufficiently liquid to trade exclusively on trading venues.

(2)   Regulation (EU) No 648/2012 sets out that derivatives are considered to be executed on an OTC basis when they are not traded on, or not subject to the rules of, a regulated market whereas the definition of derivatives executed on an over-the-counter (OTC) under Directive 2014/65/EU of the European Parliament and of the Council[3] is narrower, comprising derivatives not traded on, or not subject to the rules of, a regulated market, multilateral trading facility (MTF) or organised trading facility

---

[1] OJ L 173, 12.6.2014, p. 84.
[2] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p.1)
[3] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU , OJ L 173, 12.6.2014, p. 349.

(OTF). ESMA should therefore assess the extent to which trades are executed already on trading venues in a class of derivatives or a relevant subset thereof and compare to the level of trading not executed on a trading venue. The prevalence of trading outside a trading venue should not, however, automatically establish that a class of derivatives or a relevant subset thereof is not suitable for the trading obligation. ESMA should have regard also to the anticipated impact of the trading obligation considering both the possibility to promote liquidity and market integrity through increased transparency and availability of the financial instruments, as well as the potential negative consequences of such decision.

(3)   Given the similarity of the definition of liquid market for non-equities under Article 2(17)(a) of Regulation (EU) No 600/2014 to the criteria for determining whether a class of derivatives or subset thereof is sufficiently liquid under Article 32(3) of that Regulation, the assessment undertaken for one should be taken into consideration for the other to promote consistency of treatment of instruments. However, a class of derivatives or subset thereof deemed to have a liquid market for transparency purposes should not be deemed automatically to be sufficiently liquid for the trading obligation. The quantitative thresholds and qualitative weightings may differ, taking into account the different objectives of the assessments.

(4)   Given the wide range of instruments potentially affected by the trading obligation for derivatives and their specific characteristics, the constant evolution of financial markets and the variety of national markets involved it is not possible to determine for each and every derivative type an exhaustive list specifying the elements relevant to an assessment of third-party buying and selling interest or the weighting to be given to any particular element.

(5)   However, a degree of clarity should be provided for the determination of a class of derivatives or relevant subset thereof which is sufficiently liquid, in particular, through specifying the criteria with respect to average frequency of trades, average size of trades, number and type of active market participants and average size of spreads which together indicate the level of third-party buying and selling interest.

(6)   The observation period for determining whether a class of derivatives or relevant subset thereof is sufficiently liquid to trade exclusively on trading venues should vary depending on the class of derivatives or relevant subset thereof concerned. It should be sufficiently long to ensure that the data collected is not skewed by any type of events that may cause unusual trading patterns. In any circumstance the observation period should not be shorter than three months.

(7)   The criteria described in this Regulation should be designed so that the assessment of one derivative or classes of derivatives may be compared with other derivatives or classes of derivatives with similar characteristics. The identification of classes of derivatives with similar characteristics may include a number of elements such as the currency in which they are traded, maturity dates, the starting term of the contracts

tenor, whether they follow a standard convention or not, and whether they are on-the-run contracts.

(8)   ESMA should refer to historical data indicating shifts in liquidity to determine both whether the class of derivatives or subset thereof is sufficiently liquid to trade only on venues and whether it is only sufficiently liquid in transactions below a certain size. The thresholds for these assessments may vary between classes of derivatives or subsets thereof where the characteristics and the notional size of the classes or subsets vary. In its assessment of spreads, ESMA should have regard to both the average size and the availability of spreads, balancing the consideration that a lack of, or wide, spreads indicates insufficient liquidity against the possibility that spreads may become narrower through increased transparency and availability of the financial instruments if the trading obligation is introduced.

(9)   In its assessment, ESMA should remove from its calculations those trades which are clearly identifiable as post-trade risk reduction trades which reduce non-market risks in derivatives portfolios. To include such transactions in the assessment for the trading obligation may otherwise result in an inflated view of the level of third level buying and selling interest.

(10)   ESMA should also take into consideration the need or otherwise to permit package transactions during its assessment. Investment firms often conduct, on their own account or on behalf of clients, transactions in derivatives and other financial instruments that comprise a number of interlinked trades which are contingent on one another. Given package transactions enable investment firms and their clients to manage their risks and improve the resiliency of financial markets, it may be desirable to continue to permit the execution of some package transactions which comprise one or more derivatives subject to the trading obligation to be executed, on a bilateral basis, outside a trading venue.

(11)   Criteria should also be set out to enable ESMA to determine whether an existing trading obligation for a class of derivatives or a relevant subset thereof should be amended, suspended or revoked, unless the class of derivatives or a relevant subset thereof is no longer traded on at least one trading venue.

(12)   The new legislation of the European Parliament and of the Council on markets in financial instruments set out in Directive 2014/65/EU and Regulation (EU) No 600/2014 applies from 3 January 2017. To ensure consistency and legal certainty, this Regulation should apply from the same date.

(13)   This Regulation is based on the draft regulatory technical standards submitted by the ESMA to the Commission.

(14)   ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and

benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[4],

HAS ADOPTED THIS REGULATION:

Article 1

(Article 32(2)(b) of Regulation (EU) No 600/2014)

Sufficient third party buying and selling interest

1. When establishing whether a class of derivatives or relevant subset thereof has sufficient third-party buying and selling interest to be considered sufficiently liquid for the trading obligation, ESMA shall apply the criteria in Article 32(3) of Regulation (EU) No 600/2014, as further specified in Articles 2 to 5 below.

Article 2

(Article 32(3)(a) of Regulation (EU) No 600/2014)

Average frequency of trades

1. In relation to the average frequency of trades, ESMA shall take into consideration the following elements:

  (a) the number of days on which trading took place;

  (b) the number of trades.

2. ESMA's analysis of the criteria in paragraph 1 shall take into account the distribution of trading executed on trading venues and executed OTC. ESMA shall assess these criteria over a period of time of sufficient length to determine whether the liquidity of each class of derivatives or a relevant subset thereof is subject to seasonal or structural factors. ESMA shall also consider whether trades are concentrated at certain points in time and over certain sizes over the period assessed and determine to what extent such concentration constitutes predictable patterns.

---

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

Article 3

(Article 32(3)(a) of Regulation (EU) No 600/2014)

Average size of trades

1.   In relation to the average size of trades, ESMA shall take into consideration the following elements:

(a)   the average daily turnover whereby the notional size of all trades combined shall be divided by the number of trading days;

(b)   the average value of trades whereby the notional size of all trades combined shall be divided by the number of trades.

2.   ESMA's analysis of the criteria in paragraph 1 shall take into account the factors specified in Article 2(2).

Article 4

(Article 32(3)(b) of Regulation (EU) No 600/2014)

Number and type of active market participants

1.   In relation to the number and type of active market participants, ESMA shall take into consideration the following elements:

(a)   the total number of market participants trading in that class of derivatives or relevant subset thereof is not lower than two;

(b)   the number of trading venues that have admitted to trading or are trading the class of derivatives or a relevant subset thereof;

(c)   the number of market makers and other market participants under a binding written agreement or an obligation to provide liquidity.

2.   ESMA's analysis shall compare the ratio of market participants to the findings in the data obtained for the analyses of average size of trades and the average frequency of trades.

Article 5

(Article 32(3)(c) of Regulation (EU) No 600/2014)

Average size of spreads

1.   In relation to the average size of spreads, ESMA shall take into consideration the following elements:

(a) the size of weighted spreads, including volume weighted spreads, over different periods of time;

(b) spreads at different points in time of trading sessions.

2. Where information on spreads is not available, ESMA shall take into consideration a proxy for the assessment of this criterion.

Article 6

Entry into force and application

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

It shall apply from 3 January 2017.

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

Done at Brussels,

For the Commission
The President

[For the Commission
On behalf of the President

[Position]

RTS 5: Draft regulatory technical standards on criteria for determining whether derivatives have a direct, substantial and foreseeable effect within the EU (Article 28(5) of MiFIR)
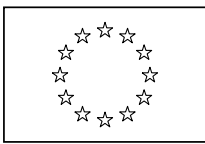
EUROPEAN COMMISSION

Brussels, XXX
[…](2012) XXX draft

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

[…]

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

[…]

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on the direct, substantial and foreseeable effect of contracts within the Union and to prevent the evasion of rules and obligations

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, and in particular Article 28(5) thereof,

Whereas:

(1)   Regulation (EU) No 600/2014 sets out a formal regulatory procedure for mandating trading in derivatives that have been considered to be clearing-eligible and which are sufficiently liquid to take place on a range of trading venues.

(2)   To ensure that goal is effectively achieved, Article 28(2) of Regulation (EU) No 600/2014 prescribes that the trading obligation shall also apply to third-country entities that would be subject to the clearing obligation if they were established in the Union, which enter into derivatives transactions pertaining to a class of derivatives that has been declared subject to the trading obligation, provided that the contract has a direct, substantial and foreseeable effect within the Union or where such obligation is necessary or appropriate to prevent the evasion of such Regulation.

(3)   Given the broad variety of over-the-counter (OTC) derivative contracts, in order to determine when an OTC derivative contract may be considered to have a direct, substantial and foreseeable effect within the Union and cases where it is necessary or appropriate to prevent the evasion of rules and obligations arising from any provision of Regulation (EU) No 648/2012 of the European Parliament and the Council[1] a criteria-based approach should be adopted.

---

[1] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1)

(4)   Given that pursuant to Article 33(3) of Regulation (EU) No 600/2014, the provisions of that Regulation would be deemed fulfilled when at least one of the counterparties is established in a country for which the Commission has adopted an implementing act declaring equivalence in accordance with Article 33(2) of Regulation (EU) No 600/2014, these regulatory technical standards should apply to contracts where both counterparties are established in a third country whose legal, supervisory and enforcement arrangements have not yet been declared equivalent to the requirements laid down in that Regulation.

(5)   Certain information on contracts concluded by third country entities would still only be available to third country competent authorities. Therefore Union competent authorities should closely cooperate with those authorities in order to ensure that the relevant provisions are applied and enforced.

(6)   Given the intrinsic relationship between these technical standards and Commission Delegated Regulation (EU) No 285/2014, of 13 February 2014, supplementing Regulation (EU) No 648/2012 with regard to regulatory technical standards on direct, substantial and foreseeable effect of contracts within the Union and to prevent the evasion of rules and obligations, the technical terms necessary for a comprehensive understanding of the technical standards should be defined in the same way.

(7)   OTC derivative contracts concluded by entities established in third countries covered by a guarantee provided by entities established in the Union create a financial risk for the guarantor established in the Union. Furthermore, given that the risk would depend on the size of the guarantee granted by financial counterparties in order to cover OTC derivative contracts and given the interconnections between financial counterparties compared to non-financial counterparties, only OTC derivative contracts concluded by entities established in third countries that are covered by a guarantee which exceeds certain quantitative thresholds and is provided by financial counterparties established in the Union should be considered as having a direct, substantial and foreseeable effect in the Union.

(8)   Financial counterparties established in third countries can enter into OTC derivative contracts through their Union branches. Given the impact of the activity of those branches on the Union market, OTC derivative contracts concluded between those Union branches should be considered to have a direct, substantial and foreseeable effect within the Union.

(9)   OTC derivative contracts that are entered into by specific counterparties with the primary purpose of avoiding the application of the clearing obligation or of the risk mitigation techniques applicable to entities that would have been the natural counterparties to the contract, should be considered as evading the rules and obligations laid down in Regulation (EU) No 600/2014 as they hinder the achievement of a purpose of that Regulation, namely mitigating counterparty credit risk.

(10) OTC derivative contracts that are part of an arrangement whose characteristics are not supported by a business rationale or commercial substance and have as their primary purpose the circumvention of the application of Regulation (EU) No 600/2014, including rules relating to the conditions of an exemption, should be considered as evading the rules and obligations laid down in that Regulation.

(11) Situations where the individual components of the arrangement are inconsistent with the legal substance of the arrangement as a whole, where the arrangement is carried out in a manner which would not ordinarily be used in what is expected to be reasonable business conduct, where the arrangement or series of arrangements includes elements that have the effect of offsetting or nullifying their reciprocal economic substance, where transactions are circular in nature, should be considered as indicators of an artificial arrangement or an artificial series of arrangements.

(12) It is desirable to provide technical standards related to contracts that have a direct, substantial and foreseeable effect within the Union as well as technical standards related to the prevention of evasion of rules and obligations provided for in Regulation (EU) No 600/2014 in a single instrument since both relate to the trading obligation. Furthermore, they share common features such as their application to a contract whose counterparties would not be subject to the trading obligation if the conditions of Article 28 of Regulation (EU) No 600/2014 specified further by this Regulation were not met.

(13) Given that third country entities affected by these regulatory technical standards require time in order to arrange for compliance with the requirements of Regulation (EU) No 600/2014 when their OTC derivative contracts fulfil the conditions set out in these regulatory technical standards for being considered to have a direct, substantial and foreseeable effect within the Union, it is appropriate to delay the application of the provision containing those conditions by six months.

(14) The new legislation of the European Parliament and of the Council on markets in financial instruments set out in Directive 2014/65/EU and Regulation (EU) No 600/2014 applies from 3 January 2017. To ensure consistency and legal certainty, this Regulation should apply from the same date.

(15) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(16) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group

established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[2].

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

For the purposes of this Regulation the following definition shall apply:

'guarantee' means an explicitly documented legal obligation by a guarantor to cover payments of the amounts due or that may become due pursuant to the OTC derivative contracts covered by that guarantee and entered into by the guaranteed entity in favour of the beneficiary where there is a default as defined in the guarantee or where no payment has been effected by the guaranteed entity.

Article 2

Contracts with a direct, substantial and foreseeable effect within the Union

1.   An OTC derivative contract shall be considered as having a direct, substantial and foreseeable effect within the Union when at least one third country entity benefits from a guarantee provided by a financial counterparty established in the Union which covers all or part of its liability resulting from that OTC derivative contract, to the extent that the guarantee meets both following conditions:

(a) it covers the entire liability of a third country entity resulting from one or more OTC derivative contracts for an aggregated notional amount of at least EUR 8 billion or the equivalent amount in the relevant foreign currency, or it covers only a part of the liability of a third country entity resulting from one or more OTC derivative contracts for an aggregated notional amount of at least EUR 8 billion or the equivalent amount in the relevant foreign currency divided by the percentage of the liability covered;

(b) it is at least equal to 5 per cent of the sum of current exposures, as defined in Article 272 (17) of Regulation (EU) No 575/2013[3], in OTC derivative contracts of the financial counterparty established in the Union issuing the guarantee.

When the guarantee is issued for a maximum amount which is below the threshold set out in point (a) of the first sub-paragraph, the contracts covered by that guarantee shall not be considered to have a direct, substantial and foreseeable effect within the Union unless the amount of the guarantee is increased, in which case the direct, substantial and foreseeable effect of the contracts within the Union shall be re-assessed by the guarantor against the conditions set out in points (a) and (b) of the first sub-paragraph on the day of the increase.

Where the liability resulting from one or more OTC derivative contracts is below the threshold set out in point (a) of the first sub-paragraph, such contracts shall not be considered to have a direct, substantial and foreseeable effect within the Union even where the maximum amount of the guarantee covering such liability is equal to or above the threshold set out in point (a) of the first sub-paragraph and even where the condition set out in point (b) of the first sub-paragraph has been met.

In the event of an increase in the liability resulting from the OTC derivative contracts or of a decrease of the current exposure, the guarantor shall re-assess whether the conditions set out in points (a) and (b) of the first sub-paragraph are met. Such assessment shall be done respectively on the day of the increase of liability for the condition set out in point (a) of the first sub-paragraph, and on a monthly basis for the condition set out in point (b) of the first sub-paragraph.

OTC derivative contracts for an aggregate notional amount of at least EUR 8 billion or the equivalent amount in the relevant foreign currency concluded before a guarantee is issued or increased, and subsequently covered by a guarantee that meets the conditions set out in points (a) and (b) of the first sub-paragraph, shall be considered as having a direct, substantial and foreseeable effect within the Union.

2. An OTC derivative contract shall be considered as having a direct, substantial and foreseeable effect within the Union where the two entities established in a third country enter into the OTC derivative contract through their branches in the Union and would qualify as financial counterparties if they were established in the Union.

Article 3

Cases where it is necessary or appropriate to prevent the evasion of rules or obligations provided for in Regulation (EU) No 600/2014

1. An OTC derivative contract shall be deemed to have been designed to circumvent the application of any provision of Regulation (EU) No 600/2014 if the way in which that

---

[3] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

contract has been concluded is considered, when viewed as a whole and having regard to all the circumstances, to have as its primary purpose the avoidance of the application of any provision of that Regulation.

2. For the purposes of paragraph 1, a contract shall be considered as having for primary purpose the avoidance of the application of any provision of Regulation (EU) No 600/2014 if the primary purpose of an arrangement or series of arrangements related to the OTC derivative contract is to defeat the object, spirit and purpose of any provision of Regulation (EU) No 600/2014 that would otherwise apply including when it is part of an artificial arrangement or artificial series of arrangements.

3. An arrangement that intrinsically lacks business rationale, commercial substance or relevant economic justification and consists of any contract, transaction, scheme, action, operation, agreement, grant, understanding, promise, undertaking or event shall be considered an artificial arrangement. The arrangement may comprise more than one step or part.

Article 4

Entry into force and application

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

It shall apply from 3 January 2017.

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

Done at Brussels,

For the Commission
The President

[For the Commission
On behalf of the President

[Position]

CHAPTER 3: MICROSTRUCTURAL ISSUES

RTS 6: Regulation on the regulatory technical standards specifying the organisational requirements of investment firms engaged in algorithmic trading, providing direct electronic access and acting as general clearing members

EUROPEAN COMMISSION

Brussels, XXX
[…](2012) XXX draft

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

[…]

COMMISSION DELEGATED REGULATION (EU) No …/..

of [date]

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the organisational requirements of investment firms engaged in algorithmic trading, providing direct electronic access and acting as general clearing members

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments amending Directive 2002/92/EC and Directive 2011/61/EU[1] , and in particular points (a) and (d) of Article 17(7) thereof.

Whereas:

(1)   It is important to adopt detailed regulatory technical standards to ensure that systems and risk controls used by investment firms engaged in algorithmic trading, providing direct electronic access and acting as general clearing members are efficient, resilient and have an adequate capacity in a manner appropriate to the nature, scale and complexity of their business model. It is also important to set out the content and format of the forms to be used by investment firms engaged in high frequency trading for submitting to competent authorities the records of their orders upon request and the length of time that these records must be kept.

(2)   These regulatory technical standards should address all risks that may affect the core elements of a trading system, including the hardware, software and associated communication lines which investment firms use to perform their trading activities and should cover any type of execution systems or order management systems operated by investment firms.

(3)   To ensure proper calibration of the obligations provided in these regulatory technical standards, it is necessary to differentiate trading algorithms that are investment decision algorithms from order execution algorithms. Investment decision algorithms make automated trading decisions by determining which assets to purchase or sell.

---

[1]   OJ L 173, 12.6.2014, p. 349.

Order execution algorithms optimise order-execution processes by automatic generation and submission of orders or quotes, to one or several trading venues once the investment decision has been taken.

(4)   The potential impact that algorithms may have on the overall fair and orderly functioning of the market should constitute a guiding principle in setting out regulatory technical standards regarding the testing of algorithms. In this regard, only those pure investment decision algorithms which generate orders that are only to be executed by non-automated means and with human intervention should be excluded from the testing requirements.

(5)   Reference should be made to elements which are instrumental for the resilience and capacity of investment firms engaged in algorithmic trading including staffing and outsourcing policies.

(6)   Investment firms should be required to segregate tasks and functions at various levels so as to reduce their dependency on a single person or unit.

(7)   Investment firms should operate a kill functionality enabling them to withdraw all or a subset of their orders where this becomes necessary. For such a functionality to be effective, investment firms should always be in a position to know which algorithms, traders or clients are responsible for an order.

(8)   These regulatory technical standards should apply jointly with other regulatory requirements stemming from Directives 2005/60/EC[2], 2014/65/EU[3] and 2013/36/EU[4] of the European Parliament and of the Council and Regulation (EU) No 600/2014 of the European Parliament and of the Council[5].

(9)   Investment firms providing direct electronic access (DEA) services should always retain responsibility for the trading that their DEA clients carry out under their name. Responsibility for those services should constitute the key factor governing the framework for pre-trade and post-trade controls and for assessing the suitability of prospective DEA clients. Investment firms should therefore have sufficient knowledge about the intentions, capabilities, financial resources and trustworthiness of their

---

[2] Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing; OJL 309 25.11.2005

[3] OJ L 173, 12.6.2014, p. 349.

[4] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC; OJL 176 27.6.2013

[5] Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012; OJL 173 12.6.2014

clients, including information about the prospective DEA clients' disciplinary history with competent authorities and trading venues, where publicly available.

(10) Investment firms which provide DEA services ("DEA provider") may provide those services to clients without being engaged in algorithmic trading themselves. However, since the clients may use the DEA to engage in algorithmic trading, it is necessary to ensure that the DEA providers have the proper systems and controls in place and be subject to the organisational requirements provided in these regulatory technical standards.

(11) The specific organisational requirements for investment firms must be determined according to a robust self-assessment where, at a minimum, the parameters set out in this Regulation must be assessed. That self-assessment should include any other circumstances not included in that list that might have an impact on their organisation, thus constituting one of the cornerstones of the supervision of investment firms carried out by the competent authorities.

(12) Self-assessments should be undertaken periodically by investment firms to gain a full understanding of the trading systems and algorithms they use and the risks stemming from algorithmic trading. An investment firm's understanding should be irrespective of whether the systems and algorithms were developed by the investment firm itself, purchased from a third party, designed or developed in close cooperation with a client or a third party.

(13) Investment firms engaged in algorithmic trading should monitor that their trading systems cannot be used for any purpose that is contrary to Regulation (EU) 596/2014 of the European Parliament and of the Council[6] or to the rules of a trading venue to which they are connected. Where monitoring leads to the identification of suspicious transactions or orders, the submission of the reports to the competent authorities should take place in accordance with the requirements and the format set out in Article 16 of Regulation (EU) No 596/2014.

(14) Conformance testing should be relied upon to establish that the trading systems of an investment firm communicate and interact properly with the trading systems of the trading venue or direct market access (DMA) provider and that market data is being processed correctly.

(15) Controlled deployment of algorithms should be observed by investment firms when introducing all algorithms regardless of whether they are new or previously successfully deployed in another trading venue or that their architecture has been

---

[6] 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;

materially modified. The controlled deployment of algorithms should ensure that the algorithms perform as expected in a live environment by setting cautious limits on the number of financial instruments being traded, the price, value and number of orders, the strategy positions and the number of markets involved and by monitoring the activity of the algorithm more intensively.

(16)   The generation of alerts following real time monitoring should be done as close to instantaneously as technically possible. Any actions following that monitoring should be undertaken as soon as possible assuming a reasonable level of efficiency and expenditure of the persons and systems concerned.

(17)   Due diligence of prospective DEA clients should be adapted to the risks posed by the nature, scale and complexity of their expected trading activities, and the service being provided. In particular, it should include an assessment of the expected level of trading and order volume and the type of connection offered to the relevant trading venues.

(18)   Different types of risks should be addressed by different types of controls. Pre-trade controls should be conducted before an order is submitted to a trading venue. Investment firms should also monitor their trading activity and implement real-time alerts which identify signs of disorderly trading or a breach of their pre-trade limits. Post-trade controls should be put in place to at least monitor the market and credit risks of the investment firm through post-trade reconciliation. In addition, potential market abuse or breach with rules of trading venues should be prevented through specific surveillance systems generating alerts on the following day at the latest, having been calibrated to minimise false positive and false negative alerts.

(19)   To ensure consistency with the general order record-keeping obligations for investment firms under Article 25(1) of Regulation (EU) No 600/2014, the time limits of the order record keeping obligation for investment firm engaging in a high-frequency algorithmic trading technique should be aligned with ones prescribed under Article 25(1) of Regulation (EU) No 600/2014.

(20)   The new legislation of the European Parliament and of the Council on markets in financial instruments as set out in Directive 2014/65/EU and Regulation (EU) No 600/2014 applies from 3 January 2017. To ensure consistency and legal certainty, this Regulation should apply from the same date.

(21)   This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(22)   ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group

established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[7],

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL ORGANISATIONAL REQUIREMENTS

Article 1

(Article 17(1) of Directive 2014/65/EU)

Governance, general requirements and proportionality

As part of their overall governance and decision making framework, investment firms shall develop and monitor trading systems and trading algorithms, taking into account the nature, scale and complexity of their business and setting out:

(a) clear lines of accountability, including procedures and processes to approve the development, deployment and subsequent updates of trading algorithms and for the resolution of problems identified through monitoring;

(b) effective procedures and processes for the communication of information within the investment firm, such that relevant issues can be escalated and instructions can be implemented in an efficient and timely manner;

(c) segregation of functions and responsibilities between trading desks and supporting functions including risk control and compliance functions ensuring that unauthorised trading activity cannot be concealed.

Article 2

(Article 17(1) of Directive 2014/65/EU)

Role of compliance function

1. Investment firms shall ensure that their compliance staff has at least a general understanding of the way in which the algorithmic trading systems and algorithms of the investment firm operate. The compliance function shall be in continuous contact with persons with detailed technical knowledge of the firm's algorithmic trading systems or algorithms.

---

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

2.   Investment firms shall also enable their compliance function to, at all times, have access to the kill functionality as referred to under Article 12 or have direct contact with the persons who have access to it, and to those who are responsible for each trading system or algorithm.

3.   Where part or all of the compliance function is outsourced to an external compliance consultant, investment firms shall engage with, and provide information and access to, the external compliance consultant as it would with its own compliance staff. Investment firms shall ensure that:

(a) data privacy is guaranteed;

(b) auditing of the compliance function by internal and external auditors or by the firms' competent authority is not constrained.

Article 3

(Article 17(1) of Directive 2014/65/EU)

Staffing

1.   Investment firms shall employ an adequate number of staff with the necessary skills to manage their algorithmic trading systems and trading algorithms and sufficient technical knowledge of:

(a) relevant trading systems and algorithms;

(b) the monitoring and testing of such systems and algorithms;

(c) the trading strategies that the firm deploys through its algorithmic trading systems and algorithms;

(d) the investment firm's legal and regulatory obligations and in particular the requirements imposed by the relevant trading venues and all other requirements established by Article 17 of Directive 2014/65/EU and Regulation (EU) No 596/2014.

2.   Investment firms shall define the skills necessary to comply with the obligation set out in paragraph 1. These skills shall be acquired through recruitment or through training of appropriate staff and shall be evaluated periodically to ensure that they remain up-to-date.

3.   Initial and ongoing training shall be tailored to the experience and responsibilities of the staff it is being delivered to, taking into account the nature, scale and complexity of the staff activity. In particular, staff involved in order submission shall receive initial and ongoing training on order submission systems and market abuse.

4. Investment firms shall have procedures in place to ensure that the staff responsible for the risk and compliance functions for algorithmic trading have sufficient knowledge of algorithmic trading and strategies and sufficient skill and authority in order to:

(a) follow up information provided by automatic alerts;

(b) challenge staff responsible for algorithmic trading when the trading activity gives rise to disorderly trading conditions or suspicions of market abuse.

Article 4

(Article 17(1) of Directive 2014/65/EU)

IT outsourcing and procurement

1. When outsourcing or procuring software or hardware which is used in algorithmic trading activities, investment firms shall remain fully responsible for fulfilling their obligations as set out in this Regulation.

2. Investment firms shall have sufficient knowledge and all the necessary documentation regarding any procured or outsourced hardware or software used in algorithmic trading.

CHAPTER II

RESILIENCE OF TRADING SYSTEMS

SECTION 1

Testing and deployment of trading algorithms and systems

Article 5

(Article 17(1) of Directive 2014/65/EU)

General methodology

1. Prior to the initial deployment or substantial update of an algorithmic trading system, trading algorithm or algorithmic trading strategy, investment firms shall set up clearly delineated development and testing methodologies.

2. A responsible party designated by senior management of the investment firm shall sign-off the initial deployment or substantial update of an algorithmic trading system, trading algorithm or algorithmic trading strategy.

3. The development and testing methodologies shall address the design and performance of the system, algorithm or strategy, the division of responsibilities, the allocation of sufficient resources, escalation procedures, recordkeeping and approval.

4. The development and testing methodologies and scenarios shall ensure that:

(a) the algorithmic trading system, trading algorithm or algorithmic trading strategy does not behave in an unintended manner;

(b) the operation of the algorithmic trading system, trading algorithm or algorithmic trading strategy is compliant with the investment firm's obligations under Directive 2014/65/EU and in particular, that embedded compliance and risk management control functions as intended;

(c) the trading systems, trading algorithms or trading strategies conform with the rules and systems of the trading venues accessed;

(d) the trading system, trading algorithm or trading strategy does not contribute to disorderly trading conditions, and can continue to work effectively in stressed market conditions, and where necessary under those conditions, allows the trading system or algorithm to be switched off.

5. Investment firms shall adapt their testing methodologies to the trading venues and markets where the algorithms will be deployed. Investment firms shall undertake further testing if there are substantial changes to the trading system or the access to the venue in which the algorithmic trading system, trading algorithm or algorithmic trading strategy is to be used.

6. Paragraphs 2 to 5 shall only apply to algorithms leading to order execution with limited or no human intervention.

7. Investment firms shall keep records of any material changes made to the software used for algorithmic trading, allowing them to accurately determine:

(a) when a change was made;

(b) who made the change;

(c) who approved the change;

(d) the nature of the change.

Article 6

(Article 17(1) of Directive 2014/65/EU)

Conformance testing

1. Investment firms shall test the conformance of their trading systems and algorithms with:

(a) the trading venue in any of the following cases:

(i) when accessing the venue as a member;

(ii) when connecting to the venue through a sponsored access arrangement for the first time;

(iii) when there is a material change of the systems of the trading venue;

(iv) prior to the initial deployment or material update of an algorithmic trading system, trading algorithm or algorithmic trading strategy.

(b) the DMA provider in any of the following cases:

(i) when they access the trading venue through a DMA arrangement for the first time;

(ii) when there is a material change affecting the DMAfunctionality of the provider;

(iii) prior to the initial deployment or material update of an algorithmic trading system, trading algorithm or algorithmic trading strategy.

2.   Conformance testing shall ensure that the basic elements of the system or the algorithm operate correctly and according to the requirements of the trading venue or the DMA provider, including the ability of the algorithm to interact as expected with the trading venue's matching logic, and adequately process the data flows downloaded from the trading venue.

Article 7

(Article 17(1) of Directive 2014/65/EU)

Testing environments

1.   Investment firms shall ensure that testing under Article 5(4)(a), (b) and (d) shall be undertaken in non-live environments, segregated from their production environments, that are used specifically for the testing and development of trading algorithms and trading systems.

For the purposes of the first subparagraph, the production environment shall include the environments where algorithmic trading systems effectively operate and comprise software and hardware used by traders, order routing to trading venues, market data, dependent databases, risk control systems, data capture and analysis systems, and post-trade processing systems.

2.   Investment firms may fulfil the testing requirements under Article 5(4)(a), (b) and (d) using their own testing environment, or a testing environment as provided by a trading venue, a DEA provider, or a vendor.

3.   Investment firms shall retain full responsibility for testing and for making the required changes to their algorithms, strategies or systems.

Article 8

(Article 17(1) of Directive 2014/65/EU)

Controlled deployment of algorithms

Investment firms shall maintain control over the trading algorithms that they deploy in the production environment by setting limits on the number of financial instruments being traded, on the price, value and numbers of orders, on the strategy positions, and on the number of trading venues to which orders are sent.

SECTION 2

Post-deployment management

Article 9

(Article 17(1) of Directive 2014/65/EU)

Annual self-assessment and validation of systems

1.   Investment firms shall perform an annual self-assessment and validation process to elaborate a validation report. Investment firms shall review and evaluate their algorithmic trading systems and trading algorithms, their governance, accountability and sign-off framework and relevant business continuity and their overall compliance with Article 17 of Directive 2014/65/EU, taking into account the nature, scale and complexity of their business. The self-assessment shall include an analysis of at least all the parameters set out in Annex I to this Regulation.

2.   The risk management control function of the investment firm shall be responsible for the creation of the validation report, and shall involve staff with the necessary technical knowledge. Compliance function shall be made aware of any issues identified in the validation reports. The validation reports shall be audited by the firm's internal audit function, where such function exists.

3.   The validation reports shall be approved by the investment firm's senior management.

4.   Investment firms shall act on the basis of the review processes and validation reports described in this Article to remedy any deficiencies identified.

Article 10

(Article 17(1) of Directive 2014/65/EU)

Stress testing

As part of their annual self-assessment referred to in Article 9, investment firms shall test their algorithmic trading systems and related procedures and controls to ensure that they are capable of withstanding increased order flows or market stresses. Investment firms shall design such tests to be specific to the nature of their trading activity and to their trading systems. Investment firms shall ensure that the tests are carried out in such a way that they do not impact the production environment. Such tests shall at least consist of the following:

(a) running high messaging volume tests using at least twice the highest volume of messaging received and sent by the firm over the previous six month period;

(b) running high trade volume tests using at least twice the highest volume of trading reached by the firm over the previous six month period.

Article 11

(Article 17(1) of Directive 2014/65/EU)

Management of material changes

1. Investment firms shall ensure that any material changes to the production environment related to algorithmic trading shall be subject to a review by a responsible party designated by senior management of the investment firm. The depth of the review shall be proportionate to the magnitude of the proposed change.

2. Investment firms shall establish procedures for internally communicating changes to the functionality of their systems.

SECTION 3

Means to ensure resilience

Article 12

(Article 17(1) of Directive 2014/65/EU)

Kill functionality

1. Investment firms shall be in the position to know which algorithm and which trader, trading desk or, where applicable, client is responsible for each order that is being sent to a trading venue and shall have the ability, as an emergency measure, to cancel unexecuted orders submitted to individual trading venues originated by individual traders, trading desks or, where applicable, clients.

2. Investment firms shall also have the ability, as an emergency measure, to immediately cancel all the firm's outstanding orders at all trading venues to which the firm is connected.

Article 13

(Article 17(1) of Directive 2014/65/EU)

Prevention and identification of potential market abuse or breaches

1. Investment firms shall monitor all trading activity that takes place through their trading systems, including that of their clients, for signs of potential market abuse as specified in Article 12 of Regulation (EU) No 596/2014.

2. In addition to the obligations contained in Article 16 of Regulation (EU) 596/EU/2014 as specified by [Article XX of Regulation on regulatory technical standards for the appropriate arrangements, systems and procedures as well as notification templates to be used for preventing, detecting and reporting abusive practices or suspicious orders or transactions], investment firms shall establish and maintain surveillance systems that are automated and adapted to the nature, scale and complexity of the firm's trading activity to conduct effective monitoring of orders and transactions, generating alerts and reports and, where appropriate, employing visualisation tools. The surveillance system shall cover the full range of trading activities undertaken by the investment firms and all orders submitted by those firms. Investment firms shall cross-check any indications of suspicious trading activity generated by their surveillance systems during the investigation phase against other relevant trading activities undertaken by those firms.

3. Investment firms' surveillance system shall be adaptable to changes to their regulatory obligations and their trading behaviour, including changes to the firm's own trading strategy or that of its clients, the type and volume of instruments traded, the size and complexity of its order flow, and the markets accessed.

4. The surveillance system shall be subject to review at least once a year, in order to assess whether the system itself and the parameters and filters that it employs are still adequate to the firm's regulatory obligations and its trading behaviour, including the minimisation of false positive and false negative surveillance alerts generated by the surveillance system.

5. Using a sufficiently detailed level of time granularity, the investment firms' monitoring systems shall be able to read, replay and analyse order and transaction data on an ex-post basis, with sufficient capacity to be able to operate in an automated low-latency trading environment where relevant, and generate operable alerts at the beginning of the following trading day or, only in cases where manual processes are involved, at the end of the following trading day. In order to ensure adequate documentation and follow-up to alerts generated by the surveillance system, the system shall be used in parallel with a workflow creation and management system.

6. Staff responsible for monitoring the firm's trading activities for the purposes of the previous paragraphs shall report any trading activity which may be not compliant with their firm's policies and procedures or with the firm's regulatory obligations to the compliance function to assess that information and take any appropriate actions, including reporting to the trading venue or submitting a suspicious transaction or order report in accordance with Regulation (EU) No 596/2014 for the appropriate arrangements, systems and procedures as well as notification templates to be used for preventing, detecting and reporting abusive practices or suspicious orders or transactions.

7. Investment firms shall maintain accurate, complete, and consistent trade and account information by reconciling as soon as practicable their own electronic trading logs with records provided by trading venues, their brokers, clearing members, central counterparties (CCPs), data providers, or other relevant business partners, as applicable and as appropriate to the nature, scale and complexity of the business.

Article 14

(Article 17(1) of Directive 2014/65/EU)

Business continuity arrangements

1. Investment firms shall have business continuity arrangements in place with respect to their algorithmic trading systems which are appropriate to the nature, scale and complexity of their business. Those arrangements shall be documented in writing or any other durable medium.

2. Business continuity arrangements of investment firms shall effectively deal with disruptive incidents and, where appropriate, ensure a timely resumption of algorithmic trading. The arrangements shall cover at least the following:

  (a) governance for the development and deployment of the arrangements;

  (b) a range of possible adverse scenarios relating to the operation of the algorithmic trading systems including at least unavailability of systems, staff, work space, external suppliers or dependencies and critical data and documents through loss or alteration;

  (c) procedures for relocating to, and operating the trading system from a back-up site, where having such a site is appropriate to the nature, scale and complexity of the algorithmic trading activities of the investment firm;

  (d) staff training on the operation of the arrangements and individuals' roles;

  (e) arrangements that are bespoke to each of the venues accessed;

  (f) usage policy regarding the firm's kill functionality;

(g) arrangements for shutting down the relevant trading algorithm or trading system where appropriate;

(h) alternative arrangements for the investment firm to manage outstanding orders and positions;

3.   Investment firms shall ensure that their trading algorithm or trading system are shut down in application of their business continuity arrangements without creating disorderly trading conditions.

4.   Investment firms shall review and test their business continuity arrangements on an annual basis and modify the arrangements in light of the review.

Article 15

(Article 17(1) of Directive 2014/65/EU)

Pre-trade controls on order entry

1.   Investment firms shall have in place the following pre-trade controls on order entry with respect to all financial instruments, reinforced by appropriate continuous post-trade controls:

(a) price collars which automatically block or cancel orders that do not meet set price parameters, differentiating between different financial instruments, both on an order-by-order basis and over a specified period of time;

(b) maximum order value, which prevents orders with an uncommonly large order value from entering the order book;

(c) maximum order volume which prevents orders with an uncommonly large order size from entering the order book;

(d) maximum messages limit which prevents sending an excessive number of messages to order books pertaining to the submission, modification or cancellation of an order.

2.   Investment firms shall have in place, repeated automated execution throttles which control the number of times a strategy was already applied. After a configurable number of repeated executions, the system shall be disabled until re-enabled by a designated member of staff.

3.   Investment firms shall immediately include all orders sent to a trading venue into their pre-trade limit calculation system.

4.   Investment firms shall establish and enforce pre-trade risk limits that are appropriately calibrated for the their capital base, clearing arrangements, trading strategy, risk tolerance and experience, including variables such as length of time since engaged in algorithmic trading

and its reliance on third party vendors. Investment firms shall re-calibrate the pre-trade controls in order to account for the changing impact of the orders on the relevant market due to different price and liquidity levels.

5. Investment firms shall be able to automatically block or cancel orders from a trader if they are aware that a trader does not have permission to trade a particular financial instrument. Investment firms shall be able to automatically block or cancel orders where they risk compromising the firm's own risk thresholds. Controls shall be applied, where appropriate, on exposures to individual clients, financial instruments, traders, trading desks or the investment firm as a whole.

6. An investment firm shall have procedures and arrangements for dealing with orders which have been automatically blocked by its pre-trade controls but which the firm wishes to submit upon authorisation of an empowered individual within the investment firm. Such procedures and arrangements shall apply on a temporary and exceptional basis.

7. Pre-trade controls may only be overridden in relation to a specific trade with the full knowledge of relevant staff responsible in the risk management function.

Article 16

(Article 17(1) of Directive 2014/65/EU)

Real-time monitoring

1. Investment firms shall, during the hours they are sending orders to trading venues, monitor in real time all algorithmic trading activity that takes place under their code, including that of their clients, for signs of disorderly trading, including from a cross-market, cross-asset class, or cross-product perspective, in cases where the firm or its clients engage in such activities.

2. Real-time monitoring of algorithms shall be undertaken by the trader in charge of the algorithm and also by an independent risk control function. The risk control function shall be considered as independent, regardless of whether the real-time monitoring is conducted by a member of the staff or by an outsourced function, provided that it is not hierarchically dependent on the trader and can offer appropriate challenge as necessary within the governance framework.

3. Staff members in charge of real-time monitoring shall respond to operational and regulatory issues in a timely manner, initiating remedial action where necessary.

4. Investment firms shall have procedures in place to ensure that their competent authorities, the relevant trading venues and, where applicable, DEA providers, clearing member or CCP have access to staff members in charge of real-time monitoring. Communication channels shall be identified and tested periodically to ensure that in an emergency, the adequate staff

members with the adequate level of authority may reach each other in a timely fashion in order to ensure a fair and orderly market. In addition, contact procedure for out-of-trading hours shall also be established.

5. Monitoring systems shall have real-time alerts to assist staff in identifying any unanticipated activities undertaken by an algorithm. Investment firms shall have a process in place to take remedial action as soon as possible after an alert is generated, including, as necessary, an orderly withdrawal from the market. These monitoring systems shall also provide alerts in relation to algorithms and DEA orders triggering circuit breakers of a trading venue.

6. Real-time alerts shall be generated within five seconds of the relevant event.

Article 17

(Article 17(1) of Directive 2014/65/EU)

Post-trade controls

1. Investment firms shall continuously operate the post-trade controls that they have in place. Where a post-trade control is triggered, the firm shall undertake appropriate action which may include adjusting or shutting down the relevant trading algorithm or trading system or an orderly withdrawal from the market.

2. Post-trade controls referred to in paragraph 1 shall include as a minimum the continuous assessment and monitoring of market and credit risk of the investment firm in terms of effective exposure.

3. Investment firms shall maintain trade and account information which is complete, accurate and consistent. Investment firms shall reconcile their own electronic trading logs with information regarding their outstanding orders and risk exposures as provided by the trading venue to which they send orders, their broker or DEA provider, their clearing member or CCP, their data providers, or other relevant business partners. Reconciliation shall be made in real time where the aforementioned market participants provide the information in real-time. Investment firms shall have the capability to calculate their outstanding exposure and that of their traders and clients in real time.

4. For derivatives, the post-trade controls referred to in paragraph 1 shall include as a minimum, controls regarding the maximum long and short and overall strategy positions, with trading limits to be set in units appropriate to the types of instruments involved.

5. Post-trade monitoring shall be undertaken by the relevant traders responsible for the algorithm and one or more risk control functions within the firm.

Article 18

(Article 17(1) of Directive 2014/65/EU)

Security and limits to access

1.   Investment firms shall implement an IT strategy with defined objectives and measures in line with:

(a)   the business and risk strategy of the firm as well as its operational activities and the risks to which the firm is exposed;

(b)   a reliable IT organisation, including service, production, and development;

(c)   an effective IT security management.

2.   Investment firms shall set up and maintain appropriate arrangements for physical and electronic security that minimise the risks of attacks against their information systems. Measures shall ensure the confidentiality, integrity, authenticity, and availability of data, and the reliability and robustness of their systems.

3.   Investment firms shall promptly inform their competent authorities of any material breaches in their physical and electronic security measures. An incident report shall be provided to its competent authority indicating the nature of the incident, the measures adopted to cope in an emergency and the initiatives taken to avoid similar incidents from recurring.

4.   Investment firms shall undertake penetration tests and vulnerability scans to safeguard against cyber-attacks at least on a yearly basis. They shall implement appropriate safeguards against attackers which may include effective identity and access management.

5.   Investment firms shall ensure that they are able to identify all persons who have critical user access rights to IT systems. Investment firms shall restrict the number of such persons and shall monitor their access to IT systems to ensure traceability at all times.

CHAPTER III

DIRECT ELECTRONIC ACCESS

Article 19

(Article 17(5) of Directive 2014/65/EU)

General provisions for DEA

1.   DEA providers shall always retain responsibility for the trading that their DEA clients carry out in their name.

2. DEA providers shall establish policies and procedures to ensure that trading of DEA clients complies with the trading venue's rules and allows the DEA providers to meet the requirements applicable to DEA.

Article 20

(Article 17(5) of Directive 2014/65/EU)

Systems and controls of DEA providers

1. DEA providers shall apply pre-trade and post-trade controls on the order flow of each of their DEA clients as well as real-time monitoring and market surveillance controls in accordance with Articles 13, 15, 16 and 17. The controls to be applied by DEA providers shall be separate and distinct from those of DEA clients. In particular, and regardless of the application by the DEA client of its own pre-trade and post-trade controls, real-time monitoring and market surveillance controls, the orders of DEA clients shall always pass through the pre-trade controls that are set and controlled by the DEA provider.

2. DEA providers may use their own proprietary pre-trade and post-trade controls, controls provided by a third party or controls offered by the trading venue. In all circumstances the DEA provider shall remain responsible for the effectiveness of those controls and shall ensure that at all time the DEA provider is solely entitled to set or modify the parameters or limits that apply to these pre-trade and post-trade controls. The DEA provider shall monitor the performance of the pre-trade and post-trade controls on an on-going basis.

3. The limits of the pre-trade controls on order submission shall be based on the credit and risk limits which the DEA provider applies to the trading activity of its DEA clients. Those limits shall be based on the initial due diligence and periodic review of the client.

4. The parameters and limits of the controls applied to clients using sponsored access shall be at least as stringent as those imposed on clients using DMA.

Article 21

(Article 17(5) of Directive 2014/65/EU)

Specifications for DEA provider systems

1. DEA providers shall have the ability to:

(a) monitor any orders submitted by DEA clients using the trading code of the DEA provider;

(b) automatically block or cancel orders from individuals operating trading systems that submit orders related to algorithmic trading which are not the ones specifically authorised to send orders through DEA;

(c) automatically block or cancel orders from a DEA client in financial instruments that a DEA client does not have permission to trade. The investment firm must use an internal flagging system to identify and to block single clients or a group of clients;

(d) automatically block or cancel orders of a DEA client when they breach the DEA provider's risk management thresholds. Controls shall be applied to exposures of individual clients, financial instruments or groups of clients;

(e) stop order flow transmitted by their DEA clients;

(f) suspend or withdraw DEA services to any clients where the DEA provider is not satisfied that continued access would be consistent with their rules and procedures for fair and orderly trading and market integrity;

(g) carry out, whenever necessary, a review of the internal risk control systems of a DEA client.

2. DEA providers shall have procedures to evaluate, manage and mitigate market disruption and firm-wide risk, and shall be able to identify the persons to be notified in the event of an error resulting in violations of the risk profile, or potential violations of the trading venue's rules.

3. DEA providers shall at all times have the ability to identify the different clients, and the trading desks and traders of those clients, who submit orders through the DEA provider's systems by assigning unique identification code to them.

4. Where a DEA provider allows a client to sub-delegate the DEA access it receives to its own clients, the DEA provider shall be able to identify the different order flows from the beneficiaries of the sub-delegation. For these purposes, it will not be necessary for the DEA provider to know the identity of these beneficiaries of the sub-delegation.

5. DEA providers shall record the relevant data relating to the orders submitted by their DEA clients, including modifications and cancellations, the alerts generated by their monitoring systems and the modifications made to their filtering process.

Article 22

(Article 17(5) of Directive 2014/65/EU)

Due diligence on prospective DEA clients

1. Investment firms offering DEA shall conduct due diligence on their prospective DEA clients to ensure they meet the requirements set out in this Regulation and the standards set out by the trading venue to which they offer access to.

2. Due diligence shall cover at least:

(a) governance and ownership structure;

(b) types of strategies to be undertaken by the prospective DEA client;

(c) operational set-up, systems and pre-trade and post-trade controls of the prospective DEA client. Where the DEA provider allows clients to use third-party trading software for accessing trading venues it shall ensure that the software includes pre-trade controls at least equivalent to the pre-trade controls set out in this Regulation;

(d) allocation of responsibilities for dealing with actions and errors;

(e) the historical trading pattern and behaviour of the prospective DEA client;

(f) an assessment of the level of expected trading and order volume of the prospective DEA client;

(g) the ability of the prospective DEA client to meet their financial obligations to the firm;

(h) the disciplinary history of the prospective DEA client, where available.

3. Where a DEA provider allows a client to sub-delegate the access it receives to its own clients, the DEA provider shall ensure that its prospective DEA client has a due diligence framework in place at least equivalent to the one described in this Article.

Article 23

(Article 17(5) of Directive 2014/65/EU)

Periodical review of DEA clients

1. DEA providers shall review their due diligence assessment processes at least on an annual basis.

2. DEA providers shall carry out an annual risk-based reassessment of the adequacy of their clients' systems and controls, in particular taking into account changes to the scale, nature or complexity of their trading activities or strategies, or changes to their staffing, ownership structure, trading or bank account, regulatory status, or financial position or whether the DEA client will sub-delegate the access it receives from the DEA provider.

CHAPTER IV

FIRMS ACTING AS GENERAL CLEARING MEMBERS

Article 24

(Article 17(6) of Directive 2014/65/EU)

Systems and controls of firms acting as general clearing members

Any systems used by clearing firms to support the provision of their clearing services to their clients shall be subject to appropriate due diligence, controls, and monitoring.

Article 25

(Article 17(6) of Directive 2014/65/EU)

Due diligence on clients

1. Clearing firms shall make an initial assessment of any prospective clearing client according to the nature, scale and complexity of the prospective client's business. Each potential client shall be assessed against at least the following criteria:

  (a) credit strength including consideration of any guarantees;

  (b) internal risk control systems;

  (c) intended trading strategy;

  (d) payment systems and arrangements that enable clients to ensure a timely transfer of assets or cash as margin required by the clearing firm in relation to the clearing services it provides;

  (e) systems setting and/or access to information that helps clients to respect any maximum trading limit agreed with the clearing firm;

  (f) any collateral provided to the clearing firm by the client;

  (g) operational resources including technological interfaces and connectivity;

  (h) any involvement in breach of financial markets integrity, including market abuse, financial crime and money laundering activities, where available.

2. Clearing firms shall review their clients' on-going performance against the criteria listed above, and any additional criteria that the clearing firm has imposed, on an annual basis. The binding written agreement between the clearing firm and its clients shall include the above criteria, including the frequency at which the clearing firm will review its clients' performance against these criteria and the consequences of clients not complying with them.

Article 26

(Article 17(6) of Directive 2014/65/EU)

Position limits

1. Clearing firms shall set and communicate appropriate trading and position limits to their clients in order to mitigate and manage their own counterparty, liquidity, operational and any other risks.

2. Clearing firms shall monitor their clients' positions against these limits as close to real-time basis as possible and have appropriate pre-trade and post-trade procedures for managing the risk of breaches, by way of appropriate margining practice and other means.

3. Clearing firms shall document such procedures in writing and maintain records of their compliance.

Article 27

(Article 17(6) of Directive 2014/65/EU)

Disclosure of information about the services provided

1. Clearing firms shall publicly disclose their general policy concerning conditions applicable to clients to whom clearing services are offered.

2. Clearing firms shall publicly disclose the levels of protection and the costs associated with the different levels of segregation that they provide and shall offer those services on reasonable commercial terms. Details of the different levels of segregation shall include a description of the main legal implications of the respective levels of segregation offered including information on the insolvency law applicable in the relevant jurisdiction.

CHAPTER V

HIGH-FREQUENCY ALGORITHMIC TRADING TECHNIQUE AND FINAL PROVISIONS

Article 28

(Article 17(2) of Directive 2014/65/EU)

Content and format of order records

1. Investment firms that engage in a high-frequency algorithmic trading technique shall immediately record the details of each placed order set out in the second and third column of tables 2 and 3 of Annex II insofar as they pertain to the order concerned.

2. Investment firms that engage in a high-frequency algorithmic trading technique shall maintain the information referred to in paragraph 1 in the standards and formats specified in the fourth column of tables 2 and 3 of Annex II.

Article 29

(Article 17(2) of Directive 2014/65/EU)

Time limits

Investment firms that engage in a high-frequency algorithmic trading technique shall keep the records required as set out in Article 28 for a period of five years as from the date of their submission to a trading venue or to another investment firm for execution.

Article 30

Entry into force and application

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

It shall apply from 3 January 2017.

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

Done at Brussels,

For the Commission
The President

[For the Commission
On behalf of the President

[Position]

Annex I: Parameters to be considered in the investment firm's self-assessment

1.   When considering the nature of its business, an investment firm shall consider at least the following, where applicable:

(a)   the regulatory status of the firm and, where applicable of its DEA clients, including the regulatory requirements to which it is subject as an investment firm under Directive 2014/65/EU, and to other regulatory requirements as relevant;

(b)   the firm's roles in the market including whether it is a market maker, whether it executes orders for clients, or whether it only trades on own account;

(c)   the level of automation of trading and other processes or activities of the firm;

(d)   the types and regulatory status of the instruments, products and asset classes that the firm trades in;

(e)   the types of strategies the firm employs and the risks contained in these strategies for the firm's own risk management and for the fair and orderly functioning of the markets ; the firm shall consider in particular the nature of these strategies, such as market making or arbitrage, and whether these strategies are long-term, short-term, directional, or non-directional;

(f)   the latency sensitivity of the firm's strategies and trading activities;

(g)   the type and regulatory status of trading venues and other liquidity pools accessed and in particular whether they are lit, dark, over-the-counter (OTC) trading;

(h)   the connectivity solutions of the firm and whether it accesses trading venues as a member, as a DEA client or DEA provider;

(i)   the extent to which the firm relies on third parties for the development and maintenance of its algorithms or trading systems and whether these algorithms or trading systems are self-developed, co-developed with a third party, or purchased from, or outsourced to, a third party;

(j)   the firm's ownership and governance structure, how it is structured organisationally and operationally, and whether it is a partnership, subsidiary, publicly traded company, or otherwise;

(k)   the firm's risk management, compliance, and audit structure and organisation; and,

(l) the date of establishment of the firm and level of experience and competency of its personnel and whether it is a start-up or an incumbent.

2. When considering the scale of its business, an investment firm shall consider at least the following, where applicable:

(a) the number of algorithms and strategies running in parallel;

(b) the number of individual instruments, products, and asset classes traded;

(c) the number of trading desks operated and individual trading identifiers used;

(d) the messaging volume capacities and in particular the number of orders submitted, adjusted, cancelled and executed;

(e) the monetary value of its gross and net positions intraday and overnight;

(f) the number of markets accessed either as a member or participant or via DEA;

(g) the number and size of the firm's clients and notably the firm's DEA clients;

(h) the number of co-location or proximity hosting sites to which the firm has connectivity;

(i) the throughput size of connectivity infrastructure of the firm;

(j) the number of clearing members or CCP memberships of the firm;

(k) the firm's size in terms of number of traders and front-office, middle-office and back-office staff employed as full-time equivalent;

(l) the number of the firm's physical locations;

(m) the number of countries and regions in which the firm is undertaking trading activities;

(n) the firm's annual earnings and profits.

3. When considering the complexity of its business, an investment firm shall consider at least the following, where applicable:

(a) the nature of the strategies carried out by the firm or by its clients, to the extent that these strategies are known by the firm and, in particular, whether these strategies imply algorithms initiating orders related to correlated instruments or on several trading venues or liquidity pools;

(b) the firm's algorithms, in terms of coding, inputs upon which the algorithms are reliant, interdependencies, and the rule exceptions contained in the algorithms, or otherwise;

(c) the firm's trading systems in terms of diversity of trading systems employed, and the extent to which the firm's has control over setting, adjusting, testing, and reviewing of its trading systems;

(d) the structure of the firm in terms of ownership and governance and its organisational, operational, technical, physical, or geographical set up;

(e) the diversity of the firm's connectivity, technology or clearing solutions;

(f) the diversity of the firm's physical trading infrastructures;

(g) the level of outsourcing undertaken or offered by the firm and in particular where key functions are being outsourced;

(h) the firm's provision or usage of DEA, whether it is DMA or sponsored access, and the conditions under which DEA is offered to clients; and,

(i) the speed of trading by the firm or its clients.

Annex II: Content and format of order records

Table 1

Legend for Tables 2 and 3

SYMBOL	DATA TYPE	DEFINITION
{ALPHANUM-n}	Up to n alphanumerical characters	Free text field.
{CURRENCYCODE_3}	3 alphanumerical characters	3 letter currency code, as defined by ISO 4217 currency codes
{DATE_TIME_FORMAT}	ISO 8601 date and time format	Date and time in the following format: YYYY-MM-DDThh:mm:ss.ddddddZ. - 'YYYY' is the year; - 'MM' is the month; - 'DD' is the day; - 'T' – means that the letter 'T' shall be used - 'hh' is the hour; - 'mm' is the minute; - 'ss.dddddd' is the second and its fraction of a second; - Z is UTC time. Dates and times shall be reported in UTC.
{DECIMAL-n/m}	Decimal number of up to n digits in total of which up to m digits can be fraction digits	Numerical field for both positive and negative values. - decimal separator is '.' (full stop); - negative numbers are prefixed with '-' (minus); - values are rounded and not truncated.
{INTEGER-n}	Integer number of up to n digits in total	Numerical field for both positive and negative integer values.
{ISIN}	12 alphanumerical characters	ISIN code as defined in ISO 6166

{LEI}	20 alphanumerical characters	Legal entity identifier as defined in ISO 17442
{MIC}	4 alphanumerical characters	Market identifier as defined in ISO 10383
{NATIONAL_ID}	40 alphanumerical characters	The ID is that set out in Article 6 and ANNEX II of [RTS 22 on transaction reporting obligations under Article 26 of Regulation (EU) No 600/2014].

Table 2

Information relating to every initial decision to deal and incoming orders from clients

N.	Field	Description	Standards and Format
1	Client first name (s)	Full first name(s) of the client. In case of more than one first name, all names shall be included in this field separated by a comma. This field shall be left blank in case of coverage by the Legal Entity Identifier (LEI)	{ALPHANUM-140}
2	Client surname (s)	Full surname(s) of the client. In case of more than one surname, all surnames shall be included in this field separated by a comma. This field shall be left blank in case of coverage by the Legal Entity Identifier (LEI)	{ALPHANUM-140}
3	Client identification code	Code used to identify the client of the investment firm. In case of DEA, the code of the DEA user shall be used. Where the client is a legal entity, the LEI code of the client shall be used. Where the client is not a legal entity, the {NATIONAL_ID} shall be used. In the case of aggregated orders, the flag AGGR as specified in Article 2(3) of [RTS 24 on maintenance of relevant data relating to orders in financial instruments under article 25(2) of Regulation (EU) No 600/2014] shall be used In case of pending allocations, the flag PNAL as specified in Article 2(2) of [RTS 24 on maintenance of relevant data relating to orders in financial instruments under article 25(2) of Regulation (EU) No 600/2014] shall be used. This field shall be left blank only if the investment firm has no client.	{LEI} {NATIONAL_ID} 'AGGR' – aggregated orders 'PNAL' – pending allocations
4	Name(s) of person acting on behalf of the client	This field shall contain the full first name(s) of the person acting on behalf of the client. In case of more than 1 first name, all names shall be included in this field separated by a comma.	{ALPHANUM-140}
5	Surname(s) of person acting on behalf of the client	This field shall contain the full surname(s) of the person acting on behalf of the client. In case of more than 1 surname, all surnames shall be included in this field separated by a comma.	{ALPHANUM-140}
6	Investment decision within firm	Code used to identify the person or the algorithm within the investment firm who is responsible for the investment	{NATIONAL_ID} - Natural persons {ALPHANUM-50} - Algorithms

		decision in accordance with Article 8 of [RTS 22 on transaction reporting under Article 26 of Regulation (EU) No 600/2014**.**]. Where a natural person was responsible for the investment decision the person who was responsible or had primary responsibility for the investment decision shall be identified with the {NATIONAL_ID} Where an algorithm was responsible for the investment decision the field shall be populated as set out in Article 8(3) of [RTS 22 on transaction reporting under Article 26 of of Regulation (EU) No 600/2014]**.** . This field shall be left blank when the investment decision was not made by a person or an algorithm within the investment firm.	
7	Initial order designation	Code used to identify the order that was received from the client or generated by the investment firm before the order is processed and submitted to the trading venue or investment firm.	{ALPHANUM-50}
8	Buy-Sell indicator	To show if the order is to buy or sell. In case of options and swaptions, the buyer shall be the counterparty that holds the right to exercise the option and the seller shall be the counterparty that sells the option and receives a premium. In case of futures and forwards other than futures and forwards relating to currencies, the buyer shall be the counterparty buying the instrument and the seller the counterparty selling the instrument. In the case of swaps relating to securities, the buyer shall be the counterparty that gets the risk of price movement of the underlying security and receives the security amount. The seller shall be the counterparty paying the security amount. In the case of swaps related to interest rates or inflation indices, the buyer shall be the counterparty paying the fixed rate. The seller shall be the counterparty receiving the fixed rate. In case of basis swaps (float-to-float interest rate swaps), the buyer shall be the counterparty that pays the spread and the seller the counterparty that receives the spread. In the case of swaps and forwards related to currencies and of cross currency swaps, the buyer shall be the	'BUYI' – buy 'SELL' – sell

		counterparty receiving the currency which is first when sorted alphabetically by ISO 4217 standard and the seller shall be the counterparty delivering this currency. In the case of swap related to dividends, the buyer shall be the counterparty receiving the equivalent actual dividend payments. The seller is the counterparty paying the dividend and receiving the fixed rate. In the case of derivative instruments for the transfer of credit risk except options and swaptions, the buyer shall be the counterparty buying the protection. The seller is the counterparty selling the protection. In case of derivative contracts related to commodities, the buyer shall be the counterparty that receives the commodity specified in the report and the seller the counterparty delivering this commodity. In case of forward rate agreements, the buyer shall be the counterparty paying the fixed rate and the seller the counterparty receiving the fixed rate For an increase in notional the buyer shall be the same as the acquirer of the financial instrument in the original transaction and the seller shall be the same as the disposer of the financial instrument in the original transaction. For a decrease in notional the buyer shall be the same as the disposer of the financial instrument in the original transaction and the seller shall be the same as the acquirer of the financial instrument in the original transaction.	
9	Financial instrument identification code	Unique and unambiguous identifier of the financial instrument	{ISIN}
10	Price	Limit price of the order excluding, where applicable, commission and accrued interest. For stop orders, this shall be the stop price for the order. In the case of option contracts, it is the premium of the derivative contract per underlying security or index point. In the case of spread bets it shall be the reference price of the direct underlying instrument. For credit default swaps, it shall be the coupon in basis points. Where price reported in monetary terms,	{DECIMAL-18/13} in case the price is expressed as monetary value value {DECIMAL-11/10} in case the price is expressed as percentage or yield 'PNDG' in case the price is not available

		it shall be provided in the major currency unit. Where price is not applicable the field shall be left blank. Where price is currently not available but pending, the value shall be 'PNDG'. If the agreed price is zero a price of zero shall be used. Where applicable, values shall not be rounded or truncated	
11	Price notation	Indication as to whether the price and the strike price is expressed in monetary value, in percentage or in yield.	'MONE' – Monetary value 'PERC' – Percentage 'YIEL' – Yield
12	Price multiplier	Number of units of the underlying instruments represented by a single derivative contract. Monetary value covered by a single swap contract where the quantity field indicates the number of swap contracts in the transaction. For a future or option on an index, the amount per index point. For spreadbets the movement in the price of the underlying instrument on which the spreadbet is based. The information reported in this field shall be consistent with the values provided in fields 10 and 26.	{DECIMAL- 18/17} '1' - If non-derivative financial instruments not traded by contracts.
13	Price currency	Currency in which the price for the financial instrument related to the order is expressed (applicable if the price is expressed as monetary value).	{CURRENCYCODE_3}
14	Currency of leg 2	In the case of multi-currency or cross-currency swaps the currency in which leg 2 of the contract is denominated. For swaptions where the underlying swap is multi-currency, the currency in which leg 2 of the swap is denominated. This field is only applicable to interest rate and currency derivatives contracts	{CURRENCYCODE_3}
15	Underlying instrument code	ISIN code of the underlying instrument. For ADRs, GDRs and similar instruments, the {ISIN} of the financial instrument on which the instruments is based. For Convertible bonds, the {ISIN} of the instrument into which the bond can be converted. For derivatives or other instruments which have an underlying, the ISIN code for the underlying instrument, when the underlying is admitted to trading, or traded on a trading venue. Where the underlying is a stock dividend, then ISIN code of the related share entitling the underlying dividend. For Credit Default Swaps, the ISIN of	{ISIN}

		the reference obligation shall be provided. In case the underlying is an Index and has an ISIN, the ISIN code for that index. When the underlying is a basket, include all the ISINs for each constituent of the basket that is admitted to trading or is traded on a trading venue. This field shall be repeated as many times as necessary to list all instruments in the basket.	
16	Option type	Indication as to whether the derivative contract is a call (right to purchase a specific underlying asset) or a put (right to sell a specific underlying asset) or whether it cannot be determined whether it is a call or a put at the time the order is placed. In case of swaptions it shall be: - "PUTO", in case of receiver swaption, in which the buyer has the right to enter into a swap as a fixed-rate receiver. -"CALL", in case of payer swaption, in which the buyer has the right to enter into a swap as a fixed-rate payer. In case of Caps and Floors it shall be: -"PUTO", in case of a Floor. -"CALL", in case of a Cap. Field only applies to derivatives that are options or warrants.	'PUTO' – Put 'CALL' – Call 'OTHR' – where it cannot be determined whether it is a call or a put
17	Strike price	Predetermined price at which the holder will have to buy or sell the underlying instrument or an indication that the price cannot be determined at the time the order is placed. Field only applies to an option or warrant where strike price can be determined at the time the order is placed. Where strike price is not applicable the field shall not be populated.	{DECIMAL-18/13} in case the price is expressed as monetary value. {DECIMAL-11/10} in case the price is expressed as percentage or yield. 'PNDG' in case the price is not available
18	Strike price currency	Currency of the Strike Price	{CURRENCYCODE_3}
19	Up-front payment	Monetary value of any up-front payment in basis points of notional received or paid by the seller. Where the seller receives the up-front payment, the value populated is positive. Where the seller pays the up-front payment, the value populated is negative. For an increase or decrease of notional in derivative contracts, the number shall reflect the absolute value of the change and shall be expressed as a positive number.	{DECIMAL-18/5}

20	Delivery type	Indication as to whether the transaction is settled physically or in cash. Where delivery type cannot be determined at time of order placement, the value shall be 'OPTL'. The field is only applicable for derivatives.	'PHYS' - Physically settled 'CASH' - Cash settled 'OPTL' - Optional for counterparty or when determined by a third party
21	Option exercise style	Indication as to whether the option may be exercised only at a fixed date (European, and Asian style), a series of pre-specified dates (Bermudan) or at any time during the life of the contract (American style). This field is only applicable for options	'EURO' - European 'AMER' - American 'ASIA' - Asian 'BERM' - Bermudan 'OTHR' - Any other type
22	Maturity date	Date of maturity of the financial instrument. Field only applies to debt instruments with defined maturity.	{DATEFORMAT}
23	Expiry date	Expiry date of the reported financial instrument. Field only applies to derivatives with defined expiry date.	{DATEFORMAT}
24	Quantity currency	Currency in which the quantity is expressed. Only applicable if quantity is expressed as nominal or monetary value.	{CURRENCYCODE_3}
25	Quantity notation	Indication as to whether the quantity reported is expressed in number of units, in nominal value or in monetary value.	'UNIT' - Number of units 'NOML' - Nominal value 'MONE' - Monetary or nominal value
26	Initial quantity	The number of units of the financial instrument, or the number of derivative contracts in the order. The nominal or monetary value of the financial instrument. For spread bets, the quantity shall be the monetary value wagered per point movement in the underlying financial instrument. For increase or decrease in notional derivative contracts, the number shall reflect the absolute value of the change and shall be expressed as a positive number. For credit default swaps, the quantity shall be the notional amount for which the protection is acquired or disposed of.	{DECIMAL-18/17} in case the quantity is expressed as number of units {DECIMAL-18/5} in case the quantity is expressed as monetary or nominal value
27	Date and time	The exact date and time of the receipt of the order or the exact date and time when the decision to deal was made. This field shall be maintained in accordance with Article 3 and table 2 in the Annex of the [RTS 25 on clock synchronisation under article 50 of Directive 2014/65/EU].	{DATE_TIME_FORMAT} The number of digits after the 'seconds' shall be determined in accordance with Table 2 in the Annex of the [RTS 25 on clock synchronisation under article 50 of Directive 2014/65/EU].

28	Additional information from the client	Any instructions, parameters, conditions and any other details of the order that was transmitted by the client to the investment firm.	Free text

Table 3

Information relating to outgoing and executed orders

N.	Field/Content	Description	Format
1	Buy-Sell indicator	To show if the order is to buy or sell as determined in the description of field 8 of the above table.	'BUYI' – buy 'SELL' – sell
2	The trading capacity	Indication of whether the order submission result from the member or participant or client of the trading venue carrying out matched principal trading under Article 4(38) of Directive 2014/65/EU or dealing on own account under Article 4(6) of Directive 2014/65/EU. Where the order submission does not result from the member, participants or client of the trading venue carrying out matched principal trading or dealing on own account, the field shall indicate that the transaction was carried out under any other capacity.	'DEAL' - Dealing on own account 'MTCH' - Matched principal 'AOTC' - Any other capacity
3	Liquidity provision activity	Indication as to whether an order is submitted to a trading venue as part of a market making strategy pursuant to Articles 17 and 48 of Directive 2014/65/EU or other activity carried out on the basis of terms which have been pre-determined by the issuer of the instrument which is the subject of the order or by the trading venue to which the order is submitted.	'true' 'false'
4	Execution within firm	Code used to identify the person or algorithm within the investment firm who is responsible for the execution of the transaction resulting from the order in accordance with Article 10 of RTS on reporting obligations under Article 26 of MiFIR. Where a natural person is responsible for the execution of the transaction, the person shall be identified by {NATIONAL_ID} Where an algorithm is responsible for the execution of the transaction,	{NATIONAL_ID} - Natural persons {ALPHANUM-50} - Algorithms

		this field shall be populated in accordance with Article 10(3) of RTS on reporting obligations under Article 26 of MiFIR. Where more than one person or a combination of persons and algorithms are involved in the execution of the transaction the firm shall determine the trader or algorithm primarily responsible as specified in Article 10(4) of RTS on reporting obligations under Article 26 of MiFIR and populate this field with the identity of that trader or algorithm. This field shall only be applicable for executed orders.	
5	The identification code of the order submitted to the trading venue or another investment firm	Internal code used by the investment firm to identify the order submitted to the trading venues or other investment firm provided that it is unique per trading day and per financial instrument	{ALPHANUM-50}
6	The identification code of the order assigned by another investment firm or trading venue to whom the order was submitted	Where the investment firm submits the order to another investment firm or trading venue for execution, this field shall be populated with the identification code assigned by the latter investment firm or trading venue upon receipt of the order.	{ALPHANUM-50}
7	Order receiver identification code	The code of the investment firm to whom the order was transmitted or code of the trading venue to whom the order was transmitted.	For investment firm: {LEI} For trading venue:{MIC}
8	Order type	Identification of the type of order submitted to the trading venue as per the trading venue specifications.	{ALPHANUM-50}
9	Limit price	The maximum price at which a buy order can trade or the minimum price at which a sell order can trade. The spread price for a strategy order. It can be negative or positive. For orders that do not have a limit price or for any unpriced orders this field shall be left blank. In case of a convertible bond the real	{DECIMAL-18/13} in case the price is expressed as monetary value. Where price reported in monetary terms, it shall be provided in the major currency unit. {DECIMAL-11/10} in case the price is expressed

		price (clean or dirty) used for the order shall be reflected in this field. If an order is executed, the investment firm shall also record the price at which the transaction was executed at.	as a percentage or yield.
10	Price Currency	Currency in which the trading price is expressed (applicable if the price is expressed as monetary value) for the financial instrument related to the order.	{CURRENCYCODE_3}
11	Price notation	Indication as to whether the price and strike price is expressed in monetary value, in percentage or in yield.	'MONE' – Monetary value 'PERC' – Percentage 'YIEL' – Yield
12	Additional limit price	Any other limit price which may apply to the order. This field shall be left blank if not relevant.	{DECIMAL-18/13} in case the price is expressed as monetary value. Where price reported in monetary terms, it shall be provided in the major currency unit. {DECIMAL-11/10} in case the price is expressed as a percentage or yield.
13	Stop price	The price that must be reached for the order to become active. For stop orders triggered by events independent of the price of the financial instrument, this field shall be populated with a stop price equal to zero. This field shall be left blank if not relevant.	{DECIMAL-18/13} in case the price is expressed as monetary value. Where price reported in monetary terms, it shall be provided in the major currency unit. {DECIMAL-11/10} in case the price is expressed as a percentage or yield.
14	Pegged limit price	The maximum price at which a pegged order to buy can trade or the minimum price at which a pegged order to sell can trade. This field shall be left blank if not relevant.	{DECIMAL-18/13} in case the price is expressed as monetary value. Where price reported in monetary terms, it shall be provided in the major currency unit. {DECIMAL-11/10} in

			case the price is expressed as a percentage or yield.
15	Remaining quantity including hidden	The total quantity that remains in the order book after a partial execution or any other event affecting the order. On a partial fill order event this is the total remaining volume after that partial execution. On an order entry this will equal the initial quantity.	{DECIMAL-18/17} in case the quantity is expressed as number of units {DECIMAL-18/13} in case the quantity is expressed as monetary or nominal value
16	Displayed quantity	The quantity that is visible (as opposed to hidden) in the order book.	{DECIMAL-18/17} in case the quantity is expressed as number of units {DECIMAL-18/13} in case the quantity is expressed as monetary or nominal value
17	Traded quantity	Where there is a partial or full execution this field shall be populated with the executed quantity.	{DECIMAL-18/17} in case the quantity is expressed as number of units {DECIMAL-18/13} in case the quantity is expressed as monetary or nominal value
18	Minimum Acceptable Quantity (MAQ)	This is the minimum acceptable quantity for an order to be filled which can consist of multiple partial executions and is normally only for non-persistent order types. This field shall be left blank if not relevant.	{DECIMAL-18/17} in case the quantity is expressed as number of units {DECIMAL-18/13} in case the quantity is expressed as monetary or nominal value
19	Minimum executable size (MES)	This is the minimum execution size of any individual potential execution. This field shall be left blank if not relevant.	{DECIMAL-18/17} in case the quantity is expressed as number of units {DECIMAL-18/13} in case the quantity is expressed as monetary or nominal value
20	MES first execution only	Specification as to whether the MES is relevant only for the first execution. Can be left blank if field 19 is not	'true' 'false'

			populated.	
21	Passive only indicator	Indicates if the order is set so that it enters the order book only if it does not result in an immediate execution with any visible volume. This field shall be left blank if not relevant.	'true' 'false'
22	Self-Execution Prevention	Indicates if the order has been entered with self-execution prevention criteria so that it would not execute with an order on the opposite side of the book entered by the same member or participant.	'true' 'false'
23	Date and time (submission of order)	The exact date and time of the submission of an order to the trading venue or other investment firm.	{DATE_TIME_FORMAT} The number of digits after the 'seconds' shall be determined in accordance with the draft technical standard on clock synchronisation (Table 2 of the Annex)
24	Date and time (receipt of order)	The exact date and time of any message that is transmitted to and received from the trading venue or other investment firm in relation to the order.	{DATE_TIME_FORMAT} The number of digits after the 'seconds' shall be determined in accordance with the draft technical standard on clock synchronisation (Table 2 of the Annex)
25	Sequence number	Each and every event listed in the field 26 shall be identified by the investment firm using a positive integer that is in ascending order. The sequence number shall be unique to each type of event, be consistent across all events timestamped by the investment firm and be persistent for the date that the event occurs.	{INTEGER-50}
26	New order, order modification, order cancellation, order rejections, partial or full execution	New order: receipt of a new order by the operator of the trading venue. Triggered: an order which becomes executable or, as the case may be,	'NEWO' – New order 'TRIG' – Triggered or 'REME' - Replaced by the

<table>
<tr>
<td></td>
<td></td>
<td>

non-executable upon the realisation of a pre-determined condition.

Replaced by the member or participant or client of the trading venue: where a member or participant or client of the trading venue decides upon its own initiative to change any characteristic(s) of the order it has previously entered into the order book.

Replaced by market operations (automatic): where any characteristic(s) of an order is changed by the trading venue operator's IT systems. This includes where a peg order's or a trailing stop order's current characteristics are changed to reflect how the order is located within the order book.

Replaced by market operations (human intervention): where any characteristic(s) of an order is changed by a trading venue operator's staff. This includes where a member or participant or client of the trading venue has IT issues and needs its orders to be cancelled urgently.

Change of status at the initiative of the Member/Participant/client of the trading venue. This includes activation, deactivation.

Change of status due to market operations.

Cancelled at the initiative of the member or participant or client of the trading venue; where a member or participant or client decides upon its own initiative to cancel the order it has previously entered.

</td>
<td>

member or participant or client of the trading venue
or
'REMA' - Replaced by market operations (automatic)
or
'REMH' - Replaced by market operations (human intervention)
or
'CHME' - Change of status at the initiative of the Member/Participant/client of the trading venue
or
'CHMO' - Change of status due to market operations
or
'CAME' - Cancelled at the initiative of the member or participant or client of the trading venue
or
'CAMO' -Cancelled by market operations
or
'REMO' - Rejected order
or
'EXPI' - Expired order
or
'PARF' - Partially filled
or
'FILL' - Filled
or
{ALPHANUM-4} characters not already in use for the trading venue's own classification.

</td>
</tr>
</table>

27	Short selling indicator	A short sale concluded by an investment firm on its own behalf or on behalf of a client, as described in Article 12 of RTS on reporting obligations under Article 26 of MiFIR. Where the transaction is for a transmitted order that has met the conditions for transmission set out in Article 5 RTS on reporting obligations under Article 26 of MiFIR of this Regulation, this field shall be populated using the information received from the transmitting firm. This field is only applicable when, the instrument is covered by Regulation (EU) 236/2012, and the seller is the investment firm or a client of the investment firm. This field shall only be applicable for executed orders.	'SSHO' - Short sale with no exemption 'SSEX' - Short sale with exemption 'SELL' - No short sale
		Cancelled by market operations. This includes a protection mechanism provided for investment firms carrying out a market making activity as per Articles 17 and 48 of Directive 2014/65/EU. Rejected order: an order received but rejected by the operator of the trading venue. Expired order. where the order is removed from the order book upon the end of its validity period. Partially filled: where the order is not fully executed so that there remains a quantity to be executed. Filled: where there is no more quantity to be executed.	
28	Waiver indicator	Indication as to whether the transaction was executed under a pre-trade waiver in accordance with	Populate one or more of the following flags: 'LRGS' - Large in scale

		Cancelled by market operations. This includes a protection mechanism provided for investment firms carrying out a market making activity as per Articles 17 and 48 of Directive 2014/65/EU. Rejected order: an order received but rejected by the operator of the trading venue. Expired order. where the order is removed from the order book upon the end of its validity period. Partially filled: where the order is not fully executed so that there remains a quantity to be executed. Filled: where there is no more quantity to be executed.	
27	Short selling indicator	A short sale concluded by an investment firm on its own behalf or on behalf of a client, as described in Article 12 of RTS on reporting obligations under Article 26 of MiFIR. Where the transaction is for a transmitted order that has met the conditions for transmission set out in Article 5 RTS on reporting obligations under Article 26 of MiFIR of this Regulation, this field shall be populated using the information received from the transmitting firm. This field is only applicable when, the instrument is covered by Regulation (EU) 236/2012, and the seller is the investment firm or a client of the investment firm. This field shall only be applicable for executed orders.	'SSHO' - Short sale with no exemption 'SSEX' - Short sale with exemption 'SELL' - No short sale
28	Waiver indicator	Indication as to whether the transaction was executed under a pre-trade waiver in accordance with	Populate one or more of the following flags: 'LRGS' - Large in scale

		Articles 4 and 9 of Regulation (EU) 600/2014. For all instruments: 'LRGS' = Large in scale For equity instruments: 'RFPT' = Reference price transaction 'NLIQ' = Negotiated transactions in liquid financial instruments 'OILQ' = Negotiated transactions in illiquid financial instruments 'PRIC' = Negotiated transactions subject to conditions other than the current market price of that equity financial instrument. For non-equity instruments: 'SIZE' = Above specific size transaction 'ILQD' = Illiquid instrument transaction This field shall only be applicable for executed orders where the transaction was executed under a waiver on a trading venue.	'RFPT' - Reference price 'NLIQ' - Negotiated (liquid) 'OILQ' - Negotiated (illiquid) 'PRIC' - Negotiated (conditions) 'SIZE' - Above specified size 'ILQD' - Illiquid instrument
29	Routing Strategy	The applicable routing strategy as per the trading venue specification. This field shall be left blank if not relevant.	{ALPHANUM-50}
30	Trading venue transaction identification code	Alphanumerical code assigned by the trading venue to the transaction pursuant to Article 12 of RTS on the maintenance of relevant data relating to orders in financial instruments. This field shall only be applicable for executed orders that were executed on a trading venue.	{ALPHANUM-52}
31	Validity period	Good-For-Day: the order expires at the end of the trading day on which it was entered in the order book. Good-Till-Cancelled: the order will remain active in the order book and be executable until it is actually cancelled. Good-Till-Time: the order expires at	'DAYV' – Good-For-Day 'GTCV' – Good-Till-Cancelled 'GTTV' – Good-Till-Time 'GTDV' – Good-Till-Date 'GTSV' – Good-Till-Specified Date and Time 'GATV' – Good After Time 'GADV' – Good After

		the latest at a pre-determined time within the current trading session.	Date 'GASV' – Good After Specified Date and Time 'IOCV' – Immediate-Or-Cancel or 'FOKV' – Fill-Or-Kill or {ALPHANUM-4} characters not already in use for the trading venue's own classification.
		Good-Till-Date: the order expires at the end of a specified date.	
		Good-Till-Specified Date and Time: the order expires at a specified date and time.	
		Good After Time: the order is only active after a pre-determined time within the current trading session.	
		Good After Date: the order is only active from the beginning of a pre-determined date.	
		Good After Specified Date and Time: the order is only active from a pre-determined time on a pre-determined date.	
		Immediate-Or-Cancel: an order which is executed upon its entering into the order book (for the quantity that can be executed) and which does not remain in the order book for the remaining quantity (if any) that has not been executed.	
		Fill-Or-Kill: an order which is executed upon its entering into the order book provided that it can be fully filled: in the event the order can only be partially executed, then it is automatically rejected and cannot therefore be executed.	
		Other: any additional indications that are unique for specific business models, trading platforms or systems.	
32	Order restriction	Good For Closing Price Crossing Session: when an order qualifies for the closing price crossing session. Valid For Auction: the order is only	'SESR' – Good For Closing Price Crossing Session 'VFAR' – Valid For

		active and can be executed only at auction phases (which can be pre-defined by the member or participants or client of the trading venue who submitted the order, e.g. opening and/or closing auctions and/or intraday auction). Valid For Continuous Trading only: the order is only active during continuous trading. Other: any additional indications that are unique for specific business models, trading platforms or systems.	Auction 'VFCR' – Valid For Continuous Trading only {ALPHANUM-4} characters not already in use for the trading venue's own classification. If multiple types are applicable, this field shall be populated with multiple flags separated by comma.
33	Validity period and time	This refers to the time stamp reflecting the time on which the order becomes active or it is ultimately removed from the order book

Good for day: will be the date of entry with the timestamp immediately prior to midnight

Good till time: will be the date of entry and the time to that specified in the order.
Good till date: Default will be the specified date of expiry with the timestamp immediately prior to midnight.

Good till specified date and time: will be the specified date and time of expiry

Good after time: will be the date of entry and the specified time at which the order becomes active.

Good after date: will be the specified date with the timestamp immediately after midnight

Good after specified date and time: Default will be the specified date and | {DATE_TIME_FORMAT} The number of digits after the 'seconds' shall be determined in accordance with table 2 in the annex of the draft technical standard on clock synchronisation (Table 2 of the Annex) |

		time at which the order becomes active. Good till Cancel: will be the ultimate date and time the order is automatically removed by market operations Other: timestamp for any additional validity type.	
34	Aggregated order	Indicates if the order is an aggregated order in accordance with Article 2(3) of RTS on the maintenance of relevant data relating to orders in financial instruments.	'true' 'false'
35	Additional information relating to the outgoing order	Any instructions, parameters, conditions and any other details of the order that is: transmitted by the investment firm to the trading venue and in particular those instructions, parameters, conditions and details which are necessary for the trading venue to have a clear understanding of how the order has to be handled by it; and transmitted by the trading venue to the investment firm and in particular those instructions, parameters, conditions and details which are necessary for the investment firm to have a clear feedback information on how the order has been handled.	Free text

RTS 7: Draft regulatory technical standards on organisational requirements of regulated markets, multilateral trading facilities and organised trading facilities enabling or allowing algorithmic trading through their systems

EUROPEAN COMMISSION

Brussels, XXX
[…](2012) XXX draft

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

[…]

COMMISSION DELEGATED REGULATION (EU) …/..

of [date]

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying organisational requirements of regulated markets, multilateral trading facilities and organised trading facilities enabling or allowing algorithmic trading through their systems

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU[1], and in particular Article 48(12)(a),(c) and (g) thereof,

Whereas:

(1)   It is important to adopt detailed regulatory technical standards to ensure that trading venues that enable algorithmic trading have sufficient systems and controls.

(2)   These regulatory technical standards should apply not only to regulated markets but also to multilateral trading facilities and organised trading facilities as determined by Article 18(5) of Directive 2014/65/EU.

(3)   The impact of technological developments and in particular algorithmic trading is one of the main drivers to determine the capacity and arrangements to manage trading venues. The risks arising from algorithmic trading can be present in any trading model that is supported by electronic means. Therefore, specific organisational requirements should apply to regulated markets, multilateral trading facilities and organised trading facilities allowing for or enabling algorithmic trading through their systems considering as such those where algorithmic trading may take place as opposed to trading venues which do not permit algorithmic trading, including trading systems where transactions are arranged through voice negotiation.

---

[1] OJ L 173, 12.6.2014, p. 349.

(4)   Governance arrangements, the role of the compliance function, staffing requirements and outsourcing should be regulated as part of these organisational requirements to ensure the resilience of electronic trading systems.

(5)   These regulatory technical standards set out the requirements to be met by trading venues with respect to their systems allowing or enabling algorithmic trading as defined under Directive 2014/65/EU. However, their specific implementation should take place in conjunction with a self-assessment to be conducted by each trading venue since not all trading models present the same risks. Therefore, some organisational requirements might not be applicable for certain trading models although their trading systems could be supported to a certain extent by electronic means. In particular, the specific requirements to be set in relation to request-for-quote (RFQ) or hybrid systems should be considered according to the nature, scale and complexity of the algorithmic trading activity undertaken. Equally, more stringent requirements should be established by the trading venues where appropriate.

(6)   Risks arising from algorithmic trading should be carefully taken into account, paying particular attention to those that may affect the core elements of a trading system, including the hardware, software and associated communication lines used by trading venues and members, participants or clients of trading venues (hereinafter 'members') to perform their activity and any type of execution systems or order management systems operated by trading venues, including matching algorithms.

(7)   The specific organisational requirements for trading venues have to be determined by means of a robust self-assessment where a number of parameters have to be assessed. That self-assessment should include any other circumstances not expressly set out that might have an impact on their organisation.

(8)   The minimum period to keep the records of the self-assessment and the due diligence of members should be aligned with the general record-keeping obligations established in Directive 2014/65/EU.

(9)   Where trading venues are required to perform monitoring in real-time, the generation of alerts following that monitoring should be done as close to instantaneously as technically possible, with a time delay of no more than five seconds. Any actions following that monitoring should be undertaken as soon as possible assuming a reasonable level of efficiency and of expenditure on systems on the part of the persons concerned.

(10)   Testing facilities offered by trading venues should not pose risks to orderly trading. To that end, trading venues should establish an adequate fair usage policy, ensure a strict separation between the testing environment and the production environment or permit testing only out of trading hours.

(11) Conformance testing should ensure that the most basic elements of the system or the algorithms used by members operate correctly and according to the venue's requirements, including the ability to interact as expected with the trading venue's matching logic and the adequate processing of data flows to and from the trading venue. Testing against disorderly trading conditions should be designed as to specifically address the reaction of the algorithm or strategy to conditions that may create a disorderly market.

(12) Where trading venues offer arrangements to test algorithms by offering testing symbols, their obligation to provide facilities to test against disorderly trading conditions should be deemed fulfilled. In order to enable members to effectively use such testing symbols, trading venues should publish the specifications and characteristics of the testing symbols to the same level of detail made publicly available for real life production contracts.

(13) Trading venues should be subject to an obligation to provide means to facilitate testing against disorderly trading conditions. However, such an obligation should not be construed as requiring their members to use those means. It should be considered as a sufficient guarantee if trading venues receive a declaration from their members confirming that such testing has taken place and the means used for that testing, but they are not obliged to validate the adequacy of those means or the outcome of that testing.

(14) Trading venues and their members have to be adequately equipped by means of a kill functionality to react in case unexpected circumstances arise. as an emergency measure to cancel unexecuted orders.

(15) The provision of direct electronic access (DEA) service to an indeterminate number of persons may pose a risk to the provider of that service and also to the resilience and capacity of the trading venue where the orders are sent. To address such risks, where sub-delegation of DEA is permitted, the DEA provider should be able to identify the different order flows from the beneficiaries of sub-delegation.

(16) Where sponsored access is permitted by a trading venue, prospective sponsored access clients should be subject to a process of authorization by the trading venue. Trading venues may also decide that the provision of direct market access services by their members is subject to authorisation.

(17) Trading venues should specify the requirements to be met by their members to provide DEA and determine the minimum standards to be met by prospective DEA clients in the due diligence process. Those requirements and standards should be adapted to the risks posed by the nature, scale and complexity of their expected trading, and the service being provided. In particular, it should include an assessment of the level of expected trading, the order volume and the type of connection offered.

(18) The new legislation of the European Parliament and of the Council on markets in financial instruments set out in Directive 2014/65/EU and Regulation (EU) No 600/2014 applies from 3 January 2017. To ensure consistency and legal certainty, this Regulation should apply from the same date.

(19) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(20) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[2],

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL ORGANISATIONAL REQUIREMENTS FOR TRADING VENUES ENABLING OR ALLOWING ALGORITHMIC TRADING THROUGH THEIR SYSTEMS

Article 1

(Article 48 of Directive 2014/65/EU)

Subject matter and scope

1. This Regulation lays down detailed rules for the organisational requirements of the trading venues' systems allowing or enabling algorithmic trading, in relation to their resilience and capacity, requirements on trading venues to ensure appropriate testing of algorithms and to the controls concerning DEA pursuant to Article 48(12)(a), (c) and (g) of Directive 2014/65/EU.

2. For the purposes of this Regulation, it is considered that a trading venue allows or enables algorithmic trading where order submission and order matching is facilitated by electronic means.

---

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

3.   For the purposes of this Regulation, any arrangements or systems that enable or allow algorithmic trading shall be considered as 'algorithmic trading systems'.

Article 2

(Article 48 of Directive 2014/65/EU)

Organisational requirements for trading venues and the proportionality principle

1.   Before the deployment of a trading system and at least once a year, trading venues shall carry out a self-assessment of their degree of compliance with Article 48 of Directive 2014/65/EU, taking into account the nature, scale and complexity of their business. The self-assessment shall include an analysis of all parameters set out in the Annex to this Regulation.

2.   Trading venues shall keep a record of their self-assessment for at least five years.

Article 3

(Article 48(1) of Directive 2014/65/EU)

Governance

1.   As part of their overall governance and decision making framework, trading venues shall establish and monitor their trading systems through a clear and formalised governance arrangement, setting out:

(a) analysis of technical, risk and compliance issues when taking key decisions; in particular, the governance and decision making framework shall embed compliance and risk management principles;

(b) existence of clear lines of accountability, including procedures to approve the development, deployment and subsequent updates of their trading systems and the resolution of problems identified through monitoring the trading systems;

(c) establishment and maintenance of procedures and processes for the communication of information which ensure that relevant issues can be escalated and instructions can be implemented in an efficient and timely manner;

(d) segregation of functions to ensure effective supervision of the venue's compliance with their legal and regulatory obligations.

2.   The management body or the senior management of trading venues shall bear responsibility for:

(a) the self-assessment of compliance with Article 48 of Directive 2014/65/EU;

(b) measures planned to expand the capacity of the trading venue following a historical peak of messages in accordance with the provision on the trading venue's capacity;

(c) actions planned to remedy any material shortcomings detected in the course of their monitoring activity and after the periodic review of the performance and capacity of the trading systems.

Article 4

(Article 48(1) of Directive 2014/65/EU)

Compliance function within the governance arrangements

1. Trading venues shall ensure that their compliance function is responsible for:

(a) providing clarity about the trading venues' legal and regulatory obligations with respect to algorithmic trading;

(b) developing and maintaining the policies and procedures to ensure that the algorithmic trading systems comply with those obligations.

2. Trading venues shall ensure that their compliance staff has at least a general understanding of the way in which algorithmic trading systems and algorithms operate. The compliance function shall be in continuous contact with persons who have detailed technical knowledge of the venue's algorithmic trading systems or algorithms. Trading venues shall also enable compliance staff to have, at all times, access to the kill functionality or to the persons who can use the kill functionality and to those who are responsible for the algorithmic trading system.

3. Where the compliance function, or elements thereof, is outsourced to an external compliance consultant, trading venues shall engage with, and provide information and access to the external compliance consultant as it would with its own compliance staff. Trading venues shall enter into an agreement with such compliance consultants, ensuring that:

(a) data privacy is guaranteed;

(b) auditing of the compliance function by internal and external auditors or by the venue's competent authority is not hindered.

Article 5

(Article 48(1) of Directive 2014/65/EU)

Staffing

1.   Trading venues shall employ an adequate number of staff with the necessary skills to manage their algorithmic trading systems and trading algorithms and sufficient knowledge of:

  (a) relevant trading systems and algorithms;

  (b) the monitoring and testing of such systems and algorithms;

  (c) the types of trading undertaken by their members; and

  (d) the trading venue's legal and regulatory obligations and in particular the requirements imposed upon the relevant trading venues and all other regulatory requirements established by Articles 48 and 49 of Directive 2014/65/EU.

2.   Trading venues shall define the skills necessary to comply with the obligation set out in paragraph 1. These skills shall be acquired through recruitment or through training of appropriate staff and shall be evaluated periodically to ensure that their skills remain up-to-date.

3.   Initial and ongoing training shall be tailored to the experience and responsibilities of the staff, taking into account the nature, scale and complexity of the staff activity.

4.   The obligation in paragraph 1 includes employing staff with sufficient seniority to represent their functions effectively within the trading venue, offering appropriate challenge as necessary within the governance framework.

Article 6

(Article 48(1) of Directive 2014/65/EU)

Outsourcing

1.   Trading venues outsourcing all or part of their operational functions in relation to the systems allowing or enabling algorithmic trading shall ensure that:

  (a) the outsourcing agreement exclusively relates to operational functions and does not alter the responsibilities of the senior management and the management body;

  (b) the relationship and obligations of the trading venue towards its members, competent authorities, or any third parties, such as clients of data feed services under the terms of Directive 2014/65/EU and Regulation (EU) No 600/2014 are not altered;

(c) they still meet the requirements that the trading venue must comply with in order to be authorised in accordance with Title III of Directive 2014/65/EU.

2.   For the purposes of point (a) in paragraph 1, operational functions shall include all direct activities related to the performance and surveillance of the trading systems supporting the following elements:

(a) upstream connectivity, order submission capacity, throttling capacities and ability to balance customer order entrance through different gateways;

(b) trading engine to match orders;

(c) downstream connectivity, order and transaction edit and any other type of market data feed;

(d) infrastructure to monitor the performance of the abovementioned elements.

3.   Trading venues shall document the selection process and take the necessary steps to ensure that the following conditions are at all times satisfied:

(a) the service provider has the ability, capacity, and any authorisation required by law to perform the outsourced functions, services or activities reliably and professionally;

(b) the service provider properly supervises the carrying out of the outsourced functions, and adequately manage the risks associated with the outsourcing arrangement;

(c) the service provider carries out the outsourced services effectively, and to this end the trading venue must establish methods for assessing the standard of performance of the service provider, including metrics to measure the service provided and specify the requirements that shall be met;

(d) the trading venue retains the necessary expertise to supervise the outsourced functions effectively and manage the risks associated with the outsourcing arrangement;

(e) the trading venue retains the ability to take appropriate action if it appears that the service provider may not be carrying out the functions effectively and in compliance with applicable laws and regulatory requirements;

(f) the service provider discloses to the trading venue any development that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with applicable laws and regulatory requirements;

(g) the trading venue is able to terminate the outsourcing arrangement where necessary without detriment to the continuity and quality of its services to clients;

(h) the service provider cooperates with the competent authorities of the trading venue in connection with the outsourced activities;

(i) the trading venue has effective access to data related to the outsourced activities, as well as to the business premises of the service provider and auditors of the trading venue and relevant competent authorities have effective access to data related to the outsourced activities;

(j) the trading venue sets out requirements to be met by the service providers to protect confidential information relating to the trading venue and its members, participants or clients, and in particular the venue's proprietary information and software;

(k) the service provider protects any confidential information relating to the trading venue and its members, and in particular the venue's proprietary information and software;

(l) the trading venue and the service provider establish, implement and maintain a contingency plan for disaster recovery and periodic testing of backup facilities, where that is necessary having regard to the function, service or activity that has been outsourced;

(m) the outsourcing contract specifies the obligations of the service provider in case it cannot provide its services, including the provision of a substituting firm;

(n) the trading venue has access to information in relation to the business continuity or disaster recovery arrangements of the entity providing the service.

4. Service providers shall only be contracted by trading venues on the basis of a binding written agreement setting out:

(a) the assignment of rights and obligations between service provider and trading venue;

(b) a clear description of:

    (i) the operational functions that are outsourced;

    (ii) the access of the outsourcing trading venue to the books and records of the service provider;

    (iii) the procedure to identify and address potential conflicts of interest;

    (iv) the responsibility assumed by each party;

    (v) the procedure for the amendment and termination of the agreement.

(c) the means to ensure that both the trading venue and the service provider facilitate in any way necessary the exercise by the competent authority of its supervisory powers.

5.   Trading venues shall report to their competent authorities their intention to outsource any operational function in any of the following cases:

   (a) the service provider is providing the same service to other trading venues;

   (b) critical operational functions would be outsourced, considering as such those necessary for business continuation. In this case, trading venues shall need prior authorisation from their competent authority.

6.   For the purposes of point (b) in paragraph 5, critical operational functions shall include those referred to in Article 47(1)(b), (c) and (e) of Directive 2014/65/EU.

7.   Trading venues shall inform their competent authorities of any outsourcing agreements not covered by the previous paragraph immediately after the signature of the written agreement.

CHAPTER II

CAPACITY AND RESILIENCE OF TRADING VENUES

Article 7

(Article 48(1) of Directive 2014/65/EU)

Due diligence for members of trading venues

1.   Trading venues shall have pre-defined standards specifically relevant to their trading model which cover the arrangements of the members for using the electronic order submission systems of the trading venue. The standards shall cover at least:

   (a) pre-trade controls on price, volume, value and usage of the system and post-trade controls on their trading activities;

   (b) qualification of staff in key positions within the members;

   (c) technical and functional conformance testing;

   (d) policy of use of the kill functionality;

   (e) whether the member may provide direct electronic access to its own clients and if so, the conditions applicable to those clients.

2.   Trading venues shall undertake a due diligence assessment of their prospective members against the standards referred to in paragraph 1.

3.   Trading venues shall conduct a risk-based assessment of the compliance of their members with the standards in paragraph 1 and check whether their members remain registered as investment firms at least once a year. The risk-based assessment shall take into account the scale and potential impact of trading undertaken by a member as well as the time elapsed since the member's last review.

4.   Trading venues shall have the ability to undertake additional revisions of their members' compliance with their standards following the yearly risk-based assessment.

5.   Trading venues shall have in place predefined criteria and procedures making reference to the sanctions they may impose on a non-compliant member, including suspending access to the trading venue and losing the membership.

6.   Trading venues shall maintain, for at least five years, records of:

  (a) the documentation setting out the criteria and procedures for the due diligence activity;

  (b) the records of the initial due diligence of their members;

  (c) the records of the annual risk-based assessment of their members;

  (d) the list of members that failed the annual risk-based assessment.

Article 8

(Article 48(1) of Directive 2014/65/EU)

Testing of the trading systems

1.   Trading venues shall, prior to deploying or updating a trading system, make use of clearly delineated development and testing methodologies which ensure at least that:

  (a) the trading system does not behave in an unintended manner;

  (b) the operation of the trading system is compatible with the trading venue's obligations under Directive 2014/65/EU and any other relevant Union or national law in particular that the compliance and risk management controls embedded in the systems work as intended, including generating error reports automatically;

  (c) the trading system can continue to work effectively in case of significant increase of the number of messages managed by the system.

2.   Trading venues shall be able to demonstrate at all times that they have taken all reasonable steps to avoid that their trading systems contribute to disorderly trading conditions.

Article 9

(Article 48(6) of Directive 2014/65/EU)

Conformance testing

1.   Trading venues shall require their members to undertake conformance testing prior to the deployment or substantial update of:

  (a) the access to the trading venue's system;

  (b) the member's trading system, trading algorithm or trading strategy.

2.   The conformance testing shall ensure that the basic functioning of the member's trading system, algorithm and strategy complies with the trading venue's standards including the ability of the system or algorithm to interact as expected with the trading venue's matching logic and the adequate processing of the data flows from and to the trading venue.

3.   The conformance testing shall verify the functioning of at least the following:

  (a) the most basic functionalities such as submission, modification or cancellation of an order or an indication of interest, static and market data downloads and all business data flows;

  (b) the connectivity, including the cancel on disconnect command, market data feed loss and throttles, recovery including cold intra-day starts and the handling of suspended instruments or stale market data.

4.   Trading venues shall provide a conformance testing environment to their actual or prospective members which fulfils all of the following requirements:

  (a) is accessible in equivalent conditions to the rest of the trading venue's testing services;

  (b) provides a list of financial instruments available for testing which is representative of the ones available in the live environment covering every class of instruments;

  (c) is available during general market hours or on a pre-scheduled periodic basis if outside market hours;

  (d) is supported by knowledgeable staff.

5.   Trading venues shall deliver a report with the outcome of the conformance testing exclusively to the actual or prospective member.

6.   Trading venues shall require their actual or prospective members to use their conformance testing facilities notwithstanding any additional testing methods that the actual or prospective member may use.

7.   Trading venues shall ensure an effective separation of the testing environment from the production environment for the tests referred to in paragraph 1. Where it is not possible to ensure such separation, testing shall take place out of trading hours.

Article 10

(Article 48(6) of Directive 2014/65/EU)

Testing the members' algorithms to avoid disorderly trading conditions

1.   Trading venues shall require their members to certify that the algorithms they deploy have been tested to avoid creating or contributing to disorderly trading conditions prior to the deployment or substantial update of a trading algorithm or trading strategy and explain the means used for that testing.

2.   Trading venues shall not be obliged to validate the outcome of those tests.

3.   Trading venues shall provide their members with access to an environment which can consist of any of the following:

  (a) simulation facilities which reproduce as realistically as possible the live production environment, including disorderly trading conditions, and which provide the functionalities, protocols and structure that allow members to test a range of scenarios that they consider suitable to their activity;

  (b) testing symbols as defined and maintained by the trading venue.

4.   Trading venues shall ensure an effective separation of the testing environment from the production environment for the tests referred to in paragraph 1. Where it is not possible to ensure such separation, testing shall take place out of trading hours.

Article 11

(Article 48(1) of Directive 2014/65/EU)

Trading venues' capacity

1.   Trading venues shall ensure that their trading systems have sufficient capacity to accommodate at least twice their historical peak of messages expressed as the highest number of messages per second recorded on that system during the previous five years.

2.   Messages to be considered shall include:

  (a) any input, including order, modification or cancellation of an order,

  (b) any output, including the system's response to an input, display of order book data and dissemination of post trade flow that implies independent use of trading system's capacity.

3.   A trading system shall be deemed to have exceeded its capacity when the elements of the trading system can no longer perform their functions without systems failures, outages or errors in matching transactions.

4.   The elements of a trading system to be considered for the purposes of paragraphs 1 and 3 shall be those supporting the following activities:

  (a) upstream connectivity, order submission capacity, throttling capacities and ability to balance customer order entrance through different gateways;

  (b) trading engine which enables the trading venue matching orders at an adequate latency;

  (c) downstream connectivity, order and transaction edit and any other type of market data feed;

  (d) infrastructure to monitor the performance the abovementioned elements.

5.   Trading venues shall assess whether the capacity of their trading systems remains adequate when the number of messages has exceeded the historical peak. After each assessment, trading venues shall inform their competent authority about any measures planned to expand their capacity or add new capabilities together with the implementation timeframe of such measures.

6.   Trading venues shall ensure that their systems are able to cope with the rising message flow without material degradation of their systems performance. In particular, the design of the trading system shall enable its capacity to be expanded within a reasonable timeframe whenever necessary.

7.   Trading venues shall immediately make public and report to their competent authority and members any severe trading interruption not due to market volatility and any other material connectivity disruptions.

Article 12

(Article 48(1) of Directive 2014/65/EU)

General monitoring obligations

1.   Trading venues shall ensure that their algorithmic trading systems are at all times adapted to the business which takes place through them and are robust enough to ensure continuity and regularity in the performance of the markets operated, regardless of the trading model used. Trading venues shall ensure that their algorithmic trading systems are monitored and reviewed on an on-going basis so as to ensure that the risks and challenges posed by technological developments are promptly addressed.

2.   Trading venues shall conduct real time monitoring in relation to the following minimum obligations:

(a) performance and capacity of the systems referred to in Article 11(4);

(b) orders sent by their members at an individual and an aggregated basis; in particular, trading venues shall operate throttling limits and monitor the concentration flow of orders to detect potential threats to the orderly functioning of the market.

3.   Real-time alerts shall be generated within five seconds of the relevant event.

Article 13

(Article 48(1) of Directive 2014/65/EU)

On-going monitoring

1.   Trading venues shall be able to demonstrate at all times to their competent authority that they monitor in real-time the performance and degree of usage of the elements of their trading systems referred to in Article 11(4) in relation to at least the following parameters:

(a) percentage of the maximum message capacity utilised per second;

(b) total number of messages managed by the trading system broken down per element of the system including:

(i)   number of messages received per second;

(ii) number of messages sent per second;

(iii) number of messages rejected by the system per second.

(c) time delay between receiving a message in any outer gateway of the trading system and sending a related message from the same gateway after the matching engine has processed the original message;

(d) performance of the matching engine.

2.   Trading venues shall take all appropriate action in relation to any issues identified in the trading system as soon as reasonably possible in order of priority and, if necessary, be able to adjust, wind down, or shut down the trading system.

Article 14

(Article 48(1) of Directive 2014/65/EU)

Periodic review of the systems performance and capacity

1.   Trading venues shall, in the context of their annual compliance review with Article 48 of Directive 2014/65/EU, evaluate the performance of their algorithmic trading systems, and associated process for governance, accountability, sign-off and associated business continuity arrangements. In particular, the on-going stress testing shall identify how hardware, software and communications respond to potential threats, covering all trading phases, trading segments and type of instruments to identify systems or parts of the system with tolerance or no tolerance to the adverse scenarios.

2.   Trading venues shall act on the basis of these reviews and evaluations to promptly remedy any deficiencies identified.

3.   As part of the review programme, trading venues shall run stress tests appropriate to the nature, scale and complexity of their business, where the design of adverse scenarios shall at least contemplate the functioning of the system under:

(a) the highest number of messages managed by the system during the previous five years and successive multipliers beyond that level;

(b) unexpected behaviour of critical constituent elements of the trading system, associated systems and communication lines;

(c) random combination of stressed and normal market conditions and unexpected behaviour of critical constituent elements.

4.   For these purposes, the scenario shall only be evaluated by simulating the members' activities with the given member connectivity setup.

5.   The review and evaluation process shall:

(a) be conducted by an independent assessor or by another department within the trading venue which is not the same that holds the responsibility for the function that is being reviewed;

(b) result in actions to promptly remedy any identified deficiencies, including measures to address shortcomings in the periodic stress testing.

6. Trading venues shall keep a record of their self-assessment for at least five years.

Article 15

(Article 48(1) of Directive 2014/65/EU)

Business continuity arrangements

1. Trading venues shall be able to demonstrate at all times that their systems have sufficient stability by having effective business continuity arrangements to address disruptive incidents including system failures.

2. The business continuity arrangements shall ensure a timely resumption of trading, targeting a recovery time of no later than two hours and a recovery point objective close to zero. The recovery point objective determines the maximum tolerable amount of data that might be lost from any IT service.

Article 16

(Article 48(1) of Directive 2014/65/EU)

Business continuity plan

1. Trading venues shall establish a business continuity plan and implement effective business continuity arrangements in relation to their trading systems. The business continuity plan shall be framed in the context of the trading venue's overall risk management policy and shall include the procedures and arrangements identified to address and manage disruptive incidents.

2. The business continuity plan shall provide for the following minimum content:

(a) a range of possible adverse scenarios including at least the unavailability of systems, staff, work space, external suppliers/dependencies and critical data and documents through loss or alteration;

(b) the governance and procedures to be followed in case of a disruptive event;

(c) the recovery time objective and the recovery point objective;

(d) the operation of back-up and disaster recovery arrangements as well as the procedures for moving to, and operating the trading system from a back-up site;

(e) back-up of critical business data including up-to-date information of the necessary contacts to ensure communication inside the trading venue and between the trading venue and the members and between the trading venue and clearing and settlement infrastructures;

(f) staff training on the operation of the business continuity arrangements;

(g) assignation of individual´s roles and establishment of a specific security operations team ready to react immediately after a system disruption;

(h) an on-going programme for testing, evaluation and review of the arrangements including procedures for modification of the arrangements in light of the results of that programme.

3. Clock synchronisation after a disruptive incident shall be included in business continuity scenarios.

4. Trading venues shall ensure that a business continuity plan is supported by an impact assessment, subject to periodic revision, in which the risks and consequences of a disruption shall be identified. Any decision by the trading venue not to take into account a specifically known potential unavailability in the business continuity plan shall be adequately documented and explicitly signed-off by the management body of the trading venue.

5. Trading venues shall ensure that their senior management:

 (a) establishes clear objectives and strategies in terms of business continuity;

 (b) allocates adequate human, technological and financial resources to pursue the objectives and strategies under point (a);

 (c) approves the business continuity plan and any amendments thereof necessary as a consequence of organizational, technological and legal changes;

 (d) is informed, at least on a yearly basis, on the outcome of the controls and audits performed on the adequacy of the business continuity plan;

 (e) establishes a business continuity function within the organisation.

6.   The business continuity plan shall include procedures to address any disruptions of outsourced critical services, including circumstances where the supplying firm's services become unavailable.

Article 17

(Article 48(1) of Directive 2014/65/EU)

Periodic review of business continuity arrangements

1.   Trading venues shall, in the context of their annual compliance review with Article 48 of Directive 2014/65/EU, test on the basis of scenarios as realistic as possible, the operation of the business continuity plan, verifying the capability of the trading venue to recover from incidents under predefined objectives in terms of timely resumption of trading.

2.   Trading venues shall make sure that a review by an independent function of their business continuity plan and arrangements is foreseen, where necessary, in light of the results of the testing activity. The results of the testing activity shall be documented in writing, stored and submitted to the trading venue's senior management as well as to the operating units involved in the business continuity plan. For the purposes of this paragraph, an independent function shall be either an independent assessor or another department within the trading venue which is not the same that holds the responsibility for the function that is being reviewed.

3.   Trading venues shall ensure that testing of the business continuity plan does not interfere with normal trading activity.

Article 18

(Article 48 (4), (5) and (6) of Directive 2014/65/EU)

Prevention of disorderly trading conditions

1.   Trading venues shall have at least the following arrangements to prevent disorderly trading and breaches of capacity limits:

  (a) limits per member on the number of orders sent per second (throttle limits);

  (b) mechanisms to manage volatility;

  (c) pre-trade controls.

2.   Trading venues shall be able to:

(a) request information from any member or user of sponsored access on their organisational requirements and trading controls;

(b) suspend the access of a member or a trader's ID to the trading system at the trading venue's own initiative or at the request of that member, a clearing member, the CCP in the pre-defined cases foreseen in the CCP's governing rules or the competent authority;

(c) operate a kill functionality to cancel unexecuted orders submitted by a member or sponsored access client under the following circumstances:

    (i) upon request of the member or sponsored access client that is technically unable to delete its own orders;

    (ii) when the order book is corrupted by erroneous duplicated orders;

    (iii) following a suspension initiated either by the market operator or the competent authority.

(d) cancel or revoke transactions in case of malfunction of the trading venue's mechanisms to manage volatility or of the trading system;

(e) balance order entrance among their different gateways, if such an architecture is used by the trading venue to avoid collapses.

3. Trading venues shall set up and maintain policies and arrangements in respect of:

(a) mechanisms to manage volatility;

(b) pre-trade and post-trade controls used by the venue and pre-trade and post-trade controls necessary for their members to access the market;

(c) members' obligation to operate their own kill functionality;

(d) information requirements for members;

(e) suspension of access;

(f) cancellation policy in relation to orders and transactions including, at least:

    (i) timing;

    (ii) procedures;

    (iii) reporting and transparency obligations;

    (iv) dispute resolution procedures;

(v) measures to minimise erroneous trades;

(g) order throttling arrangements including at least:

(i) number of orders per second on pre-defined time intervals;

(ii) equal-treatment policy among members unless they are throttled on an individual basis;

(iii) measures to be adopted following a throttling event.

4. Trading venues shall make public their general policies and arrangements set out in paragraphs 2 and 3 above. That obligation shall not affect the specific number of orders per second on pre-defined time intervals and the specific parameters of their mechanisms to manage volatility.

5. Trading venues shall maintain full records of their policies and arrangements under paragraph 3 for at least five years.

Article 19

(Article 48(5) of Directive 2014/65/EU)

Mechanisms to manage volatility

1. Trading venues shall ensure that appropriate mechanisms to automatically halt or constrain trading are operational at all times during trading hours.

2. Trading venues shall ensure:

(a) mechanisms to halt or constrain trading are tested before implementation and periodically thereafter when the capacity and performance of trading systems is reviewed;

(b) specific IT and human resources are allocated to deal with the design, maintenance and monitoring of the mechanisms implemented to halt or constrain trading;

(c) mechanisms to manage market volatility are continuously monitored.

3. Trading venues shall maintain records of the rules and parameters of the mechanisms to manage volatility and any changes thereof, as well as records of the operation, management and upgrading of those mechanisms.

4.   Trading venues shall ensure that their rules for the mechanisms to manage volatility include procedures to manage situations where the parameters have to be manually overridden to ensure orderly trading.

Article 20

(Article 48(4) and (6) of Directive 2014/65/EU)

Pre-trade and post-trade controls

1.   Trading venues shall operate at least the following pre-trade controls adapted for each financial instruments traded on them:

  (a)   price collars, which automatically block orders that do not meet pre-set price parameters on an order-by-order basis;

  (b)   maximum order value, which prevents orders with uncommonly large order values from entering the order book by reference to notional values per financial instrument;

  (c)   maximum order volume, which prevents orders with an uncommonly large order size from entering the order book.

2.   Those controls shall ensure that:

  (a)   their automated application and monitoring with a delay of no more than five seconds with the ability to readjust the limits even during the trading session and in all its phases;

  (b)   an order is rejected once a limit is breached;

  (c)   mechanisms are in place to authorise orders above the pre-set limits upon request from the member concerned.

3.   Trading venues may establish post-trade controls that they deem appropriate on the basis of a risk assessment of their members' activity.

Article 21

(Article 48 (7) of Directive 2014/65/EU)

Pre-determination of the conditions to provide direct electronic access

1.   Trading venues permitting DEA through their systems shall set out and make public the rules and conditions pursuant to which their members [DEA providers] may provide DEA service to their own clients [DEA clients].

2.   Those rules and conditions shall at least cover:

 (a) the specific requirements set out in Commission Delegated Regulation specifying the organisational requirements of investment firms engaged in algorithmic trading, providing direct electronic access and acting as general clearing members for the provision of DEA;

 (b) the minimum standards to be demonstrated by any prospective DEA client at the due diligence process of the DEA provider in accordance with the requirements set out in Commission Delegated Regulation specifying the organisational requirements of investment firms engaged in algorithmic trading, providing direct electronic access and acting as general clearing members.

Article 22

(Article 48 (7) of Directive 2014/65/EU)

Specific requirements for trading venues permitting Sponsored Access

1.   Trading venues shall subject the provision of Sponsored Access services to their authorisation and shall require firms accessing through sponsored access at least the same pre-trade risk limits and controls as to their members.

2.   Trading venues shall ensure that sponsored access providers are at all times exclusively entitled to set or modify the parameters or limits that apply to the pre-trade and post-trade controls over the order flow of their sponsored access clients.

3.   Trading venues shall be able to suspend or withdraw the provision of sponsored access to those clients who have infringed Directive 2014/65/EU, Regulation (EU) No 600/2014, Regulation (EU) No 596/2014 or the trading venue's internal rules.

Article 23

(Article 48 (1) of Directive 2014/65/EU)

Security and limits to access

1.   Trading venues shall have in place procedures and arrangements for physical and electronic security designed to protect their systems from misuse or unauthorised access and to ensure the integrity of the data that is part of or passes through their systems, including

arrangements that allows the prevention and minimization of the risks of attacks against the information systems as defined in Article 2 of Directive 2013/40/EU.

2.   In particular, trading venues shall set up and maintain measures and arrangements to promptly identify and manage the risks related to:

(a)   any unauthorised access to the whole or to any part of their trading system;

(b)   system interferences that seriously hinder or interrupt the functioning of an information system by inputting computer data, by transmitting, damaging, deleting, deteriorating, altering or suppressing such data, or by rendering such data inaccessible;

(c)   data interferences that delete, damage, deteriorate, alter or suppress computer data on the information system, or render such data inaccessible; interceptions, by technical means, of non-public transmissions of computer data to, from or within an information system, including electromagnetic emissions from an information system carrying such computer data.

3.   Trading venues shall also establish and maintain arrangements for physical and electronic security that allow the prevention or minimization of any risks related to the unauthorised access to the working environment and loss of information.

4.   Trading venues shall promptly inform their competent authority of any successful breaches in the physical and electronic security measures it has in place by promptly providing an incident report indicating the nature of the incident, the measures adopted to cope with the emergency situation and the initiatives taken to avoid similar incidents from occurring in the future.

Article 24

Entry into force

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

It shall apply from 3 January 2017.

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

EN

EN

Done at Brussels,

For the Commission
The President

[For the Commission
On behalf of the President

[Position]

Annex: Parameters to be considered in the trading venues' self-assessment

List of elements that have to be considered in a trading venue's self-assessment:

(a) Nature, in terms of:

    (i) types and regulatory status of the instruments traded on the venue such as whether the trading venue trades liquid instruments subject to mandatory trading;

    (ii) the trading venue's role in the financial system such as whether the financial instruments traded on it can be traded elsewhere.

(b) Scale, in terms of the potential impact of the trading venue on the fair and orderly functioning of the markets, taking as a reference at least the following elements:

    (i) the number of algorithms operating on the venue;

    (ii) the messaging volume capacities of the venue;

    (iii) the volume of trading executed on the venue;

    (iv) the percentage of algorithmic trading over the total trading activity and the total turnover traded on the venue;

    (v) the percentage of high frequency trading (HFT) activity over the total trading activity and the total amount traded on the venue;

    (vi) the number of its members and participants;

    (vii) the number of its members providing DEA including, where applicable, the specific number of its members providing for sponsored access and the conditions under which DEA is offered or can be delegated;

    (viii) the ratio of unexecuted orders to transactions as observed and determined pursuant to [draft RTS 9 on OTR];

    (ix) the number and percentage of remote members;

    (x) the number of co-location or proximity hosting sites provided;

    (xi) the number of countries and regions in which the trading venue is undertaking business activity.

(xii) The operating conditions for mechanisms to manage volatility and whether dynamic or static trading limits are used to trigger trading halts or rejection of orders).

(c) Complexity, in terms of:

   (i) the classes of financial instruments traded on the trading venue;

   (ii) the trading models available in the trading venue including the different trading models operating at the same time such as auction, continuous auction and hybrid systems;

   (iii) the use of pre-trade transparency waivers in combination with the trading models operated;

   (iv) the diversity of trading systems employed by the venue and the extent of the venue's control over setting, adjusting, testing, and reviewing its trading systems;

   (v) the structure of the trading venue in terms of ownership and governance and its organisational, operational, technical, physical, and geographical set up;

   (vi) the diverse locations of the trading venue's connectivity and technology;

   (vii) the diversity of the venue's physical trading infrastructure;

   (viii) the level of outsourcing and in particular where key functions or operational functions have been outsourced; and

   (ix) the frequency of changes in terms of trading models, IT systems and membership.

RTS 8: Draft regulatory technical standards on market making agreements and market making schemes

EUROPEAN COMMISSION

Brussels, XXX
[…](2012) XXX draft

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

[…]

COMMISSION DELEGATED REGULATION (EU) …/..

of [date]

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the requirements on market making agreements and schemes

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU[1], and in particular Article 17(7)(a), (b) and (c) and Article 48(12)(a) and (f) thereof,

Whereas:

(1)   Two main goals should be attained in specifying the market making obligations of algorithmic traders pursuing market making strategies and the related obligations of trading venues. First, an element of predictability to the apparent liquidity in the order book should be introduced by establishing contractual obligations for investment firms pursuing market making strategies. Second, the presence of those firms in the market should be incentivised, particularly during stressed market conditions.

(2)   The provisions in this Regulation are closely linked, since they deal with a set of related obligations for investment firms engaged in algorithmic trading pursuing market making strategies and for trading venues where those market making strategies may take place. To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view and compact access to them by persons subject to those obligations, including investors that are non-Union residents, it is desirable to include these provisions in a single Regulation.

(3)   The provisions of this Regulation regarding market making schemes and market making obligations should apply not only to regulated markets but also to multilateral trading facilities and organised trading facilities as determined by Article 18(5) of Directive 2014/65/EU.

---

[1] OJ L 173, 12.06.2014, p. 349.

(4)   Market making strategies may relate to one or more financial instruments and one or more trading venues. However, in certain cases, it may not be possible for a trading venue to monitor strategies involving more than one trading venue or instrument. In those cases, trading venues should be able, in accordance with the nature, scale and complexity of their business, to monitor market making strategies pursued on their own venue, and therefore should restrict corresponding market making agreements and schemes to those situations only.

(5)   All members or participants engaged in algorithmic trading pursuing a market making strategy on a trading venue which allows for or enables algorithmic trading should enter into a market making agreement with the operator of the trading venue. However, incentives under a market making scheme should only be required for certain instruments traded under a continuous auction order book trading system. Nothing should prevent trading venues from establishing any other type of incentives at their own initiative for other financial instruments or trading systems.

(6)   Cases where there is no mandatory requirement for trading venues to set out a market making scheme taking into account the nature and scale of the trading on those trading venues should be clarified. To this end, it is appropriate to identify financial instruments and trading systems increasing the risk of high volatility and for which it is crucial to incentivise the provision of liquidity for orderly and efficient functioning of markets. In this respect, this Regulation should take into account that when liquid shares, liquid exchange traded funds, options and futures directly related to those financial instruments as well as liquid equity index futures and liquid equity index options are algorithmically traded in continuous auction order book trading systems there is a greater risk of overreaction to external events which can exacerbate market volatility.

(7)   Trading venues for which it is considered appropriate to have market making schemes in place should review their existing agreements with respect to those instruments to ensure that their terms in respect of algorithmic traders pursuing a market making strategy comply with these regulatory technical standards.

(8)   The market making scheme may incentivise investment firms having signed a market making agreement to perform their obligations under normal trading conditions but should provide incentives for firms effectively contributing to liquidity provision under stressed market conditions. Therefore, under stressed market conditions, there should be a scheme of incentives to limit the effects of a sudden and large-scale withdrawal of liquidity. In order to avoid divergent application of this provision, it is important for trading venues to communicate the existence of such stressed market conditions to all parties to the market making scheme.

(9)   Members, participants or clients having signed a market making agreement have to meet a minimum set of requirements in terms of presence, size and spread in all cases. However, the members, participants or clients meeting those minimum requirements

only under normal trading conditions may not necessarily access any type of incentive. Trading venues may establish market making schemes which only reward members, participants or clients meeting more stringent parameters in terms of presence, size and spread. The market making schemes put in place by trading venues should clearly indicate the conditions for accessing incentives and should take into account the effective contribution to the liquidity in the trading venue measured in terms of presence, size and spread by the participants to the schemes.

(10)   In order to prevent divergent application of this Regulation and to ensure fair and non-discriminatory implementation of market making schemes, it is crucial that all members, participants and clients of a trading venue are informed in a coordinated manner when exceptional circumstances occur or when trading resumes after the occurrence of such circumstances. It is therefore necessary to specify the role to be played by trading venues in relation to the communication of exceptional circumstances and coordination of their members, participants or clients thereof.

(11)   The new legislation of the European Parliament and of the Council on markets in financial instruments set out in Directive 2014/65/EU and Regulation (EU) No 600/2014 of the European Parliament and of the Council[2] applies from 3 January 2017. To ensure consistency and legal certainty, this Regulation should apply from the same date.

(12)   This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(13)   ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[3],

HAS ADOPTED THIS REGULATION:

Article 1

(Article 17(3) and (4) of Directive 2014/65/EU)

---

[2] Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84)

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

Circumstances in which an investment firm is obliged to enter into a market making agreement

1.   Investment firms shall enter into a market making agreement regarding the financial instrument or instruments in which they pursue a market making strategy with the trading venue or venues where this strategy takes place in the circumstances set out in paragraph 2.

2.   Investment firms shall be obliged to enter into a market making agreement where in execution of one market making strategy they post firm, simultaneous two-way quotes of comparable size and competitive prices when dealing on their own account in at least one financial instrument on one trading venue for at least 50% of the daily trading hours of continuous trading at the respective trading venue, excluding opening and closing auctions, for half of the trading days over a one month period.

3.   For the purposes of paragraph 2:

  (a) a firm quote shall include any orders and quotes that can be matched against an opposite order or quote under the rules of a trading venue;

  (b) quotes shall be deemed simultaneous two-way quotes if they are posted in a way that both sides are present in the order book at the same time;

  (c) two quotes shall be deemed of comparable size when their sizes do not diverge by more than 50% from each other;

  (d) quotes shall be deemed to have competitive prices where they are posted at or within the maximum bid-ask range set by the trading venue and imposed upon every investment firm signing a market making agreement.

Article 2

(Article 17(3) and (4) and Article 48 (2) and (3) of Directive 2014/65/EU)

Content of market making agreements

1.   The content of a binding written agreement referred to in Article 17(3)(b) and Article 48(2) of Directive 2014/65/EU shall include at least:

  (a) the financial instrument or instruments covered by the agreement;

  (b) the minimum obligations to be met in terms of presence, size and spread that shall require at least posting firm, simultaneous two-way quotes of comparable size and competitive prices in no less than one financial instrument on the trading venue for no less than 50% of the hours during which continuous trading takes place during daily trading hours excluding opening and closing auctions, and calculated for each trading day;

(c) where appropriate, the terms of the applicable market making scheme;

(d) obligations in relation to resumption of trading after volatility interruptions;

(e) the surveillance, compliance and audit obligations (including in terms of resources) to be complied with in order to enable the firm to monitor its market making activity;

(f) the obligation to flag firm quotes submitted to the trading venue in the performance of the market making agreement in order to distinguish them from other order flows;

(g) the obligation to maintain records of firm quotes and transactions relating to the market making activities so that these records can be distinguished from other trading activities and be made available to the trading venue and the competent authority upon request.

2.   Trading venues shall monitor on an ongoing basis the effective compliance of the relevant investment firms with the market making agreements.

Article 3

(Article 17(3) and (4) of Directive 2014/65/EU)

Exceptional circumstances

1.   The obligation to provide liquidity on a regular and predictable basis does not apply in any of the following exceptional circumstances:

(a) in a situation of extreme volatility resulting in the triggering of volatility mechanisms with respect to the majority of instruments or underlyings of instruments traded on a trading segment within that venue;

(b) an act of war, industrial action, civil unrest or an act of cyber sabotage;

(c) under disorderly trading conditions where the maintenance of fair, orderly and transparent execution of trades is compromised as evidenced by any of the following:

   (i)   the performance of the trading venue's system being significantly affected by delays and interruptions;

   (ii) multiple erroneous orders or transactions;

   (iii) the capacity of a trading venue becoming insufficient;

(d) where the investment firm's ability to maintain prudent risk management practices is prevented by any of the following:

   (i)   technological issues including problems with a data feed or other system that is essential in order to carry out a market making strategy;

(ii) risk management issues in relation to regulatory capital, margining, access to clearing, or the inability to hedge a position due to a short selling ban;

(e) for non-equity instruments, the period in which a competent authority temporarily suspends the pre-trade transparency requirements following a significant decline in liquidity of a particular class of financial instruments in accordance with Article 9(4) of Regulation (EU) No 600/2014 of the European Parliament and of the Council[4].

2. The exceptional circumstances referred to in paragraph 1 shall not include any regular or pre-planned information events that may affect the fair value of a financial instrument due to changes in the perception of market risk, whether occurring during or outside trading hours.

Article 4

(Article 48(2) and (3) of Directive 2014/65/EU)

Identification of exceptional circumstances

1. Trading venues shall make public the existence of an exceptional circumstance and the resumption of normal trading when this exceptional circumstance ends as soon as technically possible, except in the circumstances set out in point (d) of Article 3(1).

2. Trading venues shall set out clear procedures to resume normal trading when the exceptional circumstance has ended, including the timing of such resumption, and shall make those procedures publicly available.

3. Trading venues shall only extend the declaration of exceptional events beyond market close where necessary under points (b), (c) and (e) of Article 3(1).

Article 5

(Article 48(2) and (3) of Directive 2014/65/EU)

Conditions under which the requirement to have in place a market making scheme is not appropriate

1. Trading venues shall not be required to have market making schemes in place except for any of the following classes of financial instruments traded through a continuous auction order book trading system:

(a) liquid shares and liquid exchange traded funds as defined in accordance with Article 2(1)(17) of Regulation (EU) No 600/2014 and as specified in Commission Delegated

---

4 Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

Regulations [Regulation on the specification of liquid market for equity and equity-like instruments];

(b) options and futures directly related to the financial instruments set out in point (a);

(c) liquid equity index futures and liquid equity index options as defined in accordance with point (c) of Article 9(1) and point (c) of Article 11(1) of Regulation (EU) No 600/2014 and as specified in Commission Delegated Regulation [Regulation on transparency requirements in respect of bonds, structured finance products, emission allowances and derivatives].

2. For the purpose of paragraph 1, a continuous auction order book trading system is a system that by means of an order book and a trading algorithm operated without human intervention matches sell orders with buy orders on the basis of the best available price on a continuous basis.

Article 6

(Article 48(2) and (3) of Directive 2014/65/EU)

Minimum market making obligations that trading venues must provide for when designing a market making scheme

1. Trading venues shall describe in their market making scheme the incentives and the parameters that must be met in terms of presence, size and spread to access those incentives under:

(a) normal trading conditions where the trading venue decides to offer incentives in such circumstances. In that case, the market making scheme may include a condition that only the best performer or performers receive those incentives;

(b) stressed market conditions taking into account the additional risks implied under those circumstances.

2. Trading venues shall set out the parameters to identify stressed market conditions in terms of significant short-term changes of price and volume. Trading venues shall consider the resumption of trading after volatility interruptions as stressed market conditions.

Article 7

(Article 48(2) and (3) of Directive 2014/65/EU)

Fair and non-discriminatory market making schemes

1. Trading venues shall publish on their websites the terms of the market making schemes, the names of the firms that have signed market making agreements under each of those schemes and the financial instruments covered by those agreements.

2. Trading venues shall communicate any changes to the terms of the market making schemes to the participants in those schemes at least one month prior to their application.

3. Trading venues shall provide in a market making scheme the same incentives to the participants who perform equally in terms of presence, size and spread.

4. Trading venues shall not limit the number of participants in a market making scheme but may limit the access to the incentives included in this scheme to the firms which have met pre-determined thresholds.

5. Trading venues shall monitor on an ongoing basis the effective compliance of the participants with the market making schemes.

6. Trading venues shall establish procedures to communicate to all participants in market making schemes the existence of stressed market conditions on its venue through readily accessible channels.

Article 8

Entry into force and application

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

It shall apply from 3 January 2017.

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

Done at Brussels,

For the Commission
The President

[For the Commission
On behalf of the President

[Position]

RTS 9: Draft regulatory technical standards on the ratio of unexecuted orders to transactions

EUROPEAN COMMISSION

Brussels, XXX
[…](2012) XXX draft

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

[…]

COMMISSION DELEGATED REGULATION (EU) No …/..

of [date]

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the ratio of unexecuted orders to transactions

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU[1], and in particular Article 48(12)(b) thereof,

Whereas:

(1)   Trading venues should have a number of systems, procedures and arrangements in place to ensure that algorithmic trading systems cannot create or contribute to disorderly trading conditions including systems to monitor and, where appropriate, limit the ratio of unexecuted orders to transactions. Taking into account their nature, voice trading systems should be exempt from the scope of this regulation which should only apply to trading venues operating electronic continuous auction order book, quote-driven or hybrid trading systems.

(2)   Directive 2014/65/EU extends the requirements relating to the determination of the ratio of unexecuted orders to transactions to multilateral trading facilities and organised trading facilities and it is therefore important that those venues are also within the scope of these regulatory technical standards.

(3)   Trading venues have the ability to set out the maximum ratio of unexecuted orders to transactions at the level they deem appropriate, for instance per group of financial instruments with similar characteristics. However, trading venues should calculate the ratio effectively incurred by their members or participants at the level of each financial instrument traded on them to ensure effectively that the ratio of unexecuted orders does not lead to excessive volatility in that instrument.

(4)   In order to ensure sufficient harmonisation across the Union of these arrangements, a clear methodology to calculate the ratio of unexecuted orders to transactions with respect to all market participants should be laid down.

---

[1] OJ L 173, 12.6.2014, p. 349

(5) The meaning of certain essential parameters to be used for the calculation of the ratio of unexecuted orders to transactions should be clarified. Definitions are an essential element of the methodology and should therefore be set out in order to avoid divergent application across the Union.

(6) The calculation of the ratio of unexecuted orders to transactions entered into the system by a member or participant should be supported by an adequate observation period. On that basis, the calculation period of the effective ratio of unexecuted orders to transactions should not be longer than a trading session. However, trading venues should be allowed to set out shorter observation periods in case such shorter observation periods would contribute more effectively to maintain orderly trading conditions.

(7) Trading venues should be able to identify whether the observed pattern of the ratio of unexecuted orders to transactions of any of their members or participants may contribute to disorderly trading conditions and to take measures considered necessary even if the maximum ratio has not been effectively breached.

(8) The new legislation of the European Parliament and of the Council on markets in financial instruments set out in Directive 2014/65/EU and Regulation (EU) No 600/2014 applies from 3 January 2017. To ensure consistency and legal certainty, this Regulation should apply from the same date.

(9) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(10) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[2],

HAS ADOPTED THIS REGULATION:

Article 1

(Article 48(6) of Directive 2014/65/EU)

---

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

Obligation to calculate the ratio of unexecuted orders to transactions

Trading venues shall calculate the ratio of unexecuted orders to transactions effectively entered into the system by each of their members and participants and for every financial instrument traded under an electronic continuous auction order book, quote-driven or hybrid trading system.

Article 2

(Article 48(6) of Directive 2014/65/EU)

Definitions

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

(a) 'order' means all input messages, including submission, modification and cancellation sent to a trading venue's trading system relating to an order or a quote, but excluding cancellation messages sent subsequent to:

   (i) uncrossing in an auction;

   (ii) a loss of venue connectivity;

   (iii) the use of a kill functionality.

(b) 'transaction' means a totally or partially executed order;

(c) 'volume' means the quantity of financial instruments traded expressed as:

   (i) the number of instruments for shares, depositary receipts, ETFs, certificates and other similar financial instruments;

   (ii) the nominal value for bonds and structured finance products;

   (iii) the number of lots size or contracts for derivatives;

   (iv) metric tonnes of carbon dioxide for emission allowances.

Article 3

(Article 48(6) of Directive 2014/65/EU)

Methodology

1. Trading venues shall calculate the ratio of unexecuted orders to transactions for each of their members or participants at least at the end of every trading session in both of the following ways:

(a) in volume terms: (Total volume of orders/Total volume of transactions) - 1;

(b) in number terms: (Total number of orders/Total number of transactions) - 1.

2.   The maximum ratio of unexecuted orders to transactions determined by the trading venue shall be deemed as being exceeded by a member or participant of the trading venue during a trading session if the trading activity of that member or participant in one specific instrument, taking into account all phases of the trading session including the auctions, exceeds either of the two ratios set out in paragraph 1.

3.   Trading venues shall calculate the number of orders effectively received from each member or participant following the counting methodology per order type set out in the Annex.

4.   Where a trading venue uses an order type which is not explicitly laid down in the Annex, it shall count the messages in accordance with the general systematic behind the counting methodology and as the most similar order type appearing in the Annex.

Article 4

Entry into force and application

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

It shall apply from 3 January 2017.

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

Done at Brussels,

For the Commission
The President

[For the Commission
On behalf of the President

[Position]

Annex I: Order types

Types of order	Number of orders received by the trading venue to be counted when calculating the ratio of unexecuted orders to transactions (each submission, modification, cancellation shall be counted as one single order)	Updates potentially sent by the trading venue not to be counted when calculating the ratio of unexecuted orders to transactions (excluding executions / cancellations by market operations)
Limit	1	0
Limit - add	1	0
Limit - delete	1	0
Limit - modify	2 (any modifications entails a cancellation and a new insertion)	0
Stop	1	1 (when triggered)
Immediate (Market)	1	0
Immediate (Fill-or-Kill, Immediate-or-Cancel)	1 (and if deleted/cancelled 2)	0
Iceberg / reserve	1	0
Market-to-limit	1	1 (when triggered)
Quote	2 (1 for the buy side and 1 for the sell side)	0
Quote - add	2	0
Quote - delete	2	0
Quote - modify	4 (any modifications entails a cancellation and a new insertion)	0
Peg Market peg: an order to the opposite side of the (European) Best Bid and Offer (BBO) Primary peg: an order to the same side of the (European) BBO	1	potentially unlimited as the order tracks the BBO

Midpoint peg: an order to the midpoint of the (European) BBO		
Alternate peg to the less aggressive of the midpoint or 1 tick		
Midpoint inside the same side of the Protected BBO		
One-cancels-the-other: two orders are linked so that if one of the two is executed, then, the other one is removed by market operations	2	1 (when one leg trades, the other is cancelled)
One-cancels-the-other - add	2	
One-cancels-the-other - delete	2	
One-cancels-the-other - modify	4	
Trailing stop: Stop order which stop price at which the order is triggered changes in function of the (European) BBO	1	potentially unlimited as the stop limit tracks the BBO
At best limit order where the limit price is equal to the opposite side of the (European) BBO at the time of entry	1	0
Spread limit order whose yield is calculated by adding a spread to a benchmark's yield (two parameters: spread and benchmark)	1	potentially unlimited as the limit is dependent on another asset's quote

Strike match: minimum price for buy orders and maximum price for sell orders	1	potentially unlimited but limited in time (the lasting of the auction)
Order-on-event: order that is inactive until it is triggered by a specific event (similar to a stop order, except that the order, once triggered, does not necessarily be in the same way as the trend of the underlying: a buy order can be triggered while the stop price was triggered due to a fall of the financial instrument)	1	1 (when triggered)
"At the open"/"At the close": Order that is inactive until it is triggered by the opening or the closing of a market.	1	1 (when triggered)
Book-or-cancel / Post: order that cannot match the other side of the order book at the time it enters into the order book		
Book-or-cancel / Post – add	1 (2 if deleted/cancelled)	0
Book-or-cancel / Post – delete	1 (2 if deleted/cancelled)	0
Book-or-cancel / Post – modify	2	0
Withheld: order entered in the order book that is ready to be transformed as a firm order	2 (submission of the order + confirmation)	0
Deal order	1	0

TOP, TOP+ either placed on the top of the book or rejected (+: check on the available volume): an order which has to be both passive and at the BBO, failing which it is rejected.	1	0
Imbalance Order (IOOP or IOOC): an order which is only valid for auctions and which aims at filling the quantity imbalance (between the surplus and deficit sides) without affecting the price equilibrium.	1	potentially unlimited but limited in time (the lasting of the auction)
Linked order: an order which corresponds to a number of single orders each of which being on a different financial instrument. When a trade takes place on one of these orders, the volume of the other ones will be immediately reduced proportionally. This order type is typically used on the bond market.	1	potentially equal to the quantity of underlying entered
Sweep: allows participants to access integrated order-books. Best price sweep: work through price levels from the combined order books, to the limit price	1	0

Sequential lit sweep: execute to the limit order price on the book of entry before any quantity is sent to the other book	293	
Named: non-anonymous order	1	0
If-touched: triggered when the last, bid or ask price touches a certain level	1	1 (when triggered)
Guaranteed stop: This guarantees the execution at the stop price	1	1 (when triggered)
Combined orders such as options' strategy, futures' roll, etc)	1	potentially unlimited

RTS 10: Draft regulatory technical standards on requirements to ensure co-location and fee structures are fair and non-discriminatory

EUROPEAN COMMISSION

Brussels, XXX
[…](2012) XXX draft

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

[…]

COMMISSION DELEGATED REGULATION (EU) …/.. of [date]

supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on requirements to ensure fair and non-discriminatory co-location and fee structures

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU[1], and in particular Article 48(12)(d),

Whereas:

(1)   It is important to adopt detailed regulatory technical standards to clearly identify conditions when co-location and fee structures used by trading venues may be considered fair and non-discriminatory.

(2)   Directive 2014/65/EU extends the requirements relating to co-location and fee structures to multilateral trading facilities and organised trading facilities and it is therefore important to ensure that those venues are also within the scope of this Regulation.

(3)   In order to ensure a level playing field, it is necessary to impose common requirements to all types of co-location services and to apply the same rules to trading venues organising their own data centers and those using data centers owned or managed by third parties.

(4)   Trading venues have the ability to determine their own commercial policy as regards co-location and determine which types of market participants they want to grant access to these services on the basis of objective, transparent and non-discriminatory criteria.

---

[1] OJ L 173, 12.6.2014, p.349

(5)   Trading venues should not be forced to extend their co-location capacities beyond the limits of the space, power, cooling or similar facilities available and should have discretion to decide whether they expand their co-location space or not.

(6)   Ensuring fair and non-discriminatory practice in relation to fee structures and co-location requires a sufficient degree of transparency without which obligations laid down in Directive 2014/65/EU could be easily circumvented.

(7)   Objective parameters should be used by trading venues to determine rebates, incentives and disincentives that may include volumes effectively traded, services effectively used and the provision of specific services, such as the provision of liquidity provided by an investment firm pursuing a market making strategy.

(8)   The implementation of any fee structure that contributes to disorderly trading conditions through encouraging intensive trading and that leads to a potential stress of market infrastructures should be explicitly prohibited. However, volume discounts should still be allowed, since, as price differentiation schemes, they are based on the total trading volume, the total number of trades or the cumulated trading fees generated by one member whereby only the marginal trade executed subsequently to reaching the threshold is executed at a reduced price.

(9)   The new legislation of the European Parliament and of the Council on markets in financial instruments set out in Directive 2014/65/EU and Regulation (EU) No 600/2014 applies from 3 January 2017. To ensure consistency and legal certainty, this Regulation should apply from the same date.

(10)   This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(11)   ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[2],

HAS ADOPTED THIS REGULATION:

---

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

Article 1

(Article 48(8) of Directive 2014/65/EU)

Types of co-location services covered

1. Trading venues shall provide objective, fair, transparent and non-discriminatory co-location services as laid down in Article 2 in the following cases:

(a) data centers owned and managed by a trading venue;

(b) data centers owned by a trading venue but managed by a third party selected by this venue;

(c) data centers owned and managed by a third party but where an outsourcing arrangement with a trading venue organises that venue's execution infrastructure as well as the proximity access to it;

(d) proximity hosting services owned and managed by third parties with a contractual arrangement with a trading venue.

2. Trading venues shall ensure that third party providers of co-location services are subject to equivalent obligations in terms of fair and non-discriminatory provision of co-location services as trading venues.

Article 2

(Article 48(8) of Directive 2014/65/EU)

Fair and non-discriminatory co-location services

1. Trading venues shall publish their policy regarding co-location services on their websites, including:

(a) a list of co-location services that they offer including details about space, power, cooling, cable length, access to data, market connectivity, technology, technical support, message types, telecommunications and any other related products and services;

(b) the price of each service as set out in Article 3(2);

(c) the conditions for accessing the service, including IT and operational arrangements;

(d) the different types of latency access available;

(e) the procedure to allocate co-location space;

(f) the requirements on third party providers of co-location services.

2. Trading venues shall provide co-location services on the basis of objective, transparent and non-discriminatory criteria to the different types of users of the venue within the limits of the space, power, cooling or similar facilities available.

3. Trading venues shall provide to all users which have subscribed to the same co-location services access to their network under equivalent conditions including space, power, cooling, cable length, access to data, market connectivity, technology, technical support and messaging types.

4. Trading venues shall take all reasonable steps to monitor all connections and latency measurements to ensure the non-discriminatory treatment of all users of co-location services with the same type of latency provided.

5. Users of co-location services shall be granted the possibility to only subscribe certain co-location services, without being required to purchase bundled services.

Article 3

(Article 48(9) of Directive 2014/65/EU)

Fair and non-discriminatory fee structures

1. Trading venues shall publish on their websites in one comprehensive and publicly accessible document their fee structures, including execution fees, ancillary fees, rebates, incentives and disincentives.

2. Trading venues shall ensure that their fee structure is set with sufficient granularity such that the outcome is predictable and identifying at least the following concepts:

  (a) the chargeable activities, identifying the activity that triggers each fee;

  (b) the pricing policy for each chargeable activity, identifying clearly whether that pricing policy is based on a fixed or a variable fee;

  (c) the pricing structure, including any types of rebates, incentives or disincentives.

3. Users of services shall be granted the possibility to only request certain chargeable activities, without being required to pay for bundled services.

4. Trading venues shall charge the same price and provide the same conditions to all users of the same type in a class of users of the services they provide in accordance with published and objective criteria. Trading venues may establish different fee structures only on the basis of non-discriminatory, measurable, objective and published parameters relating to:

  (a) the total volume traded, the numbers of trades or cumulated trading fees;

(b) the services provided by the venue;

(c) the provision of liquidity under a market making agreement as defined in Article 48 of Directive 2014/65/EU or as a market maker as defined by Article 4(1)(7) of Directive 2014/65/EU;

(d) the provision of packages of services;

(e) the scope or field of use demanded.

Article 4

(Article 48(8) of Directive 2014/65/EU)

Prohibited fee structures

Trading venues shall not offer a fee structure whereby upon a member's, participant's or client's trading exceeding a given threshold, all of its trades benefit from a lower fee for a set period, including trades which have been executed previously in addition to the trades executed subsequent to reaching the threshold.

Article 5

Entry into force

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

It shall apply from 3 January 2017.

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

Done at Brussels,

For the Commission
The President

[For the Commission
On behalf of the President

[Position]

RTS 11: Draft regulatory technical standards on the tick size regime for shares, depositary receipts and exchange traded funds

EUROPEAN COMMISSION

Brussels, XXX
[…](2012) XXX draft

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

[…]

COMMISSION DELEGATED REGULATION (EU) …/..

of [date]

supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the tick size regime for shares, depositary receipts and, exchange traded funds

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU[1], and in particular Article 49(3) and (4) thereof,

Whereas:

(1) A tick size regime or minimum tick sizes should be set out in respect of certain financial instruments to ensure the orderly functioning of the markets. In particular, the risk of an ever-decreasing tick size for shares, depositary receipts and certain types of exchange-traded funds and its impact on the orderliness of the market should be controlled by means of a compulsory tick size regime.

(2) For other financial instruments, given the nature of these instruments and the microstructures of the markets on which they are traded, the enactment of a tick size regime for those instruments cannot be presumed to effectively contribute to the orderliness of the markets and, hence, these instruments should not be subject to a mandatory tick size regime.

(3) In particular, certificates are only traded in certain Member States. Having taken into consideration the liquidity, scale and nature of these specific markets and the characteristics of those financial instruments, no mandatory tick size regime is deemed necessary to prevent the occurrence of disorderly trading conditions.

(4) With respect to non-equity financial instruments and fixed income products, a large proportion of trading remains executed OTC with only a limited number of

---

1 OJ L 173, 12.6.2014, p.349

transactions being executed on-venue. Due to the specific characteristics of the liquidity of these instruments on electronic platforms and their fragmentation it is not deemed necessary to regulate a mandatory tick size regime for them.

(5)   The correlation between exchange-traded funds (ETFs) and the underlying equity instruments makes necessary the determination of a minimum tick size for ETFs having as underlying shares and depositary receipts. However, ETFs having as underlying financial instruments which are not shares or depositary receipts should not be subject to these regulatory technical standards.

(6)   For ETFs, in order to reduce the risk of circumvention, it is important that all ETFs covered by this Regulation have the same tick size regime based on a single liquidity band regardless of their average daily number of transactions.

(7)   A certain number of technical terms should be clearly defined for the purposes of setting out a tick size regime. Those technical definitions are necessary to ensure objective, effective and harmonised application of the tick size regimes in the Union and, hence, contribute to the establishment of a single rulebook for Union financial markets in that respect. In particular, it appears essential to clarify the meaning of the most relevant market in terms of liquidity since Regulation (EU) No 600/2014 of the European Parliament and of the Council[2] establishes two different definitions of most relevant market in terms of liquidity respectively for the purpose of the reference price waiver and for the purpose of transaction reporting.

(8)   The tick size regime only determines the minimum difference between two price levels of orders sent in relation to a financial instrument in the order-book. As a consequence, it should be applied equally regardless of the currency of the financial instrument.

(9)   Competent authorities should have the ability to react to events known in advance that lead to a change in the number of transactions in a financial instrument whereby, as a result, the applicable tick size may no longer be appropriate. To that end, a specific procedure should be set out to avoid disorderly market conditions arising from corporate actions that may cause the tick size of one specific instrument to be unsuitable. That procedure should apply to corporate actions that could affect significantly the liquidity of this instrument including splits, reverse splits, scrip issues, capital repayments, rights issues, entitlement offers, takeovers, mergers and stock conversions. While assessing the impact of a corporate action on a specific financial instrument, competent authorities should take account of any previous corporate actions with similar characteristics.

---

[2] Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84)

(10)   The new legislation of the European Parliament and of the Council on markets in financial instruments set out in Directive 2014/65/EU and Regulation (EU) No 600/2014 of the European Parliament and of the Council3 applies from 3 January 2017. To ensure consistency and legal certainty, this Regulation should apply from the same date. However, to ensure that the tick size regime can operate effectively from 3 January 2017, and that market participants have sufficient time to implement the new requirements by that date, it is necessary for certain transitional provisions to apply from the date of entry into force of this Regulation. These transitional provisions should enable the collection of data for the calculations and provide for an earlier publication of the average daily number of transactions for each financial instrument covered by this Regulation.

(11)   This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(12)   ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council4,

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

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

(1)   'most relevant market in terms of liquidity' means the most relevant market in terms of liquidity as defined in Article 4(1)(a) of Regulation (EU) No 600/2014 and specified in Article 4 of Commission Delegated Regulation (EU) No [xxxx/xxxx] [Draft RTS 1 on transparency requirements for equity and equity-like financial instruments];

(2)   'liquidity band' means the liquidity range based on the average daily number of transactions for a given financial instrument as set out in the Annex to this Regulation.

---

3 Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).
4 Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

Article 2

(Article 49(1) and (2) of Directive 2014/65/EU)

Tick size for shares, depositary receipts and exchange-traded funds

1.   Trading venues shall apply to orders in shares or depositary receipts a tick size which is equal to or greater than the one corresponding to:

  (a) the liquidity band in the table in the Annex to this Regulation corresponding with the average daily number of transactions in the most relevant market in terms of liquidity for that instrument;

  (b) the price range in that liquidity band corresponding to the price of the order.

2.   By way of derogation from paragraph 1(a), where the most relevant market in terms of liquidity for a share or depositary receipt operates only a periodic auction trading system, trading venues shall apply the liquidity band corresponding to the lowest average daily number of transactions in the table in the Annex.

For the purpose of the first subparagraph, a trading system shall be deemed to be a periodic auction trading system where orders are matched on the basis of a periodic auction and of a trading algorithm operated without human intervention.

3.   Trading venues shall apply to orders in ETFs a tick size which is equal to or greater than the one corresponding to:

  (a) the liquidity band in the table in the Annex to this Regulation corresponding with the highest average daily number of transactions;

  (b) the price range in that liquidity band according to the price of the order.

4.   The requirements set out in paragraph 3 shall apply only to ETFs having as sole underlying equities or a basket of equities subject to the tick size regime under paragraph 1.

Article 3

(Article 49(1) and (2) of Directive 2014/65/EU)

Average daily number of transactions for shares and depositary receipts

1.   By 1 March 2018 and by 1 March of each year thereafter, the competent authority for a specific share or depositary receipt shall, when determining the most relevant market in terms of liquidity for that share or depositary receipt also calculate the average daily number of transactions for that financial instrument in that market and ensure the publication of that information.

The competent authority in the first sub-paragraph shall be the one specified in Article XX of Commission Delegated Regulation (EU) [insert reference to Article 18 of RTS on reporting obligations under Article 26 of MiFIR].

2. The calculation referred to in paragraph 1 shall have the following characteristics:

(a) it shall cover the period in the preceding year beginning on 1 January and ending on 31 December or, where applicable, that part of the year during which the financial instrument was admitted to trading or traded on a trading venue and was not suspended from trading;

(b) it shall include transactions executed under the rules of the relevant trading venue excluding reference price and negotiated transactions as set out in Table 4 of Annex I of [RTS 1 on equity transparency] and transactions executed on the basis of at least one order that has benefitted from a large in scale waiver and where the transactions' size is above the applicable large in scale threshold as determined in accordance with Article 7 of [RTS 1 on equity transparency].

This paragraph and paragraph 1 shall not apply to shares and depositary receipts first admitted to trading or traded on a trading venue after 30 November of the preceding year.

3. Trading venues shall apply the tick sizes of the liquidity band corresponding to the average daily number of transactions as published in accordance with paragraph 1 from 1 April following that publication.

4. Before the first admission to trading or before the first day of trading of a share or depositary receipt, the competent authority of the trading venue where that instrument is to be first admitted to trading or first traded shall estimate and publish the estimate average daily number of transactions for that venue, taking into account the previous trading history of that instrument, where applicable, as well as the trading history of instruments that are considered to have similar characteristics.

The tick size of the liquidity band corresponding to that published estimate average daily number of transactions shall apply immediately after the publication of that estimate and until the publication of the average daily number of transactions for that instrument in accordance with paragraph 5.

5. No later than six weeks after the share or depositary receipt has started trading, the competent authority of the trading venue where the instrument was first admitted to trading or first traded on a trading venue shall calculate and ensure the publication of the average daily number of transactions in that financial instrument for that venue using the data relating to the first four weeks of trading of that financial instrument.

The tick size of the liquidity band corresponding to that published average daily number of transactions shall apply immediately after the publication and continue to apply until a new

average daily number of transactions for that instrument calculated and published in accordance with the procedure set out in paragraphs 1, 2 and 3 applies.

6. For the purposes of this Article, the average daily number of transactions for a given financial instrument shall be calculated by dividing, for the relevant time period and the relevant trading venue, the total number of transactions in that instrument by the number of trading days.

Article 4

(Article 49(1) and (2) of Directive 2014/65/EU)

Corporate actions

Where a competent authority considers that a corporate action may modify the average daily number of transactions of a particular financial instrument such that this financial instrument falls within a different liquidity band, the competent authority shall determine and make public a new applicable liquidity band for that financial instrument treating it as if it were first admitted to trading or first traded on a trading venue and apply the procedure set out in Article 3(4) and (5).

Article 5

Transitional provisions

1. The competent authority of the trading venue where a share or depositary receipt was first admitted to trading or traded for first time shall collect the necessary data, calculate and ensure the publication of the average daily number of transactions for that financial instrument and for that trading venue:

(a) by 1 December 2016 for financial instruments traded for the first time on a trading venue before 21 October 2016;

(b) by 3 January 2017 for financial instruments traded for the first time on a trading venue between 21 October 2016 and 2 January 2017.

2. The calculations referred to in paragraph 1 shall be based on:

(a) available data for the period from 1 January 2016 to 30 September 2016 for financial instruments first admitted to trading or traded for first time on a trading venue before 1 September 2016;

(b) available data for the first four weeks of trading for financial instruments first admitted to trading or traded for first time on a trading venue between 1 September 2016 and 20 October 2016;

(c) previous trading history of that financial instrument or of other financial instruments considered to have similar characteristics for financial instruments first admitted to trading or traded for first time in the Union between 21 October 2016 and 2 January 2017.

3.   The tick sizes of the liquidity band corresponding to that published average daily number of transactions shall apply from 3 January 2017 to 31 March 2018. During that period, competent authorities shall ensure for financial instruments referred to under points (b) and (c) of paragraph 2 and for which they are the competent authority that those tick sizes do not contribute to disorderly trading conditions. Where a competent authority identifies a risk for the orderly functioning of the markets for such an instrument, it shall determine and make public an updated average daily number of transactions for that financial instrument to address that risk on the basis of longer and more comprehensive trading history data for that instrument. Trading venues shall apply the liquidity band corresponding to this updated average daily number of transactions immediately and until 1 April 2018 or any further publication by the competent authority in accordance with this paragraph.

Article 6

Entry into force and application

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

It shall apply from 3 January 2017, except Article 5 which shall apply immediately following the entry into force of this Regulation.

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

Done at Brussels,

For the Commission
The President

[For the Commission
On behalf of the President

[Position]

Annex

Tick Size Table

Price ranges	Liquidity bands					
	0 ≤ Average daily number of transactions < 10	10 ≤ Average daily number of transactions < 80	80 ≤ Average daily number of transactions < 600	600 ≤ Average daily number of transactions < 2000	2000 ≤ Average daily number of transactions < 9000	9000 ≤ Average daily number of transactions
0 ≤ price < 0.1	0.0005	0.0002	0.0001	0.0001	0.0001	0.0001
0.1 ≤ price < 0.2	0.001	0.0005	0.0002	0.0001	0.0001	0.0001
0.2 ≤ price < 0.5	0.002	0.001	0.0005	0.0002	0.0001	0.0001
0.5 ≤ price < 1	0.005	0.002	0.001	0.0005	0.0002	0.0001
1 ≤ price < 2	0.01	0.005	0.002	0.001	0.0005	0.0002
2 ≤ price < 5	0.02	0.01	0.005	0.002	0.001	0.0005
5 ≤ price < 10	0.05	0.02	0.01	0.005	0.002	0.001
10 ≤ price < 20	0.1	0.05	0.02	0.01	0.005	0.002
20 ≤ price < 50	0.2	0.1	0.05	0.02	0.01	0.005
50 ≤ price < 100	0.5	0.2	0.1	0.05	0.02	0.01
100 ≤ price < 200	1	0.5	0.2	0.1	0.05	0.02
200 ≤ price < 500	2	1	0.5	0.2	0.1	0.05
500 ≤ price < 1000	5	2	1	0.5	0.2	0.1
1000 ≤ price < 2000	10	5	2	1	0.5	0.2
2000 ≤ price < 5000	20	10	5	2	1	0.5
5000 ≤ price < 10000	50	20	10	5	2	1
10000 ≤ price < 20000	100	50	20	10	5	2
20000 ≤ price < 50000	200	100	50	20	10	5
50000 ≤ price	500	200	100	50	20	10

RTS 12: Draft regulatory technical standards on the determination of a material market in terms of liquidity relating to trading halt notifications

EUROPEAN COMMISSION

Brussels, XXX
[…](2012) XXX draft

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

[…]

COMMISSION DELEGATED REGULATION (EU) No …/..

of [date]

supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the determination of a material market in terms of liquidity relating to trading halt notifications

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU[1] , and in particular Article 48(12)(e) thereof,

Whereas:

(1)   It is necessary to adopt regulatory technical standards to clarify which regulated markets should be considered material in terms of liquidity for a specific financial instrument so that those markets have in place appropriate systems and procedures for notifying competent authorities of trading halts.

(2)   Directive 2014/65/EU extends the requirements relating to trading halts to multilateral trading facilities and organised trading facilities and it is therefore important to ensure that financial instruments traded on those venues are also within the scope of these regulatory technical standards.

(3)   It is important to ensure a proportionate application of the notification requirement. After being notified, competent authorities are obliged to assess whether this notification should be disseminated to the rest of the market and to coordinate, where necessary, a market-wide response. Therefore, it is necessary to limit the number of notifying venues so as to reserve this mechanism for the market with the greatest potential for market wide impact when trading is halted on that market.

(4)   For equity and equity-like financial instruments, the material market in terms of liquidity should be the trading venue with the highest turnover in the Union in the financial instrument concerned since this venue has the greatest scope for causing

---

[1] OJ L 173, 12.06.2014, p. 349.

market wide impact when halting trading. This is specified as the most relevant market in terms of liquidity for the purposes of the reference price waiver and that specification should therefore be incorporated into this Regulation.

(5)   For non-equity financial instruments, the material market in terms of liquidity should be the regulated market where the financial instrument concerned was first admitted to trading or, if it is not admitted to trading on a regulated market, it should be the trading venue where it was first traded. This ensures certainty for a range of complex financial instruments by establishing a simple reference point to the trading venue on which events have important liquidity impacts on other markets trading the same financial instrument, typically due to the significant share in terms of the volumes executed in that instrument on that venue.

(6)   The new legislation of the European Parliament and of the Council on markets in financial instruments set out in Directive 2014/65/EU and Regulation (EU) No 600/2014 of the European Parliament and of the Council[2] applies from 3 January 2017. To ensure consistency and legal certainty, this Regulation should apply from the same date.

(7)   This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(8)   ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[3],

HAS ADOPTED THIS REGULATION:

Article 1

(Article 48(5) of Directive 2014/65/EU)

Material market in terms of liquidity

A material market in terms of liquidity shall be:

---

[2] Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84)
[3] Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

(a) in respect of a share, depositary receipt, exchange-traded fund, certificate or other similar financial instrument, the trading venue which is the most relevant market in terms of liquidity for that instrument as set out in Article 4 of Commission Delegated Regulation (EU) No [xxxx/xxxx] [RTS on transparency requirements in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on the trading obligation for firms],

(b) in respect of a financial instrument other than those set out in point (a) and which is admitted to trading on a regulated market, the regulated market where that financial instrument was first admitted to trading;

(c) in respect of a financial instrument other than those set out in point (a) and which is not admitted to trading on a regulated market, the trading venue where that financial instrument was first traded.

Article 2

Entry into force and application

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

It shall apply from 3 January 2017.

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

Done at Brussels,

For the Commission
The President

[For the Commission
On behalf of the President

[Position]

CHAPTER 4: DATA PUBLICATION AND ACCESS

RTS 13: Draft regulatory technical standards on authorisation, organisational requirements and the publication of transactions for data reporting services providers

EUROPEAN COMMISSION

Brussels, XXX
[…](2012) XXX draft

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

[…]

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

[…]

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services providers

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of 15 May 2014 of the European Parliament and of the Council on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU[1] , and in particular Articles 61(4), 64(6), 64(8), 65(6), 65(8), and 66(5) thereof,

Whereas:

(1)   In accordance with Directive 2014/65/EU data reporting services providers cover three different types of entities: approved reporting mechanisms (ARMs), approved publication arrangements (APAs) and consolidated tape providers (CTPs). Although those types of entities are engaged in different activities, Directive 2014/65/EU provides for a similar authorisation process for all of those entities.

(2)   An applicant seeking authorisation as a data reporting services provider should provide in its application for authorisation a programme of operations and an organisational chart. The organisational chart should identify who is responsible for the different activities to enable the competent authority to assess whether the data reporting services provider has sufficient human resources and oversight over its business. The organisational chart should not only cover the scope of the data reporting services, but should also include any other services that the entity provides as this may highlight areas which may affect the independence of the data reporting services provider and give rise to a conflict of interest. An applicant seeking authorisation as a data reporting services provider should also provide information on the composition, functioning and independence of its governing bodies in order for competent authorities to be able to assess whether the policies, procedures and

---

[1] OJ L 173, 12.6.2014, p. 349

corporate governance structure ensure the independence of the data reporting services provider and the avoidance of conflicts of interest.

(3)   Conflicts of interest can arise between the data reporting services provider and clients using its services to meet their regulatory obligations and other entities purchasing data from data reporting services providers. In particular, those conflicts may arise where the data reporting services provider is engaged in other activities such as acting as a market operator, investment firm or trade repository. If left unaddressed, this could lead to a situation where the data reporting services provider has an incentive to delay publication or submission or to trade on the basis of the confidential information it has received. The data reporting services provider should therefore adopt a comprehensive approach to identifying, preventing and managing existing and potential conflicts of interest, including preparing an inventory of conflicts of interest and implementing appropriate policies and procedures to manage those conflicts and, where needed, separate business functions and personnel to limit the flow of sensitive information between different business areas of the data reporting services provider.

(4)   All members of the management body of a data reporting services provider should be persons who are of sufficiently good repute and possess sufficient knowledge, skills and experience, as those persons play a key role in ensuring that the data reporting services provider meets its regulatory obligations and contribute to the business strategy of the data reporting services provider. It is therefore important for the data reporting services provider to demonstrate that it has a robust process for appointing and evaluating the performance of members of the management body and that clear reporting lines and regular reporting to the management body are in place.

(5)   The outsourcing of activities, in particular of critical functions, is capable of constituting a material change of the conditions for the authorisation of a data reporting services provider. To ensure that the outsourcing of activities does not impair the data reporting services provider's ability to meet its obligations under Directive 2014/65/EU or lead to conflicts of interest, the data reporting services provider should be able to demonstrate sufficient oversight and control over those activities.

(6)   The IT systems used by a data reporting services provider should be well adapted to the different types of activities these entities may perform, that is to publish trade reports, submit transaction reports or provide a consolidated tape, and robust enough to ensure continuity and regularity in the provision of those services. This includes ensuring that the data reporting services provider's IT systems are able to handle fluctuations in the amount of data which it must handle. Such fluctuations, particularly unexpected increases in data flow, may adversely impact the effectiveness of the data reporting services provider's systems and as a result, its ability to publish or report complete and accurate information within the required timeframes. In order to handle this, a data reporting services provider should periodically test its systems to ensure

that they are robust enough to handle changes in operating conditions and sufficiently scalable.

(7)   The backup facilities and arrangements established by a data reporting services provider should be sufficient to enable the data reporting services provider to carry out its services, even in the event of a disruptive incident. A data reporting services provider should establish maximum acceptable recovery times for critical functions that would apply in the event of a disruptive incident, which should allow compliance with the deadlines for reporting and disclosing the information.

(8)   To ensure that the data reporting services provider can deliver its services, it should undertake an analysis of which tasks and activities are critical to the delivery of its services and of possible scenarios that may give rise to a disruptive incident, including taking steps to prevent and mitigate those situations.

(9)   Where a service disruption occurs, a data reporting services provider should notify the competent authority of its home Member State, any other relevant competent authorities, clients and the public as the disruption could also mean that those parties would not be able to fulfil their own regulatory obligations such as the duty to forward transaction reports to other competent authorities or to make public the details of executed transactions. The notification should allow those parties to make alternative arrangements for meeting their obligations.

(10)   The deployment of any IT systems' updates may potentially impact the effectiveness and robustness of the system. A data reporting services provider should therefore make use of clearly delineated development and testing methodologies to ensure that the operation of the IT system is compatible with its regulatory obligations, that compliance and risk management controls embedded in the systems work as intended and that the system can continue to work effectively in all conditions. Where a data reporting services provider undertakes a significant system change, it should notify the competent authority of its home Member State and other competent authorities, where relevant, so they can assess whether the update will impact their own systems and whether the conditions for authorisation continue to be met.

(11)   Premature public disclosure, in the case of trade reports, or unauthorised disclosure in the case of transaction reports could provide an indication of a person's trading strategy or reveal sensitive information such as the identity of the data reporting services provider's clients. Therefore, physical controls, such as locked facilities, and electronic controls including firewalls and passwords should be put in place by the data reporting services provider to ensure that only authorised personnel have access to the data.

(12)   Breaches in the physical or electronic security of a data reporting services provider pose a threat to the confidentiality of client data. Consequently, where such a breach occurs, a data reporting services provider should promptly notify the relevant

competent authority as well as any clients which have been affected by the breach. Notification to the competent authority of the home Member State is necessary to enable that competent authority to carry out its ongoing supervisory responsibilities with respect to whether the data reporting services provider is properly maintaining sound security mechanisms to guarantee the security of the information and to minimise the risk of data corruption and unauthorised access. Other competent authorities which have a technical interface with the data reporting services provider should also be notified as they may be adversely affected, particularly where the breach relates to the means of transferring information between the data reporting services provider and the competent authority.

(13)   An investment firm which has transaction reporting obligations, known as a 'reporting firm', may choose to use a third party to submit transaction reports on its behalf to an ARM, that is a 'submitting firm'. By virtue of its role the submitting firm will have access to the confidential information that it is submitting. However, the submitting firm should not be entitled to access any other data about the reporting firm or the reporting firm's transactions which are held at the ARM. Such data may relate to transaction reports which the reporting firm has submitted itself to the ARM or which it has sent to another submitting firm to send to the ARM. This data should not be accessible to the submitting firm as it may contain confidential information such as the identity of the reporting firm's clients.

(14)   A data reporting services provider should monitor that the data it is publishing or submitting is accurate and complete and should ensure that it has mechanisms for detecting errors or omissions caused by the client or itself. In the case of an ARM, this can include reconciliations of a sample population of data submitted to the ARM by an investment firm or generated by the ARM on the investment firm's behalf with the corresponding data provided by the competent authority. The frequency and extent of such reconciliations should be proportionate to the volume of data handled by the ARM and the extent to which it is generating transaction reports from clients' data or passing on transaction reports completed by clients. In order to ensure timely reporting that is free of errors and omissions an ARM should continuously monitor the performance of its systems.

(15)   Where an ARM itself causes an error or omission, it should correct this information without delay as well as notify the competent authority of its home Member State and any competent authority to which it submits reports of the error or omission as those competent authorities have an interest in the quality of the data being submitted to them. The ARM should also notify its client of the error or omission and provide updated information to the client so that the client's internal records may be aligned with the information which the ARM has submitted to the competent authority on the client's behalf.

(16)   APAs and CTPs should be able to delete and amend the information which they receive from an entity providing them with information to deal with situations where

in exceptional circumstances the reporting entity is experiencing technical difficulties and cannot delete or amend the information itself. However, APAs and CTPs should not otherwise be responsible for correcting information contained in published reports where the error or omission was attributable to the entity providing the information. This is due to the fact that APAs and CTPs cannot know with certainty whether a perceived error or omission is indeed incorrect since they were not party to the executed trade.

(17)   To facilitate reliable communication between an APA and the investment firm reporting a trade, particularly in relation to cancellations and amendments of specific transactions, an APA should include in the confirmation messages to reporting investment firms the transaction identification code that has been assigned by the APA when making the information public.

(18)   To comply with its reporting obligation under Regulation (EU) No 600/2014 of the European Parliament and of the Council[2], an ARM should ensure the smooth flow of information to and from a competent authority, including the ability to transfer reports and deal with rejected reports. The ARM should therefore be able to demonstrate that it can comply with the technical specification required by the competent authority, which sets out the necessary rules and protocols to govern the interface between the ARM and the competent authority.

(19)   A data reporting services provider should also ensure that it stores the transaction and trade reporting information which it handles for a sufficiently long period of time in order to facilitate the retrieval of historical information by competent authorities. In the specific case of APAs and CTPs, they should ensure that they establish the necessary organisational arrangements to maintain the data for at least the period specified in Regulation (EU) No 600/2014 and are able to respond to any request.

(20)   This Regulation sets out a number of additional services a CTP could perform which increase the efficiency of the market. A CTP should be able to provide further services going beyond the additional services specifically listed in this Regulation provided that those other services do not pose a risk to the independence of the CTP or the quality of the consolidated tape.

(21)   In order to ensure efficient dissemination of information made public by APAs and CTPs and an easy access and use of such information by market participants, the information should be published in a machine readable format through robust channels allowing for automatic access to the data. While websites may currently not always

offer an architecture that is robust and scalable enough and that allows for easy automatic access to data, these technological constraints may be overcome in the future. A particular technology should therefore not be prescribed, but criteria should be set out that need to be met by the technology which is to be used.

(22)   With respect to equity and equity-like instruments, Regulation (EU) No 600/2014 does not exclude that investment firms make public their transactions through more than one APA. However, a specific arrangement should be in place to enable interested parties consolidating the trade information from various APAs, in particular CTPs, to identify such potential duplicate trades as otherwise the same trade might be consolidated several times, and published repeatedly by the CTPs. This would undermine the quality and usefulness of the consolidated tape.

(23)   When publishing a transaction, APAs should therefore publish transactions reported by investment firms by including a 'reprint' field indicating whether a report is a duplicate. In order to allow for an approach that is neutral in terms of the technology used it is necessary to provide for different possible ways in which an APA can identify duplicates.

(24)   In order to ensure that each transaction is only included once in the consolidated tape and therefore to strengthen the reliability of the provided information, CTPs should not publish information in relation to a transaction published by an APA which is identified as duplicative.

(25)   APAs should publish information on transactions, including the relevant time stamps, such as the time when transactions were executed and the time transactions were reported. This is the most meaningful from the perspective of data users. Furthermore, the granularity of the time stamps should reflect the nature of the trading system on which the transaction was executed. A greater granularity should be provided when publishing information on transactions executed in electronic systems than on transactions executed in non-electronic systems.

(26)   CTPs may publish information on equity and non-equity instruments. Given the different requirements for the operation of those tapes, and in particular the significantly broader scope of financial instruments covered for non-equity instruments and the deferred application of the provisions for the non-equity consolidated tape, this Regulation only specifies the scope of the CTP consolidating information on equity-instruments.

(27)   The provisions in this Regulation are closely linked, since they deal with the authorisation, organisational requirements and the publication of transactions for data reporting services providers. To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view and compact access to them by persons subject to those obligations, including investors

that are non-Union residents, it is desirable to include these regulatory technical standards in a single Regulation.

(28)   This Regulation specifies the data publication requirements applicable to APAs and CTPs. In order to ensure consistent practices for publishing trade information across trading venues, APAs and CTPs and to facilitate the consolidation of data by CTPs, this Regulation should apply in conjunction with Regulation (EU) No [RTS 1 on equity transparency] and Regulation (EU) No [RTS 2 on non-equity transparency] where detailed requirements applicable to the publication of trade information are set out.

(29)   The requirements in respect of data reporting services providers set out in Directive 2014/65/EU should apply from 3 January 2017 with the exception of Article 65(2) which applies from 3 September 2018. To ensure consistency and legal certainty, this Regulation should apply from the same dates.

(30)   This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(31)   ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[3],

HAS ADOPTED THIS REGULATION:

CHAPTER I

AUTHORISATION

(Articles 61(2) of Directive 2014/65/EU)

Article 1

Information to competent authorities

---

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

1.   An applicant seeking authorisation as a data reporting services provider shall provide to the competent authority the information set out in Articles 2 to 4 and the information regarding all the organisational requirements set out in Chapters 2 and 3.

2.   A data reporting services provider shall promptly inform the competent authority of its home Member State of any material change to the information provided at the time of the authorisation and thereafter.

Article 2

Information on the organisation

1.   An applicant seeking authorisation as a data reporting services provider shall include in its application for authorisation a programme of operations referred to in Article 61(2) of Directive 2014/65/EU. The programme of operations shall include the following information:

(a) information on the organisational structure of the applicant, including an organisational chart and a description of the human, technical and legal resources allocated to its business activities;

(b) information on the compliance policies and procedures of the data reporting services provider, including:

   (i)   the name of the persons responsible for the approval and maintenance of those policies;

   (ii) the means to monitor and enforce the compliance policies and procedures;

   (iii) measures to be undertaken in the event of a breach; and

   (iv) a description of the procedure for reporting to the competent authority any breach which may result in a failure to meet the conditions for initial authorisation;

(c) a list of all outsourced functions and resources allocated to the control of the outsourced functions;

2.   A data reporting services provider offering services other than data reporting services shall describe those services in the organisational chart.

Article 3

Corporate governance

1. An applicant seeking authorisation as a data reporting services provider shall include in its application for authorisation information on the internal corporate governance policies and the procedures which govern its management body, senior management, and, where established, committees.

2. The information set out in paragraph 1 shall include:

(a) a description of the processes for selection, appointment, performance evaluation and removal of senior management and members of the management body;

(b) a description of the reporting lines and the frequency of reporting to the senior management and the management body ;

(c) a description of the policies and procedures on access to documents by members of the management body.

Article 4

Information on the members of the management body

1. An applicant seeking authorisation as a data reporting services provider shall include in its application for authorisation the following information in respect of each member of the management body:

(a) name, date and place of birth, personal national identification number or an equivalent thereof, private address and contact details;

(b) the position for which the person is or will be appointed;

(c) a curriculum vitae evidencing sufficient experience and knowledge to adequately perform the responsibilities;

(d) criminal records, notably through an official certificate, or, where such a document is not available in the relevant Member State, a self-declaration of good repute and the authorisation to the competent authority to inquire whether the member has been convicted of any criminal offence in connection with the provision of financial or data services or in relation to acts of fraud or embezzlement.

(e) a self-declaration of good repute and the authorisation to the competent authority to inquire whether the member:

(i) has been subject to an adverse decision in any proceedings of a disciplinary nature brought by a regulatory authority or government body or is the subject of any such proceedings which are not concluded;

(ii) has been subject to an adverse judicial finding in civil proceedings before a court in connection with the provision of financial or data services, or for impropriety or fraud in the management of a business;

(iii) has been part of the management body of an undertaking which was subject to an adverse decision or penalty by a regulatory authority or whose registration or authorisation was withdrawn by a regulatory authority;

(iv) has been refused the right to carry on activities which require registration or authorisation by a regulatory authority;

(v) has been part of the management body of an undertaking which has gone into insolvency or liquidation while the person was connected to the undertaking or within a year of the person ceasing to be connected to the undertaking;

(vi) has been otherwise fined, suspended, disqualified, or been subject to any other sanction in relation to fraud, embezzlement or in connection with the provision of financial or data services, by a professional body;

(vii) has been disqualified from acting as a director, disqualified from acting in any managerial capacity, dismissed from employment or other appointment in an undertaking as a consequence of misconduct or malpractice.

(f) An approximation of the minimum time that is to be devoted to the performance of the person's functions within the data reporting services provider;

(g) a declaration of any potential conflicts of interest that may exist or arise in performing the duties and how those conflicts are managed.

CHAPTER II

ORGANISATIONAL REQUIREMENTS

(Articles 64(3), 64(4), 64(5), 65(4), 65(5), 65(6), 66(2), 66(3) and 66(4) of Directive 2014/65/EU)

Article 5

Conflicts of interest

1.   A data reporting services provider shall operate and maintain effective administrative arrangements, designed to prevent conflicts of interest with clients using its services to meet their regulatory obligations and other entities purchasing data from other data reporting services providers.. Such arrangements shall include policies and procedures for identifying, managing and disclosing existing and potential conflicts of interest and shall contain:

(a) an inventory of existing and potential conflicts of interest, setting out their description, identification, prevention, management and disclosure;

(b) the separation of duties and business functions within the data reporting services provider including:

    (i) effective measures to prevent or control the exchange of information where a risk of conflicts of interest may arise;

    (ii) the separate supervision of relevant persons whose main functions involve interests that are potentially in conflict with those of a client;

(c) a description of the fee policy for determining fees charged by the data reporting services provider and undertakings to which the DRSP has close links;

(d) a description of the remuneration policy for the members of the management body and senior management;

(e) the rules regarding the acceptance of money, gifts or favours by staff of the data reporting services provider and its management body.

2. The inventory of conflicts of interest as referred to in paragraph 1(a) shall include conflicts of interest arising from situations where the data reporting services provider:

(a) may realise a financial gain or avoid a financial loss, to the detriment of a client;

(b) may have an interest in the outcome of a service provided to a client, which is distinct from the client's interest in that outcome;

(c) may have an incentive to prioritise its own interests or the interest of another client or group of clients rather than the interests of a client to whom the service is provided;

(d) receives or may receive from any person other than a client, in relation to the service provided to a client, an incentive in the form of money, goods or services, other than commission or fees received for the service.

Article 6

Organisational requirements regarding outsourcing

1. Where a data reporting services provider arranges for activities to be performed on its behalf by third parties, including undertakings with which it has close links, it shall ensure that the third party service provider has the ability and the capacity, to perform the activities reliably and professionally.

2. A data reporting services provider shall specify which of the activities are to be outsourced, including a specification of the level of human and technical resources needed to carry out each of those activities.

3. A data reporting services provider that outsources activities shall ensure that it does not reduce its ability or power to perform senior management or management body functions.

4. A data reporting services provider shall remain responsible for any outsourced activity and shall adopt organisational measures to ensure:

  (a) that it assesses whether the third party service provider is carrying out outsourced activities effectively and in compliance with applicable laws and regulatory requirements and adequately addresses identified failures;

  (b) the identification of the risks in relation to outsourced activities and adequate periodic monitoring;

  (c) adequate control procedures with respect to outsourced activities, including effectively supervising the activities and their risks within the data reporting services provider;

  (d) adequate business continuity of outsourced activities;

For the purposes of point (d), the data reporting services provider shall obtain information on the business continuity arrangements of the third party service provider, assess its quality and where needed, request improvements.

5. A data reporting services provider shall ensure that the third party service provider cooperates with the competent authority of the data reporting services provider in connection with outsourced activities;

6. Where a data reporting services provider outsources any critical function, it shall provide the competent authority of its home Member State with:

  (a) the identification of the third party service provider;

  (b) the organisational measures and policies with respect to outsourcing and the risks posed by it as specified in paragraph 4;

  (c) internal or external reports on the outsourced activities.

For the purpose of paragraph 6, a function shall be regarded as critical if a defect or failure in its performance would materially impair the continuing compliance of the data reporting services provider with the conditions and obligations of its authorisation or its other obligations under Directive 2014/65/EU.

Article 7

Business continuity and back-up facilities

1.   A data reporting services provider shall use systems and facilities that are appropriate and robust enough to ensure continuity and regularity in the performance of the services provided referred to in Directive 2014/65/EU.

2.   A data reporting services provider shall conduct periodic reviews, at least annually, evaluating its technical infrastructures and associated policies and procedures, including business continuity arrangements. A data reporting services provider shall remedy any deficiencies identified during the review.

3.   A data reporting services provider shall have effective business continuity arrangements in place to address disruptive incidents, including :

 (a) the processes which are critical to ensuring the services of the data reporting services provider, including escalation procedures, relevant outsourced activities or dependencies on external providers;

 (b) specific continuity arrangements, covering an adequate range of possible scenarios, in the short and medium term, including system failures, natural disasters, communication disruptions, loss of key staff and inability to use the premises regularly used;

 (c) duplication of hardware components, allowing for failover to a back-up infrastructure, including network connectivity and communication channels;

 (d) back-up of business critical data and up-to-date information of the necessary contacts, ensuring communication within the data reporting services provider and with clients;

 (e) the procedures for moving to and operating data reporting services from a back-up site;

 (f) the target maximum recovery time for critical functions, which shall be as short as possible and in any case no longer than six hours in the case of approved publication arrangements (APAs) and consolidated tape providers (CTPs) and until the close of the next working day in the case of approved reporting mechanisms (ARMs);

 (g) staff training on the operation of the business continuity arrangements, individuals' roles including specific security operations personnel ready to react immediately to a disruption of services;

4.   A data reporting services provider shall set up an on- programme for periodically testing, reviewing and, where needed, modifying the business continuity arrangements.

5.   A data reporting services provider shall publish on its website and promptly inform the competent authority of its home Member State and its clients of any service interruptions or connection disruptions as well as the time estimated to resume a regular service.

6.   In the case of ARMs, the notifications referred to in paragraph 5 shall also be made to any competent authority to whom the ARM submits transaction reports.

Article 8

Testing and capacity

1.   A data reporting services provider shall implement clearly delineated development and testing methodologies, ensuring that:

(a) the operation of the IT systems satisfies the data reporting services provider's regulatory obligations;

(b) compliance and risk management controls embedded in those systems work as intended;

(c) the IT systems can continue to work effectively at all times.

2.   A data reporting services provider shall also use the methodologies referred to in paragraph 1 prior to and following the deployment of any updates of the IT systems'.

3.   A data reporting services provider shall promptly notify the competent authority of its home Member State of any planned significant changes to the IT system prior to their implementation.

4.   In the case of ARMs, the notifications referred to in paragraph 3 shall also be made to any competent authority to whom the ARM submits transaction reports.

5.   A data reporting services provider shall set up an on-going programme for periodically reviewing and, where needed, modifying the development and testing methodologies.

6.   A data reporting services provider shall run stress tests periodically at least on an annual basis. A data reporting services provider shall include in the adverse scenarios of the stress test unexpected behaviour of critical constituent elements of its systems and communication lines. The stress testing shall identify how hardware, software and communications respond to potential threats, specifying systems unable to cope with the adverse scenarios. A data reporting services provider shall take measures to address identified shortcomings in those systems.

7.   A data reporting services provider shall:

(a) have sufficient capacity to perform its functions without outages or failures, including missing or incorrect data;

(b) have sufficient scalability to accommodate without undue delay any increase in the amount of information to be processed and in the number of access requests from its clients.

Article 9

Security

1. A data reporting services provider shall set up and maintain procedures and arrangements for physical and electronic security designed to:

(a) protect its IT systems from misuse or unauthorised access;

(b) minimise the risks of attacks against the information systems as defined in Article 2(a) of Directive 2013/40/EU of the European Parliament and of the Council[4];

(c) prevent unauthorised disclosure of confidential information;

(d) ensure the security and integrity of the data.

2. Where an investment firm ('reporting firm') uses a third party ('submitting firm') to submit information to an ARM on its behalf, an ARM shall have procedures and arrangements in place to ensure that the submitting firm does not have access to any other information about or submitted by the reporting firm to the ARM which may have been sent by the reporting firm directly to the ARM or via another submitting firm.

3. A data reporting services provider shall set up and maintain measures and arrangements to promptly identify and manage the risks identified in paragraph 1.

4. In respect of breaches in the physical and electronic security measures referred to in paragraphs 1, 2 and 3, a data reporting services provider shall promptly notify:

(a) the competent authority of its home Member State and provide an incident report, indicating the nature of the incident, the measures adopted to cope with the incident and the initiatives taken to prevent similar incidents.

(b) its clients that have been affected by the security breach.

5. In the case of ARMs, the notification referred to in paragraph 4(a) shall also be made to any other competent authorities to whom the ARM submits transaction reports.

Article 10

Management of incomplete or potentially erroneous information by APAs and CTPs

---

[4] Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA (OJ L 218, 14.8.2013, p. 8).

1.   APAs and CTPs shall set up and maintain appropriate arrangements to ensure that they accurately publish the trade reports received from investment firms and, in the case of CTPs, from trading venues and APAs, without themselves introducing any errors or omitting information and shall correct information where they have themselves caused the error or omission.

2.   APAs and CTPs shall continuously monitor in real-time the performance of their IT systems ensuring that the trade reports they have received have been successfully published.

3.   APAs and CTPs shall perform periodic reconciliations between the trade reports they receive and the trade reports that they publish, verifying the correct publication of the information.

4.   An APA shall confirm the receipt of a trade report to the reporting investment firm, including the transaction identification code assigned by the APA. An APA shall refer to the transaction identification code in any subsequent communication with the reporting firm in relation to a specific trade report.

5.   An APA shall set up and maintain appropriate arrangements to identify on receipt trade reports that are incomplete or contain information that is likely to be erroneous. These arrangements shall include automated price and volume alerts, taking into account:

  (a) the sector and the segment in which the financial instrument is traded;

  (b) liquidity levels, including historical trading levels;

  (c) appropriate price and volume benchmarks;

  (d) if needed, other parameters according to the characteristics of the financial instrument.

6.   Where an APA determines that a trade report it receives is incomplete or contains information that is likely to be erroneous, it shall not publish that trade report and shall promptly alert the investment firm submitting the trade report.

7.   APAs and CTPs shall delete and amend information in a trade report upon request from the entity providing the information when that entity cannot, in exceptional circumstances delete or amend its own information for technical reasons.

8.   APAs shall publish non-discretionary policies on information cancellation and amendments in trade reports which set out the penalties that APAs may impose on investment firms providing trade reports where the incomplete or erroneous information has led to the cancellation or amendment of trade reports.

Article 11

Management of incomplete or potentially erroneous information by ARMs

1. An ARM shall set up and maintain appropriate arrangements to identify transaction reports that are incomplete or contain obvious errors caused by clients. An ARM shall perform validation of the transaction reports against the requirements established under Article 26 of Regulation (EU) No 600/2014 for field, format and content of fields in accordance with Table 1 of Annex I to Commission Regulation (EU) on [transaction reporting].

2. An ARM shall set up and maintain appropriate arrangements to identify transaction reports which contain errors or omissions caused by that ARM itself and to correct, including deleting or amending, such errors or omissions. An ARM shall perform validation for field, format and content of fields in accordance with Table 1 of Annex I to Regulation (EU) [on transaction reporting].

3. An ARM shall continuously monitor in real-time the performance of its systems ensuring that a transaction report it has received has been successfully reported to the competent authority in accordance with Regulation (EU) No 600/2014.

4. An ARM shall perform periodic reconciliations at the request of the competent authority of its home Member State or the competent authority to whom the ARM submits transaction reports between the information that the ARM receives from its client or generates on the client's behalf for transaction reporting purposes and data samples of the information provided by the competent authority.

5. Any corrections, including cancellations or amendments of transaction reports, that are not correcting errors or omissions caused by an ARM, shall only be made at the request of a client and per transaction report. Where an ARM cancels or amends a transaction report at the request of a client, it shall provide this updated transaction report to the client.

6. Where an ARM, before submitting the transaction report, identifies an error or omission caused by a client, it shall not submit that transaction report and shall promptly notify the investment firm of the details of the error or omission to enable the client to submit a corrected set of information.

7. Where an ARM becomes aware of errors or omissions caused by the ARM itself, it shall promptly submit a correct and complete report.

8. An ARM shall promptly notify the client of the details of the error or omission and provide an updated transaction report to the client. An ARM shall also promptly notify the competent authority of its home Member State and the competent authority to whom the ARM reported the transaction report about the error or omission.

The requirement to correct or cancel erroneous transaction reports or report omitted transactions shall not extend to errors or omissions which occurred more than five years before the date that the ARM became aware of such errors or omissions.

Article 12

Connectivity of ARMs

1.   An ARM shall have in place policies, arrangements and technical capabilities to comply with the technical specification for the submission of transaction reports required by the competent authority of its home Member State and by other competent authorities to whom the ARM sends transaction reports.

2.   An ARM shall have in place adequate policies, arrangements and technical capabilities to receive transaction reports from clients and to transmit information back to clients. The ARM shall provide the client with a copy of the transaction report which the ARM submitted to the competent authority on the client's behalf.

Article 13

Other services provided by CTPs

1.   A CTP may provide the following additional services:

(a)   provision of pre-trade transparency data;

(b)   provision of historical data;

(c)   provision of reference data;

(d)   provision of research;

(e)   processing, distribution and marketing of data and statistics on financial instruments, trading venues, and other market-related data;

(f)   design, management, maintenance and marketing of software, hardware and networks in relation to the transmission of data and information.

2.   A CTP may perform services other than those specified under paragraph 1 which increase the efficiency of the market, provided that such services do not create a risk affecting the quality of the consolidated tape or the independence of the CTP that cannot be adequately prevented or mitigated.

CHAPTER III

PUBLICATION ARRANGEMENTS

(Articles 64(1), 64(2) and 65(1) of Directive 2014/65/EU)

Article 14

Machine readability

1.   APAs and CTPs shall publish the information which has to be made public in accordance with Articles 64(1) and 65(1) of Directive 2014/65/EU in a machine readable way.

2.   CTPs shall publish the information which has to be made in accordance with Article 65(2) of Directive 2014/65/EU in a machine readable way.

3.   Information shall only be considered published in a machine readable way where all of the following conditions are met:

(a) it is in an electronic format designed to be directly and automatically read by a computer;

(b) it is stored in an appropriate IT architecture in accordance with Article 8(7) that enables automatic access;

(c) it is robust enough to ensure continuity and regularity in the performance of the services provided and ensures adequate access in terms of speed;

(d) it can be accessed, read, used and copied by computer software that is free of charge and publicly available.

For the purposes of point (a), the electronic format shall be specified by free, non-proprietary and open standards.

4.   For the purposes of paragraph 3(a), electronic format shall include the type of files or messages, the rules to identify them, and the name and data type of the fields they contain.

5.   APAs and CTPs shall:

(a) make instructions available to the public, explaining how and where to easily access and use the data, including identification of the electronic format;

(b) make public any changes to the instructions referred to in point (a) at least three months before they come into effect, unless there is an urgent and duly justified need for changes in instructions to take effect more quickly;

(c) include a link to the instructions referred to in point (a) on the homepage of their website.

Article 15

Scope of the consolidated tape for shares, depositary receipts, ETFs, certificates and other similar financial instruments

1.   A CTP shall include in its electronic data stream data made public pursuant to Articles 6 and 20 of Regulation (EU) No 600/2014 relating to all financial instruments referred to in those Articles.

2.   When a new APA or a new trading venue starts operating, a CTP shall include the data made public by that APA or trading venue in the electronic data stream of its consolidated tape as soon as possible, and in any case no later than six months after the start of the APA's or trading venue's operations.

Article 16

Identification of original and duplicative trade reports in shares, depositary receipts, ETFs, certificates and other similar financial instruments

1.   Where an APA publishes a trade report which is a duplicate, it shall insert the code 'DUPL' in a reprint field to enable recipients of the data to differentiate between the original trade report and any duplicates of that report.

2.   For the purposes of paragraph 1, an APA shall require each investment firm to comply with one of the following conditions:

  (a) to certify that it only reports transactions in a particular financial instrument through that APA;

  (b) to use an identification mechanism which flags one report as the original one ('ORGN), and all other reports of the same transaction as duplicates ('DUPL').

Article 17

Publication of original reports in shares, depositary receipts, ETFs, certificates and other similar financial instruments

A CTP shall not consolidate trade reports with the code 'DUPL' in the reprint field.

Article 18

Details to be published by the APA

1.   An APA shall make public:

  (a) for transactions executed in respect of shares, depositary receipts, exchange-traded funds (ETFs), certificates and other similar financial instruments, the details of a transaction specified in Table 2 of Annex I to Commission Regulation (EU) [RTS on

equity transparency]and, use the appropriate flags listed in Table 3 of Annex I to Commission Regulation (EU) [RTS on equity transparency];

(b) for transactions executed in respect of bonds, structured finance products, emission allowances and derivatives the details of a transaction specified in Table 1 of Annex II to Commission Regulation (EU) [RTS on non-equity transparency] and use the appropriate flags listed in Table 2 of Annex II to Commission Regulation (EU) [RTS on non-equity transparency].

2. Where publishing information on when the transaction was reported, an APA shall include the date and time, up to the second, it publishes the transaction.

3. By way of derogation from paragraph 2, an APA that publishes information regarding a transaction executed on an electronic system shall include the date and time, up to the millisecond, of the publication of that transaction in its trade report.

4. For the purposes of paragraph 3. an 'electronic system' shall mean a system where orders are electronically tradable or where orders are tradable outside the system provided that they are advertised through the given system.

5. Timestamps referred to in paragraphs 2 and 3 shall, respectively, not diverge by more than one second or millisecond from the Coordinated Universal Time (UTC) issued and maintained by one of the timing centres listed in the latest Bureau International des Poids et Mesures (BIPM) Annual Report on Time Activities.

Article 19

Non-discriminat**ion**

APA and CTPs shall ensure that the information which has to be made public is sent through all distribution channels at the same time, including when the information is made public as close to real time as technically possible or 15 minutes after the first publication.

Article 20

Details to be published by the CTP

A CTP shall make public:

(a) for transactions executed in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments, the details of a transaction specified in Table 2 of Annex I to Commission Regulation (EU) [RTS on equity transparency] and use the appropriate flags listed in Table 3 of Annex I to Commission Regulation (EU) [RTS on equity transparency];

(b) for transactions executed in respect of bonds, structured finance products, emission allowances and derivatives the details of a transaction specified in Table 1 of Annex II to Commission Regulation (EU) [RTS on non-equity transparency]and use the appropriate flags listed in Table 2 of Annex II to Commission Regulation (EU) [RTS on non-equity transparency].

Article 21

Entry into force and application

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

It shall apply from 3 January 2017, except Articles 14(2) and 20(b) that shall apply from 3 September 2018

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

Done at Brussels,

For the Commission
The President

[For the Commission
On behalf of the President

[Position]

RTS 14: Draft regulatory technical standards on data disaggregation

EUROPEAN COMMISSION

Brussels, XXX
[…](2012) XXX draft

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

[…]

COMMISSION DELEGATED REGULATION (EU) No …/...

of […]

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on the specification of the offering of pre-trade and post-trade data and the level of disaggregation

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments and amending Regulation (EU) No 648/2012[1] and in particular the third subparagraph of Article 12(2) thereof,

Whereas:

(1)   In order to reduce costs for market participants when purchasing data, Regulation (EU) No 600/2014 provides for pre-trade and post-trade transparency data to be made available to the public in an "unbundled" fashion for separate data items. It is necessary to specify the level of disaggregation by which venues should offer data. Taking into account the evidence of demand for such data from other stakeholders, market operators and investment firms operating a trading venue should disaggregate data by asset class, by country of issue, by the currency in which an instrument is traded, and according to whether data comes from scheduled daily auctions or from continuous trading.

(2)   To ensure that pre- and post-trade data offered appropriately matches the demand from market participants, market operators and investment firms operating a trading venue should offer any combination of the disaggregation criteria set out in this Regulation on a reasonable commercial basis.

(3)   For some financial instruments such as for derivatives it may not always be possible to determine unambiguously the particular asset class to which that instrument belongs since the determination of an asset class depends on which characteristics of the instruments are considered to be the decisive ones. Similarly, it may not always be possible to unambiguously determine which other criteria a type of data meets. To

---

[1] OJ L 173, 12.6.2014, p. 84.

ensure that market participants purchasing data from a particular trading venue receive a consistent data set, it is necessary to require market operators or investment firms operating a trading venue to determine in those cases where the disaggregation criteria application cannot be applied in an unambiguous manner which criteria an instrument or type of data meets.

(4)   The new legislation of the European Parliament and of the Council on markets in financial instruments set out in Directive 2014/65/EU and Regulation (EU) No 600/2014 applies from 3 January 2017. To ensure consistency and legal certainty, this Regulation should apply from the same date.

(5)   This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(6)   ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[2],

HAS ADOPTED THIS REGULATION:

Article 1

Offering of pre-trade and post-trade transparency data

1. A market operator or investment firm operating a trading venue shall make the information published in accordance with Articles 3, 4 and 6 to 11 of Regulation (EU) No 600/2014 available to the public by offering pre-trade and post-trade data disaggregated, if there is a request for such disaggregation, according to the following criteria:

   (a) the nature of the asset class:

      (i)   shares;

      (ii) depositary receipts, ETFs, certificates and other similar financial instruments referred to in Article 3 of Regulation (EU) No 600/2014;

(iii) bonds and structured finance products;

(iv) emission allowances;

(v) derivatives:

    1. equity derivatives;

    2. interest rate derivatives;

    3. credit derivatives;

    4. foreign exchange derivatives;

    5. commodity derivatives;

    6. other derivatives;

(b) the country of issue for shares and sovereign debt;

(c) the currency in which the instrument is traded;

(d) scheduled daily auctions as opposed to continuous trading.

2.   The market operator or investment firm operating a trading venue shall determine which criteria an instrument or type of data meets where this is unclear.

3.   The market operator or investment firm operating a trading venue shall apply the criteria referred to in paragraph in any combination, if requested.

4.   In addition to offering the data according to paragraph 1, a market operator or investment firm operating a trading venue may also offer bundles of data.

Article 2

Entry into force and application

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

It shall apply from 3 January 2017.

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

Done at Brussels,

For the Commission
The President

[For the Commission
On behalf of the President

[Position]

RTS 15: Draft regulatory technical standards on access in respect of central counterparties and trading venues

EUROPEAN COMMISSION

Brussels, XXX
[…](2012) XXX draft

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

[…]

COMMISSION DELEGATED REGULATION (EU) …/..

of XXX

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on clearing access in respect of central counterparties and trading venues

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012[1], and in particular Articles 35(6) and 36(6) thereof,

Whereas:

(1)   To prevent distortion of competition, central counterparties (CCPs) as well as trading venues should only be able to deny an access request where they have made all reasonable efforts to manage the risk arising from granting that access but significant undue risk remains.

(2)   In accordance with Regulation (EU) No 600/2014 if a CCP or trading venue denies an access request it has to provide full reasons for that decision and this includes identifying how the relevant risks arising from granting access would in the particular situation be unmanageable and that there would be significant undue risk remaining. An appropriate way of doing this is for the party denying access to clearly outline the changes that would arise from granting access, how it would have to manage the risk associated with changes in consequence of granting access, and to explain the impact on its structures.

(3)   Regulation (EU) No 600/2014 does not distinguish between risks incurred by CCPs and trading venues when granting access and includes the same general categories of conditions to be considered by trading venues and CCPs when assessing access requests. However, due to the different nature of the activities of CCPs as compared to trading venues, risks stemming from granting access may in practice impact CCPs and

---

[1] OJ L 173, 12.6.2014, p. 84.

trading venues differently, thus demanding an approach differentiating between CCPs and trading venues.

(4)   When a competent authority assesses whether access would threaten the smooth and orderly functioning of the markets or adversely affect systemic risk, it should consider whether the CCP or trading venue in question has adequate risk management procedures, including with respect to operational and legal risks, to avoid the access agreement creating significant undue risks to third parties that cannot be mitigated.

(5)   The terms under which access must be permitted should be reasonable and non-discriminatory so as not to undermine the purpose for which the access provisions were introduced. Charging fees in a discriminatory way so as to deter access should not be permitted. However, fees could differ for objectively justified reasons, such as where the costs to implement the access arrangements are higher. When access results in a trading venue dealing with two or more CCPs, it is important to specify how trades on the trading venue will be allocated to the CCP that is party to the agreement, if the agreement creates a situation where there are two or more CCPs with access to the trading venue .

(6)   When granting access CCPs and trading venues incur both one-off costs, such as assessing legal requirements, and ongoing costs. Since the scope of the access request and the associated costs for implementing the access agreement are likely to differ on a case-by-case basis, it is not appropriate to cover the specific allocation of costs between the CCP and the trading venue in this Regulation, However, the allocation of costs is an important element of an access agreement, therefore both parties should specify in the access arrangement the coverage of costs.

(7)   Pursuant to Regulation (EU) No 648/2012 of the European Parliament and of the Council[2], a CCP wishing to extend its business to additional services or activities not covered by the initial authorisation should submit a request for an extension of authorisation. An extension of authorisation is needed where a CCP intends to offer clearing services on financial instruments with a different risk profile or that have material differences from the CCP's existing product set. When a contract traded on a trading venue to which a CCP has granted access is in a class of financial instruments covered by the CCP's existing authorisation and has therefore similar risk characteristics to the contracts already cleared by the CCP, such a contract is to be considered as economically equivalent.

(8)   In order to ensure that a CCP does not apply discriminatory collateral and margining requirements to economically equivalent contracts traded on a trading venue that has been granted access to the CCP, any change to the margining methodology and

---

[2] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

operational requirements regarding margining and netting applied to economically equivalent contracts already cleared by the CCP should be subject to a review by the risk committee of the CCP and be considered as a significant change to the models and parameters for the purpose of the review procedure as provided for by Regulation (EU) No 648/2012. Such a review should validate that the new models and parameters are non-discriminatory and based on relevant risk considerations.

(9)   Regulation (EU) No 648/2012 prevents competitive distortions by requiring non-discriminatory access to CCPs offering clearing of OTC derivatives to trading venues. In turn, Regulation (EU) No 600/2014 recognises the need to introduce similar requirements for regulated markets. Given that a CCP may clear both OTC and exchange-traded derivatives, non-discriminatory treatment of economically equivalent contracts traded on a trading venue requesting access to a CCP should take into account all relevant contracts cleared by that CCP, irrespective of where the contracts are traded.

(10)   Article 35 (6)(e) of Regulation (EU) No 600/2014 refers to the cross-margining of correlated contracts. The term "portfolio margining" should be used when referring to correlated contracts cleared by the same CCP, rather than "cross-margining" which is used in contexts involving margining between two CCPs, e.g. in relation to interoperability arrangements.

(11)   A notification by a relevant competent authority to the CCP college and the European Securities and Markets Authority (ESMA) about the approval of CCP transitional arrangements in accordance with Article 35 of Regulation (EU) No 600/2014 should be made without undue delay in order to assist other relevant competent authorities to understand the impact this will have on the CCP and any trading venues that are connected by close links to that CCP. The notification should contain all relevant information necessary to enable the CCP college and ESMA to understand the decision and to enhance transparency.

(12)   Clear requirements about the information to be provided by CCPs and trading venues when notifying competent authorities and ESMA that they wish to benefit from transitional arrangements in accordance with Articles 35 and 36 of Regulation (EU) No 600/2014 should contribute to a transparent and harmonised application of the notification procedure. It is therefore necessary for the notification procedure to include uniform templates for the notifications so as to enable consistent supervisory practices and a level playing field.

(13)   It is important to avoid the risk of larger trading venues using calculation methods that minimise their annual notional amount with the aim of benefiting from the opt-out mechanism to the access provisions. Where there are equally accepted alternative approaches to calculating notional amount, using the calculation which gives the higher value helps avoid that risk. The methods used for calculating notional amount for the purposes of Regulation (EU) No 600/2014 should enable genuinely smaller

trading venues that have not yet acquired the technological capability to engage on a level playing field with the majority of the post-trade infrastructure market to make use of the opt-out mechanism. It is also important for the methods prescribed to be straightforward and unambiguous in order to contribute to consistent supervisory practices and a level playing field.

(14)   It is important for trading venues to be consistent about calculating their notional amount for the purposes of Regulation (EU) No 600/2014 so that the access provisions can be applied fairly by trading venues. This is particularly relevant for certain types of exchange-traded derivatives, traded in units, such as barrels or tons.

(15)   The requirements in respect of non-discriminatory access to CCPs and trading venues set out in Regulation (EU) No 600/2014 apply from 3 January 2017. To ensure consistency and legal certainty, this Regulation should apply from the same date. However, to ensure that CCPs and trading venues may benefit from the transitional arrangements, it is necessary for certain transitional provisions to apply at an earlier date.

(16)   The provisions in this Regulation are closely linked, since they deal with the denial and granting of access to CCPs and trading venues, incl. the procedure for CCPs and trading venues to opt out. To ensure coherence between those provisions, most of which should enter into force at the same time, and to facilitate a comprehensive view and compact access to them by persons subject to those obligations, it is desirable to include these regulatory technical standards in a single Regulation.

(17)   This Regulation is based on the draft regulatory technical standards submitted by ESMA to the Commission.

(18)   ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[3],

HAS ADOPTED THIS REGULATION:

SECTION I

---

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

Non-discriminatory access to CCPs and Trading Venues

Article 1

Conditions on the denial of access by a CCP

1.   A CCP shall assess whether granting access would create any of the risks specified in Articles 2, 3 and 4 and may deny access only if, after making all reasonable efforts to manage its risks, there remain significant undue risks that cannot be managed.

2.   If a CCP denies access, it shall identify which risks specified in Articles 2, 3 and 4 would result from granting access and why those risks cannot be managed.

Article 2

Denial of access by a CCP based on the anticipated volume of transactions

A CCP may deny an access request on grounds of the anticipated volume of transactions arising from such access only where this would result in one of the following:

(a)   exceeding the scalable design of the CCP to such an extent that the CCP cannot adapt its systems so as to deal with the anticipated volume of transactions;

(b)   exceeding the planned capacity of the CCP in a way that the CCP would not be able to acquire the required extra capacity to clear the anticipated volume of transactions.

Article 3

Denial of access by a CCP based on operational risk and complexity

A CCP may deny an access request on grounds of operational risk and complexity.

Relevant types of risks shall include any of the following:

(a)   incompatibility of CCP and trading venue IT systems impeding the CCP to provide for connectivity between the systems;

(b)   lack of human resources with the necessary knowledge, skills and experience to perform the CCP's functions regarding the risk stemming from additional financial instruments where these differ from financial instruments already cleared by the CCP or inability to deploy such human resources.

Article 4

Denial of access by a CCP based on other factors creating significant undue risks

1. A CCP may deny an access request on grounds of significant undue risks where:

 (a) the CCP does not offer clearing services in respect of the financial instruments for which access is being requested and would not be able with reasonable efforts to launch a clearing service consistent with the requirements set out in Titles II, III and IV of Regulation (EU) No 648/2012;

 (b) granting access would threaten the economic viability of the CCP or its ability to meet minimum capital requirements under Article 16 of Regulation (EU) No 648/2012;

 (c) there are legal risks;

 (d) there is an incompatibility of CCP rules and trading venue rules that the CCP cannot remedy in cooperation with the trading venue.

2. A CCP may refuse an access request based on legal risk as referred to in paragraph 1(c), where as a result of granting access, the CCP would not be able to enforce its rules relating to close out netting and default procedures or cannot manage the risks arising from the simultaneous use of different trade acceptance models.

Article 5

Conditions on the denial of access by a trading venue

1. A trading venue shall assess whether granting access would create any of the risks specified in Articles 6 and 7 and may deny access only if, after making all reasonable efforts to manage its risks, there remain significant undue risks that cannot be managed.

2. If a trading venue denies access, it shall identify which risks specified in Articles 5 and 6 would result from granting access and why those risks cannot be managed.

Article 6

Denial of access by a trading venue based on operational risk and complexity

A trading venue may deny an access request on grounds of operational risk and complexity arising from such access only if the relevant types of risks could result in incompatibility of CCP IT systems and trading venue IT systems, impeding the trading venue to provide for connectivity between those systems.

Article 7

Denial of access by a trading venue based on other factors creating significant undue risks

A trading venue may deny an access request on grounds of significant undue risks in any of the following cases:

(a) threat to the economic viability of the trading venue or its ability to meet minimum capital requirements under Article 47(1)(f) of Directive 2014/65/EU of the European Parliament and of the Council[4],

(b) incompatibility of trading venue rules and CCP rules that the trading venue cannot remedy in cooperation with the CCP.

Article 8

Conditions under which access will threaten the smooth and orderly functioning of markets or adversely affect systemic risk

In addition to liquidity fragmentation, as defined in Article 2(1)(45) of Regulation (EU) No 600/2014, for the purposes of Articles 35(4)(b) and 36(4)(b) of that Regulation, granting access will threaten the smooth and orderly functioning of the markets, or adversely affect systemic risk, where the competent authority can provide full reasons for the denial, including evidence that the risk management procedures of one or both of the parties to the access request are insufficient to prevent the granting of access from creating significant undue risks to third parties, and there is no remedial action that would sufficiently mitigate those inadequacies.

SECTION 2

Conditions under which access must be permitted

Article 9

Conditions under which access must be permitted

1.   The parties shall agree on their respective rights and obligations arising from the access granted, including the applicable law governing their relationships. The terms of the access agreement shall:

---

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

(a) be clearly defined, transparent, valid and enforceable;

(b) specify the way in which transactions on the trading venue will be allocated to the CCP that is party to the agreement, where two or more CCPs have access to the trading venue;

(c) contain clear rules concerning the moment of entry of transfer orders, construed pursuant to Directive 98/26/EC of the European Parliament and of the Council[5], into relevant systems and the moment of irrevocability;

(d) contain rules regarding the termination of the access agreement by any of the parties, which shall:

    (i) provide for termination in an orderly manner that does not unduly expose other entities to additional risks, including clear and transparent arrangements for the management and orderly run-off of contracts and positions made under the access agreement that were open at the point of termination;

    (ii) ensure that the relevant party is given a reasonable amount of time to remedy any breach that does not give rise to immediate termination;

    (iii) allow the termination, if risks increase in a way that would have justified denial of access in the first instance;

(e) specify the financial instruments being subject to the access agreement;

(f) specify the cover of the one-off and ongoing costs triggered by the access request;

(g) contain provisions for claims and liabilities stemming from the access agreement.

2.   The terms of the access agreement shall require that the parties to the agreement put in place adequate policies, procedures and systems to ensure the following:

(a) timely, reliable and secure communication between the parties;

(b) prior consultation to the other party where changes to either party's operations are likely to have a material impact on the access agreement or on the risks to which the other party is exposed;

(c) timely notification to the other party before a change is implemented, in the cases not covered by point (b);

---

[5] Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166, 11.6.1998, p. 45).

(d) resolution of disputes;

(e) identification, monitoring and management of the potential risks arising from the access agreement;

(f) reception by the trading venue of all necessary information to fulfil its obligations regarding the monitoring of open interest;

(g) acceptance by the CCP of delivery of physically settled commodities.

3.   The relevant parties to the access agreement shall ensure the following:

(a) that proper risk management standards are maintained when granting access;

(b) that information provided in the request for access is kept up-to-date throughout the duration of the access agreement, including information about material changes;

(c) that non-public and commercially sensitive information including information provided during the development phase of a financial instrument may only be used for the specific purpose for which it is conveyed and may only be acted upon for the specific purpose agreed by the entities.

Article 10

Non-discriminatory and transparent clearing fees charged by CCPs

1.   A CCP shall only charge fees for clearing transactions executed on a trading venue to which it has granted access on the basis of objective criteria, applicable to all clearing members and, where relevant, clients. Fees shall not depend on the trading venue where the transaction takes place.

2.   A CCP shall make all clearing members and, where relevant, clients subject to the same schedule of fees and rebates.

3.   A CCP shall only charge fees to a trading venue in relation to access on the basis of objective criteria. The same fees and rebates shall apply to all trading venues accessing the CCP with regard to the same or similar financial instruments, unless a different fee schedule can be objectively justified.

4.   In accordance with Article 38 of Regulation (EU) No 648/2012 a CCP shall ensure that the fee schedules referred to in paragraphs 1, 2 and 3 of this Article are easily accessible, adequately identified per service provided and sufficiently granular in order to ensure that fees charged are predictable.

5.   For the purpose of paragraphs 1 to 4, relevant fees are fees charged to cover one-off and ongoing costs.

Article 11

Non-discriminatory and transparent fees charged by trading venues

1.   A trading venue shall only charge fees in relation to access on the basis of objective criteria. The same schedule of fees and rebates shall apply to all CCPs accessing the trading venue with regard to the same or similar financial instruments, unless a different fee schedule can be objectively justified.

2.   A trading venue shall ensure that the fee schedules referred to in paragraph 1 are easily accessible, that the fees are adequately identified per service provided and sufficiently granular in order to ensure that the arising fees are predictable.

3.   Paragraphs 1 and 2 shall apply to all fees related to access, including those that are charged to cover one-off and ongoing costs.

SECTION III

Condtions for non-discriminatory treatment of contracts

Article 12

Collateral and margining requirements of economically equivalent contracts

1.   The CCP shall determine whether contracts traded on the trading venue to which it has granted access are economically equivalent to contracts with similar risk characteristics already cleared by the CCP. For the purpose of this Article, a CCP shall consider all contracts traded on the trading venue to which it has granted access, which are in the class of financial instruments covered by the CCP's authorisation referred to in Article 14 of Regulation (EU) No 648/2012, or by any subsequent extension of authorisation referred to in Article 15 of Regulation (EU) No 648/2012, as economically equivalent to the contracts in the respective class of financial instruments already cleared by the CCP.

2.   A CCP may consider a contract traded on the trading venue to which it has granted access, which presents a significantly different risk profile or material differences from the contracts already cleared by the CCP in the respective class of financial instruments, as non-economically equivalent where the CCP had obtained an extension of the authorisation pursuant to Article 15 of Regulation (EU) No 648/2012 with respect to that contract and in connection with that trading venue's access request.

3.   A CCP shall apply to economically equivalent contracts referred to in paragraph 1 the same margin and collateral methodologies, irrespective of where the contracts are traded. A CCP shall subject the clearing of an economically equivalent contract referred to in paragraph

1 to the adoption of changes to the CCP's risk models and parameters, only if necessary in order to mitigate the risk factors in relation to that trading venue or the contracts traded thereon. Such changes shall be considered as significant changes to the CCP's models and parameters referred to in Articles 28 and 49 of Regulation (EU) No 648/2012.

Article 13

Netting of economically equivalent contracts

1.   A CCP shall apply to economically equivalent contracts referred to in Article 12(1) of this Regulation the same netting procedures irrespective of where the contracts were traded, provided that any netting procedure it applies is valid and enforceable in accordance with Directive 98/26/EC and the applicable insolvency law in the relevant Member State.

2.   A CCP considering that the legal risk or the basis risk related to a netting procedure it applies to an economically equivalent contract is not sufficiently mitigated, shall subject the clearing of such a contract to the adoption of changes to that netting procedure excluding the netting of such contract. Such changes shall be considered as significant changes to the CCP's risk models and parameters referred to in Article 28 and 49 of Regulation (EU) No 648/2012.

3.   For the purpose of paragraph 2, "basis risk" shall mean the risk arising from less than perfectly correlated movements between two or more assets or contracts cleared by the CCP.

Article 14

Cross-margining of correlated contracts (portfolio margining)

Where a CCP calculates margins with respect to portfolio margining of financial instruments in accordance with Article 41 of Regulation (EU) No 648/2012 and Article 27 of Commission Delegated Regulation (EU) No 153/2013[6], the CCP shall apply its portfolio margining approach to all relevant correlated contracts irrespective of where the contracts are traded. Contracts with a significant and reliable correlation, or an equivalent statistical parameter of dependence, shall benefit from the same offsets or reductions.

SECTION IV

Transitional arrangements and final provisions

---

[6] Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on requirements for central counterparties (OJ L 52, 23.2.2013, p. 41).

Article 15

Notification procedure from the CCP to its competent authority

Where a CCP applies for permission to avail itself of transitional arrangements referred to in Article 35(5) of Regulation (EU) No 600/2014, it shall submit a notification to its competent authority in written form, using Form 1 set out in the Annex.

Article 16

Notification procedure from the competent authority to ESMA and the CCP college

Relevant competent authorities shall notify ESMA and the CCP college of every decision to approve a transitional arrangement in accordance with Article 35(5) of Regulation (EU) No 600/2014 in writing without undue delay and no later than one month from the decision, using Form 2 set out in the Annex to this Regulation.

Article 17

Notification procedure from the trading venue to its competent authority regarding the initial transitional period

Where a trading venue does not wish to be bound by Article 36 of Regulation (EU) No 600/2014, it shall submit a notification to ESMA and its competent authority in written form, using Forms 3.1 and 3.2 set out in the Annex to this Regulation.

Article 18

Notification procedure from the trading venue to its competent authority regarding an extension of the transitional period

Where a trading venue wishes to continue not to be bound by Article 36 of Regulation (EU) No 600/2014 for a further thirty months, it shall submit a notification to ESMA and its competent authority in written form, using Forms 4.1 and 4.2 set out in the Annex to this Regulation.

Article 19

Further specifications for the calculation of notional amount for transitional purposes

1. In accordance with Article 36(5) of Regulation (EU) No 600/2014, a trading venue that does not wish to be bound by Article 36 of this Regulation for a period of thirty months from the date of application of Regulation (EU) No 600/2014 shall include in its calculation of its

annual notional amount all transactions in exchange-traded derivatives concluded in the calendar year preceding the application under its rules.

2.   For the purposes of calculating its annual notional amount for 2016 in accordance with paragraph 1, a trading venue shall use actual figures for the period for which they are available. If a trading venue has less than 12 months of 2016 data available, then it shall produce an estimated figure for 2016 using the following three inputs:

  (a) actual data for the longest possible period from the beginning of 2016, including at least the first 8 months;

  (b) actual data for the equivalent period during 2015;

  (c) actual data for the entire year 2015.

The estimated figure for 2016 shall be calculated as follows: the inputs referred to in point (a) shall be multiplied by the inputs referred to in point (c) and divided by the inputs referred to in point (b).

3.   Where a trading venue wishes to continue not to be bound by Article 36 of Regulation (EU) No 600/2014 for a further thirty month period, it shall include in its calculation of its annual notional amount all transactions in exchange-traded derivatives concluded in each of the first two rolling years of the previous thirty month period under its rules.

4.   Where there are equally acceptable alternative approaches to calculating notional amount for certain types of instruments, but there are notable differences in the values to which these calculation methods give rise, the calculation which gives the higher value shall be used. In particular for derivatives, such as futures or options, including all types of commodity derivatives which are designated in units, the notional amount shall be the full value of the derivative's underlying assets at the relevant price at the time at which the transaction is concluded.

Article 20

Approval and verification method by ESMA

1.   For the purposes of verification in accordance with Article 36(6)(d) of Regulation (EU) No 600/2014, the trading venue shall submit to ESMA on request all facts and figures on which the calculation is based.

2.   ESMA shall also consider relevant post-trade data and annual statistics for verification of the submitted notional amount figures.

3.   ESMA shall decide on the approval of the opt-out within three months after the reception of all relevant information for the notification according to either Article 16 or 17, including the information specified by Article 18.

Article 21

Entry into force and application

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

It shall apply from 3 January 2017, except Articles 15 to 17, 19 and 20 that shall apply from 1 September 2016.

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

Done at Brussels,

For the Commission
The President

[For the Commission
On behalf of the President

[Position]

Annex

Form 1

Notification referred to in Article 15

Name of the CCP	Relevant contact details		Name(s) of trading venue(s) connected by close links	Jurisdiction(s) of trading venue(s) connected by close links
			1. 2. 3. ...	1. 2. 3. ...

Form 2

Notification referred to in Article 16

Name of the CCP	Relevant contact details		Date of approval decision	Dates of beginning and end of transitional period	Name(s) of trading venue(s) connected by close links	Jurisdiction(s) of trading venue(s) connected by close links
				Beginning: End:	1. 2. 3. …	1. 2. 3. ...

EN **EN**

Form 3.1

General notification referred to in Article 17

Name of the trading venue	Relevant contact details	Name(s) and jurisdiction(s) of trading venues in the same group based in the Union	Name(s) and jurisdiction(s) of CCP(s) connected by close links
		1. 2. 3. …	1. 2. 3 …

Form 3.2

Notification of notional amount referred to in Article 17

Trading Venue:	Traded notional amount in 2016
Asset class X:	
Asset class Y:	
Asset class Z: ...	

Form 4.1

General notification referred to in Article 18

Name of the trading venue	Relevant contact details	Name(s) and jurisdiction(s) of trading venues in the same group based in the Union	Name(s) and jurisdiction(s) of CCP(s) connected by close links
		1. 2. 3. ...	1. 2. 3. ...

Form 4.2

Notification of notional amount referred to in Article 18

Name of the trading venue:	Notional amount for rolling year **...**	Notional amount for rolling year **...**
Asset class X:		
Asset class Y:		
Asset class Z: ...		

RTS 16: Draft regulatory technical standards on access in respect of benchmarks

EUROPEAN COMMISSION

Brussels, XXX
[…](2012) XXX draft

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

[…]

COMMISSION DELEGATED REGULATION (EU) …/..

of [Date]

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on access to benchmarks

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012[1], and in particular Article 37(4) (a), (b), and (c) thereof,

Whereas:

(1)   Regulation (EU) No 600/2014 provides for the non-discriminatory access for clearing and trading between central counterparties (CCPs) and trading venues, including access to licences of and information relating to benchmarks which are used to determine the value of some financial instruments for trading and clearing purposes. Given the variety of different types of benchmarks covered, the information CCPs and trading venues need for clearing or trading purposes may vary depending on a number of factors, including the relevant financial instrument being traded or cleared and the type of benchmark that the financial instrument references.

(2)   Therefore, it is not desirable to have an exhaustive list of the types of information that should be provided to CCPs and trading venues by a person with proprietary rights to a benchmark. CCPs and trading venues should be allowed to request access to information, provided it is required for clearing or trading purposes.

(3)   The diversity of benchmarks and the different uses identified render a one size fits all approach inappropriate and a high degree of harmonisation on the content of licence agreements unsuitable. Limiting the conditions under which access is granted to predetermined terms might therefore be detrimental to all parties.

(4)   A person with proprietary rights to a benchmark should be able to set different conditions for different categories of CCPs and trading venues to access its benchmarks only where objectively justified, such as in terms of the quantity, scope or field of use demanded and applied in a proportionate manner. The different categories

---

[1] OJ L 173, 12.6.2014, p. 84.

and the criteria defining the different categories of CCPs and trading venues should be made publicly available.

(5)   The way a benchmark is assessed as new or not will vary on a case by case basis. The person with proprietary rights to a benchmark should therefore demonstrate in what way that benchmark is new, if that is invoked as the reason for denying immediate access. Each assessment of a declared new benchmark should consider a combination of various factors and their appropriate weightings and not rely on a single factor to assess whether or not the benchmark meets the criteria specified in Regulation (EU) No 600/2014.

(6)   Accordingly, although the values of two benchmarks could be highly correlated, particularly in the short run, their compositions or methodology could be fundamentally different. The long run correlation and similarities in the composition and the methodology of each of the benchmarks should therefore be taken into account for assessing whether a benchmark is new. In addition to the factors laid down in this Regulation, a person with proprietary rights to a benchmark should also take into account additional factors that are specific to the type of benchmark concerned.) For commodity benchmarks other factors should be assessed, including whether the relevant benchmarks are based on different underlying commodities and different delivery locations.

(7)   Certain benchmarks release a new series on a periodic basis, such as credit default swaps (CDS) benchmarks. In those cases, the newly released benchmark is a continuation of the previous series and should therefore not be considered a new benchmark.

(8)   The requirements in respect of non-discriminatory access to and obligation to licence benchmarks set out in Regulation (EU) No 600/2014 apply from 3 January 2019. To ensure consistency and legal certainty, this Regulation should apply from the same date.

(9)   This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(10)   ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[2],

---

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

HAS ADOPTED THIS REGULATION:

Article 1

Information to be made available to CCPs and trading venues

1. A person with proprietary rights to a benchmark shall, upon request, make available to central counterparties (CCPs) and trading venues the information necessary for performing their clearing or trading functions, as appropriate to the specific type of benchmark to which access is sought and to the relevant financial instrument to be traded or cleared.

2. A CCP or trading venue shall in its request explain why such information is required for clearing or trading purposes.

3. For the purposes of paragraph 1, relevant trading and clearing functions include the following:

  (a) for a trading venue:

      (i) the initial assessment of the characteristics of the benchmark;

      (ii) marketing of the relevant product;

      (iii) support of the price formation process for the contracts admitted or being admitted to trading;

      (iv) supporting on-going market surveillance activities;

  (b) for a CCP:

      (i) performing appropriate risk management of relevant open positions in exchange-traded derivatives, including netting;

      (ii) meeting relevant obligations set out in Regulation (EU) No 648/2012.

4. Relevant information in respect of price and data feeds shall at least include:

  (a) a feed of the benchmark's values;

  (b) prompt notification of any inaccuracy in the calculation of the benchmark's values and of the updated or corrected benchmark values;

(c) historical benchmark values where the person with proprietary rights to the benchmark maintains such information.

5.   In respect of composition, methodology and pricing, the information provided shall allow CCPs and trading venues to understand how each benchmark value is created, and the actual methodology used to make the benchmark's values. Relevant information in respect of composition, methodology and pricing shall at least include:

(a) the definitions for all key terms used in relation to the benchmark;

(b) the rationale for adopting a methodology and procedures for the review and approval of the methodology;

(c) the criteria and procedures used to determine the benchmark, including a description of the input data, the priority given to different types of input data, the use of any models or methods of extrapolation and any procedure for rebalancing the constituents of a benchmark;

(d) the controls and rules that govern any exercise of discretion or judgement, to ensure consistency in the use of such discretion or judgment;

(e) the procedures which govern benchmark determination in periods of stress, or periods where transaction-data sources may be insufficient, inaccurate or unreliable and the potential limitations of the benchmark in such periods;

(f) the hours during which the benchmark is calculated;

(g) the procedures which govern the benchmark's rebalancing methodology and the resulting weightings of the constituents of the benchmark;

(h) the procedures for dealing with errors in input data, or the benchmark determination, including when a re-determination of the benchmark may be required;

(i) information regarding the frequency for any internal reviews and approvals of the composition and methodology and, where applicable, information regarding the procedures and frequency for external review of the composition and methodology.

Article 2

General conditions for the information through licensing to be made available to CCPs and trading venues

1. A person with proprietary rights to a benchmark shall make available all relevant information referred to in Article 1 requested by CCPs and trading venues through licensing without undue delay, either on a one-off basis, including amendments to previously supplied

information, or on a continuous or periodic basis, depending on the type of information concerned.

2.   A person with proprietary rights to a benchmark shall provide all relevant information to all CCPs and trading venues through licensing on the same timescales and under the same conditions, unless different conditions can be objectively justified.

3.   If, and for as long as, a person with proprietary rights to a benchmark can demonstrate that certain information is available publicly or through other commercial means to CCPs and trading venues, provided such information is reliable and timely, it need not supply that information through licensing.

Article 3

Differentiation and non-discrimination

1.   Where a person with proprietary rights to a benchmark sets, in accordance with Article 37(1) of Regulation (EU) No 600/2014, different conditions, including fees and the conditions for paying them, those conditions shall apply in a manner specific to each category of licensees.

2.   A person with proprietary rights to a benchmark shall set the same rights and obligations for the licensees within the same category.

3.   A person with proprietary rights to a benchmark shall make the criteria defining the different categories of licensees publicly available.

4.   A person with proprietary rights to a benchmark shall, on request, provide to any CCP or trading venue for free the conditions applying to the category to which that CCP or trading venue belongs.

5.   A person with proprietary rights to a benchmark shall make available to all licensees within the same category any additions or modifications to the conditions for licensing agreements agreed with a licensee within that category under the same conditions.

Article 4

Other conditions under which access is granted

1.   A person with proprietary rights to a benchmark shall set the conditions for licensing agreements and make them available to CCPs and trading venues upon request free of charge. The conditions shall include the following:

  (a) the scope of use and content of information for each use under the licensing agreements, clearly identifying in each case confidential information;

(b)   the conditions for redistribution, if allowed, of information by CCPs and trading venues;

(c)   the technical requirements for the delivery of the service;

(d)   the fees and the conditions for paying them;

(e)   the conditions under which the agreement expires taking into consideration the lifespan of financial instruments that reference the benchmark;

(f)   the contingency circumstances and the relevant measures to regulate the continuation, transitional periods and interruption of the service during this contingency period, which:

  (i)   cater for termination in an orderly manner;

  (ii) ensure that termination is not triggered by minor breaches of the contract and that the relevant party is given a reasonable amount of time to remedy any breach that does not give rise to immediate termination.

(g)   the governing law and allocation of liabilities.

2.   The licensing agreement shall require that a person with proprietary rights to a benchmark, CCPs and trading venues put in place adequate policies, procedures and systems to ensure the following:

(a)   implementation of the service without undue delay according to a prearranged schedule;

(b)   keeping up to date all information provided by the parties throughout the duration of the access arrangement, including information that could have a reputational impact;

(c)   a communication channel between the parties that is timely, reliable and secure during the lifetime of the licence agreement;

(d)   consultation where any change to either entity's operations is likely to have a material impact on the licence agreement or on the risks to which the other entity is exposed and notification within a reasonable notice period before any change to either entity´s operation is implemented;

(e)   the provision of information and the relevant instructions to transmit and use it through the technical means agreed;

(f)   the provision of up-to-date information to persons with proprietary rights to a benchmark regarding the redistribution, if allowed, of information to clearing members of CCPs and members or participants of trading venues;

(g)   resolution of disputes and termination of the agreement occurs in an orderly manner according to the identified circumstances.

Article 5

Standards guiding how a benchmark may be proven to be new

1.   When establishing whether a new benchmark meets the cumulative criteria in accordance with paragraphs 2(a) and (b) of Article 37 of Regulation (EU) No 600/2014, a person with proprietary rights to a benchmark shall take the following standards into account

(a) whether contracts based on the more recent benchmark are not capable of being netted nor substantially offset with contracts based on the relevant existing benchmark by a CCP;

(b) whether the regions and industry sectors covered by the relevant benchmarks are not the same, nor similar;

(c) whether the values of the relevant benchmarks are not highly correlated;

(d) whether composition of the relevant benchmarks, having regard to the number of constituents, the actual constituents, their values and their weightings are not the same, nor similar;

(e) whether the methodologies of each relevant benchmark are not the same, nor similar.

2.   For commodity benchmarks the following additional standards shall also be taken into account:

(a) whether the relevant benchmarks are not based on the same underlying commodities;

(b) whether the delivery locations of the underlying commodities are not the same.

3.   In addition to the standards specified in paragraph 1 and 2, a person with proprietary rights to a benchmark shall also take into account other standards specific to the types of benchmarks being assessed, as appropriate.

4.   A newly released series of a benchmark shall not constitute a new benchmark.

Article 6

Entry into force and application

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

It shall apply from 3 January 2019.

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

Done at Brussels,

For the Commission
The President

[For the Commission
On behalf of the President

[Position]

CHAPTER 5: REQUIREMENTS APPLYING ON AND TO TRADING VENUES

RTS 17: Draft regulatory technical standards on the admission of financial instruments to trading on regulated markets

EUROPEAN COMMISSION

Brussels, XXX
[…](2012) XXX draft

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

[…]

COMMISSION DELEGATED REGULATION (EU) No …/..

of [date]

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the admission of financial instruments to trading on regulated markets

(**Text with EEA relevance**)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU[1], and in particular the third subparagraph of Article 51(6) thereof,

Whereas:

(1) Transferable securities should only be considered freely negotiable if before admission to trading no restrictions exist which prevent the transfer of those securities in a way that would disturb creating a fair, orderly and efficient market.

(2) For the admission to trading on a regulated market of a transferable security as defined in Directive 2014/65/EU, in the case of a security within the meaning of Directive 2003/71/EC of the European Parliament and of the Council[2], there needs to be sufficient information publicly available so as to enable to value that financial instrument for it to be traded in a fair, orderly and efficient manner. In addition, in the case of shares an adequate number should be available for distribution to the public and for securitised derivatives suitable settlement and delivery arrangements should be in place.

(3) Transferable securities which fulfil the requirements for admission to an official list in accordance with Directive 2001/34/EC should be considered freely negotiable and capable of being traded in a fair, orderly and efficient manner[3].

---

[1] OJ L 173, 12.06.2014, p. 349.

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

[3] Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities (OJ L 184, 6.7.2001, p.1).

(4)   The admission to trading on a regulated market of units issued by undertakings for collective investment in transferable securities or alternative investment funds should not allow the avoidance of the relevant provisions of Directive 2009/65/EC of the European Parliament and of the Council[4] or of Directive 2011/61/EU of the European Parliament and of the Council[5]. Therefore, it is necessary for an operator of a regulated market to verify that the units it admits to trading stem from a collective investment scheme that complies with the relevant sectoral legislation. In the case of exchange-traded funds, it is necessary for the operator of a regulated market to ensure that adequate redemption arrangements for investors are in place at all times.

(5)   The admission to trading on a regulated market of derivative instruments referred to in points (4) to (10) of Sections C of Annex I to Directive 2014/65/EU should take into account whether there is sufficient information available for the pricing of the derivative as well as the underlying, and in the case of physically settled contracts, the existence of appropriate settlement and delivery procedures.

(6)   Any emission allowance within the meaning of point (11) of Section C of Annex I to Directive 2014/65/EU recognised for compliance with the requirements of Directive 2003/87/EC of the European Parliament and of the Council[6] should be eligible for admission to trading on a regulated market and no further requirements should be imposed in this Regulation

(7)   Arrangements by regulated markets in relation to verifying the compliance of issuers with obligations under Union law and in relation to facilitating access to information which has been made public under Union law should cover the obligations in Regulation (EU) No 596/2014 of the European Parliament and of the Council[7], Directive 2003/71/EC and Directive 2004/109/EC of the European Parliament and of the Council[8] as these pieces of legislation contain the core and most important obligation for issuers after the initial admission to trading on a regulated market.

---

[4] Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (OJ L 302, 17.11.2009, p. 32).
[5] Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).
[6] Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).
[7] 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, 12.06.2014, p.1).
[8] Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2014 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p.38).

(8)   Regulated markets should have a policy for verifying the compliance of issuers of transferable securities with obligations under Union law which should be accessible for issuers and the public. The policy should ensure that compliance checks are efficient and issuers should be made aware of their obligations by the regulated market.

(9)   Regulated markets should facilitate access to information published under the conditions established by Union law available to members and participants via arrangements that provide for easy, fair and non-discriminatory access for all members and participants.

(10)   The new legislation of the European Parliament and of the Council on markets in financial instruments set out in Directive 2014/65/EU and Regulation (EU) No 600/2014[9] applies from 3 January 2017. To ensure consistency and legal certainty, this Regulation should apply from the same date.

(11)   This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(12)   ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[10].

HAS ADOPTED THIS REGULATION:

Article 1

(Article 51(1) of Directive 2014/65/EU)

Transferable securities - freely negotiable

1.   Transferable securities shall be considered freely negotiable if they can be traded between the parties to a transaction, and subsequently transferred without restriction, and if all securities within the same class as the security in question are fungible.

---

[9] Regulation (EU) No 600/2014 of the European Parliament and of the Council" with the following footnote: "Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).
[10]   Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

2.   Transferable securities which are subject to a restriction on transfer shall not be considered as freely negotiable unless that restriction is not likely to disturb the market.

3.   Transferable securities that are not fully paid may be considered as freely negotiable if arrangements have been made to ensure that the negotiability of such securities is not restricted and that adequate information concerning the fact that the securities are not fully paid, and the implications of that fact for shareholders, is publicly available.

Article 2

(Article 51(1) of Directive 2014/65/EU)

Transferable securities – fair, orderly and efficient trading

1.   When assessing whether a transferable security is capable of being traded in a fair, orderly and efficient manner, a regulated market shall take into account the information required to be prepared under Article 3 of Directive 2003/71/EC, or that is or will be otherwise publicly available such as:

  (a) historical financial information;

  (b) information about the issuer;

  (c) information providing a business overview.

2.   In addition to paragraph 1, when assessing whether a share is capable of being traded in a fair, orderly and efficient manner a regulated market shall take into account the distribution of those shares to the public.

3.   When assessing whether a transferable security defined in point (c) of Article 4(1)(44) of Directive 2014/65/EU is capable of being traded in a fair, orderly and efficient manner the regulated market shall take into account, depending on the nature of the security being admitted, whether the following criteria are satisfied:

  (a) the terms of the security are clear and unambiguous and allow for a correlation between the price of the security and the price or other value measure of the underlying;

  (b) the price or other value measure of the underlying is reliable and publicly available;

  (c) there is sufficient information publicly available of a kind needed to value the security;

  (d) the arrangements for determining the settlement price of the security ensure that this price properly reflects the price or other value measures of the underlying;

  (e) where the settlement of the security requires or provides for the possibility of the delivery of an underlying security or asset rather than cash settlement, there are

adequate settlement and delivery procedures for those underlying as well as adequate arrangements to obtain relevant information about that underlying.

Article 3

(Article 51(1) of Directive 2014/65/EU)

Transferable securities – official listing

A transferable security that is officially listed in accordance with Directive 2001/34/EC, and the listing of which is not suspended, shall be deemed to be freely negotiable and capable of being traded in a fair, orderly and efficient manner.

Article 4

(Article 51(1) of Directive 2014/65/EU)

Units and shares in collective investment undertakings

1. A regulated market shall, when admitting units or shares of a collective investment undertaking to trading, ensure that these units or shares are permitted to be marketed in the Member State of the regulated market.

2. When assessing whether units or shares in an open-ended collective investment undertaking are capable of being traded in a fair, orderly and efficient manner, a regulated market shall take into account the following:

  (a) the distribution of those units or shares to the public;

  (b) whether there are appropriate market-making arrangements, or whether the management company of the scheme provides appropriate alternative arrangements for investors to redeem the units or shares;

  (c) in the case of exchange-traded funds, whether in addition to market making arrangements appropriate alternative arrangements for investors to redeem units or shares are provided at least in cases where the value of the units or shares significantly varies from the net asset value;

  (d) whether the value of the units or shares is made sufficiently transparent to investors by means of the periodic publication of the net asset value.

3. When assessing whether units or shares in a closed-end collective investment undertaking are capable of being traded in a fair, orderly and efficient manner, a regulated market shall take into account the following:

  (a) the distribution of those units or shares to the public;

(b) whether the value of the units or shares is made sufficiently transparent to investors, either by publication of information on the fund's investment strategy or by the periodic publication of the net asset value.

Article 5

(Article 51(1) of Directive 2014/65/EU)

Derivatives

1.   When assessing whether a financial instrument referred to in points (4) to (10) of Section C of Annex I to Directive 2014/65/EU are capable of being traded in a fair, orderly and efficient manner, a regulated market shall verify that the following conditions are satisfied:

(a) the terms of the contract establishing the financial instrument are clear and unambiguous, and enable a correlation between the price of the financial instrument and the price or other value measure of the underlying;

(b) the price or other value measure of the underlying is reliable and publicly available;

(c) sufficient information of a kind needed to value the derivative is publicly available;

(d) the arrangements for determining the settlement price of the contract is such that the price properly reflects the price or other value measures of the underlying;

(e) where the settlement of the derivative requires or provides for the possibility of the delivery of an underlying security or asset rather than cash settlement, there are adequate arrangements to enable market participants to obtain relevant information about that underlying as well as adequate settlement and delivery procedures for the underlying.

2.   Point (b) of paragraph 1 of this Article shall not apply to financial instruments referred to in points (5) to (7) and point (10) of Section C of Annex I to Directive 2014/65/EU, where the following conditions are fulfilled:

(a) the contract establishing that instrument is likely to provide a means of disclosing to the market, or enabling the market to assess, the price or other value measure of the underlying, where the price or value measure is not otherwise publicly available;

(b) the regulated market ensures that appropriate supervisory arrangements are in place to monitor trading and settlement in such financial instruments;

(c) the regulated market ensures that settlement and delivery, whether physical delivery or by cash settlement, can be effected in accordance with the contract terms and conditions of those financial instruments.

Article 6

(Article 51(3) of Directive 2014/65/EU)

Verification of issuer obligations

1. Regulated markets shall adopt and publish on their website a policy that determines how they verify compliance by an issuer of a transferable security with its obligations under Union law.

2. Regulated markets shall ensure that compliance with the obligations specified in paragraph 1 is checked effectively in accordance with the nature of the obligation under review taking into account the supervisory tasks performed by relevant competent authorities.

3. Regulated markets shall ensure that the policy describes:

  (a) the processes the regulated markets employ to achieve the outcome specified in paragraph 1;

  (b) how an issuer may best demonstrate compliance with the obligations specified in paragraph 1 to the regulated market.

4. Regulated markets shall ensure that an issuer is made aware of the obligations specified in paragraph 1 upon admission to trading of that issuer's transferable security and upon the request of the issuer.

Article 7

(Article 51(3) of Directive 2014/65/EU)

Facilitation of access to information

Regulated markets shall have arrangements which are easily accessible, free of charge and published on their website to facilitate access of their members or participants to information which has been made public under the conditions established by Union law.

Article 8

Entry into force and application

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

It shall apply from 3 January 2017.

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

Done at Brussels,

For the Commission
The President

[For the Commission
On behalf of the President

[Position]

RTS 18: Draft regulatory technical standards on suspension and removal of financial instruments from trading

EUROPEAN COMMISSION

Brussels, XXX
[…](2012) XXX draft

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

[…]

COMMISSION DELEGATED REGULATION (EU) No …/..

of [date]

supplementing Directive (EU) No 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the suspension and removal of financial instruments from trading

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU[1], and in particular the tenth subparagraph of Article 32(2) and the tenth subparagraph of Article 52(2) thereof,

Whereas:

(1)   The objective of a suspension or removal from trading of a financial instrument will in some cases not be achieved unless a derivative of a type referred to in points (4) to (10) of Section C of Annex I to Directive 2014/65/EU relating or referenced to that financial instrument is also suspended or removed from trading.

(2)   In determining cases where the connection is such that it is necessary to suspend or remove related derivatives, the strength of the connection between the derivative and the financial instrument that is suspended or removed from trading should be considered. In this respect, a distinction should be made between a derivative for which the formation of its price or value is dependent on the price or value of a sole underlying financial instrument, and derivatives for which the price or value is dependent on multiple price inputs, for instance, derivatives related to an index or a basket of financial instruments.

(3)   The inability to correctly price related derivatives, leading to a disorderly market, should be considered the strongest for the cases where the derivative is related or referenced to only one financial instrument. When the derivative is related or referenced to a basket of financial instruments or an index of which the suspended financial instrument is only one part, the ability of market participants to determine the correct price would be less affected. Thus the characteristics of the connection

---

[1] OJ L 173, 12.6.2014, p. 349.

between the derivative and the underlying should be taken into account in considering the overall objective of the suspension or removal.

(4)   It should be taken into account that a market operator has to ensure fair, orderly and efficient trading in its market. Outside the scope of this Regulation, a market operator will need to make an assessment of whether the suspension or removal from trading of the underlying financial instrument endangers the fair and orderly trading of the derivative in its trading venue, including taking appropriate action such as the suspension or removal of related derivatives on its own initiative.

(5)   The provisions in this Regulation are closely linked, since they deal with specifying the suspensions and removals on different types of trading venues. To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view for stakeholders and, in particular, those subject to the obligations it is necessary to consolidate the regulatory technical standards in a single Regulation.

(6)   The new legislation of the European Parliament and of the Council on markets in financial instruments set out in Directive 2014/65/EU and Regulation (EU) No 600/2014 of the European Parliament and of the Council[2] applies from 3 January 2017. To ensure consistency and legal certainty, this Regulation should apply from the same date.

(7)   This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(8)   ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[3].

HAS ADOPTED THIS REGULATION:

Article 1

---

[2] Regulation (EU) No 600/2014 of the European Parliament and of the Council" with the following footnote: "Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

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

(Articles 32(2) and 52(2) of Directive 2014/65/EU)

Connection between a derivative relating or referenced to a financial instrument suspended or removed from trading and the original financial instrument

A market operator of a regulated market and an investment firm or market operator operating an MTF or an OTF shall suspend or remove a derivative referred to in points (4) to (10) of Section C of Annex I to Directive 2014/65/EU from trading where that derivative is related or referenced to only one financial instrument, and that financial instrument has been suspended or removed from trading.

Article 2

Entry into force and application

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

It shall apply from 3 January 2017.

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

Done at Brussels,

*For the Commission
The President*

*[For the Commission
On behalf of the President*

[Position]

ITS 19: Implementing technical standards of the description of the functioning of MTFs and OTFs
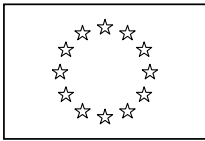
EUROPEAN COMMISSION

COMMISSION IMPLEMENTING REGULATION (EU) No …/..

of XXX

[…]

EN

EN

COMMISSION IMPLEMENTING REGULATION (EU) No …/..

of [Date]

laying down implementing technical standards with regard to the content and format of the description of the functioning of MTFs and OTFs and the notification to ESMA according to Directive 2014/65/EU of the European Parliament and of the Council

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of 15 May 2014 of the European Parliament and of the Council on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU[1] and in particular the third subparagraph of Article 18(11) thereof,

Whereas:

(1)   It is important to recognise the need for competent authorities to receive complete information about the purpose, structure and organisation of multilateral trading facilities (MTFs) and organised trading facilities (OTFs) that they will be required to supervise in order to ensure the efficient and orderly functioning of financial markets.

(2)   This information should build upon the information an investment firm or market operator would be required to provide as part of the general authorisation requirements under Directive 2014/65/EU. It should focus upon the specific functionality of the trading system so as to enable competent authorities to assess whether the system satisfies the definition of an MTF or OTF and to assess its compliance with the particular, venue-orientated requirements of Directive 2014/65/EU and Regulation (EU) No 600/2014 of the European Parliament and of the Council[2]. The requirement for a detailed description should not affect the duty of an investment firm or market operator to provide other information to its competent authority as required under Directive 2014/65/EU and Regulation (EU) No 600/2014, or the rights of competent authorities to request other information as part of their on-going supervision of trading venues.

---

[1] OJ L 173, 12.6.2014, p. 173
[2] Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.06.2014, p. 84).

(3)   The information should ensure a uniform application of collecting detailed descriptions of the functioning of the MTF or OTF under Directive 2014/65/EU and achieve an efficient processing of information for existing MTFs already operating in accordance with national authorisation at the point the requirement of submitting a detailed description comes into force.

(4)   Since SME growth markets are distinguished from other MTFs in that they are subject to additional rules, it is necessary that SME growth markets shall provide additional information.

(5)   Since OTFs are distinguished from MTFs in that the trading process may involve the use of discretionary rules by the operator and because the operator of an OTF will owe client facing responsibilities to users of the system, OTFs should provide additional information.

(6)   To ensure the efficient processing of the information required it should be provided in electronic format.

(7)   To facilitate the publication by the European Securities and Markets Authority (ESMA) of the list of all MTFs and OTFs in the Union with information on the services they provide and the unique code identifying them, a standard template for that information should be used.

(8)   The new legislation of the European Parliament and of the Council on markets in financial instruments set out in Directive 2014/65/EU and Regulation (EU) No 600/2014[3] applies from 3 January 2017. To ensure consistency and legal certainty, this Regulation should apply from the same date.

(9)   This Regulation is based on the draft regulatory technical standards submitted by ESMA to the Commission.

(10)   ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[4].

---

[3] Regulation (EU) No 600/2014 of the European Parliament and of the Council" with the following footnote: "Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

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

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

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

(1)   'relevant operator' means:

  (a) an investment firm operating a multilateral trading facility (MTF);

  (b) an investment firm operating an organised trading facility (OTF);

  (c) a market operator operating an MTF;

  (d) a market operator operating an OTF;

(2)   'asset classes' means the categories of financial instruments as set out in Section C of Annex I to Directive 2014/65/EU.

Article 2

Information to be provided on MTFs and OTFs

1.   A relevant operator shall provide its competent authority with the following information:

  (a) the asset classes of financial instruments traded on the MTF or OTF;

  (b) the rules and procedures for making financial instruments available for trading, together with details of the publication arrangements, used to make that information available to the public;

  (c) the rules and procedures to ensure the objective and non-discriminatory access to the trading facilities together with details on the publication arrangements used to make that information available to the public;

  (d) the measures and procedures to ensure that sufficient information is publicly available to users of the MTF or OTF to form an investment judgement, taking into account both the nature of the users and the classes of financial instruments traded;

  (e) the systems, procedures and arrangements to ensure compliance with the conditions laid down in Articles 48 and 49 of Directive 2014/65/EU;

  (f) a detailed description of any arrangements to facilitate the provision of liquidity to the system such as market making schemes;

(g) the arrangements and procedures to monitor transactions as required by Article 31 of Directive 2014/65/EU;

(h) the rules and procedures for suspension and removal of financial instruments from trading as required by Article 32 of Directive 2014/65/EU;

(i) the arrangements to comply with pre-trade and post-trade transparency obligations that apply to the financial instruments traded and the trading functionality of the MTF or OTF; that information shall be accompanied with information on the intention to use waivers under Articles 4 and 9 of Regulation (EU) No 600/2014 and deferred publication under Articles 7 and 11 of that Regulation;

(j) the arrangements for the efficient settlement of the transactions effected under its systems and to ensure that users are aware of their respective responsibilities in this regard;

(k) a list of the members or participants of the MTF or OTF which it operates.

2.   A relevant operator shall provide its competent authority with a detailed description of the functioning of its trading system specifying:

(a) whether the system represents a voice, electronic or hybrid functionality;

(b) in the case of an electronic or hybrid trading system, the nature of any algorithm or program used to determine the matching and execution of trading interests;

(c) in the case of a voice trading system, the rules and protocols used to determine the matching and execution of trading interests;

(d) a description explaining how the trading system satisfies each element of the definition of an MTF or an OTF.

3.   A relevant operator shall provide its competent authority with information on how and in what instances the operation of the MTF or OTF will give rise to any potential conflicts between the interests of the MTF or OTF, its operator or its owners and the sound functioning of the MTF or OTF. The relevant operator shall specify the procedures and arrangements to comply with the requirements set out in Article 18(4) of Directive 2014/65/EU.

4.   A relevant operator shall provide its competent authority with the following information on its outsourcing arrangements that relate to the management, operation or oversight of the MTF or OTF and, in particular:

(a) the organisational measures to identify the risks in relation to those outsourced activities and to monitor the outsourced activities;

(b) the contractual agreement between the relevant operator and the entity providing the outsourced service in which the nature, scope, objectives, and service level agreements are outlined.

5.   A relevant operator shall provide its competent authority with information on any links to or participation by a regulated market, MTF, OTF or systematic internaliser owned by the same relevant operator.

Article 3

Additional information to be provided on MTFs

1.   In addition to the information set out in Article 2, a relevant operator shall provide its competent authority with the following information relating to the requirements set out in Article 19(3) of Directive 2014/65/EU:

(a) a description of the arrangements and the systems implemented to manage the risks to which it is exposed, to identify all significant risks to its operation and to put in place effective measures to mitigate those risks;

(b) a description of the arrangements implemented to facilitate the efficient and timely finalisation of the transactions executed under its systems;

(c) having regard to the nature and extent of the transactions concluded on the market and the range and degree of the risks to which it is exposed, a description of the financial resources considered sufficient to facilitate its orderly functioning.

Article 4

Information to be provided on MTFs already in operation

In the case of an investment firm or market operator authorised to operate an MTF under Article 5 of Directive 2004/39/EC of the European Parliament and of the Council[5] which is operating at the date of application of this Regulation, that firm or operator shall provide the information referred to under Articles 2 and 3 of this Regulation in the following cases:

(a) to correct, update or clarify information previously submitted by the relevant operator to its competent authority;

---

[5] Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

(b) to demonstrate compliance with obligations under Directive 2014/65/EU and Regulation (EU) No 600/2014 that did not apply to the MTF prior to the application of this Regulation.

Article 5

Additional information to be provided on MTFs for registration as an SME growth market

In the case of a relevant operator which is applying for registration of an MTF as an SME growth market, that operator shall ensure that the information provided under Articles 2 and 3 clearly identifies which functionalities or arrangements are applicable to the SME growth market.

Article 6

Additional information to be provided on OTFs

1. In addition to Article 2, a relevant operator operating an OTF shall provide its competent authority with the following information:

  (a) information on whether another investment firm is engaged to carry out market making on its OTF on an independent basis in accordance with Article 20(5) of Directive 2014/65/EU;

  (b) a detailed description of how and under what circumstances it executes orders on the OTF on a discretionary basis in accordance with Article 20(6) of Directive 2014/65/EU;

  (c) the rules, procedures and protocols which allow the operator to route the trading interest of a member or participant outside the facilities of the OTF;

  (d) a description of the use of matched principal trading which complies with Article 20(7) of Directive 2014/65/EU;

  (e) the rules and procedures to ensure compliance with Articles 24, 25, 27 and 28 of Directive 2014/65/EU for transactions concluded on the OTF where those rules are applicable to the relevant operator in relation to an OTF user.

Article 7

Asset class specific information

Where a relevant operator of an MTF or OTF applies different rules to different asset classes, it shall provide the information required by this Regulation for each of those asset classes separately.

Article 8

Material changes

1. A relevant operator shall provide its competent authority with a description of any material changes to the information previously submitted in accordance with this Regulation which would be relevant to an assessment of that operator's compliance with Directive 2014/65/EU and Regulation (EU) No 600/2014.

2. Where a relevant operator sends new information to its competent authority to correct, update or clarify information previously submitted in accordance with this Regulation, it does not need to include information which is of a purely minor or technical nature that would not be relevant to an assessment of their compliance with Directive 2014/65/EU or Regulation (EU) No 600/2014.

3. An investment firm or market operator authorised to operate an MTF under Directive 2004/39/EC which is operating at the date of application of this Regulation shall, in addition to paragraph 1 of this Article, provide its competent authority with a description of any material changes to the information previously submitted to the competent authority in respect of that MTF under that Directive.

Article 9

Format for providing the detailed description

1. Where the relevant operator provides the competent authority with the detailed description of the functioning of the MTF or OTF it operates as set out under this Regulation, the relevant operator shall include clear references in its submission which satisfy the requirements of the template in Table 1 of the Annex.

2. In providing the information required by this Regulation, a relevant operator shall include references to the appropriate provisions of the rules of its MTF or OTF, agreements or contracts with participants or relevant third parties and internal procedures and policies.

3. A relevant operator shall provide the information required by this Regulation to its competent authority in an electronic format.

4. When providing the information required by this Regulation, a relevant operator shall:

  (a) give a unique reference number to each document it submits;

(b) ensure that the information it submits clearly identifies which specific requirement of this Regulation it refers to and in which document that information is provided by using the unique reference number to identify the document;

(c) ensure that if a requirement of this Regulation does not apply to it, that fact is stated together with an explanation;

(d) submit that information in the format set out in Table 1 of the Annex.

5. Where the provision of the detailed description occurs in the context of an authorisation request, an entity requesting authorisation to provide more than one service at the same time shall submit one application clearly identifying the services to which the information provided applies. When the same document is to be considered as part of several authorisation requests, for the purpose of providing the information in the format in Table 1 of the Annex, the same reference number shall be used when submitting the same document for several applications.

Article 10

Notification to ESMA

A competent authority shall notify ESMA of the authorisation of a relevant operator as an MTF or an OTF in electronic format and in the format in Table 2 of the Annex.

Article 11

Entry into force and application

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

It shall apply from 3 January 2017.

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

Done at Brussels,

For the Commission
The President

[For the Commission
On behalf of the President

[Position]

Annex: Formats

Table 1

Information by MTFs and OTFs

Relevant operator for which the application is submitted	Relevant Article number of this Regulation	Document reference number	Title of the document	Chapter or section or page of the document where the information is provided or reasons why the information has not been provided

Table 2

Information to be sent to ESMA

Notifying Competent Authority	Name of the relevant operator	Name of the MTF/OTF operated	MIC code	Services provided (i.e. MTF and/or OTF)

CHAPTER 6: COMMODITY DERIVATIVES

RTS 20: Draft regulatory technical standards on criteria for establishing when an activity is to be considered to be ancillary to the main business

EUROPEAN COMMISSION

Brussels, XXX
[…](2012) XXX draft

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

[…]

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

[…]

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for criteria to establish when an activity is considered to be ancillary to the main business

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments[1], and in particular Article 2(4) thereof,

Whereas:

(1)   The assessment whether persons are dealing on own account or are providing investment services in commodity derivatives, emission allowances and derivatives thereof in the Union as an activity ancillary to their main business should be performed at a group level. In line with Article 2(11) of Directive 2013/34/EU of the European Parliament and of the Council[2], a group is considered to comprise the parent undertaking and all its subsidiary undertakings and includes entities domiciled in the Union and in third countries regardless of whether the group is headquartered inside or outside the Union.

(2)   The assessment should be performed in the form of two tests, which are both based on the trading activity of the persons within the group and should be calculated on a per-asset-class basis. The first test should determine whether the persons within the group are large participants relative to the size of the financial market in that asset class and as a consequence should be required to obtain authorisation as an investment firm. The second test should determine whether the persons within the group trade on own account or provide investment services in commodity derivatives, emission allowances or derivatives thereof to such a large extent relative to the main business of the group that those activities cannot be considered to be ancillary at group level and that therefore the persons should be required to obtain authorisation as an investment firm.

---

[1] OJ L 173, 12.06.2014, p. 349.

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

Where persons within the group operate simultaneously in different asset classes and exceed the threshold in relation to one asset class, it should be subject to Directive 2014/65/EU for all commodity classes.

(3)   The first test compares the level of a person's trading activity against the overall trading activity in the Union on an asset class basis to determine the person's market share. The size of the trading activity should be determined by deducting the sum of the volume of the transactions referred to in points (a), (b) and (c) of the fifth subparagraph of Article 2(4), fifth subparagraph ('privileged transactions') from the volume of the overall trading activity undertaken by the group.

(4)   The volume of the trading activity should be determined by the gross notional value of contracts in commodity derivatives, emission allowances and derivatives thereof on the basis of a rolling annual average of the preceding three calendar years. The overall market size should be determined on the basis of trading activity undertaken in the Union in relation to each asset class: metals, oil, coal, emission allowances and derivatives thereof, gas, power, agricultural products and other commodities. Trading activity comprises trading in contracts traded ouside trading venues to which a person that is located in a Member State is party and contracts that are traded on trading venues located in a Member State.

(5)   As commodity markets differ significantly in terms of size, number of market participants, level of liquidity and other characteristics, different thresholds shall apply for different asset classes in relation to the test on the size of the trading activity.

(6)   The second test assesses the size of the trading activity, excluding privileged transactions and transactions executed by authorised entities of the group, undertaken by the group in all asset classes (the numerator) against the size of the overall trading activity, including privileged transactions and transactions executed by authorised entities of the group, undertaken by the group in total for all asset classes (the denominator).

(7)   The size of the trading activity as used in the second test, including privileged transactions and transactions executed by authorised entities, is taken as a proxy for the commercial activity that the person or group does as its main business. This proxy should be easy and cost efficient for persons to apply as it builds on data already required to be collected for the first test while at the same time establishing a meaningful test.

(8)   A rational risk-averse entity, such as a producer, processor or consumer of commodities, will seek to hedge the volume of the commercial activity of its main business with an equivalent volume of commodity derivatives, emission allowances or derivatives thereof. Therefore the volume of turnover of commodity derivatives measured in the gross notional value of the underlying, which are purchased or sold is an appropriate proxy for the size of the main business of the group. Main business of

the group that is not related to commodities would not use commodity derivatives as a risk-reducing tool and therefore any co-existing trading in commodity derivatives would ab initio be speculative and unable to benefit from the ancillary exemption.

(9) The second test may inadvertently capture persons with a high proportion of trading which is neither privileged transactions nor executed in an authorised entity of the group but nevertheless have a very low level of trading activity in total. IN addition, hedging activity cannot be considere a perfect proxy for the commercial activity that the person or group conducts as its main business as it does not take into account other investments of commodity market participants in fixed assets unrelated to derivative markets. Therefore, the second test should not solely operate on the basis of the application of this proxy but rather should contain a backstop mechanism which recognises that the trading activity undertaken by the persons within the group should also exceed a certain percentage of any of the thresholds set under the first test for each relevant asset class to be deemed non-ancillary. The higher the percentage of the speculative activity within all trading activity, the lower this threshold. Calibrating the main business test in this way should ensure that only relevant and sizable participants in European commodity derivative markets should be determined as not conducting their activities as ancillary to their main business.

(10) The rationale of the ancillary activity tests is to check whether entities not subject to financial regulation should be required to acquire an authorisation due to the relative or absolute size of their activity in commodity derivatives, emission allowances and derivatives thereof The ancillary activity tests determine the size of activities in commodity derivatives, emission allowances and derivatives thereof which entities within a group may carry out without authorisation under Directive 2014/65/EU due to those activities being ancillary to the group's main business. The group level assessment means that it is appropriate to calculate the size of the ancillary activity of the group by using criteria which exclude certain privileged transactions and activity carried out by authorised group members. This is because these transactions serve regulatory or commercial purposes or are otherwise already subject to appropriate supervision. Without excluding the activity of authorised group members, the exemption could have the effect of requiring the consolidation of genuine ancillary activity carried out by unauthorised group members, for example, persons which only execute privileged transactions, into the trading activity of its authorised members solely as a result of the size of the supervised trading activity of those authorised members. Trading activity undertaken by an authorised entity of the group should therefore be excluded from the calculations of the ancillary activity undertaken by unauthorised members of the group as it is already appropriately authorised.

(11) In order to allow for market participants to plan and operate a business in a reasonable way and to take into account seasonal patterns of activity, the calculation of the tests determining when an activity is considered to be ancillary to the main business should be based on a period of three years. Therefore, entities should perform the assessment whether they breach one of the two thresholds on an annual basis by calculating a

simple average of three years on a rolling basis in order to be able to submit their annual notification to the competent authority. This obligation should be without prejudice to the right of the competent authority to request at any time a report from a person about the basis on which that person considers its activity under points (i) and (ii) under point (j) of Article 2(4) of Directive 2014/65/EU to be ancillary to its main business.

(12) Transactions objectively measurable as reducing risks directly relating to commercial activity or treasury financing activity and intra-group transactions should be considered in a way consistent with Regulation (EU) No. 648/2012 of the European Parliament and of the Council[3]. However, in relation to transactions in derivatives which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity Commission Delegated Regulation (EU) No 149/2013[4] only refers to derivatives not traded on regulated markets while Article 2(4) of Directive 2014/65/EU covers derivatives traded on trading venues. Therefore, this Regulation should also take into account derivatives traded on regulated markets in relation to transactions that are deemed to be objectively measurable as reducing risks directly related to commercial or treasury financing activity.

(13) In some circumstances, it may not be possible to hedge a commercial risk by using a directly related commodity derivative contract: a contract with exactly the same underlying and settlement date as the risk being covered. In such case, the person may use proxy hedging through a closely correlated instrument to cover its exposure such as an instrument with a different but very close underlying in terms of economic behaviour. Additionally, macro or portfolio hedging may be used by persons, which enter into commodity derivative contracts to hedge a risk in relation to their overall risks or the overall risks of the group. Those macro, portfolio or proxy hedging commodity derivative contracts may constitute hedging for the purpose of this Regulation.

(14) When a person applying the ancillary activity test uses portfolio or macro hedging, it may not be able to establish a one-to-one link between a specific transaction in a commodity derivative and a specific risk directly related to the commercial and treasury financing activities entered into to hedge it. The risks directly related to the commercial and treasury financing activities may be of a complex nature e.g. several geographic markets, several products, time horizons or entities. The portfolio of commodity derivative contracts entered into to mitigate those risks may derive from

---

[3] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

[4] Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP (OJ L 52, 23.2.2013, p. 11).

complex risk management systems. In such cases the risk management systems should prevent non-hedging transactions from being categorised as hedging and provide for a sufficiently disaggregate view of the hedging portfolio so that speculative components are identified and counted towards the thresholds. Positions should not qualify as reducing risks related to commercial activity solely on the grounds that they form par of a risk-reducing portfolio on an overall basis.

(15)   A risk may evolve over time and, in order to adapt to the evolution of the risk, commodity derivatives initially executed for reducing risk related to commercial activity, may have to be offset through the use of additional commodity derivative contracts. As a result, hedging of a risk may be achieved by a combination of commodity derivative contracts including offsetting commodity derivative contracts that close out those commodity derivative contracts that have become unrelated to the commercial risk. Additionally the evolution of a risk that has been addressed by the entering into of a position in a commodity derivative for the purpose of reducing that risk should not subsequently give rise to the re-evaluation of that position as being not a privileged transaction ab initio.

(16)   The new legislation of the European Parliament and of the Council on markets in financial instruments set out in Directive 2014/65/EU and Regulation (EU) No 600/2014 of the European Parliament and of the Council[5] applies from 3 January 2017. To ensure consistency and legal certainty, this Regulation should apply from the same date.

(17)   This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(18)   ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[6].

HAS ADOPTED THIS REGULATION:

Article 1

Application of thresholds

---

[5] Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).
[6] Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

The activities of a person referred to in points (i) and (ii) of Article 2(1)(j) of Directive 2014/65/EU shall be considered to be ancillary to the main business of the group if that person meets the conditions set out in Article 2 and that person's activities constitute a minority of activities at group level in accordance with Article 3.

Article 2

Trading activity threshold

1.   The size of the trading activity calculated in accordance with paragraph 2 divided by the overall market trading activity calculated in accordance with paragraph 3 shall, in each of the following asset classes, account for less than the following values:

(a) 4 % in relation to derivatives on metals;

(b) 3 % in relation to derivatives on oil and oil products;

(c) 10 % in relation to derivatives on coal;

(d) 3 % in relation to derivatives on gas;

(e) 6 % in relation to derivatives on power;

(f) 4 % in relation to derivatives on agricultural products;

(g) 15 % in relation to derivatives on other commodities, including freight and commodities referred to in Section C 10 of Annex I to Directive 2014/65/EU;

(h) 20 % in relation to emission allowances or derivatives thereof.

2.   The size of the trading activity undertaken by persons within a group in each of the asset classes referred to in paragraph 1 shall be calculated by aggregating the gross notional value of all contracts within the relevant asset class to which those persons are a party.

The aggregation referred to in the first subparagraph shall not include contracts resulting from transactions referred to in points (a), (b) and (c) of the fifth subparagraph of Article 2(4) of Directive 2014/65/EU and transactins executed in an entitiy of the group authorised in accordance with Directive 2014/65/EU or Directive 2013/36/EU.

3.   The overall market trading activity in each of the asset classes referred to in paragraph 1 shall be calculated by aggregating the gross notional value of all contracts that are not traded on a trading venue within the relevant asset class to which any person located in a Member State is a party and of any other contract within that asset class that is traded on a trading venue located in a Member State .

4.   The gross notional value shall be denominated in EUR.

Article 3

Main business threshold

1.   Ancillary activities shall be considered to constitute a minority of activities at group level compared to the main business of the group where the size of the trading activities calculated in accordance with paragraph 34 does not account for more than 10% of the total size of the trading activity of the group calculated in accordance with paragraph 4.

2.   By way of derogation from paragraph 1,

  (a) where the size of the trading activities calculated in accordance with paragraph 34 accounts for more than 10% but less than 50% of the total size of the trading activity of the group calculated in accordance with paragraph 4, ancillary activities shall be considered to constitute a minority of activities at group level only where the size of the trading activity for each of the asset classes referred to in Article 2(1) accounts for less than 50% of the threshold established by Article 2(1) of the overall market's size in the relevant asset class.

  (b) where the size of the trading activity calculated in accordance with paragraph 34 accounts for equal to or more than 50% of the size of the trading activity calculated in accordance with paragraph 4, ancillary activities shall be considered to constitute a minority of activities at group level only where the size of the trading activity for each of the asset classes referred to in Article 2(1) accounts for less than 20% of the threshold established by Article 2(1) of the overall market's size in the relevant asset class.

3.   The size of the activities referred to in points (i) and (ii) of Article 2(1)(j) of Directive 2014/65/EU undertaken by persons within a group shall be calculated by aggregating the trading activity undertaken by those persons in all of the asset classes referred to in Article 2(1) in accordance with the same calculation criteria as that referred to in Article 2(2).

4.   The total size of the trading activity undertaken by persons within a group shall be calculated by aggregating the gross notional value of all contracts in financial instruments to which persons within that group are a party to.

5.   The gross notional value shall be denominated in EUR.

Article 4

Procedure for calculation

1.   The calculation of the size of the trading activities referred to in Articles 2 and 3 shall be undertaken annually on the basis of a simple average of the trading activities carried out in the three annual calculation periods preceding the date of calculation.

2.   By derogation to paragraph 1, the calculation of the size of the trading activities shall be undertaken on the following basis:

(a)   before 1 July 2017, it shall only take into account the trading activities carried out from 1 July 2015 to 30 June 2016;

(b)   between 1 July 2017 and 30 June 2018 it shall only take into account the simple average of two annual calculation periods based on the trading activities carried out from the calendar year of 1 July 2015 to 30 June 2017;

(c)   In the case of a persion that has no trading activity prior to an annual calculation period referred to in subparagraph (b) or paragraph 1, it shall only take into account trading activities carried out in the annual calculation period in which that person commenced trading and any following annual calculation period.

3.   For the purposes of paragraphs 1 and 2, references to an 'annual calculation period' means a period which starts on 1 July of a given year and ends on 30 June in the following year.

Article 5

Transactions qualifying as reducing risks

1.   For the purposes of the fifth subparagraph of point (b) of Article 2(4), of Directive 2014/65/EU, a transaction in derivatives shall be considered to reduce objectively measurable risks directly relating to commercial activity or treasury financing activity when one of the following criteria are met:

(a)   it reduces the risks arising from the potential change in the value of assets, services, inputs, products, commodities or liabilities that the person or its group owns, produces, manufactures, processes, provides, purchases, merchandises, leases, sells, or incurs or reasonably anticipates owning, producing, manufacturing, processing, providing, purchasing, merchandising, leasing, selling or incurring in the normal course of its business;

(b)   it covers the risks arising from the potential indirect impact on the value of assets, services, inputs, products, commodities or liabilities referred to in point (a), resulting from fluctuation of interest rates, inflation rates, foreign exchange rates or credit risk;

(c)   it qualifies as a hedging contract pursuant to International Financial Reporting Standards adopted in accordance with Article 3 of Regulation (EC) No 1606/2002 of the European Parliament and Council.

2.   For the purposes of paragraph 1, a qualifying risk-reducing transaction taken on its own or in combination with other derivatives is one for which the non-financial entity:

(a) describes the following in its internal policies:

    (i) the types of commodity derivative contracts included in the portfolios used to reduce risks directly relating to commercial activity and their eligibility criteria;

    (ii) the link between the portfolio and the risks that the portfolio is mitigating;

    (iii) the measures adopted to ensure that the transactions concerning those contracts serve no other purpose than covering risks directly related to the commercial activities of the non-financial entity, and that any transaction serving a different purpose can be clearly identified;

(b) is able to provide a sufficiently disaggregate view of the portfolios in terms of class of commodity derivative, underlying commodity, time horizon and any other relevant factors.

Article 6

Entry into force and application

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

It shall apply from 3 January 2017.

Done at Brussels,

For the Commission
The President

[For the Commission
On behalf of the President

[Position]

RTS 21: Draft regulatory technical standards on methodology for the calculation and the application of position limits for commodity derivatives traded on trading venues and economically equivalent OTC contracts

EUROPEAN COMMISSION

Brussels, XXX
[…](2012) XXX draft

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

[…]

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

[…]

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the application of position limits to commodity derivatives

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments[1], and in particular Article 57(3) and (12) thereof,

Whereas:

(1)   In order to ensure a harmonised approach to applying position limits to commodity derivatives in the Union, a methodology should be specified for calculating those limits. The methodology should prevent regulatory arbitrage and promote consistency whilst providing competent authorities with sufficient flexibility to take into account the variations among different commodity derivatives markets and the markets in the underlying commodities. The methodology for calculating the limits should allow competent authorities to balance the objectives of setting limits at a level sufficiently low to prevent persons holding positions in those commodity derivatives from abusing or distorting the market against the objectives of supporting orderly pricing and settlement arrangements, developing new commodity derivatives and enabling commodity derivatives to continue to support the functioning of commercial activities in the underlying commodity market.

(2)   In order to clearly identify a limited number of concepts stemming from Directive 2014/65/EU, as well as to specify technical terms necessary for this Regulation, a number of terms should be defined to ensure uniform application.

(3)   Long and short positions in a commodity derivative of market participants should be netted off against each other to determine the effective size of a position a person controls at any point in time. The size of a position held through an option contract should be calculated on a delta equivalent basis, As this Regulation applies a different

---

[1] OJ L 173, 12.6.2014, p. 173

methodology to the calculation of position limits for spot and other months' contracts, such netting should be applied separately to the spot and other months' positions.

(4)   Directive 2014/65/EU requires that any positions held by other persons on behalf of a person should be included in the calculation of that person's position limit and for position limits to be applied at both an entity level and at a group level and it is therefore necessary to aggregate positions at a group level. It is appropriate to only provide for aggregation at the group level if a parent undertaking can control the use of positions. Accordingly, parent undertakings should aggregate positions held by their subsidiaries with any positions that the parent entity holds directly, in addition to the subsidiaries aggregating their own positions. Such aggregation can lead to positions calculated at the level of the parent undertaking which are larger or, due to a netting of long and short positions held by different subsidiaries, lower than at individual subsidiary level. Positions should not be aggregated at the level of the parent undertaking if the positions are held by collective investment undertakings which hold those positions on behalf of their investors rather than on behalf of their parent undertakings in cases where the parent undertaking cannot control the use of those positions for its own benefit.

(5)   The concept of the same commodity derivative should establish a demanding threshold to prevent persons from inappropriately netting positions across dissimilar commodity derivatives in order to circumvent and weaken the robustness of the position limit on the principal commodity derivative contract. This should not prevent competent authorities from setting similar position limits for similar commodity derivative contracts under the coordination of the European Securities and Markets Authority (ESMA). Commodity derivatives should only be considered as trading in significant volume on a trading venue if they exceed the liquidity threshold specified in this Regulation for a sufficient period of time.

(6)   Where an over-the-counter (OTC) contract is valued on the same underlying commodity that is deliverable at the same location and with the same contractual conditions such as date of delivery and if it is having a highly correlated economic outcome to a contract traded on a trading venue, it should be deemed economically equivalent. Differences in post trade risk management arrangements, such as clearing arrangements, should not be barriers to declaring such contracts as economically equivalent. In order to prevent inappropriate netting of potentially dominant positions traded on a trading venue by the use of bilateral arrangements in OTC contracts and to ensure an efficient operation of the position limits regime in practice it is necessary for commodity derivatives traded OTC to be considered economically equivalent to trading venue contracts only in limited circumstances. To deter avoidance of position limits and to enhance the integrity of the position limit regime it is necessary that a definition of an economically equivalent OTC contract is narrowly framed so that it does not permit a person to net an OTC position against multiple other positions or to exercise discretion in the choice of positions against which it is netted.

(7)   In order to establish which positions in commodity derivatives are objectively measurable as reducing risks directly relating to commercial activity, certain criteria should be provided, including the use of the accounting definition of a hedging contract based on International Financial Reporting Standards (IFRS) rules. That accounting definition should be also available to non-financial entities even though they do not apply IFRS rules at an entity level.

(8)   Additionally, non-financial entities should be able to use risk management techniques to mitigate their overall risks arising from their commercial activity or that of their group, including risks arising from several geographic markets, several products, time horizons or entities ('macro or portfolio hedging'). When a non-financial entity uses macro or portfolio hedging, it may not be able to establish a one-to-one link between a specific position in a commodity derivative and a specific risk arising from the commercial activity that the commodity derivative is intended to hedge. A non-financial entity may also use a non-equivalent commodity derivative to hedge a specific risk arising from commercial activity where an identical commodity derivative is not available or where a more closely correlated commodity derivative does not have sufficient liquidity ('proxy hedging'). In such cases, risk management policies and systems should be able to prevent non-hedging transactions from being categorised as hedging and should be able to provide for a sufficiently disaggregate view of the hedging portfolio so that speculative components are identified and counted towards the position limits. Positions should not qualify as reducing risks related to commercial activity solely on the grounds that they have been included as part of a risk-reducing portfolio on an overall basis.

(9)   A risk may evolve over time and, in order to adapt to the evolution of the risk, commodity derivatives initially executed for reducing risk related to commercial activity, may have to be offset throught the use of additional commodity derivative contracts that close out those commodity derivative contracts that have become unrelated to the commercial risk. Additionally, the evolution of a risk that has been addressed by the entering into of a position in a commodity derivative for the purpose of reducing risk should not subsequently give risk to the re-evaluation of that position as not being a privileged transaction ab initio.

(10)   Non-financial entities should be able to apply for the exemption in relation to hedging of commercial activities before entering into a position. The application should give the competent authority a clear and concise overview of the commercial activities of the non-financial entity in respect of an underlying commodity, the associated risks and how commodity derivatives are utilised to mitigate those risks. Position limits apply at all times and should the exemption ultimately not be granted by the competent authority, the non-financial entitiy should reduce any position in excess of a limit accordingly and may face supervisory measures in respect of a breach of a limit. Non-financial entities should re-assess their activities periodically to ensure that the continued application of the exemption is justified.

(11)   The spot-month period, which is the time period immediately before delivery at expiry, is specific to each commodity derivative and may not correspond to exactly one month. Spot month contracts should therefore refer to the contract that is the next contract in that commodity derivative to mature. Restricting the positions a person may hold in the period during which delivery of the physical commodity is to be made limits the quantity of the underlying deliverable supply each person may make or take delivery of, thereby preventing the accumulation of dominant positions by individuals which may enable them to squeeze the market through restricting access to the commodity. The standard baseline for the spot month position limit for both physically and cash settled commodity derivatives should therefore be computed as a percentage of the deliverable supply estimate. Competent authorities should be able to implement a schedule of decreasing position limits ranging from the point in time when a contract becomes a spot month contract until maturity in order to more precisely ensure that position limits are adequately set throughout the spot month period and to ensure orderly settlement.

(12)   The other months' position limit is applied across all maturities other than the spot month. The standard baseline for the other months' position limits for both physically and cash settled commodity derivatives should be computed as a percentage of the total open interest. The distribution of positions across the other months' of a commodity contract is often concentrated in the months closest to maturity. Therefore total open interest provides a more appropriate baseline for setting position limits than using a figure averaged across all maturities.

(13)   The standard baseline of 25% of deliverable supply and of open interest has been set with reference to the experience of other markets and other jurisdictions. The baseline should be adjusted by competent authorities to enable it to be reduced by a maximum of 20% and to be increased by a maximum of 10% should the characteristics of the market require it, such as an absence of market participants, in order to support the orderly settlement and functioning of the contract and its underlying market. Competent authorities should ensure that an adjustment downwards of the baseline is effected whenever it is necessary to prevent dominant positions and to support orderly pricing in the commodity derivative and in the underlying commodity. The range reflects that Directive 2014/65/EU covers a wider range of commodity derivatives and markets than other markets and jurisdictions.

(14)   The definition of commodity derivative under Article 2(1)(30) of Regulation 600/2014 of the European Parliament and the Council[2] is broad, comprising also securitised derivatives and cash settled derivatives which do not have a tangible underlying such as climatic variables. For securitised derivatives the concept of spot and other months'

---

[2] Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

does not apply. For derivatives without a tangible underlying the deliverable supply cannot be used to establish a position limit. Therefore competent authorities should be able to enhance or adjust the methodologies to determine position limits for these commodity derivatives based on different parameters like number of securities issued or the use of open interest also for the spot month.

(15) Certain commodity derivatives, in particular for power and gas, provide that the underlying be delivered constantly over a specified period of time such as day, month or year. Moreover, certain contracts with longer delivery periods such as year or quarter may be automatically substituted by related contracts of shorter delivery periods such as quarter or month (cascadation). In these cases, a spot month position limit for the contract to be substituted prior to delivery would be inappropriate, as such limit would not cover the expiry and physical delivery or cash settlement of the contract. To the extent that delivery periods of contracts for the same underlying overlap, a single position limit should apply to all the related contracts in order to properly take into account the positions across those contracts which may potentially be delivered. To facilitate this, related contracts should be measured in units of the underlying and aggregated and netted accordingly.

(16) The competent authority should assess whether the factors listed under paragraph 3 of Article 57 of Directive 2014/65/EU necessitate adjustment of the baseline in order to set the final level of the position limit. The assessment should take into account these factors as relevant for the particular commodity derivative in question. The methodologies should provide a direction of how to set the limit without taking away the ultimate decision on an appropriate position limit for a commodity derivative from the competent authority in order to prevent market abuse. The factors should give important indications to the competent authorities and also to ESMA to facilitate forming its opinions and ensuring an adequate alignment of position limits across the Union.

(17) Position limits should not create barriers to the development of new commodity derivatives and should not prevent less liquid sections of the commodity derivative markets from working adequately. Competent authorities should take into account in applying the methodology the time required to develop and attract liquidity to both new and existing commodity derivatives and, in particular, for commodity derivatives that may support risk management in bespoke or immature markets or seek to develop new hedging arrangements in new commodities. Given the broad range of markets and commodities to which the position limits regime applies, there is no single and predetermined time period which adequately captures the shift from a commodity derivative contract being new to being established. Equally, there are many commodity derivative contracts which may never attract sufficient participants or liquidity to enable the effective application of position limits without the risk of participants regularly and inadvertently breaching the limit and consequently disrupting the pricing and settlement of those commodity derivatives. In order to address these risks to the efficient functioning of markets, the methodology provides

for a tiered approach whereby the position limit for the spot month and for other months is set at a fixed level of 2,500 lots or securities in issue until a threshold is exceeded, after which it is calculated under the standard metheology.

(18)   The number, composition, and the role of market participants in a commodity derivative can influence the nature and the size of positions that certain market participants hold in the market. For some commodity derivatives, certain market participants might hold a large position which reflects their role in the buying and selling of, and the delivery of, the commodity when they are on the opposite side of the market to the majority of other market participants providing liquidity or risk management services for the underlying commodity market.

(19)   The supply, use, access to, and availability of the underlying commodity are characteristics of the underlying commodity market. Through the assessment of more granular components of these characteristics, such as perishability of the commodity and method of transportation, the competent authority can determine the flexibility of the market and adjust position limits appropriately.

(20)   The new legislation of the European Parliament and of the Council on markets in financial instruments set out in Directive 2014/65/EU and Regulation (EU) No 600/2014 applies from 3 January 2017. To ensure consistency and legal certainty, this Regulation should apply from the same date.

(21)   This Regulation is based on the draft regulatory technical standards submitted by theESMA to the Commission.

(22)   ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[3],

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

---

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

Article 1

Subject matter

This Regulation lays down rules for the calculation of the net position held by a person in commodity derivatives and the methodology for calculating the position limits on the size of that position.

Article 2

Definitions

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

(1)   'non-financial entity' means a natural or legal person other than:

(a)   an investment firm authorised in accordance with Directive 2014/65/EC,

(b)   a credit institution authorised in accordance with Directive 2013/36/EU of the European Parliament and of the Council[4],

(c)   an insurance undertaking authorised in accordance with Directive 73/239/EEC[5],

(d)   an assurance undertaking authorised in accordance with Directive 2002/83/EC of the European Parliament and of the Council[6],

(e)   a reinsurance undertaking authorised in accordance with Directive 2005/68/EC of the European Parliament and of the Council[7],

(f)   a UCITS and, where relevant, its management company, authorised in accordance with Directive 2009/65/EC[8] of the European Parliament and of the Council,

(g)   an institution for occupational retirement provision within the meaning of Article 6(a) of Directive 2003/41/EC of the European Parliament and of the Council[9],

---

[4] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms.

[5] First Council Directive of 24 July 1973 on the coordination of laws regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance.

[6] Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance.

[7] Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance.

[8] Directive 2009/65/EC[8] of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).

(h) an alternative investment fund managed by AIFMs authorised or registered in accordance with Directive 2011/61/EU of the European Parliament and of the Council,

(i) a CCP authorised in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council[10],

(j) a central securities depositary authorised in accordance with Regulation EU No 909/2014 of the European Parliament and of the Council[11].

A third-country entity is a non-financial entity if it would not require authorisation under any of the aforementioned legislation if it was based in the Union and subject to Union law.

(2) 'spot month contract' means the commodity derivative contract in relation to a particular underlying commodity whose maturity is the next to expire in accordance with the rules set by the trading venue.

(3) 'other months' contract' means any commodity derivative contract that is not a spot month contract.

CHAPTER II

METHOD FOR CALCULATING THE SIZE OF THE NET POSITION OF A PERSON

Article 3

(Article 57(1) of Directive 2014/65/EU)

Aggregation and netting of positions in a commodity derivative

1. The net position of a person in a commodity derivative shall be the aggregation of its positions held in that commodity derivative traded on a trading venue, in commodity derivatives considered the same commodity derivative to that commodity derivative in

---

[9] Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision.
[10] Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers.
[11] Regulation 2014/909/EU of the European Parliament and of the Council of 23 July 2014 on on improving securities settlement in the European Union and on central securities depositories.

accordance with paragraph 1 of Article 5, and in economically equivalent OTC contracts pursuant to Article 6.

2.   Where a person holds both long and short positions in any of the commodity derivatives referred to in paragraph 1, the person shall net those positions to determine its net position for that commodity derivative.

3.   Positions held by a non-financial entity in commodity derivatives that are objectively measureable as reducing risks in accordance with Article 7, as approved by the competent authority pursuant to Article 8, shall not be aggregated for the purposes of determining the net position of that non-financial entity.

4.   A person shall determine separately the net position it holds in a commodity derivative for both the spot month contracts and the other months' contracts.

Article 4

(Article 57(1) of Directive 2014/65/EU)

Method of calculating positions for legal entities within a group

1.   A parent undertaking shall determine its net position by aggregating the following positions in accordance with Article 3:

  (a) its own net position;

  (b) the net positions of each of its subsidiary undertakings.

2.   By way of derogation to paragraph 1, the parent undertaking of a collective investment undertaking or, where the collective investment undertaking has appointed a management company, the parent undertaking of that management company shall not aggregate the positions in commodity derivatives in any collective investment undertaking where it does not in any way influence the investment decisions in respect of opening, holding or closing those positions.

Article 5

(Article 57(6) of Directive (EU) No 2014/65/EU)

Same commodity derivatives and significant volumes

1.   A commodity derivative traded on a trading venue shall be considered the same commodity derivative as a commodity derivative traded on another trading venue where the following conditions are met:

(a) both commodity derivatives have identical contractual specifications, terms and conditions, excluding post trade risk management arrangements;

(b) both commodity derivatives form a single fungible pool of open interest or, in the case of commodity derivatives defined under point (c) of Article 4(1)(44) of Directive 2014/65/EU, of securities in issue by which the positions held in a commodity derivative traded on one trading venue may be closed out against the positions held in the commodity derivative traded on the other trading venue.

2.   A commodity derivative shall be considered to be traded in a significant volume on a trading venue when the trading in the commodity derivative on that trading venue over a consecutive three month period:

(a) exceeds an average daily open interest of 10,000 lots in the spot and other months' combined; or

(b) in the case of commodity derivatives defined under point (c) of Article 4(1)(44) of Directive 2014/65/EU, when the number of units traded multiplied by the price exceeds an average daily amount of 1 million EUR.

3.   The trading venue where the largest volume of trading in the same commodity derivative takes place shall be the trading venue that over one year has:

(a) the largest average daily open interest; or

(b) in the case of commodity derivatives defined under point (c) of Article 4(1)(44) of Directive 2014/65/EU, the highest average daily amount.

Article 6

(Article 57(1) of Directive 2014/65/EU)

OTC contracts economically equivalent to commodity derivatives traded on trading venues

An OTC derivative shall be considered economically equivalent to a commodity derivative traded on a trading venue where it has identical contractual specifications, terms and conditions, excluding post trade risk management arrangements, to those of that commodity derivative traded on a trading venue.

Article 7

(Article 57(1) of Directive 2014/65/EU)

Positions qualifying as reducing risks directly related to commercial activities

1.   A position held by a non-financial entity in commodity derivatives traded on trading venues or in economically equivalent OTC contracts pursuant to Article 6 qualifies as reducing risks directly relating to the commercial activities of that non-financial entity where by itself, or in combination with other derivatives in accordance with paragraph 2 ('position in a portfolio of commodity derivatives'), the position meets one of the following criteria:

  (a) it reduces the risks arising from the potential change in the value of assets, services, inputs, products, commodities or liabilities that the non-financial entity or its group owns, produces, manufactures, processes, provides, purchases, merchandises, leases, sells, or incurs or reasonably anticipates owning, producing, manufacturing, processing, providing, purchasing, merchandising, leasing, selling or incurring in the normal course of its business;

  (b) it qualifies as a hedging contract pursuant to International Financial Reporting Standards (IFRS) adopted in accordance with Article 3 of Regulation (EC) No 1606/2002 of the European Parliament and Council[12].

2.   For the purposes of paragraph 1, a qualifying risk-reducing position taken on its own or in combination with other derivatives is one for which the non-financial entity or the person holding the position on behalf of that entity:

  (a) describes the following in its internal policies:

    (i)   the types of commodity derivative contracts included in the portfolios used to reduce risks directly relating to commercial activity and their eligibility criteria;

    (ii) the link between the portfolio and the risks that the portfolio is mitigating;

    (iii) the measures adopted to ensure that the positions concerning those contracts serve no other purpose than covering risks directly related to the commercial activities of the non-financial entity, and that any position serving a different purpose can be clearly identified;

  (b) is able to provide a sufficiently disaggregated view of the portfolios in terms of class of commodity derivative, underlying commodity, time horizon and any other relevant factors.

Article 8

(Article 57(1) of Directive 2014/65/EU)

Application for the exemption from position limits

---

[12] OJ L 243, 11.9.2002, p. 1

1. A non-financial entity holding a qualifying position in a commodity derivative shall apply for the exemption referred to in the second subparagraph of paragraph 1 of Article 57 of Directive 2014/65/EU to the competent authority which sets the position limit for that commodity derivative.

2. The person referred to in paragraph 1 shall submit to the competent authority the following information which demonstrates how the position reduces risks directly relating to the non-financial entity's commercial activity:

  (a) a description of the nature and value of the non-financial entity's commercial activities in the commodity to which the commodity derivative for which an exemption is sought is relevant;

  (b) a description of the nature and value of the non-financial entity's activities in the trading of and positions held in the relevant commodity derivatives traded on trading venues and in their economically equivalent OTC contracts;

  (c) a description of the nature and size of the exposures and risks in the commodity which the non-financial entity has or expects to have as a result of its commercial activities and which are or would be mitigated by the use of commodity derivatives;

  (d) an explanation of how the non-financial entity's use of commodity derivatives directly reduces its exposure and risks in its commercial activities.

3. The competent authority shall approve or reject the application within 21 calendar days after it has received the application and shall notify the non-financial entity of its approval or rejection of the exemption.

4. The non-financial entity shall notify the competent authority if there is a significant change to the nature or value of the non-financial entity's commercial activities or its trading activities in commodity derivatives and the change is relevant to the information set out in point (b) of paragraph 2 and shall submit a new application for the exemption if it intends to continue to use it.

CHAPTER III

METHODOLOGY FOR COMPETENT AUTHORITIES TO CALCULATE POSITION LIMITS

SECTION 1

Determination of baseline figures

Article 9

(Article 57(4) of Directive 2014/65/EU)

Methodology for determining the baseline figure for spot month limits

1.   Competent authorities shall determine a baseline figure for the spot month position limit in a commodity derivative by calculating 25% of the deliverable supply for that commodity derivative.

2.   The baseline figure shall be specified in lots which shall be the unit of trading used by the trading venue on which the commodity derivative trades representing a standardised quantity of the underlying commodity.

3.   Where a competent authority establishes different position limits for different times within the spot month period, those position limits shall decrease on an incremental basis towards the maturity of the commodity derivative and shall take into account the position management arrangements of the trading venue.

Article 10

(Article 57(3) of Directive 2014/65/EU)

Deliverable supply

1.   Competent authorities shall calculate the deliverable supply for a commodity derivative by identifying the quantity of the underlying commodity that fulfils the following conditions:

  (a) it meets the delivery specifications of the commodity derivative;

  (b) it is expected to be readily available for settling that type of commodity derivative contract traded on the trading venue at the contract's delivery points during the spot month delivery period   as specified by the trading venue.

2.   Competent authorities shall determine the deliverable supply for a commodity deriviative referred to in paragraph 1 by reference to the average monthly amount of the underlying commodity available for delivery over the one year period immediately preceding the determination.

3.   In order to identify the quantity of the underlying commodity meeting the conditions of paragraph 1, competent authorities shall take into account the following criteria:

  (a) the storage arrangements for the underlying commodity;

  (b) the factors that may affect the supply of the underlying commodity.

Article 11

(Article 57(4) of Directive 2014/65/EU)

Methodology for determining the baseline figure for other months' limits

1. Competent authorities shall determine a baseline figure for the other months' position limit in a commodity derivative by calculating 25% of the open interest in that commodity derivative .

2. The baseline figure shall be specified in lots which shall be the unit of trading used by the trading venue on which the commodity derivative trades representing a standardised quantity of the underlying commodity.

Article 12

(Article 57(3) of Directive 2014/65/EU)

Open interest

Competent authorities shall calculate the open interest in a commodity derivative by aggregating the number of lots of that commodity derivative that are outstanding on trading venues at a point in time.

Article 13

(Article 57(4) of Directive (EU) No 2014/65/EU)

Methodology for determining the baseline figure in respect of certain contracts

1. By way of derogation to Article 9, competent authorities shall determine the baseline figure for the spot month position limits for cash settled spot month contracts which are under Section C(10) of Annex I to Directive 2014/65/EU and which have no measurable deliverable supply of their underlying commodities by calculating 25% of the open interest in those commodity derivative contracts.

2. By way of derogation to Articles 9 and 11, competent authorities shall determine the baseline figure for the position limits for commodity derivatives defined under point (c) of Article 4(1)(44) of Directive 2014/65/EU by calculating 25% of the number of securities issued.

The baseline figure shall be specified in number of securities.

3. By way of derogation to Articles 9 and 11, where a commodity derivative provides that the underlying is delivered constantly over a specified period of time, the baseline figures calculated pursuant to Articles 9 and 11 shall apply to related commodity derivatives for the same underlying to the extent that their delivery periods overlap.

SECTION II

Factors relevant for the calculation of position limits

Article 14

(Article 57(3) of Directive 2014/65/EU)

Assessment of factors

Competent authorities shall set the spot month and other months' position limits for a commodity derivative by taking the baseline figure determined in accordance with Articles 9, 11 and 13 and adjusting it to a limit between 5% and 35% according to the potential impact of the factors referred to in Articles 16 to 20 on the integrity of the market for that derivative and for its underlying commodity.

Article 15

(Article 57(3)(g) of Directive 2014/65/EU)

New and illiquid contracts

1.   By way of derogation to Article 14,

  (a) for commodity derivatives traded on a trading venue with a total combined open interest in spot and other months' contracts not exceeding 10,000 lots over a consecutive three month period, competent authorities shall set the limit of positions held in those commodity derivatives at 2,500 lots;

  (b) for commodity derivatives as defined in point (c) of Article 4(1)(44) of Directive 2014/65/EU with a total number of securities in issue not exceeding 10 million over a consecutive three months period, the competent authority shall set the limit of positions held in those commodity derivatives at 2.5 million securities.

2.   The trading venue shall notify the competent authority if the total open interest of any such commodity derivative reaches 10,000 lots or 10 million securities in issue over a consecutive three month period. Competent authorities shall review the position limit upon receiving such notification.

Article 16

(Article 57(3)(a) of Directive 2014/65/EU)

The maturity of the commodity derivatives contracts

1. For spot month position limits, if the commodity derivative has a short maturity, the position limit shall be set at a level lower than the baseline figure.

2. For other months' position limits, where the commodity derivative has a large number of separate expiries, the position limit shall be set at a level higher than the baseline figure.

Article 17

(Article 57(3)(b) of Directive 2014/65/EU)

Deliverable supply in the underlying commodity

Where the deliverable supply in the underlying commodity can be restricted or controlled or if the level of deliverable supply is low relative to the amount required for orderly settlement competent authorities shall set the position limit at a level lower than the baseline figure. Competent authorities shall assess the extent to which this deliverable supply is used also as the deliverable supply for other commodity derivatives.

Article 18

(Article 57(3)(c) of Directive 2014/65/EU)

The overall open interest

Where there is a large volume of overall open interest, competent authorities shall set the position limit at a level lower than the baseline figure.

Article 19

(Article 57(3)(e) of Directive 2014/65/EU)

The number of market participants

Where the daily average number of market participants holding a position in the commodity derivative over a period of one year is high the competent authority shall set the position limit at a level lower than the baseline figure.

Article 20

(Article 57(3)(f) of Directive 2014/65/EU)

Characteristics of the underlying commodity market

1. Competent authorities shall take into account how the characteristics of the underlying market impact on the functioning and trading of the commodity derivative and on the size of the positions held by market participants, including having regard to the ease and speed of access which market participants have to the underlying commodity.

2.   The assessment of the underlying commodity market referred to in paragraph 1 shall take into account:

(a) whether there are restrictions on the supply of the commodity, including the perishability of the deliverable commodity;

(b) the method of transportation and delivery of the physical commodity, including the following:

    (i)   whether the commodity can be delivered to specified delivery points only;

    (ii) the capacity constraints of specified delivery points.

(c) the structure, organisation and the operation of the market, including the seasonality present in extractive and agricultural commodity markets whereby physical supply fluctuates over the calendar year;

(d) the composition and role of market participants in the underlying commodity market, including consideration of the number of market participants which provide specific services that enable the functioning of the underlying commodity market such as risk management, delivery, storage, or settlement services;

(e) macroeconomic or other related factors that influence the operation of the underlying commodity market including the delivery, storage, and settlement of the commodity;

(f) the characteristics, physical properties and lifecycles of the underlying commodity.

Article 21

Entry into force and application

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

It shall apply from 3 January 2017.

Done at Brussels,

For the Commission
The President

CHAPTER 7: MARKET DATA REPORTING

RTS 22: Draft regulatory technical standards on reporting obligations under Article 26 of MiFIR

EUROPEAN COMMISSION

Brussels, XXX
[…](2012) XXX draft

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

[…]

COMMISSION DELEGATED REGULATION (EU) …/..

of [date]

**supplementing Regulation (EU) No 600/2014 of the European Parliament
and of the Council with regard to regulatory technical standards for the
reporting of transactions to competent authorities**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the
Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU)
No 648/2012, and in particular the third subparagraph of Article 26(9) thereof,

Whereas:

(1)   For the purposes of effective data analysis by competent authorities, there should be
        consistency in the standards and formats used when reporting transactions .

(2)   Given market practices, supervisory experience and market developments, the
        meaning of a transaction for reporting purposes should be broad and not be
        exhaustively defined. It should cover purchases and sales of reportable instruments as
        well as other cases of acquisition or disposal of reportable instruments, as these may
        also give rise to market abuse concerns. Furthermore, changes to notional amount may
        give rise to market abuse concerns as they are similar in nature to additional purchase
        or sale transactions. In order for competent authorities to distinguish those changes
        from other purchases or sales, those changes should be specifically reported in
        transaction reports.

(3)   However, the concept of a transaction should not include acts or events which do not
        need to be reported to competent authorities for market surveillance purposes. In order
        to ensure that such acts and events are filtered out of transaction reporting, they should
        be specifically excluded from the meaning of a transaction.

(4)   For the purposes of clarifying which investment firms are required to report
        transactions, the activities or services which lead to a transaction should be defined.
        Accordingly, an investment firm should be considered to be executing a transaction
        where it performs a service or activity referred to in points 1 to 3 of Section A of
        Annex I of [Directive 2014/65/EU], makes the investment decision in accordance with

a discretionary mandate given by a client, or transfers financial instruments to or from accounts, provided in each case that such services or activities have resulted in a transaction. However, by way of exception in accordance with Article 26(4) of Regulation (EU) No 600/2014, investment firms which are considered to have transmitted orders which result in transactions should be considered to have not executed those transactions.

(5)   In order to avoid non-reporting or double reporting by investment firms who transmit orders to each other, they should agree whether the firm receiving the transmitted order will report all the details in its transaction report of the resulting transaction or transmit the order onwards to another investment firm. In the absence of an agreement and to avoid non-reporting or double reporting, the transmitting firm should submit its own transaction report which includes all the details of the resulting transaction and the receiving firm should submit a transaction report which does not include the transmitted details. Moreover, the details relating to the order to be transmitted between firms should be prescribed in order to ensure that the relevant, accurate and complete information ultimately reaches competent authorities.

(6)   For the purpose of ensuring certain and efficient identification of investment firms responsible for execution of transactions, those firms should ensure that they are identified in the transaction report submitted pursuant to their transaction reporting obligation using validated, issued and duly renewed legal entity identifiers (LEIs).

(7)   In order to ensure consistent and robust identification of natural persons referred to in transaction reports, they should be identified by a concatenation of the country of their nationality followed by identifiers assigned by the country of nationality of those persons. Where those identifiers are not available, it is necessary to identify natural persons by identifiers created from a concatenation of their date of birth and name.

(8)   In order to facilitate market surveillance, client identification should be consistent, unique and robust. Transaction reports should therefore include the full name and date of birth of clients who are natural persons and should identify clients who are legal entities by their LEIs.

(9)   Persons or computer algorithms which make investment decisions may be responsible for market abuse. Therefore, in order to ensure effective market surveillance, where investment decisions are made by a person other than the client or by a computer algorithm, the persons or algorithm should be identified in the transaction report using unique, robust and consistent identifiers. Where more than one person in an investment firm makes the investment decision, the person taking the primary responsibility for the decision should be identified in the report.

(10)   The persons or computer algorithms responsible for determining the venue to access, which firms to transmit the orders to or any other conditions related to the execution of the order can thereby be responsible for market abuse. Therefore, in order to ensure

effective market surveillance, a person or computer algorithm within the investment firm that is responsible for the above activities should be identified in the transaction report. Where both a person and computer algorithm are involved, or more than one person or algorithm is involved, the investment firm should determine, on a consistent basis, which person or algorithm is primarily responsible for undertaking those activities.

(11)   In order to enable effective market monitoring, transaction reports should include exact information on any change in the position of an investment firm or its client resulting from a reportable transaction at the time such transaction took place. Therefore investment firms should report related fields in an individual transaction report consistently and should report a transaction or different legs of a transaction in such manner that collectively their reports provide a clear overall picture which accurately reflects changes in position.

(12)   Effective market surveillance in the case of a transaction in a combination of financial instruments presents particular challenges for market surveillance. The competent authority needs to have the global view and also be able to see separately the transaction in respect of each financial instrument that is part of a transaction in a combination of financial instruments. Therefore, investment firms which execute transactions in a combination of financial instruments should report the transaction for each financial instrument separately and link those reports by an identifier that is unique at the level of the firm to the group of transaction reports related to that execution.

(13)   In order to safeguard the effectiveness of market abuse surveillance of legal persons, Member States should ensure that LEIs are developed, attributed and maintained in accordance with internationally established principles. For similar reasons, investment firms should obtain their clients' LEIs from their clients before providing services which would trigger reporting obligations in respect of transactions effected on behalf of those clients.

(14)   Efficient and effective market monitoring requires that transaction reports be submitted once only and to a single competent authority who can route them to other relevant competent authorities. Therefore, where an investment firm executes a transaction, it should report the transaction once only, and that report should be submitted to its home competent authority. The principle of single reporting should apply irrespective of whether the reporting firm executed the transaction through a branch in another Member State. Moreover, where a transaction is executed wholly or partly through a branch of an investment firm located in another Member State, the principle of reporting to the home Member State of the investment firm should apply unless otherwise agreed by the competent authorities of the home and host Member States. In order to ensure that host competent authorities can supervise the services provided by branches within their territory, they will need to receive transaction reports of activity by branches of investment firms. For this reason and to allow for the

transaction reports to be routed to all the relevant competent authorities for the branches that take part in those transactions it is necessary to include granular data on branch activity in the reports.

(15) Complete and accurate transaction reporting data is essential to market abuse surveillance. Therefore trading venues and investment firms should have methods and arrangements to ensure complete and accurate transaction reports are submitted to competent authorities.

(16) Determination of the most relevant market in terms of liquidity enables the routing of transaction reports to other competent authorities and enables investors to identify the competent authorities to whom they must report their short positions pursuant to Articles 5, 7 and 8 of Regulation (EU) No 236/2012 of the European Parliament and of the Council . The rules for determining which is the relevant competent authority under Directive 2004/39/EC of the European Parliament and of the Council work effectively for most financial instruments and should, therefore, remain unchanged. However, new rules should be introduced specifically for those instruments which are not covered by Directive 2004/39/EC, namely for debt instruments issued by a non-EEA entity and for derivatives for which the immediate underlying has no global identifier, is a basket or a non-EEA index.

(17) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(18) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[1].

(19) The application of this Regulation should be deferred in order to align its applicability with the application of paragraphs 1 to 8 of Article 26 of Regulation (EU) No 600/2014,

HAS ADOPTED THIS REGULATION:

Article 1

---

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

Data standards and formats for transaction reporting

1.   A transaction report shall be provided using all details specified in Table 2 of the Annex that pertain to the transaction concerned, and   The information shall be provided using the data standards and formats specified in Table 2 Annex I.

2.   Transaction reports shall be provided in an electronic and machine-readable form and common XML template in accordance with the ISO 20022 methodolog y.

Article 2

Meaning of transaction

1.   For the purposes of Article 26 of Regulation (EU) No 600/2014, the conclusion of an acquisition or disposal of a financial instrument referred to in Article 26(2) of Regulation (EU) No 600/2014 shall constitute a transaction.

2.   An acquisition referred to in paragraph 1 shall include:

  (a) a purchase of a financial instrument;

  (b) entering into a derivative contract in a financial instrument;

  (c) an increase in the notional amount for a derivative contract that is a financial instrument.

3.   A disposal referred to in paragraph 1 shall include:

  (a) sale of a financial instrument;

  (b) closing out of a derivative contract in a financial instrument;

  (c) a decrease in the notional amount for a derivative contract that is a financial instrument.

4.   For the purposes of Article 26 of Regulation (EU) No 600/2014, transaction shall also include a simultaneous acquisition and disposal of a financial instrument where there is no change in the ownership of that financial instrument, but post-trade publication is required under Articles 6, 10, 20 or 21 of Regulation (EU) No 600/2014.

5.   A transaction for the purposes of Article 26 of Regulation (EU) No 600/2014 shall not include:

  (a) a securities financing transaction as defined in Regulation [Securities Financing Transactions –full reference to be inserted when available] that either

      (i)   has been reported under that Regulation ; or

      (ii)   is, at a time prior to the date of obligation of Article 4 of that Regluation, a securities financing transaction for which there would be a reporting obligation under that Article if the Article applied at that time.

(b)   a contract arising exclusively for clearing or settlement purposes;

(c)   a settlement of mutual obligations between parties where the net obligation is carried forward;

(d)   an acquisition or disposal that is solely a result of custodial activity;

(e)   a post-trade assignment or novation in a derivative contract where one of the parties to the derivative contract is replaced by a third party;

(f)   a portfolio compression;

(g)   a creation or redemption of a fund by the administrator of the fund;

(h)   an exercise of a financial instrument or conversion of a convertible bond and the resultant transaction in the underlying financial instrument or in the financial instrument that the bond has been converted into;

(i)   a creation, expiration or redemption of a financial instrument as a result of pre-determined contractual terms, or as a result of mandatory events which are beyond the control of the investor where no investment decision by the investor takes place at the point in time of the creation, expiration or redemption of the financial instrument;

(j)   a decrease or increase in the notional amount of a derivative contract that is a financial instrument as a result of pre-determined contractual terms or mandatory events where no investment decision by the investor takes place at the point in time of the change in notional;

(k)   a change in the composition of an index or a basket that occurs after the execution of a transaction;

(l)   an acquisition under a dividend re-investment plan;

(m) an acquisition or disposal under an employee share incentive plan, or arising from the administration of an unclaimed asset trust, or of residual fractional share entitlements following corporate events or as part of shareholder reduction programmes where all the following criteria are met:

      (i)   the dates of acquisition or disposal are pre-determined and published in advance;

      (ii)   the investment decision concerning the acquisition or disposal that is taken by the investor amounts to a choice by the investor to enter into the transaction with no ability to unilaterally vary the terms of the transaction;

(iii) there is a delay of at least ten business days between the investment decision and the moment of execution;

(iv) the value of the transaction is capped at the equivalent of a thousand euros for a one off transaction for the particular investor in the particular instrument or, where the arrangement results in transactions, the cumulative value of the transaction shall be capped at the equivalent of five hundred euros for the particular investor in the particular instrument per calendar month.

(n) an exchange and tender offer on a bond or other form of securitised debt where the terms and conditions of the offer are pre-determined and published in advance and the investment decision amounts to a choice by the investor to enter into the transaction with no ability to unilaterally vary its terms.

The exclusion provided for in point (i) of the first subparagraph shall not apply to initial public offerings or secondary public offerings or placings, or debt issuance.

Article 3

Meaning of execution of a transaction

1.   Where an investment firm performs any of the following services or activities that result in a transaction within the meaning of Article 2, it shall be deemed to have executed that transaction:

(i)   Reception and transmission of orders in relation to one or more financial instruments;

(ii)   Execution of orders on behalf of clients;

(iii) Dealing on own account;

(iv) Making an investment decision in accordance with a discretionary mandate given by a client;

(v)   Transfer of financial instruments to or from accounts.

2.   By way of derogation from paragraph 1, an investment firm shall be deemed not to have executed a transaction where it has transmitted an order in accordance with Article 4.

Article 4

Transmission of an order

1. An investment firm ("transmitting firm") shall be deemed to have transmitted an order pursuant to Article 26(4) of Regulation (EU) No 600/2014 only if the following conditions are met:

(a) The order was received from its client or results from its decision to acquire or dispose of a specific financial instrument in accordance with a discretionary mandate provided to it by one or more clients.

(b) The transmitting firm has transmitted the information referred to in paragraph 2 ("order details") to another investment firm ("receiving firm").

(c) That receiving firm is subject to Article 26(1) of Regulation No 600/2014 and agrees either to report the transaction resulting from the order concerned or to transmit the order details to another investment firm. The agreement shall specify the timing for the provision of the order details by the transmitting firm to the receiving firm and provide confirmation that the receiving firm shall validate the order details received for obvious errors and omissions before submitting a transaction report.

2. The following order details shall be transmitted in accordance with paragraph 1, insofar as pertinent to a given order:

(a) the identification code of the financial instrument;

(b) whether the order is for the acquisition or disposal of the financial instrument;

(c) the price and quantity of the order;

(d) the designation and details of the transmitting firm's client for the purposes of the order. Where the client is a natural person, the designation shall be in accordance with Article 6;

(e) the designation and details of the decision maker for the client where the investment decision is made under a power of representation;

(f) a designation to identify a short sale;

(g) a designation to identify a person or algorithm responsible for the investment decision within the transmitting firm;

(h) country of the branch for the person responsible for the investment decision and country of the branch that received the order from the client or made an investment decision for a client in accordance with a discretionary mandate given to it by the client;

(i) for an order in commodity derivatives, an indication whether the transaction is to reduce risk in an objectively measurable way in accordance with Article 57 of Directive 2014/65/EU of the European Parliament and of the Council ;.

(j) the code identifying the transmitting firm.

For the purposes of point (j), if there is no prior transmitting firm that successfully transmitted the order, the code for the transmitting firm shall be transmitted. Where the order was received from a prior transmitting firm that successfully transmitted the order, the code provided by the prior transmitting firm shall be transmitted.

3. Where there is more than one transmitting firm in relation to a given order, the order details to be transmitted are those referred to in points (d) to (i) in respect of the client of the first transmitting firm.

4. Where the order is aggregated for several clients, information specified in paragraph 2 shall be transmitted for each allocation to a client.

Article 5

Identification of the investment firm executing a transaction

1. An investment firm which executes a transaction shall ensure that it is identified in the transaction report submitted pursuant to its obligation under Article 26(1) with a validated, issued and duly renewed ISO 17442 legal entity identifier code.

2. An investment firm which executes a transaction shall ensure that the reference data related to its legal entity identifier is renewed according to the terms of any of the accredited Local Operating Units of the Global Legal Entity Identifier System.

Article 6

Designation to identify natural persons

1. A natural person shall be identified in a transaction report using a concatenation of the ISO 3166-1 alpha-2 (2 letter country code) of the nationality of the person, followed by the identifier listed in Annex II based on the nationality of the person.

2. The identifier shall be assigned in accordance with the priority levels in Annex II. When designating a natural person in accordance with paragraph 1, the first priority identifier provided in Annex II shall be used where that person has the first priority identifier. If the natural person does not have the first priority identifier, the second priority identifier shall be used where that person has the second priority identifier. If the natural person does not have the second priority identifier, the third priority identifier shall be used .

3. Where a natural person is a national of more than one European Economic Area (EEA) country, the country code of the first nationality when sorted alphabetically by its ISO 3166-1 alpha-2 code and the applicable identifier related to the first nationality as determined in

accordance with paragraph 2 shall be used. Where a natural person has a non-EEA nationality, the highest priority identifier in accordance with the field referring to 'all other countries' provided in Annex II shall apply. Where a natural person has EEA and non-EEA nationality, the highest priority identifier related to the EEA nationality as determined in accordance with paragraph 2 shall be used.

4.   Where the applicable identifier specified in Annex II as determined in accordance with paragraph 2 refers to CONCAT, the natural person shall be identified by the investment firm using an identifier created from the concatenation of the following elements in the following order:

   (a) the date of birth of the person in the format YYYYMMDD;

   (b) the five first characters of the first name;

   (c) the five first characters of the surname.

5.   For the purposes of paragraph 4, prefixes to names shall be excluded and first names and surnames shorter than five characters shall be appended by '#' so as to ensure that references to names and surnames in accordance with paragraph 4 contain five characters. All characters shall be in upper case. No apostrophes, accents, hyphens, punctuation marks or spaces shall be used.

Article 7

Details of the identity of the client and identifier and details for the decision maker

1.   A transaction report relating to a transaction executed on behalf of a client who is a natural person shall include the full name and date of birth of the client as specified in Annex I.

2.   Where the client is not the person taking the investment decision in relation to that transaction, the transaction report shall identify the person taking such decision on behalf of the client as specified in fields 12-15 for the buyer and fields 21-24 for the seller in Table 2 of Annex 1.

Article 8

Identification of person or computer algorithm responsible for the investment decision

1.   Where a person or computer algorithm within an investment firm makes the decision to acquire or dispose of a specific financial instrument ('investment decision'), that person or computer algorithm shall be identified in field 57 of Annex I. The investment firm shall only identify such a person or computer algorithm where the acquisition or disposal is made either

on behalf of the investment firm itself, or on behalf of a client in accordance with a discretionary mandate given to it by the client.

2.   Where more than one person within the investment firm makes the investment decision, the investment firm shall determine who is the person taking the primary responsibility for that decision. The determination of the person taking primary responsibility for the investment decision shall be made on a consistent basis

3.   Where a computer algorithm within the investment firm is responsible for the investment decision in accordance with paragraph 1, the investment firm shall assign a designation for identifying the computer algorithm in a transaction report. That designation shall comply with the following conditions:

(a) it is unique for each set of code or trading strategy that constitutes the algorithm, regardless of the financial instruments or markets that the algorithm applies to;

(b) it is used consistently when referring to the algorithm or version of the algorithm once assigned to it;

(c) it is unique over time.

Article 9

Identification of person or computer algorithm responsible for execution of a transaction

1.   Where a person or computer algorithm within the investment firm which executes a transaction determines which trading venue, systematic internaliser or organised trading platform located outside the Union to access, which firms to transmit orders to or any conditions related to the execution of an order, that person or computer algorithm shall be identified in field 59 of table 2 of the Annex.

2.   Where a person within the investment firm is responsible for the execution of the transaction, the investment firm shall assign a designation for identifying that person in a transaction report in accordance with Article 7.

3.   Where a computer algorithm within the investment firm is responsible for theexecution of the transaction, the investment firm shall assign a designation for identifying the computer algorithm in accordance with Article 8(43).

4.   Where a person and computer algorithm are both involved in execution of the transaction, or more than one person or algorithm is involved, the investment firm shall determine which person or computer algorithm is primarily responsible for the execution of the transaction. Determination of the person or computer algorithm taking primary responsibility for the execution shall be done on a consistent basis.

Article 10

Designation to identify an applicable waiver

Transaction reports shall identify the applicable waiver pursuant to Article 4 or Article 9 of Regulation (EU) No 600/2014 under which the executed transaction has taken place in accordance with field 61 of Annex I.

Article 11

Designation to identify a short sale

1.   Transaction reports shall identify transactions which were short sale transactions at the time of their execution in accordance with field 62 of the Annex.

2.   An investment firm shall determine on a best effort basis the short sales transactions in which its client is the seller. The investment firm shall identify those short sale transactions in its transaction report in accordance with field 62 of the Annex.

3.   Where an investment firm executes a short sale transaction on its own behalf, it shall indicate in the transaction report whether the short sale transaction was undertaken in a market making or primary dealer capacity under an exemption provided under Article 17 of Regulation (EU) No 236/2012.

4.   No differentiation between a partial and full short sale transaction shall be made in the transaction report.

5.   Paragraph 2 also applies where an investment firm aggregates orders from several clients..

Article 12

Reporting of an execution for a combination of financial instruments

Where an investment firm executes a transaction in a combination of two or more financial instruments, the investment firm shall report the transaction for each financial instrument separately and shall link those reports by an identifier that is unique at the level of the firm to the group of transaction reports related to that execution as specified in field 40 of Annex I.

Article 13

Conditions upon which legal entity identifiers are to be developed, attributed and maintained

1.   Member States shall ensure that legal entity identifiers are developed, attributed and maintained in accordance with the following principles:

(a) uniqueness,

(b) accuracy

(c) consistency

(d) neutrality,

(e) reliability,

(f) open source,

(g) flexibility

(h) scalability,

(i) accessibility,

(j) availability at a reasonable cost basis,

(k) use of uniform global operational standards

(l) are subject to governance framework of the Legal Entity Identifier Regulatory Oversight Commitee.

2.   Investment firm shall not provide a service that would trigger the obligation of an investment firm to submit a transaction report for a transaction entered into on behalf of a client who is eligible for the legal entity identifier code, prior to the legal entity identifier code being obtained from that client .

3.   The investment firm shall ensure that the length and construction of the code are compliant with the ISO 17442 standard and that the code is included in the Global LEI database maintained by the Central Operating Unit and pertains to the client concerned.

Article 14

Reporting transactions executed by branches

1.   Transaction reports for transactions executed by an investment firm wholly or partly through its branch shall be sent to the competent authority of the home Member State of the investment firm unless otherwise agreed by the competent authorities of the home and host Member States.

2. Where an investment firm executes a transaction wholly or partly through its branch, it shall report the transaction once only .

3. Where country code details in respect of an investment firm are required to be included in a transaction report in accordance with fields 8, 17, 37, 58 and/or 60 in Table 2 of the Annex, an investment firm shall provide in the transaction report the ISO 3166 country code for any branch through which it has wholly or partly executed a transaction, in any of the following cases:

(a) the branch received the order from a client or made an investment decision for a client in accordance with a discretionary mandate given to it by the client;

(b) the branch has supervisory responsibility for the person responsible for the investment decision concerned;

(c) the branch has supervisory responsibility for the person responsible for execution of the transaction;

(d) the transaction was executed on a trading venue or an organised trading platform located outside the Union using the membership of the branch .

4. Where one or more of the cases provided in paragraph 3 do not apply to a branch of the investment firm, the relevant fields in Annex I shall be populated with the ISO country code for the home Member State of the investment firm, or, in the case of a third country firm, the country code of the country where the firm has established its head office or registered office.

5. The branch of a third country firm shall submit the transaction report to the competent authority which authorised the branch. The branch of a third country firm shall fill the relevant fields in Annex I with the ISO country code for the Member State of the authorising competent authority.

6. Where a third country firm has set up branches in more than one Member State within the Union, those branches shall jointly choose one of the competent authorities from th Member States to whom transaction reports are to be sent pursuant to paragraphs 1 to 3 .

Article 15

Methods and arrangements for reporting financial transactions

1. The methods and arrangements by which transaction reports are generated and submitted by trading venues and investment firms shall include:

(a) systems to ensure the security and confidentiality of the data reported;

(b) mechanisms for authenticating the source of the transaction report;

(c) precautionary measures to enable the timely resumption of reporting in the case of a failure of the reporting system;

(d) mechanisms for identifying errors and omissions within transaction reports;

(e) mechanisms to avoid the reporting of duplicate trans action reports, including where an investment firm relies on a trading venue to report the details of transactions executed by the investment firm through the trading venue's systems in accordance with Article 26(7) of Regulation (EU) No 600/2014;

(f) mechanisms to ensure that the trading venue only submits reports on behalf of those investment firms that have chosen to rely on the trading venue to send reports on their behalf for transactions completed through its systems;

(g) mechanisms to avoid reporting of any transaction where there is no obligation to report under Article 26(1) of Regulation (EU) No 600/2014 either because there is no transaction the within the meaning of Article 2 of this Regulation or because the instrument which is the subject of the transaction concerned does not fall within the scope of Article 26(2) of Regulation (EU) No 600/2014;

(h) mechanisms for identifying unreported transactions for which there is an obligation to report under Article 26 of Regulation (EU) No 600/2014, including cases where transaction reports rejected by the competent authority concerned have not been successfully re-submitted;

2.   Where the trading venue or investment firm becomes aware of any error or omission within a transaction report submitted to a competent authority, any failure to submit a transaction report including any failure to re-submit a rejected transaction report for transactions that are reportable, or of the reporting of a transaction for which there no obligation to report applies, it shall promptly notify the relevant competent authority of this fact.

3.   Investment firms shall have arrangements in place to ensure that their transaction reports are complete and accurate. These arrangements shall include testing of their reporting process and regular reconciliation of their front-office trading records against data samples provided to them by their competent authorities to that effect.

4.   Where competent authorities do not provide data samples, investment firms shall reconcile their front-office trading records against the information contained in the transaction reports that they have submitted to competent authorities, or in the transaction reports that ARM or trading venues have submitted on their behalf. The reconciliation shall include checking the timeliness of the report, the accuracy and completeness of the individual data fields and their compliance with the standards and formats specified in Annex I.

5.   Investment firms shall have arrangements in place to ensure that their transaction reports, when viewed collectively, reflect all changes in their position and in the position of their

clients in the financial instruments concerned at the time transactions in the financial instruments are executed.

6.   Where an ARM, in accordance with instructions from the investment firm, cancels or corrects a transaction report submitted on behalf of an investment firm, the investment firm shall retain the details of the corrections and cancellations provided to it by the ARM in order to be able to track the cancellations or corrections.

7.   The reports referred to in Article 26(5) of Regulation (EU) No 600/2014 shall be sent to the competent authority of the home Member State of the trading venue.

8.   Competent authorities shall use secure electronic communication channels when exchanging transaction reports with each other.

Article 16

Determination of the most relevant market in terms of liquidity

1.   In the case of a transferable security within the meaning of Article 4(1)(44)(a) of Directive 2014/65/EU or a unit in a collective investment undertaking, the most relevant market in terms of liquidity for that financial instrument (hereinafter 'most relevant market') shall be determined once each calendar year based on the previous calendar year data, provided that the financial instrument was admitted to trading or traded at the beginning of the previous calendar year, as follows:

(a)   for instruments admitted to trading on one or more regulated markets, the most relevant market shall be the regulated market where the turnover for the previous calendar year for that instrument is the highest;

(b)   for instruments not admitted to trading on regulated markets, the most relevant market shall be the MTF where the turnover for the previous calendar year for that instrument is the highest;

(c)   for the purposes of (a) and (b), the highest turnover shall be calculated by excluding all transactions that benefit from pre-trade transparency waivers pursuant to Article 4(1)(a), (b) or (c) of Regulation (EU) No 600/2014 .

2.   By way of derogation from paragraph 1, where a transferable security within the meaning of Article 4(1)(44)(a) of Directive 2014/65/EU or a unit in a collective investment undertaking was not admitted to trading or traded at the beginning of the previous calendar year or where there is insufficient or non-existent data to calculate the turnover in accordance with paragraph 1(c) for the purpose of determining the most relevant market for that financial instrument , the most relevant market for the financial instrument shall be the market of the Member State in which a request for admission to trading was first made or where the instrument was first traded.

3. In the case of a transferable security within the meaning of Article 4(1)(44)(b) of Directive 2014/65/EU or a money market instrument whose issuer is established in the EEA, the most relevant market shall be the market of the Member State where the registered office of the issuer is situated.

4. In the case of a transferable security within the meaning of Article 4(1)(44)(b) of Directive 2014/65/EU or a money market instrument whose issuer is established outside the EEA , the most relevant market shall be the market of the Member State where the request for admission to trading of that financial instrument was first made or where the financial instrument was first traded on a trading venue.

5. In the case of a financial instrument which is a derivative contract or a contract for difference or a transferable security within the meaning of Article 4(1)(44)(c) of Directive 2014/65/EU, the most relevant market shall be determined as follows:

(a) where the underlying in the financial instrument is a transferable security within the meaning of Article 4(1)(44)(a) of Directive 2014/65/EU which is admitted to trading on a regulated market or is traded on an MTF, the most relevant market shall be the market deemed to be the most relevant market for the underlying security in accordance with paragraph 1 or 2 of this Article;

(b) where the underlying in a financial instrument is a transferable security within the meaning of Article 4(1)(44)(b) of Directive 2014/65/EU or a money market instrument which is admitted to trading on a regulated market or traded on an MTF or an OTF, the most relevant market shall be the market deemed to be the most relevant market for the underlying financial instrument in accordance with paragraph 3 or 4 of this Article;

(c) where the underlying in a financial instrument is a basket, the most relevant market shall be the market of the Member State in which the financial instrument was first admitted to trading or traded on a trading venue;

(d) where the underlying in a financial instrument is an index, the most relevant market shall be the market of the Members State in which the financial instrument was first admitted to trading or traded on a trading venue;

(e) where the underlying of the financial instrument is a derivative admitted to trading or traded on a trading venue, the most relevant market shall be the market of the Member State in which that derivative is admitted to trading or traded on a trading venue.

6. For financial instruments that are not covered by paragraphs 1 to 5, the most relevant market shall be the market of the Member State of the trading venue which first admitted the financial instrument to trading or on which the financial instrument was first traded .

Article 17

Entry into force and application

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

This Regulation shall apply from 3 January 2017.

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

Done at Brussels,

For the Commission
The President

[For the Commission
On behalf of the President

[Position]

Annex I:

Table 1

Legend for Table 2

SYMBOL	DATA TYPE	DEFINITION
{ALPHANUM-n}	Up to n alphanumerical characters	Free text field.
{CFI_CODE}	6 characters	ISO 10962 CFI code
{COUNTRYCODE_2}	2 alphanumerical characters	2 letter country code, as defined by ISO 3166-1 alpha-2 country code
{CURRENCYCODE_3}	3 alphanumerical characters	3 letter currency code, as defined by ISO 4217 currency codes
{DATE_TIME_FORMAT}	ISO 8601 date and time format	Date and time in the following format: YYYY-MM-DDThh:mm:ss.ddddddZ. - 'YYYY' is the year; - 'MM' is the month; - 'DD' is the day; - 'T' – means that the letter 'T' shall be used - 'hh' is the hour; - 'mm' is the minute; - 'ss.dddddd' is the second and its fraction of a second; - Z is UTC time. Dates and times shall be reported in UTC.
{DATEFORMAT}	ISO 8601 date format	Dates shall be formatted in the following format: YYYY-MM-DD.
{DECIMAL-n/m}	Decimal number of up to n digits in total of which up to m digits can be fraction digits	Numerical field for both positive and negative values. - decimal separator is '.' (full stop); - negative numbers are prefixed with '-' (minus); Values are rounded and not truncated.
{INDEX}	4 alphabetic characters	'EONA' -– EONIA 'EONS' - EONIA SWAP 'EURI' - EURIBOR 'EUUS' - EURODOLLAR 'EUCH' - EuroSwiss 'GCFR' - GCF REPO 'ISDA' - ISDAFIX 'LIBI' - LIBID 'LIBO' - LIBOR 'MAAA' – Muni AAA 'PFAN' - Pfandbriefe 'TIBO' - TIBOR 'STBO' - STIBOR 'BBSW' - BBSW

		'JIBA' - JIBAR
		'BUBO' - BUBOR
		'CDOR' - CDOR
		'CIBO' - CIBOR
		'MOSP' - MOSPRIM
		'NIBO' - NIBOR
		'PRBO' - PRIBOR
		'TLBO' - TELBOR
		'WIBO' – WIBOR
		'TREA' – Treasury
		'SWAP' – SWAP
		'FUSW' – Future SWAP
{INTEGER-n}	Integer number of up to n digits in total	Numerical field for both positive and negative integer values.
{ISIN}	12 alphanumerical characters	ISIN code, as defined in ISO 6166
{LEI}	20 alphanumerical characters	Legal entity identifier as defined in ISO 17442
{MIC}	4 alphanumerical characters	Market identifier as defined in ISO 10383
{NATIONAL_ID}	35 alphanumerical characters	The identifier is derived in accordance with Article 6 and Table of Annex II.

Table 2

Details to be reported in transaction reports

All fields are mandatory, unless stated otherwise.

N	FIELD	CONTENT TO BE REPORTED	FORMAT AND STANDARDS TO BE USED FOR REPORTING
1	Report status	Indication as to whether the transaction report is new or a cancellation.	'NEWT' - New 'CANC' - Cancellation
2	Transaction Reference Number	Identification number that is unique to the executing firm for each transaction report . Where, pursuant to Article 26(5) of Regulation (EU) 600/2014, a trading venue submits a transaction report on behalf of a firm that is not subject to Regulation (EU) 600/2014, the trading venue shall populate this field with a number that has been internally generated by the trading venue and that is unique for each transaction report submitted by the trading venue.	{ALPHANUMERICAL-52}
3	Trading venue transaction identification code	This is a number generated by trading venues and disseminated to both the buying and the selling parties in accordance with Article 12 of [RTS 24 on the maintenance of relevant data relating to orders in financial instruments under Article 25 of Regulation 600/2014 EU]. This field is only required for the market side of a transaction executed on a trading venue.	{ALPHANUMERICAL-52}
4	Executing entity identification code	Code used to identify the entity executing the transaction. For legal entities, use the legal entity identifier.	{LEI}
5	Investment Firm covered by Directive 2004/39/EC or Directive 2014/65/EU	Indicates whether the entity identified in field 4 is an investment firm covered by Directive 2004/39/EC or Directive 2014/65/EU.	'true'- yes 'false'- no
6	Submitting entity identification code	Code used to identify the entity submitting the transaction report to the competent authority in accordance with Article 26(7) of Regulation (EU) 600/2014. Where the report is submitted by the executing firm directly to the competent authority, it shall be populated with the LEI of the executing firm (where the executing firm is a legal entity). Where the report is submitted by a trading venue, it shall be populated with the LEI of the operator of the trading venue. Where the report is submitted by an ARM, it shall be populated with the LEI of the ARM.	{LEI}

Buyer details			
	- For joint accounts fields 7-11 shall be repeated for each buyer. - Where the transaction is for a transmitted order that has met the conditions for transmission set out in Article 4, the information in fields 7-15 shall be populated by the receiving firm in the receiving firm's report with the information received from the transmitting firm. - Where the transmission is for a transmitted order that has not met the conditions for transmission set out in Article 4 the receiving firm shall treat the transmitting firm as the buyer.		
7	Buyer identification code	Code used to identify the acquirer of the financial instrument. Where the acquirer is a legal entity, the LEI code of the acquirer shall be used. Where the acquirer is a non-legal entity, the identifier specified in Article 6 shall be used. Where the transaction was executed on a trading venue or on an organised trading platform outside of the Union that utilises a central counterparty (CCP) and where the identity of the acquirer is not disclosed, the LEI code of the CCP shall be used. Where the transaction was executed on a trading venue or on an organised trading platform outside of the Union that does not utilise a CCP and where the identity of the acquirer is not disclosed, the MIC code of the trading venue or of the organised trading platform outside of the Union shall be used. Where the acquirer is an investment firm acting as a systematic internaliser (SI), the LEI code of the SI shall be used. 'INTC' shall be used to designate an aggregate client account within the investment firm in order to report a transfer into or out of that account with an associated allocation to the individual client(s) out of or into that account respectively. In case of options and swaptions, the buyer shall be the counterparty that holds the right to exercise the option and the seller shall be the counterparty that sells the option and receives a premium. In case of futures and forwards other than futures and forwards relating to currencies, the buyer shall be the counterparty buying the instrument and the seller the counterparty selling the instrument. In the case of swaps relating to securities, the buyer shall be the counterparty that gets the risk of price movement of the underlying security and receives the security amount. The seller shall be the counterparty paying the security amount. In the case of swaps related to interest rates or inflation indices, the buyer shall be the counterparty paying the fixed rate. The seller shall be the counterparty receiving the fixed rate. In case of basis swaps (float-to-float interest rate swaps), the buyer shall be the counterparty that pays the spread and the seller the counterparty that receives the spread. In the case of swaps and forwards related to currencies and of cross currency swaps, the buyer shall be the counterparty receiving the currency which is first when sorted alphabetically by ISO 4217 standard and the seller shall be the counterparty	{LEI} {MIC} {NATIONAL_ID} 'INTC'

		delivering this currency.	
		In the case of swap related to dividends, the buyer shall be the counterparty receiving the equivalent actual dividend payments. The seller is the counterparty paying the dividend and receiving the fixed rate.	
		In the case of derivative instruments for the transfer of credit risk except options and swaptions, the buyer shall be the counterparty buying the protection. The seller is the counterparty selling the protection.	
		In case of derivative contract related to commodities, the buyer shall be the counterparty that receives the commodity specified in the report and the seller the counterparty delivering this commodity.	
		In case of forward rate agreements, the buyer shall be the counterparty paying the fixed rate and the seller the counterparty receiving the fixed rate.	
		For an increase in notional, the buyer shall be the same as the acquirer of the financial instrument in the original transaction and the seller shall be the same as the disposer of the financial instrument in the original transaction.	
		For a decrease in notional the buyer shall be the same as the disposer of the financial instrument in the original transaction and the seller shall be the same as the acquirer of the financial instrument in the original transaction.	

Additional details
- Field 8-15 are only applicable if the buyer is a client
- Fields 9-11 are only applicable if the buyer is a natural person

8	Country of the branch for the buyer	Where the acquirer is a client, this field should identify the country of the branch that received the order from the client or made an investment decision for a client in accordance with a discretionary mandate given to it by the client as required by Article 14.3. Where this activity was not conducted by a branch this should be populated with the country code of the home Member State of the investment firm or the country code of the country where the investment firm has established its head office or registered office (in the case of third country firms). Where the transaction is for a transmitted order that has met the conditions for transmission set out in Article 4, this field shall be populated using the information received from the transmitting firm.	{COUNTRYCODE_2}
9	Buyer - first name(s)	Full first name(s) of the buyer. In case of more than one first name, all names shall be included in this field separated by a comma.	{ALPHANUM-140}
10	Buyer - surname(s)	Full surname(s) of the buyer. In case of more than one surname, all surnames shall be included in this field separated by a comma.	{ALPHANUM-140}
11	Buyer - date of	Date of birth of the buyer	{DATEFORMAT}

		birth		

<table>
<tr><td colspan="5">Buyer decision maker
-      Fields 12-15 are only applicable if the decision maker acts under a power of representation</td></tr>
<tr>
<td>12</td>
<td>Buyer decision maker code</td>
<td>Code used to identify the person who makes the decision to acquire the financial instrument.

Where the decision is made by an investment firm, this field shall be populated with the identity of the investment firm rather than the individual making the investment decision.

Where the decision maker is a legal entity, the LEI code of the decision maker shall be used.

Where the decision maker is a non-legal entity, the identifier specified in Article 6 shall be used.</td>
<td>{LEI}
{NATIONAL_ID}</td>
</tr>
<tr><td colspan="5">Buyer decision maker details
-      Fields 13-15 are only applicable if the decision maker is a natural person</td></tr>
<tr>
<td>13</td>
<td>Buy decision maker - First Name(s)</td>
<td>Full first name(s) of the decision maker for the buyer. In case of more than one first name, all names shall be included in this field separated by a comma</td>
<td>{ALPHANUM-140}</td>
</tr>
<tr>
<td>14</td>
<td>Buy decision maker – Surname(s)</td>
<td>Full surname(s) of the decision maker for the buyer. In case of more than one surname, all surnames shall be included in this field separated by a comma</td>
<td>{ALPHANUM-140}</td>
</tr>
<tr>
<td>15</td>
<td>Buy decision maker - Date of birth</td>
<td>Date of birth of the decision maker for the buyer</td>
<td>{DATEFORMAT}</td>
</tr>
<tr><td colspan="5">Seller details and decision maker
-      For joint accounts fields 16-20 shall be repeated for each seller.
-      Where the transaction for a seller is for a transmitted order that has met the conditions for transmission set out in Article 4, the information in fields 16-24 shall be populated by the receiving firm in the receiving firm's report from the information received from the transmitting firm.
-      Where the transmission is for a transmitted order that has not met the conditions for transmission set out in Article 5, the receiving firm shall treat the transmitting firm as the seller.</td></tr>
</table>

| 16 | Seller identification code | Code used to identify the disposer of the financial instrument.

Where the disposer is a legal entity, the LEI code of the disposer shall be used.

Where the disposer is a non-legal entity, the identifier specified in Article 7 shall be used.

Where the transaction was executed on a trading venue or on an organised trading platform outside of the Union that utilises a CCP and where the identity of the disposer is not disclosed, the LEI code of the CCP shall be used.

Where the transaction was executed on a trading venue or on an organised trading platform outside of the Union that does not utilise a CCP and where the identity of the disposer is not disclosed, the MIC code of the trading venue or of the organised trading platform outside of the Union shall be used.

Where the disposer is an investment firm acting as a SI, the LEI code of the SI shall be used

'INTC' shall be used to designate an aggregate client account within the investment firm in order to report a transfer into or out of that account with an associated allocation to the individual client(s) out of or into that account respectively.

In case of options and swaptions, the buyer shall be the counterparty that holds the right to exercise the option and the seller shall be the counterparty that sells the option and receives a premium.

In case of futures and forwards other than futures and forwards relating to currencies, the buyer shall be the counterparty buying the instrument and the seller the counterparty selling the instrument.

In the case of swaps relating to securities, the buyer shall be the counterparty that gets the risk of price movement of the underlying security and receives the security amount. The seller shall be the counterparty paying the security amount.

In the case of swaps related to interest rates or inflation indices, the buyer shall be the counterparty paying the fixed rate. The seller shall be the counterparty receiving the fixed rate. In case of basis swaps (float-to-float interest rate swaps), the buyer shall be the counterparty that pays the spread and the seller the counterparty that receives the spread.

In the case of swaps and forwards related to currencies and of cross currency swaps, the buyer shall be the counterparty receiving the currency which is first when sorted alphabetically by ISO 4217 standard and the seller shall be the counterparty delivering this currency.

In the case of swap related to dividends, the buyer shall be the counterparty receiving the equivalent actual dividend payments. The seller is the counterparty paying the dividend and receiving the fixed rate. | {LEI}

{MIC}

{NATIONAL_ID}

'INTC' |
|---|---|---|---|

		In the case of derivative instruments for the transfer of credit risk except options and swaptions, the buyer shall be the counterparty buying the protection. The seller is the counterparty selling the protection. In case of derivative contracts related to commodities, the buyer shall be the counterparty that receives the commodity specified in the report and the seller the counterparty delivering this commodity. In case of forward rate agreements, the buyer shall be the counterparty paying the fixed rate and the seller the counterparty receiving the fixed rate. For an increase in notional, the seller shall be the same as the disposer in the original transaction. For a decrease in notional the seller shall be the same as the acquirer of the financial instrument in the original transaction.	
17-24	**Fields 17-24 mirror all buyer related fields numbered 8-15 (buyer details and decision maker) for the seller.**		

Transmission details

- Field 25 shall only be populated for transaction reports by transmitting firms where the conditions for transmission as set out in Article 4 are not met.
- Fields 26 and 27 shall only be populated for transaction reports by a receiving firm where all the conditions for transmission in Article 4 have been met.
- Where a firm acts both as a receiving firm and a transmitting firm it shall populate field 25 to indicate that it is a transmitting firm and shall populate fields 26 and 27 from its perspective as a receiving firm.

25	Transmission of order indicator	'true' shall be populated by the transmitting firm within the transmitting firm's report where the conditions for transmission specified in Article 4 were not satisfied 'false' – in all other circumstances	'true' 'false'
26	Transmitting firm identification code for the buyer	Code used to identify the firm transmitting the order This shall be populated by the receiving firm within the receiving firm's report with the identification code provided by the transmitting firm.	{LEI}

27	Transmitting identification code for the seller	Code used to identify the firm transmitting the order. This shall be populated by the receiving firm within the receiving firm's report with the identification code provided by the transmitting firm	{LEI}
Transaction details			
28	Trading date time	Date and time when the transaction was executed. For transactions executed on a trading venue, the level of granularity shall be in accordance with the requirements set out in Article 3 [RTS 25 on clock synchronization under article 50 of Directive 2014/65/EU]. For transactions not executed on a trading venue, the date and time shall be when the parties agree the content of the following fields: quantity, price, currencies in fields 31, 34 and 44, instrument identification code, instrument classification and underlying instrument code, where applicable. For transactions not executed on a trading venue the time reported shall be at least to the nearest second. Where the transaction results from an order transmitted by the executing firm on behalf of a client to a third party where the conditions for transmission set out in Article 4 were not satisfied, this shall be the date and time of the transaction rather than the time of the order transmission.	{DATE_TIME_FORMAT}
29	Trading capacity	Indication of whether the transaction results from the executing firm carrying out matched principal trading under Article 4(38) of Directive 2014/65/EU or dealing on own account under Article 4(6) of Directive 2014/65/EU. Where the transaction does not result from the executing firm carrying out matched principal trading or dealing on own account, the field shall indicate that the transaction was carried out under any other capacity.	'DEAL' - Dealing on own account 'MTCH' - Matched principal 'AOTC' - Any other capacity
30	Quantity	The number of units of the financial instrument, or the number of derivative contracts in the transaction. The nominal or monetary value of the financial instrument. For spread bets, the quantity shall be the monetary value wagered per point movement in the underlying financial instrument. For credit default swaps, the quantity shall be the notional amount for which the protection is acquired or disposed of. For increase or decrease in notional amount derivative contracts, the number shall reflect the absolute value of the change and shall be expressed as a positive number. The information reported in this field shall be consistent with the values provided in fields 33 and 46.	{DECIMAL-18/17} in case the quantity is expressed as number of units {DECIMAL-18/5} in case the quantity is expressed as monetary or nominal value

31	Quantity currency	Currency in which the quantity is expressed. Only applicable if quantity is expressed as nominal or monetary value.	{CURRENCYCODE_3}
32	Derivative notional increase/decrease	Indication as to whether the transaction is an increase or decrease of notional of a derivative contract. Field only applies when there is change in notional for a derivative contract.	'INCR' - Increase 'DECR' - Decrease
33	Price	Traded price of the transaction excluding, where applicable, commission and accrued interest. In the case of option contracts, it shall be the premium of the derivative contract per underlying security or index point. In the case of spread bets it shall be the reference price of the underlying instrument. . For credit default swaps (CDS) it shall be the coupon in basis points. Where price is reported in monetary terms, it shall be provided in the major currency unit. Where price is currently not available but pending, the value shall be 'PNDG' Where price is not applicable the field shall not be populated. The information reported in this field shall be consistent with the values provided in fields 30 and 46.	{DECIMAL-18/13} in case the price is expressed as monetary value {DECIMAL-11/10} in case the price is expressed as percentage or yield 'PNDG' in case the price is not available
34	Price Currency	Currency in which the price is expressed (applicable if the price is expressed as monetary value).	{CURRENCYCODE_3}
35	Net amount	The net amount of the transaction means the cash amount which is paid by the buyer of the debt instrument upon the settlement of the transaction. This cash amount equals to: (clean price * nominal value)+any accrued coupons. As a result, the net amount of the transaction excludes any commission or other fees charged to the buyer of the debt instrument. Field only applies when the financial instrument is debt.	{DECIMAL-18/5}
36	Venue	Identification of the venue where the transaction was executed. Use the ISO 10383 segment MIC for transactions executed on a trading venue, Systematic Internaliser (SI) or organised trading platform outside of the Union. Where the segment MIC does not exist, use the operating MIC. Use MIC code 'XOFF' for financial instruments admitted to trading, or traded on a trading venue or for which a request for admission was made, where the transaction on that financial instrument is not executed on a trading venue, SI or organised trading platform outside of the Union, or where an investment firm does not know it is	{MIC}

		trading with another investment firm acting as an SI.	
		Use MIC code 'XXXX' for financial instruments that are not admitted to trading or traded on a trading venue or for which no request for admission has been made and that are not traded on an organised trading platform outside of the Union but where the underlying is admitted to trading or traded on a trading venue.	
37	Country of the branch membership	Code used to identify the country of a branch of the investment firm whose market membership was used to execute the transaction. Where a branch's market membership was not used, this field shall be populated with the country code of the home Member State of the investment firm or the country code of the country where the firm has established its head office or registered office (in the case of third country firms). This field shall only be populated for the market side of a transaction executed on a trading venue or on an organised trading platform outside of the Union.	{COUNTRYCODE_2}
38	Up-front payment	Monetary value of any up-front payment received or paid by the seller. Where the seller receives the up-front payment, the value populated is positive. Where the seller pays the up-front payment, the value populated is negative.	{DECIMAL-18/5}
39	Up-front payment currency	Currency of the up-front payment.	{CURRENCYCODE_3}
40	Complex trade component id	Identifier, internal to the reporting firm to identify all the reports related to the same execution of a combination of financial instruments in accordance with Article 12. The code must be unique at the level of the firm for the group of reports related to the execution. Field only applies when the conditions specified in Article 12 apply.	{ALPHANUMERIC-35}
Instrument details			
41	Instrument identification code	Code used to identify the financial instrument This field applies to financial instruments for which a request for admission to trading has been made, that are admitted to trading or traded on a trading venue or on a systematic internaliser. It also applies to financial instruments which have an ISIN and are traded on organised trading platform outside of the Union where the underlying is a financial instrument traded on a trading venue.	{ISIN}
Fields 42-56 are not applicable where:			
transactions are executed on a trading venue or with an investment firm acting as a **SI; or**			

		field 41 is populated with an ISIN that exists on the reference data list from ESMA	
42	Instrument full name	Full name of the financial instrument	{ALPHANUM-350}
43	Instrument classification	Taxonomy used to classify the financial instrument A complete and accurate CFI code shall be provided.	{CFI_CODE}
44	Notional currency 1	Currency in which the notional is denominated. In the case of an interest rate or currency derivative contract, this will be the notional currency of leg 1 or the currency 1 of the pair. In the case of swaptions where the underlying swap is single-currency, this will be the notional currency of the underlying swap. For swaptions where the underlying is multi-currency, this will be the notional currency of leg 1 of the swap.	{CURRENCYCODE_3}
45	Notional currency 2	In the case of multi-currency or cross-currency swaps the currency in which leg 2 of the contract is denominated. For swaptions where the underlying swap is multi-currency, the currency in which leg 2 of the swap is denominated	{CURRENCYCODE_3}
46	Price multiplier	Number of units of the underlying instrument represented by a single derivative contract. Monetary value covered by a single swap contract where the quantity field indicates the number of swap contracts in the transaction.For a future or option on an index, the amount per index point. For spreadbets the movement in the price of the underlying instrument on which the spreadbet is based. The information reported in this field shall be consistent with the values provided in fields 30 and 33.	{DECIMAL-18/17}
47	Underlying instrument code	ISIN code of the underlying instrument. For ADRs, GDRs and similar instruments, the ISIN code of the financial instrument on which those instruments are based. For convertible bonds, the ISIN code of the instrument in which the bond can be converted. For derivatives or other instruments which have an underlying, the underlying instrument ISIN code, when the underlying is admitted to trading, or traded on a trading venue. Where the underlying is a stock dividend, then ISIN code of the related share entitling the underlying dividend.	{ISIN}

		For Credit Default Swaps, the ISIN of the reference obligation shall be provided. In case the underlying is an Index and has an ISIN, the ISIN code for that index. Where the underlying is a basket, include the ISIN of each constituent of the basket that is admitted to trading or is traded on a trading venue. Field 47 shall be reported as many times as necessary to list all reportable instruments in the basket.	
48	Underlying index name	When the underlying is an index, the name of the Index.	{INDEX} Or {ALPHANUM-25} - if the index name is not included in the {INDEX} list
49	Term of the underlying index	In case the underlying is an index, the term of the index.	{INTEGER-3}+'DAYS' - days {INTEGER-3}+'WEEK' - weeks {INTEGER-3}+'MNTH' - months {INTEGER-3}+'YEAR' - years
50	Option type	Indication as to whether the derivative contract is a call (right to purchase a specific underlying asset) or a put (right to sell a specific underlying asset) or whether it cannot be determined whether it is a call or a put at the time of execution. In case of swaptions it shall be: - 'PUTO', in case of receiver swaption, in which the buyer has the right to enter into a swap as a fixed-rate receiver. -'Call', in case of payer swaption, in which the buyer has the right to enter into a swap as a fixed-rate payer. In case of Caps and Floors it shall be: -'PUTO', in case of a Floor. -'Call', in case of a Cap. Field only applies to derivatives that are options or warrants.	'PUTO' - Put 'CALL' - Call 'OTHR' - where it cannot be determined whether it is a call or a put
51	Strike price	Pre-determined price at which the holder will have to buy or sell the underlying instrument, or an indication that the price cannot be determined at the time of execution. Field only applies to an option or warrant where strike price can be determined at the time of execution. Where price is currently not available but pending, the value shall be 'PNDG'	{DECIMAL-18/13} in case the price is expressed as monetary value {DECIMAL-11/10} in case the price is expressed as percentage

		Where strike price is not applicable the field shall not be populated.	or yield 'PNDG' in case the price is not available
52	Strike price currency	Currency of the strike price	{CURRENCYCODE_3}
53	Option exercise style	Indication as to whether the option may be exercised only at a fixed date (European, and Asian style), a series of pre-specified dates (Bermudan) or at any time during the life of the contract (American style). This field is only applicable for options, warrants and entitlement certificates.	'EURO' - European 'AMER' - American 'ASIA' - Asian 'BERM' - Bermudan 'OTHR' - Any other type
54	Maturity date	Date of maturity of the financial instrument. Field only applies to debt instruments with defined maturity.	{DATEFORMAT}
55	Expiry date	Expiry date of the financial instrument. Field only applies to derivatives with a defined expiry date.	{DATEFORMAT}
56	Delivery type	Indication as to whether the transaction is settled physically or in cash. Where delivery type cannot be determined at time of execution, the value shall be 'OPTL' The field is only applicable for derivatives.	'PHYS' - Physically settled 'CASH' - Cash settled 'OPTL' - Optional for counterparty or when determined by a third party
Trader, algorithms, waivers and indicators			
57	Investment decision within firm	Code used to identify the person or algorithm within the investment firm who is responsible for the investment decision. For natural persons, the identifier specified in Article 6 shall be used If the investment decision was made by an algorithm, the field shall be populated as set out in Article 8. Field only applies for investment decision within the firm. Where the transaction is for a transmitted order that has met the conditions for transmission set out in Article 4, this field shall be populated by the receiving firm within the receiving firm's report using the information received from the transmitting firm.	{NATIONAL_ID} - Natural persons {ALPHANUMERICAL-50} - Algorithms
58	Country of the branch responsible for the person making the investment decision	Code used to identify the country of the branch of the investment firm for the person responsible for the investment decision, as set out in Article 14.3(b). Where the person responsible for the investment decision was not supervised by a branch, this field shall be populated with the country code of the home Member State of the investment firm or the country code of the	{COUNTRYCODE_2}

		country where the firm has established its head office or registered office (in the case of third country firms). Where the transaction is for a transmitted order that has met the conditions for transmission set out in Article 4, this field shall be populated by the receiving firm within the receiving firm's report using the information received from the transmitting firm. This field is not applicable when the investment decision was made by an algorithm	
59	Execution within firm	Code used to identify the person or algorithm within the investment firm who is responsible for the execution. For natural persons, the identifier specified in Article 7 shall be used If the execution was made by an algorithm, the field shall be populated as set out in Article 9.	{NATIONAL_ID} - Natural persons {ALPHANUMERICAL-50} - Algorithms
60	Country of the branch supervising the person responsible for the execution	Code used to identify the country of the branch of the investment firm for the person responsible for the execution of the transaction, as set out in Article 14.3(c). Where the person responsible was not supervised by a branch, this field shall be populated with the country code of the home Member State of the investment firm, or the country code of the country where the firm has established its head office or registered office (in the case of third country firms) This field is not applicable when the execution was made by an algorithm	{COUNTRYCODE_2}

61	Waiver indicator	Indication as to whether the transaction was executed under a pre-trade waiver in accordance with Articles 4 and 9 of Regulation (EU) 600/2014.
		For all instruments:
		    'LRGS' = Large in scale
		For equity instruments:
		    'RFPT' = Reference price transaction
		    'NLIQ' = Negotiated transactions in liquid financial instruments
		    'OILQ' = Negotiated transactions in illiquid financial instruments
		    'PRIC' = Negotiated transactions subject to conditions other than the current market price of that equity financial instrument.
		For non-equity instruments:
		    'SIZE' = Above specific size transaction
		    'ILQD' = Illiquid instrument transaction
		
		This field shall only be populated for the market side of a transaction executed under a waiver on a trading venue.
			Populate one or more of the following flags:
			'LRGS' - Large in scale
			'RFPT' - Reference price
			'NLIQ' - Negotiated (liquid)
			'OILQ' - Negotiated (illiquid)
			'PRIC' - Negotiated (conditions)
			'SIZE' - Above specified size
			'ILQD' - Illiquid instrument

62	Short selling indicator	A short sale concluded by an investment firm on its own behalf or on behalf of a client, as described in Article 11. When an investment firm executes a transaction on behalf of a client who is selling and the investment firm, acting on a best effort basis, cannot determine whether it is a short sale transaction, this field shall be populated with 'NTAV' Where the transaction is for a transmitted order that has met the conditions for transmission set out in Article 4 of this Regulation, this field shall be populated by the receiving firm in the receiving firm's reports using the information received from the transmitting firm. This field is only applicable when, the instrument is covered by Regulation (EU) 236/2012, and the seller is the investment firm or a client of the investment firm.	'SESH' - Short sale with no exemption 'SSEX' - Short sale with exemption 'SELL' - No short sale 'NTAV' – Information not available

63	OTC post-trade indicator	Indicator as to the type of transaction in accordance with Articles 20(3)(a) and 21(5)(a) of Regulation (EU) 600/2014.
		For all instruments:
		  'BENC' = Benchmark transactions
		  'ACTX' = Agency cross transactions
		  'NPFT' = Non-price forming transactions
		  'LRGS' = Post-trade large-in-scale transactions
		  'ILQD' = Illiquid instrument transaction
		  'SIZE' = Above specific size transaction
		  'CANC' = Cancellations
		  'AMND' = Amendments
		
		For equity instruments:
		  'SDIV' = Special dividend transactions
		  'RFPT' =Reference price transactions
		  'NLIQ' =Negotiated transactions in liquid financial instruments
		  'OILQ' =Negotiated transactions in illiquid financial instruments
		  'PRIC' = Negotiated transactions subject to conditions other than the current market price
		  'ALGO' = Algorithmic transactions
		  'RPRI' = Transactions which have received price improvement
		  'DUPL'= Duplicative trade reports
		'TNCP' = Transactions not contributing to the price discovery process for the purposes of Article 23 of Regulation (EU) No 600/2014
		For non-equity instruments:
		'TPAC' = Package transaction
		'XFPH' = Exchange for Physical transaction
			Populate one or more of the following flags:
			'BENC' – Benchmark
			'ACTX' – Agency cross
			'NPFT' – Non-price forming
			'LRGS' - Large in scale
			'ILQD' - Illiquid instrument
			'SIZE' - Above specified size
			'CANC' - Cancellations
			'AMND' - Amendments
			'SDIV' – Special dividend
			'RFPT' - Reference price
			'NLIQ' - Negotiated (liquid)
			'OILQ' - Negotiated (illiquid)
			'PRIC' - Negotiated (conditions)
			'ALGO' – Algorithmic
			'RPRI' – Price improvement
			'DUPL' – Duplicative
			'TNCP – Not contributing to the price discovery process
			'TPAC' - Package
			'XFPH' – Exchange for Physical

64	Commodity derivative indicator	Indication as to whether the transaction reduces risk in an objectively measurable way in accordance with Article 57 of Directive 2014/65/EU. Where the transaction is for a transmitted order that has met the conditions for transmission set out in Article 4, this field shall be populated by the receiving firm in the receiving firm's reports using the information received from the transmitting firm. This field is only applicable for commodity derivative transactions.	'true' - yes 'false'- no
65	Securities financing transaction indicator	'true' shall be populated where the transaction falls within the scope of activity but is exempted from reporting under [Securities Financing Transactions Regulation] 'false' shall be populated where the transaction does not fall within the scope of activity under [Securities Financing Transactions Regulation]	true - yes false- no

Annex II:

National client identifiers for natural persons to be used in transaction reports

ISO 3166 – 1 alpha 2	Country Name	1st priority	2nd priority	3rd priority
AT	Austria	CONCAT		
BE	Belgium	Belgian National Number (Numéro de registre national – Rijksregisternummer)	CONCAT	
BG	Bulgaria	Bulgarian Personal Number	CONCAT	
CY	Cyprus	National Passport Number	CONCAT	
CZ	Czech Republic	National identification number (Rodné číslo)	Passport Number	CONCAT
DE	Germany	Personal Identity Card Number (Personalausweisnummer)	National Passport Number	CONCAT
DK	Denmark	Personal identity code 10 digits alphanumerical: DDMMYYXXXX	CONCAT	
EE	Estonia	Estonian Personal Identification Code (Isikukood)		
ES	Spain	Tax identification number (Código de identificación fiscal)		
FI	Finland	Personal identity code	CONCAT	
FR	France	CONCAT		
GB	United Kingdom	UK National Insurance number	CONCAT	
GR	Greece	10 DSS digit investor share	CONCAT	
HR	Croatia	Personal Identification Number (OIB – Osobni identifikacijski broj)	CONCAT	
HU	Hungary	CONCAT		
IE	Ireland	CONCAT		
IS	Iceland	National Passport Number (Kennitala)		
IT	Italy	Fiscal code (Codice fiscale)		
LI	Liechtenstein	National Passport Number	National Identity Card Number	CONCAT

ISO 3166 – 1 alpha 2	Country Name	1st priority	2nd priority	3rd priority
LT	Lithuania	Personal code (Asmens kodas)	National Passport Number	CONCAT
LU	Luxembourg	CONCAT		
LV	Latvia	Personal code (Personas kods)	CONCAT	
MT	Malta	National Identification Number	National Passport Number	
NL	Netherlands	National Passport Number	National identity card number	CONCAT
NO	Norway	11 digit personal id (Foedselsnummer)	CONCAT	
PL	Poland	National Identification Number (PESEL)	Tax Number (Numer identyfikacji podatkowej)	
PT	Portugal	Tax number (Número de Identificação Fiscal)	National Passport Number	CONCAT
RO	Romania	National Identification Number (Cod Numeric Personal)	National Passport Number	CONCAT
SE	Sweden	Personal identity number	CONCAT	
SI	Slovenia	Personal Identification Number (EMŠO: Enotna Matična Številka Občana)	CONCAT	
SK	Slovakia	Personal number (Rodné číslo)	National Passport Number	CONCAT
All other countries		**National Passport Number**	**CONCAT**	

RTS 23: Draft regulatory technical standards on supply of financial instruments reference data under Article 27 of MiFIR

EUROPEAN COMMISSION

Brussels, XXX
[…](2015) XXX draft

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

[…]

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the data standards and formats for financial instrument reference data and technical measures in relation to arrangements to be made by the European Securities and Markets Authority and competent authorities

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012[1], and in particular [the third subparagraph of] Article 27(3) thereof,

Whereas:

(1) For the purpose of effective market monitoring by competent authorities, reference data for financial instruments should be reported in a consistent format and according to uniform standards.

(2) Reporting and publication of reference data in electronic, machine-readable and downloadable form and format facilitates the efficient use and exchange of that data.

(3) Promptly receiving reference data in respect of all financial instruments that were admitted to trading or that were traded on a trading venue or systematic internaliser enables competent authorities and the European Securities and Markets Authority (ESMA) to ensure data quality and effective market monitoring, to the benefit of market integrity.

(4) For the purposes of efficient use and exchange of reference data, and in order to ensure that reference data are consistent with corresponding data provided in transaction reports, trading venues and systematic internalisers must base the identification of financial instruments and legal entities to be included in the reference data on uniform accepted standards.

(5) Senders and recipients of reference data must ensure the effective receipt, efficient exchange and quality of the data and its consistency with corresponding transaction

---

[1] OJ L 173, 12.6.2014, p. 84.

reports provided in Article 26 of Regulation (EU) No 600/2014. In this sense, trading venues and systematic internalisers should provide complete and accurate reference data and should promptly inform competent authorities of identified incompleteness or inaccuracy in data already provided. They should also maintain adequate systems and controls for the purpose of accurate, complete and timely provision of reference data.

(6) In order to ensure that reference data are matched with corresponding transaction reports, trading venues and systematic internalisers should ensure that ISIN codes in accordance with ISO 6166 pertaining to the financial instruments being reported are obtained and included in the reported data.

(7) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(8) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[2].

(9) The application of this Regulation should be deferred in order to align its applicability with the application of paragraphs 1 and 2 of Article 27 of Regulation (EU) No 600/2014,

HAS ADOPTED THIS REGULATION:

Article 1

Content, standards, form and format of reference data

1. Trading venues and systematic internalises shall provide competent authorities with financial instrument reference data ('reference data') using all details specified in Table 3 of the Annex that pertain to the financial instrument concerned.

2. Trading venues and systematic internalisers shall provide competent authorities with the reference data referred to in paragraph 1using the standards and formats specified in Table 3 of the Annex, in an electronic and machine-readable form and in a common XML template in accordance with the ISO 20022 methodology.

---

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

Article 2

Timing for provision of reference data to competent authorities

1.   A trading venue or systematic internaliser shall provide its competent authority by no later than 21:00 CET on each day it is open for trading with the reference data for all financial instruments that were admitted to trading or that were traded, including where orders or quotes were placed through its system, before 18:00 CET on that day.

2.   Where a financial instrument is admitted to trading or traded, including where an order or a quote is placed for the first time, after 18:00 CET on a day on which a trading venue or systematic internaliser is open for trading, the reference data in respect of the financial instrument concerned shall be provided by 21:00 CET on the next day on which the trading venue or systematic internaliser concerned is open for trading.

Article 3

Identification of financial instruments and legal entities

1.   Prior to the commencement of trading in a financial instrument in a trading venue or systematic internaliser, the trading venue or systematic internaliser concerned shall obtain the ISO 6166 International Securities Identifying Number (ISIN) code for the financial instrument.

2.   Trading venues and systematic internalisers shall ensure that legal entity identifier codes included in the reference data provided comply with the ISO 17442:2012 standard, pertain to the issuer concerned, and are listed in the Global Legal Entity Identifier database maintained by the Central Operating Unit.

Article 4

Arrangements to ensure effective receipt of reference data

1.   Competent authorities shall monitor and assess the completeness of the reference data they receive from a trading venue or systematic internaliser, and the compliance of that data with the standards and formats specified in Table 3 of the Annex.

2.   Following receipt of reference data in respect of each day on which trading venues and systematic internalisers are open for trading, competent authorities shall notify trading venues and systematic internalisers of any incompleteness in that data and of any failure to deliver reference data by the deadlines of Article 2.

3. ESMA shall monitor and assess the completeness of reference data it receives from competent authorities, and compliance of the data with the standards and formats specified in Table 3 of the Annex.

4. Following receipt of reference data from competent authorities, ESMA shall notify them of any incompleteness in that data and of any failure to deliver reference data by the deadlines of Article 7(1).

Article 5

Arrangements to ensure the quality of the reference data

Competent authorities shall conduct quality assessments regarding the content and accuracy of the reference data received pursuant to article 27(1) of Regulation (EU) No 600/2014 on at least quarterly basis.

Article 6

Methods and arrangements for supplying reference data

1. Trading venues and systematic internalisers shall ensure that they provide complete and accurate reference data to their competent authorities pursuant to Articles 1 and 3 of this Delegated Regulation.

2. Trading venues and systematic internalisers shall put methods and arrangements in place that enable them to identify incomplete or inaccurate reference data previously submitted. A trading venue or systematic internaliser detecting that submitted reference data is incomplete or inaccurate shall promptly notify its competent authority and transmit to the competent authority complete and correct relevant reference data without undue delay.

Article 7

Arrangements for efficient exchange and publication of reference data

1. Competent authorities shall transmit complete and accurate reference data to ESMA each day no later than 23:59 CET using the secure electronic communication channel established for that purpose between competent authorities and ESMA.

2. On the day following receipt of reference data in accordance with paragraph 1, ESMA shall consolidate the data received from each competent authority.

3. ESMA shall make the consolidated data available to all competent authorities no later than 08:00 CET on the day following its receipt using the secure electronic communication channels referred to in paragraph 1.

4.   Competent authorities shall use the consolidated data in respect of a given day to validate the transaction reports in respect of transactions executed on that given day and reported pursuant to Article 26 of Regulation (EU) No 600/2014.

5.   Each competent authority shall use the consolidated data for a given day to exchange transaction reports submitted on that given day in accordance with the second subparagraph of Article 26(1) of Regulation (EU) No 600/2014.[

6.   ESMA shall publish the reference data in an electronic, downloadable and machine readable form.

Article 8

Entry into force and application

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

This Regulation shall apply from 3 January 2017.

Done at Brussels,

For the Commission
The President

[For the Commission
On behalf of the President

[Position]

Annex

Table 1

Legend for Table 3

SYMBOL	DATA TYPE	DEFINITION
{ALPHANUM-n}	Up to n alphanumerical characters	Free text field.
{CFI_CODE}	6 characters	ISO 10962 CFI code
{COUNTRYCODE_2}	2 alphanumerical characters	2 letter country code, as defined by ISO 3166-1 alpha-2 country code
{CURRENCYCODE_3}	3 alphanumerical characters	3 letter currency code, as defined by ISO 4217 currency codes
{DATE_TIME_FORMAT}	ISO 8601 date and time format	- Date and time in the following format: YYYY-MM-DDThh:mm:ss.ddddddZ. - 'YYYY' is the year; - 'MM' is the month; - 'DD' is the day; - 'T' – means that the letter 'T' shall be used - 'hh' is the hour; - 'mm' is the minute; - 'ss.dddddd' is the second and its fraction of a second; - Z is UTC time. Dates and times shall be reported in UTC.
{DATEFORMAT}	ISO 8601 date format	Dates shall be formatted by the following format: YYYY-MM-DD.
{DECIMAL-n/m}	Decimal number of up to n digits in total of which up to m digits can be fraction digits	Numerical field for both positive and negative values. - decimal separator is '.' (full stop); - negative numbers are prefixed with '-' (minus); - values are rounded and not truncated.
{INDEX}	4 alphabetic characters	'EONA' – EONIA 'EONS' - EONIA SWAP 'EURI' - EURIBOR 'EUUS' - EURODOLLAR 'EUCH' - EuroSwiss 'GCFR' - GCF REPO 'ISDA' - ISDAFIX 'LIBI' - LIBID 'LIBO' - LIBOR 'MAAA' – Muni AAA 'PFAN' - Pfandbriefe 'TIBO' - TIBOR 'STBO' - STIBOR 'BBSW' - BBSW 'JIBA' - JIBAR 'BUBO' - BUBOR

		'CDOR' - CDOR 'CIBO' - CIBOR 'MOSP' - MOSPRIM 'NIBO' - NIBOR 'PRBO' - PRIBOR 'TLBO' - TELBOR 'WIBO' – WIBOR 'TREA' – Treasury 'SWAP' – SWAP 'FUSW' – Future SWAP
{INTEGER-n}	Integer number of up to n digits in total	Numerical field for both positive and negative integer values.
{ISIN}	12 alphanumerical characters	ISIN code, as defined in ISO 6166
{LEI}	20 alphanumerical characters	Legal entity identifier as defined in ISO 17442
{MIC}	4 alphanumerical characters	Market identifier as defined in ISO 10383
{FISN}	35 alphanumeric characters	FISN code as defined in ISO 18774

Table 2

Classification of commodity derivatives for Table 3 (Fields 35-37)

Base product	Sub product	Further sub product
'AGRI' -Agricultural	'GROS' -Grains Oil Seeds	'FWHT' -Feed Wheat 'SOYB' - Soybeans 'CORN' - Corn 'RPSD' - Rapeseed 'OTHR' -Other
	'SOFT' –Softs	'CCOA' - Cocoa 'ROBU' - Robusta Coffee 'WHSG' - White Sugar 'BRWN' -Brown Sugar 'POTA' - Potatoe 'RICE' - Rice 'OTHR' - Other
	'OOLI'-Olive oil	'LAMP' - Lampante'
	'DIRY'- Dairy	
	'FRST' – Forestry	
	'SEAF' – Seafood	
	'LSTK' –Livestock	
	'GRIN' – Grain	'MWHT' - Milling Wheat
'NRGY' –'Energy	'ELEC' –Electricity	'BSLD' -Base load 'FITR' - Financial Transmission Rights 'PKLD' - Peak load 'OFFP' - Off-peak 'OTHR' - Other
	'NGAS' - Natural Gas	'GASP' - GASPOOL 'LNGG' - LNG 'NBPG' - NBP 'NCGG' - NCG 'TTFG' - TTF
	'OILP' –Oil	'BAKK' - Bakken 'BDSL' - Biodiesel 'BRNT' - Brent 'BRNX' - Brent NX 'CNDA' - Canadian 'COND' - Condensate 'DSEL' - Diesel 'DUBA' - Dubai 'ESPO' - ESPO ''ETHA' - Ethanol 'FUEL' - Fuel 'FOIL' - Fuel Oil 'GOIL' - Gasoil 'GSLN' - Gasoline 'HEAT' - Heating Oil 'JTFL' - Jet Fuel 'KERO' - Kerosene 'LLSO' - Light Louisiana Sweet (LLS) 'MARS' - Mars 'NAPH' - Naptha 'NGLO' - NGL 'TAPI' - Tapis 'URAL' - Urals 'WTIO' - WTI

	'COAL' - Coal 'INRG' -Inter Energy 'RNNG' - Renewable energy 'LGHT' - Light ends 'DIST' – Distillates	
'ENVR' -Environmental	'EMIS' – Emissions	'CERE' - CER 'ERUE' - ERU 'EUAE' - EUA 'EUAA' – EUAA
	'WTHR' - Weather 'CRBR' - Carbon related'	
'FRGT' –'Freight'	'WETF' – Wet	'TNKR' -Tankers 'CSHP' - Containerships
	'DRYF' – Dry	'DBCR' -Dry bulk carriers 'CSHP' - Containerships
'FRTL' –'Fertilizer'	'AMMO' - Ammonia 'DAPH' -DAP (Diammonium Phosphate) 'PTSH' - Potash 'SLPH' -Sulphur 'UREA' -Urea 'UAAN' - UAN (urea and ammonium nitrate)	
'INDP' - Industrial products'	'CSTR' - Construction 'MFTG' – Manufacturing	
'METL' - Metals'	'NPRM' - Non Precious	'ALUM' - Aluminium 'ALUA' - Aluminium Alloy 'CBLT' - Cobalt 'COPR' - Copper 'IRON' - Iron ore 'LEAD' - Lead 'MOLY' - Molybdenum 'NASC' - NASAAC 'NICK' - Nickel 'STEL' - Steel 'TINN' - Tin 'ZINC' - Zinc 'OTHR' - Other
	'PRME' – Precious	'GOLD' - Gold 'SLVR' - Silver 'PTNM' - Platinum 'PLDM' - Palladium 'OTHR' - Other
'MCEX' - Multi Commodity Exotic'		
'PAPR' - Paper'	'CBRD' - Containerboard 'NSPT' - Newsprint 'PULP' - Pulp 'RCVP' - Recovered paper	
'POLY' - Polypropylene'	'PLST' – Plastic	
'INFL' - Inflation'		

‘OEST’ - Official economic statistics’	470	
‘OTHC’ - Other C10 ‘as defined in Table 10.1 Section 10 of Annex III to [RTS 2 on transparency requirements in respect of bonds, structured finance products, emissison allowances and derivatives]		
‘OTHR’ - Other		

Table 3

Details to be reported as financial instrument reference data

N.	FIELD	CONTENT TO BE REPORTED	FORMAT AND STANDARDS TO BE USED FOR REPORTING
General Fields			
1	Instrument identification code	Code used to identify the financial instrument.	{ISIN}
2	Instrument full name	Full name of the financial instrument.	{ALPHANUM-350}
3	Instrument classification	Taxonomy used to classify the financial instrument. A complete and accurate CFI code shall be provided.	{CFI_CODE}
4	Commodities derivative indicator	Indication as to whether the financial instrument falls within the definition of commodities derivative under Article 2(1)(30) of Regulation (EU) No 600/2014.	'true' - Yes 'false' – No
Issuer related fields			
5	Issuer or operator of the trading venue identifier	LEI of issuer or trading venue operator.	{LEI}
Venue related fields			
6	Trading venue	Segment MIC for the trading venue or systematic internaliser, where available, otherwise operating MIC.	{MIC}
7	Financial instrument short name	Short name of financial instrument in accordance with ISO 18774.	{FISN}
8	Request for admission to trading by issuer	Whether the issuer of the financial instrument has requested or approved the trading or admission to trading of their financial instruments on a trading venue.	'true'- Yes 'false' - No
9	Date of approval of the admission to trading	Date and time the issuer has approved admission to trading or trading in its financial instruments on a trading venue.	{DATE_TIME_FORMAT}

10	Date of request for admission to trading	Date and time of the request for admission to trading on the trading venue.	{DATE_TIME_FORMAT}
11	Date of admission to trading or date of first trade	Date and time of the admission to trading on the trading venue or the date and time when the instrument was first traded or an order or quote was first received by the trading venue.	{DATE_TIME_FORMAT}
12	Termination date	Date and time when the financial instrument ceases to be traded or to be admitted to trading on the trading venue. Where this date and time is unavailable, the field shall not be populated.	{DATE_TIME_FORMAT}
Notional related fields			
13	Notional currency 1	Currency in which the notional is denominated. In the case of an interest rate or currency derivative contract, this will be the notional currency of leg 1 or the currency 1 of the pair. In the case of swaptions where the underlying swap is single-currency, this will be the notional currency of the underlying swap. For swaptions where the underlying is multi-currency, this will be the notional currency of leg 1 of the swap.	{CURRENCYCODE_3}
Bonds or other forms of securitised debt related fields			
14	Total issued nominal amount	Total issued nominal amount in monetary value.	{DECIMAL-18/5}
15	Maturity date	Date of maturity of the financial instrument. Field only applies to debt instruments with defined maturity.	{DATEFORMAT}
16	Currency of nominal value	Currency of the nominal value for debt instruments.	{CURRENCYCODE_3}
17	Nominal value per unit/minimum traded value	Nominal value of each instrument. If not available, the minimum traded value shall be populated.	{DECIMAL-18/5}

18	Fixed rate	The fixed rate percentage of return on a Debt instrument when held until maturity date, expressed as a percentage.	{DECIMAL-11/10} Expressed as a percentage (e.g. 7.0 means 7% and 0.3 means 0.3%)
19	Identifier of the index/benchmark of a floating rate bond	Where an identifier exists.	{ISIN}
20	Name of the index/benchmark of a floating rate bond	Where no identifier exists, name of the index.	{INDEX} Or {ALPHANUM-25} - if the index name is not included in the {INDEX} list
21	Term of the index/benchmark of a floating rate bond.	Term of the index/benchmark of a floating rate bond. The term shall be expressed in days, weeks, months or years.	{INTEGER-3}+'DAYS' - days {INTEGER-3}+'WEEK' - weeks {INTEGER-3}+'MNTH' - months {INTEGER-3}'YEAR' - years
22	Base Point Spread of the index/benchmark of a floating rate bond	Number of basis points above or below the index used to calculate a price	{INTEGER-5}
23	Seniority of the bond	Identify the type of bond: senior debt, mezzanine, subordinated or junior.	'SNDB' - Senior Debt 'MZZD' - Mezzanine 'SBOD' - Subordinated Debt 'JUND' - Junior Debt
Derivatives and Securitised Derivatives related fields			
24	Expiry date	Expiry date of the financial instrument. Field only applies to derivatives with a defined expiry date.	{DATEFORMAT}
25	Price multiplier	Number of units of the underlying instrument represented by a single derivative contract. For a future or option on an index, the	{ DECIMAL-18/17}

		amount per index point.	
26	Underlying instrument code	ISIN code of the underlying instrument. For ADRs, GDRs and similar instruments, the ISIN code of the financial instrument on which those instruments are based. For convertible bonds, the ISIN code of the instrument in which the bond can be converted. For derivatives or other instruments which have an underlying, the underlying instrument ISIN code, when the underlying is admitted to trading, or traded on a trading venue. Where the underlying is a stock dividend, then the ISIN code of the related share entitling the underlying dividend. For Credit Default Swaps, the ISIN of the reference obligation shall be provided. In case the underlying is an Index and has an ISIN, the ISIN code for that index. Where the underlying is a basket, include the ISINs of each constituent of the basket that is admitted to trading or is traded on a trading venue. Fields 26 and 27 shall be reported as many times as necessary to list all instruments in the basket.	{ISIN}
27	Underlying issuer	In case the instrument is referring to an issuer, rather than to one single instrument, the LEI code of the Issuer.	{LEI}
28	Underlying index name	In case the underlying is an Index, the name of the index.	{INDEX} Or {ALPHANUM-25} - if the index name is

			not included in the {INDEX} list
29	Term of the underlying index	In case the underlying is an index, the term of the index.	{INTEGER-3}+'DAYS' - days {INTEGER-3}+'WEEK' - weeks {INTEGER-3}+'MNTH' - months {INTEGER-3}+'YEAR' - years
30	Option type	Indication as to whether the derivative contract is a call (right to purchase a specific underlying asset) or a put (right to sell a specific underlying asset) or whether it cannot be determined whether it is a call or a put at the time of execution.In case of swaptions it shall be: - "Put", in case of receiver swaption, in which the buyer has the right to enter into a swap as a fixed-rate receiver. -"Call", in case of payer swaption, in which the buyer has the right to enter into a swap as a fixed-rate payer. In case of Caps and Floors it shall be: -"Put", in case of a Floor. -"Call", in case of a Cap. Field only applies to derivatives that are options or warrants.	'PUTO' - Put 'CALL' – Call 'OTHR' – where it cannot be determined whether it is a call or a put
31	Strike price	Predetermined price at which the holder will have to buy or sell the underlying instrument, or an indication that the price cannot be determined at the time of execution. Field only applies to options, warrants, spread bet on an option on an equity or contract for difference on an option on an equity. Where price is currently not available but pending, the value shall be 'PNDG'. Where strike price is not applicable the field shall not be populated.	{DECIMAL-18/13} in case the price is expressed as monetary value {DECIMAL-11/10} in case the price is expressed as percentage or yield 'PNDG' in case the price is not available
32	Strike price currency	Currency of the strike price	{CURRENCYCODE_3}
33	Option exercise style	Indication as to whether the option may be exercised only at a fixed date (European, and Asian style), a series of pre-specified dates (Bermudan) or at any time during the life of the contract (American style). This field is only applicable for options, warrants and entitlement certificates.	'EURO' - European 'AMER' - American 'ASIA' - Asian 'BERM' - Bermudan 'OTHR' - Any other type
34	Delivery type	Indication as to whether the financial	'PHYS' - Physically Settled 'CASH' - Cash settled 'OPTL' - Optional for counterparty or

		instrument is settled physically or in cash.	when determined by a third party
		Where delivery type cannot be determined at time of execution, the value shall be 'OPTL'	
		This field is only applicable for derivatives.	

Commodity derivatives			
35	Base product	Base product for the underlying asset class as specified in the classification of commodities derivatives table.	Only values in the 'Base product' column of the classification of commodities derivatives table are allowed.
36	Sub product	The Sub Product for the underlying asset class as specified in the classification of commodities derivatives table. Field requires a Base product.	Only values in the 'Sub product' column of the classification of commodities derivatives table are allowed are allowed.
37	Further sub product	The Further sub product for the underlying asset class as specified in the classification of commodities derivatives table. Field requires a Sub product.	Only values in the 'Further sub product' of the classification of commodities derivatives table are allowed.
38	Transaction type	Transaction type as specified by the trading venue	'FUTR' - Futures 'OPTN' - Options 'TAPO' - TAPOS 'SWAP' - SWAPS 'MINI' - Minis 'OTCT' - OTC 'ORIT' - Outright 'CRCK' - Crack 'DIFF' - Differential 'OTHR' - Other
39	Final price type	Final price type as specified by the trading venue	'ARGM' - Argus/McCloskey 'BLTC' - Baltic 'EXOF' - Exchange 'GBCL' - GlobalCOAL 'IHSM' - IHS McCloskey 'PLAT' - Platts 'OTHR' - Other

Interest rate derivatives
- The fields in this section should only be populated for instruments that have non-financial instrument of type interest rates

as underlying.			
40	Reference rate	Name of the reference rate	{INDEX} Or {ALPHANUM-25}- if the reference rate is not included in the {INDEX} list
41	IR Term of contract	If the asset class is Interest Rates, this field states the term of the contract. The term shall be expressed in days, weeks, months or years.	{INTEGER-3}+'DAYS' - days {INTEGER-3}+'WEEK' - weeks {INTEGER-3}+'MNTH' - months {INTEGER-3}+'YEAR' - years
42	Notional currency 2	In the case of multi-currency or cross-currency swaps the currency in which leg 2 of the contract is denominated. For swaptions where the underlying swap is multi-currency, the currency in which leg 2 of the swap is denominated.	{CURRENCYCODE_3}
43	Fixed rate of leg 1	An indication of the fixed rate of leg 1 used, if applicable.	{DECIMAL -11/10} Expressed as a percentage (e.g. 7.0 means 7% and 0.3 means 0.3%)
44	Fixed rate of leg 2	An indication of the fixed rate of leg 2 used, if applicable	{DECIMAL -11/10} Expressed as a percentage (e.g. 7.0 means 7% and 0.3 means 0.3%)
45	Floating rate of leg 2	An indication of the interest rate used if applicable.	{INDEX} Or {ALPHANUM-25} - if the reference rate is not included in the {INDEX} list
46	IR Term of contract of leg 2	An indication of the reference period of the interest rate, which is set at predetermined intervals by reference to a market reference rate. The term shall be expressed in days, weeks, months or years.	{INTEGER-3}+'DAYS' - days {INTEGER-3}+'WEEK' - weeks {INTEGER-3}+'MNTH' - months {INTEGER-3}+'YEAR' - years
Foreign exchange derivatives - The fields in this section should only be populated for instruments that have non-financial instrument of type foreign exchange as underlying.			
47	Notional currency 2	Field should be populated with the underlying currency 2 of the currency pair (the currency one will be populated in the notional currency 1 field 13).	{CURRENCYCODE_3}
48	FX Type	Type of underlying currency	'FXCR' - FX Cross Rates 'FXEM' - FX Emerging Markets 'FXMJ' - FX Majors

478

RTS 24: Draft regulatory technical standards on the maintenance of relevant data relating to orders in financial instruments

EUROPEAN COMMISSION

Brussels, XXX
[…](2012) XXX draft

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

[…]

COMMISSION DELEGATED REGULATION (EU) …/..

of XXX

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the maintenance of relevant data relating to orders in financial instruments

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 600/2014/EU of the European Parliament and the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012[1] , and in particular the fourth subparagraph of Article 25(3) thereof,

Whereas:

(1)   Operators of trading venues should be free to determine the manner in which they maintain records of relevant data relating to all orders in financial instruments. However, in order to enable effective and efficient collation, comparison and analysis of the relevant order data for market monitoring purposes, such information needs to be available to the competent authorities in uniform standards and formats. Therefore, upon a request by a competent authority pursuant to Article 25(2) of Regulation (EU) No 600/2014, the relevant order data should be converted into the standards and formats specified in this Regulation.

(2)   The Annex to this Regulation contains all data elements relating to orders, including those already included in the scope of Article 25(2) of Regulation No 600/2014 by reference to Article 26(1) and (3) in order to ensure clarity, legal certainty and avoid double storage of the same information.

(3)   In order to detect and investigate potential or attempted market abuse effectively, competent authorities need to promptly identify persons and entities who may be significantly involved in the order process, including members or participants of trading venues, entities responsible for investment and execution decisions, non-executing brokers and clients on whose behalf orders are initiated. Accordingly operators of trading venues should maintain designations for such parties.

---
[1] OJ L 173, 12.06.2014, p. 84.

(4)   In order to allow competent authorities to more efficiently identify suspicious patterns of potentially abusive behaviour originating from one client, including where the client is operating through a number of investment firms, the operators of trading venues should record the identity of clients on whose behalf their members or participants submitted the order. Operators should identify those clients by unique identifiers in order to facilitate certain and efficient identification of such persons and thereby facilitate more effective analysis of potential market abuse in which clients may be involved.

(5)   Operators of trading venues should not be required to record client identifiers for all clients in the trading chain but only for the client on whose behalf the member or participant submitted the order.

(6)   The identification of market making strategies or similar activities is important in order to enable efficient detection of market manipulation. This allows the competent authorities to distinguish the order flow coming from an investment firm acting on the basis of terms pre-determined by the issuer of the instrument which is the subject of the order or by the trading venue to which the order is submitted from the order flow coming from an investment firm acting at its own or at its client's discretion.

(7)   The record of the precise date and time and of the details of any order placement, modification, cancellation, rejection and execution should be maintained. This allows monitoring the changes to the order throughout its lifetime, that can be significant in detecting and assessing potential market manipulation and front running behaviours.

(8)   To ensure an accurate and complete picture of the order book of a trading venue, competent authorities require information on trading sessions in which financial instruments are traded. This information can notably be used to determine when auction periods or continuous trading start and finish and whether orders cause unscheduled circuit breakers. This information is also required to identify how orders will interact, particularly when sessions end at random periods such as auctions. Information on indicative uncrossing prices and volumes would also assist in analysing possible auction manipulation. Given that a single order can impact either the auction uncrossing price, auction uncrossing volume or both, competent authorities need to see the impact of each order on these values as. Without this information it would be difficult to identify which order has had the impact on those values. Additionally, a sequence number should be assigned to each relevant event in order to determine the sequence of events when two or more events take place at the same time.

(9)   Specification of the position of the orders in an order book allows for the reconstruction of the order book and for analysis of the sequence of execution of orders which is an important element of market abuse surveillance. The position assigned to an order depends on how priority is determined by the trading system. Therefore, operators of trading venues should assign and maintain details of the

priority of orders according to the price visibility-time priority or the size-time priority method.

(10) In order to enable effective market monitoring it is necessary to be able to link orders with their corresponding transactions. Accordingly operators of trading venues should maintain distinctive transaction identification codes linking orders to transactions.

(11) Operators of trading venues should, for each order received, record and maintain the order type and the related specific instructions which together determine how each order is to be handled by their matching engines, in accordance with their own classifications. This detailed information is essential for competent authorities to be able to monitor, as part of its market abuse surveillance, trading activity in a given trading venue order book and in particular to replicate how each order behaves within the order book. However, given the broad range of existing and potential new order types designed by operators of trading venues and the specific technicalities attached to the latter, the maintenance of this detailed information according to the operators' internal classification system may not currently allow competent authorities to replicate the order book activity of all trading venues in a consistent manner. Therefore, for competent authorities to be in a position to exactly locate each order within the order book, operators of trading venues should also classify each order received either as a limit order where the order is tradable or as a stop order where the order becomes tradable only upon the realisation of a pre-determined price event.

(12) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(13) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[2].

(14) The application of this regulation should be deferred in order to align its applicability with the application of paragraph 2 of Article 25 of Regulation (EU) No 600/2014,

HAS ADOPTED THIS REGULATION:

---

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

Article 1

Scope, standards and format of relevant order data

1. Operators of trading venues shall keep at the disposal of their competent authority the details of each order advertised through their systems set out in Articles 2 to 13 as specified in the second and third columns of Table 2 of the Annex to this Regulation insofar as they pertain to the order concerned.

2. Where competent authorities request any of the such details referred to in paragraph 1 in accordance with Article 25(2) of Regulation (EU) No 600/2014, the operators of trading venues shall provide such details using the standards and formats prescribed in the fourth columns of Table 2 of the Annex to this Regulation.

Article 2

Identification of the relevant parties

1. For all orders, operators of trading venues shall maintain the records on the following:

(a) the member or participant of the trading venue who submitted the order to the trading venue, identified as prescribed in field 1 of Table 2 of the Annex;

(b) the person or computer algorithm within the member or participant of the trading venue to which an order is submitted that is responsible for the investment decision in relation to the order, identified as prescribed in field 4 of the Table 2 of the Annex;

(c) the person or computer algorithm within the member or participant of the trading venue that is responsible for the execution of the order, identified as prescribed in field 5 of Table 2 of the Annex;

(d) the member or participant of the trading venue who routed the order on behalf of and in the name of another member or participant of the trading venue, identified as a non-executing broker as prescribed in field 6 of Table 2 of the Annex;

(e) the client on whose behalf the member or participant of the trading venue submitted the order to the trading venue, identified as prescribed in field 3 of Table 2 of the Annex.

2. Where a member or participant or client of the trading venue is authorised under the legislation of a Member State to allocate an order to its client following submission of the order to the trading venue and has not yet allocated the order to its client at the time of the submission of the order, that order shall be identified as prescribed in field 3 of the Annex.

3. Where several orders are submitted to the trading venue together as an aggregated order, the aggregated order shall be identified as prescribed in field 3 of Table 2 of the Annex.

Article 3

Trading capacity of members or participants of the trading venue and liquidity provision activity

1.   The trading capacity in which the member or participant of the trading venue submits an order shall be described as specified in field 7 of the Annex.

2.   The following orders shall be identified as specified in field 8 of Table 2 of the Annex:

> (i)   an order submitted to a trading venue by a member or participant as part of a market making strategy pursuant to Articles 17 and 48 of Directive 2014/65/EU of the European Parliament and of the Council [3];
>
> (ii)   an order submitted to a trading venue by a member or participant as part of any other liquidity provision activity carried out on the basis of terms pre-determined either by the issuer of the instrument which is the subject of the order or by that trading venue.

Article 4

Date and time recording

1.   Operators of trading venues shall maintain a record of the date and time of the occurrence of each event listed in field 21 of Table 2 of the Annex with the level of accuracy prescribed by Article 2 of [RTS 25 on clock synchronization under Article 50 of Directive 2014/65/EU] as specified in field 9 of Table 2 of the Annex. Except for the recording of the date and time of the rejection of orders by trading venue systems, all events referred to in field 21 of the Annex shall be recorded using the business clocks used by trading venue matching engines.

2.   Operators of trading venues shall maintain a record of the date and time for each data element listed in fields 49, 50 and 51 of Table 2 of the Annex, with the level of accuracy prescribed by Article 2 of the [RTS 25 on clock synchronization under Article 50 of Directive 2014/65/EU].

Article 5

Validity period and order restrictions

---

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

1. Operators of trading venues shall keep a record of the validity periods and order restrictions that are listed in fields 10 and 11 of Table 2 of the Annex.

2. Records of the dates and times in respect of validity periods shall be maintained as specified in field 12 of Table 2 of the Annex for each validity period.

Article 6

Priority and sequence numbers

1. Operators of trading venues which operate trading systems on a price visibility-time priority shall maintain a record of the priority time stamp for all orders as specified in field 13 of Table 2 of the Annex. The priority time stamp shall be maintained with the same level of accuracy specified by Article 4(1).

2. Operators of trading venues which operate trading systems on a size-time priority basis shall maintain a record of the quantities which determine the priority of orders as specified in field 14 of Table 2 of the Annex as well as the priority time stamp referred to in paragraph 1.

3. Operators of trading venues which use a combination of price-visibility-time priority and size-time priority and display orders on their order book in time priority shall comply with paragraph 1.

4. Operators of trading venues which use a combination of price-visibility-time priority and size-time priority and displays orders on its order book in size-time priority shall comply with paragraph 2.

5. Operators of trading venues shall assign and maintain a sequence number for all events as specified in field 15 of Table 2 of the Annex.

Article 7

Identification codes for orders in financial instruments

1. Operators of trading venues shall maintain an individual identification code for each order as specified in field 20 of Table 2 of the Annex. The identification code shall be unique per order book, per trading day and per financial instrument. It shall apply from the receipt of the order by the operator of the trading venue until the removal of the order from the order book. The identification code shall also apply to rejected orders irrespective of the ground for their rejection.

2. The operator of the trading venue shall maintain the relevant details of strategy orders with implied functionality (SOIF) that are disseminated to the public, as specified in the

Annex. Field 33 of Table 2 of the Annex shall include a statement that the order is an implicit order.

Upon execution of a SOIF, its details shall be maintained by the operator of the trading venue as specified in the Annex.

Upon execution of a SOIF, a strategy linked order identification code shall be indicated using the same identification code for all orders connected to the particular strategy. The strategy linked order identification code shall be as specified provided in field 46 of Table 2 of the Annex.

3.   Orders submitted to a trading venue allowing for a routing strategy shall be identified by that trading venue as "routed" as specified in field 33 of Table 2 of the Annex when they are routed to another trading venue. Orders submitted to a trading venue allowing for a routing strategy shall retain the same identification code for their lifetime, regardless of whether any remaining quantity is re-posted on the order book of entry.

Article 8

Events affecting the orders in financial instruments

Operators of trading venues shall maintain a record of the details referred to in field 21 of Table 2 of the Annex in relation to the new orders.

Article 9

Type of order in financial instruments

1.   Operators of trading venues shall maintain a record of the order type for each order received using their own classification as specified in field 22 of Table 2 of the Annex.

2.   Operators of trading venues shall classify each received order either as a limit order or as a stop order as specified in field 23 of Table 2 of the Annex to this Regulation.

Article 10

Prices relating to orders

Operators of trading venues shall maintain a record of all price related details referred to in section I of Table 2 in the Annex insofar as they pertain to the orders.

Article 11

Order instructions

Operators of trading venues shall maintain records of all order instructions received for each order as specified in section J of Table 2 of the Annex.

Article 12

Trading venue transaction identification code

Operators of trading venues shall maintain an individual transaction identification code for each transaction resulting from the full or partial execution of an order as specified in field 48 of Table 2 of the Annex.

Article 13

Trading phases and indicative auction price and volume

1. Operators of trading venues shall maintain a record of the order details as specified in section K of Table 2 of the Annex.

2. Where competent authorities request details referred to in section K pursuant to Article 1, the details referred to in fields 9, 15, 16, 17 and 18 of Table 2 of the Annex shall also be considered as details pertaining to the order to be kept at the disposal of the competent authority.

Article 14

Entry into force and application

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

This Regulation shall apply from 3 January 2017.

Done at Brussels,

*For the Commission
The President*

[For the Commission
On behalf of the President

[Position]

Annex

Table 1

Legend for Table 2

SYMBOL	DATA TYPE	DEFINITION
{ALPHANUM-n}	Up to n alphanumerical characters	Free text field.
{CURRENCYCODE_3}	3 alphanumerical characters	3 letter currency code, as defined by ISO 4217 currency codes
{DATE_TIME_FORMAT}	ISO 8601 date and time format	Date and time in the following format: YYYY-MM-DDThh:mm:ss.ddddddZ. - 'YYYY' is the year; - 'MM' is the month; - 'DD' is the day; - 'T' – means that the letter 'T' shall be used - 'hh' is the hour; - 'mm' is the minute; - 'ss.dddddd' is the second and its fraction of a second; - Z is UTC time. Dates and times shall be reported in UTC.
{DATEFORMAT}	ISO 8601 date format	Dates shall be formatted by the following format: YYYY-MM-DD.
{DECIMAL-n/m}	Decimal number of up to n digits in total of which up to m digits can be fraction digits	Numerical field for both positive and negative values. - decimal separator is '.' (full stop); - negative numbers are prefixed with '-' (minus); - values are rounded and not truncated.
{INTEGER-n}	Integer number of up to n digits in total	Numerical field for both positive and negative integer values.
{ISIN}	12 alphanumerical characters	ISIN code as defined in ISO 6166
{LEI}	20 alphanumerical characters	Legal entity identifier as defined in ISO 17442
{MIC}	4 alphanumerical characters	Market identifier as defined in ISO 10383
{NATIONAL_ID}	40 alphanumerical characters	The identifier is that set out in Article 6 and Annex II of [RTS 22 on reporting obligations under Article 26 of Regulation (EU) No 600/2014].

Table 2

Details of orders

N.	Field	Content of the order details to be maintained at the disposal of the competent authority	Standards and formats of the order details to be used when providing the relevant order data to competent authority upon request
Section A - Identification of the relevant parties			
1	Identification of the entity which submitted the order	The identity of the member or participant of the trading venue. In case of Direct Electronic Access (DEA) the identity should be the one of the DEA provider.	{LEI}
2	Direct Electronic Access (DEA)	'true' where the order was submitted to the trading venue using DEA as defined in Article 4(1) (41) of Directive (EU) 2014/65. 'false' where the order was not submitted to the trading venue using DEA as defined in Article 4(1) (41) of Directive (EU) 2014/65.	'true' 'false'
3	Client identification code	Code used to identify the client of the member or participant of the trading venue. In case of DEA, the code of the DEA user should be provided. Where the client is a legal entity, the LEI code of the client shall be used. Where the client is not a legal entity, the {NATIONAL_ID} shall be used. In the case of aggregated orders, the flag AGGR shall be used. In case of pending allocations, the flag PNAL shall be used. This field shall be left blank only if the member or participant of the trading venue has no client.	{LEI} {NATIONAL_ID} 'AGGR' – aggregated orders 'PNAL' – pending allocations
4	Investment decision within firm	Code used to identify the person or the algorithm within the member or participant of the trading venue who is responsible for the investment decision. Where a natural person(s) within the member or participant of the trading venue is responsible for the investment decision the person who is responsible or has primary responsibility for the investment decision shall be identified with the {NATIONAL_ID} Where an algorithm is responsible for the investment decision the field shall be populated in accordance with Article 8 of [RTS 22 on transaction reporting under Article 26 of Regulation (EU) No 600/2014**.]** This field shall be left blank when the	{NATIONAL_ID} - Natural persons {ALPHANUM-50} - Algorithms

		investment decision was not made by a person or algorithm within the member or participant of the trading venue.	
5	Execution within firm	Code used to identify the person or algorithm within the member or participant of the trading venue who is responsible for the execution of the transaction resulting from the order. Where a natural person is responsible for the execution of the transaction, the person shall be identified by {NATIONAL_ID} Where an algorithm is responsible for the execution of the transaction, this field shall be populated in accordance with Article 9 of [RTS 22 on transaction reporting under Article 26 of Regulation (EU) No 600/2014] Where more than one person or a combination of persons and algorithms are involved in the execution of the transaction, the member or participant or client of the trading venue shall determine the trader or algorithm primarily responsible as specified in Article 9(4) of [RTS on trading obligations under Article 26 of Regulation (EU) No 600/2014] and populate this field with the identity of that trader or algorithm.	{NATIONAL_ID} - Natural persons {ALPHANUM-50} - Algorithms
6	Non-executing broker	In accordance with Article 2(d). This field shall be left blank when not relevant.	{LEI}
Section B - Trading capacity and liquidity provision			
7	Trading capacity	Indication of whether the order submission resulted from the member or participant of the trading venue carrying out matched principal trading under Article 4(38) of Directive 2014/65/EU or dealing on own account under Article 4(6) of Directive 2014/65/EU. Where the order submission did not result from the member or participants of the trading venue carrying out matched principal trading or dealing on own account, the field shall indicate that the transaction was carried out under any other capacity.	'DEAL' - Dealing on own account 'MTCH' - Matched principal 'AOTC' - Any other capacity
8	Liquidity provision activity	Indication as to whether an order is submitted to a trading venue as part of a market making strategy pursuant to Articles 17 and 48 of Directive 2014/65/EU or other activity in accordance with Article 3 of this Regulation.	'true' 'false'
Section C – Date and time			
9	Date and Time	The date and time for each event listed in Section [G] and [K].	{DATE_TIME_FORMAT}

			The number of digits after the 'seconds' shall be determined in accordance with Article 2 of [RTS 25 on clock synchronisation under Article 50 of Directive 201/65/EU].
Section D - Validity period and order restrictions			
10	Validity period	Good-For-Day: the order expires at the end of the trading day on which it was entered in the order book. Good-Till-Cancelled: the order will remain active in the order book and be executable until it is actually cancelled. Good-Till-Time: the order expires at the latest at a pre-determined time within the current trading session. Good-Till-Date: the order expires at the end of a specified date. Good-Till-Specified Date and Time: the order expires at a specified date and time. Good After Time: the order is only active after a pre-determined time within the current trading session. Good After Date: the order is only active from the beginning of a pre-determined date. Good After Specified Date and Time: the order is only active from a pre-determined time on a pre-determined date. Immediate-Or-Cancel: an order which is executed upon its entering into the order book (for the quantity that can be executed) and which does not remain in the order book for the remaining quantity (if any) that has not been executed. Fill-Or-Kill: an order which is executed upon its entering into the order book provided that it can be fully filled: in the event the order can only be partially executed, then it is automatically rejected and cannot therefore be executed. Other: any additional indications that are unique for specific business models, trading platforms or systems.	'GDAY' – Good-For-Day 'GTCA' – Good-Till-Cancelled 'GTHT' – Good-Till-Time 'GTHD' – Good-Till-Date 'GTDT' – Good-Till-Specified Date and Time 'GAFT' – Good After Time 'GAFD' – Good After Date 'GADT' – Good After Specified Date and Time 'IOCA' – Immediate-Or-Cancel or 'FIKI' – Fill-Or-Kill or {ALPHANUM-4} characters not already in use for the trading venue's own classification.
11	Order restriction	Good For Closing Price Crossing Session: when an order qualifies for the closing price crossing session. Valid For Auction: the order is only active	'SESR' – Good For Closing Price Crossing Session 'VFAR' – Valid For Auction 'VFCR' – Valid For Continuous

		and can be executed only at auction phases (which can be pre-defined by the member or participants of the trading venue who submitted the order). Valid For Continuous Trading only: the order is only active during continuous trading. Other: any additional indications that are unique for specific business models, trading platforms or systems.	Trading only {ALPHANUM-4} characters not already in use for the trading venue's own classification. If multiple types are applicable, this field shall be populated with multiple flags separated by comma
12	Validity period date and time	This refers to the time stamp reflecting the time on which the order becomes active or it is ultimately removed from the order book. Good for day: will be the date of entry with the timestamp immediately prior to midnight. Good till time: will be the date of entry and the time to that specified in the order. Good till date: will be the specified date of expiry with the timestamp immediately prior to midnight. Good till specified date and time: will be the specified date and time of expiry. Good after time: will be the date of entry and the specified time at which the order becomes active. Good after date: will be the specified date with the timestamp immediately after midnight. Good after specified date and time: will be the specified date and time at which the order becomes active. Good till Cancel: will be the ultimate date and time the order is automatically removed by market operations. Other: timestamp for any additional validity type.	{DATE_TIME_FORMAT} The number of digits after the 'seconds' is determined in accordance with Article 2 of [RTS 25 on clock synchronisation under Article 50 of Directive 2014/65/EU].
Section E – Priority and sequence number			
13	Priority time stamp	This field shall be updated every time the priority of an order changes.	{DATE_TIME_FORMAT} The number of digits after the 'seconds' is determined in accordance with Article 2 of [RTS on clock synchronisation under Article 50 of Directive 2014/65/EU].
14	Priority size	For trading venues which use size-time priority, this field shall be populated with a positive number corresponding to the quantity. This field shall be updated every time the	Up to 20 numeric positive digits.

		priority of the order changes.	
15	Sequence number	Each and every event listed in section G shall be identified through a positive integer that is in ascending order. The sequence number shall be unique to each type of event; be consistent across all events timestamped by the operator of the trading venue; be persistent for the date that the event occurs.	{INTEGER-50}
Section F – Identification of the order			
16	Segment MIC code	Identification of the trading venue where the order was submitted. If the trading venue uses segment MICs then the segment MIC shall be used. If the trading venue does not use segment MICs then the operating MIC shall be used	{MIC}
17	Order book code	The alphanumerical code established by the trading venue for each and every order book.	{ALPHANUM-20}
18	Financial instruments identification code	Unique and unambiguous identifier of the financial instrument	{ISIN}
19	Date of receipt	Date of receipt of the original order.	{DATEFORMAT}
20	Order identification code	An alphanumerical code assigned by the operator of the trading venue to the individual order.	{ALPHANUM-50}
Section G – Events affecting the order			
21	New order, order modification, order cancellation, order rejections, partial or full execution	New order: receipt of a new order by the operator of the trading venue. Triggered: an order which becomes executable or, as the case may be, non-executable upon the realisation of a pre-determined condition. Replaced by the member or participant of the trading venue: where a member or participant or client of the trading venue decides upon its own initiative to change any characteristic(s) of the order it has previously entered into the order book. Replaced by market operations (automatic): where any characteristic(s) of an order is changed by the trading venue operator's IT systems. This includes where a peg order's or a trailing stop order's current characteristics are changed to reflect how the order is located within the order book. Replaced by market operations (human intervention): where any characteristic(s) of an order is changed by a trading venue	'NEWO' – New order 'TRIG' – Triggered or 'REME' - Replaced by the member or participant of the trading venue or 'REMA' - Replaced by market operations (automatic) or 'REMH' - Replaced by market operations (human intervention) or 'CHME' - Change of status at the initiative of the member or participant of the trading venue or 'CHMO' - Change of status due to market operations or 'CAME' - Cancelled at the initiative of the member or participant of the

		operator's staff. This includes where a member or participant or client of the trading venue has IT issues and needs its orders to be cancelled urgently. Change of status at the initiative of the member/participant of the trading venue. This includes activation, deactivation. Change of status due to market operations. Cancelled at the initiative of the member or participant of the trading venue; where a member or participant or client decides upon its own initiative to cancel the order it has previously entered. Cancelled by market operations. This includes a protection mechanism provided for investment firms carrying out a market making activity as per Articles 17 and 48 of Directive 2014/65/EU. Rejected order: an order received but rejected by the operator of the trading venue. Expired order: where the order is removed from the order book upon the end of its validity period. Partially filled: where the order is not fully executed so that there remains a quantity to be executed. Filled: where there is no more quantity to be executed.	trading venue or 'CAMO' -Cancelled by market operations or 'REMO' - Rejected order or 'EXPI' - Expired order or 'PARF' - Partially filled or 'FILL' - Filled or {ALPHANUM-4} characters not already in use for the trading venue's own classification.
Section H – Type of order			
22	Order type	Identification of the order type as per venue specifications.	{ALPHANUM-50}
23	Order type classification	Classification of the order according to two generic order types. LIMIT order: in the cases where the order is tradable and STOP order: in the cases where the order becomes tradable only upon the realisation of a pre-determined price event.	The letters "LMTO" for limit or the letters "STOP" for stop.
Section I – Prices			
24	Limit price	The maximum price at which a buy order can trade or the minimum price at which a sell order can trade. The spread price for a strategy order. It can be negative or positive. For orders that do not have a limit price or for any unpriced orders this field shall be left blank. In case of a convertible bond the real price (clean or dirty) used for this transaction shall be reflected in this field	{DECIMAL-18/13} in case the price is expressed as monetary value. Where price reported in monetary terms, it shall be provided in the major currency unit. {DECIMAL-11/10} in case the price is expressed as a percentage or yield.
25	Additional limit Price	Any other limit price which may apply to the order. This field shall be left blank if	{DECIMAL-18/13} in case the price is expressed as monetary.

		not relevant.	Where price reported in monetary terms, it shall be provided in the major currency unit.
			{DECIMAL-11/10} in case the price is expressed as a percentage or yield.
26	Stop price	The price that must be reached for the order to become active. For stop orders triggered by events independent of the price of the financial instrument, this field shall be populated with a stop price equal to zero. This field shall be left blank if not relevant.	{DECIMAL-18/13} in case the price is expressed as monetary. Where price reported in monetary terms, it shall be provided in the major currency unit. {DECIMAL-11/10} in case the price is expressed as a percentage or yield.
27	Pegged limit price	The maximum price at which a pegged order to buy can trade or the minimum price at which a pegged order to sell can trade. This field shall be left blank if not relevant.	{DECIMAL-18/13} in case the price is expressed as monetary. Where price reported in monetary terms, it shall be provided in the major currency unit. {DECIMAL-11/10} in case the price is expressed as a percentage or yield.
28	Transaction price	Traded price of the transaction excluding, where applicable, commission and accrued interest. In the case of option contracts, it shall be the premium of the derivative contract per underlying security or index point. In the case of spread bets it shall be the reference price of the direct underlying instrument. For credit default swaps (CDS) it shall be the coupon in basis points. Where price reported in monetary terms, it shall be provided in the major currency unit. Where price is not applicable the field shall not be populated.	{DECIMAL-18/13 in case the price is expressed as monetary. {DECIMAL-11/10} in case the price is expressed as percentage or yield
29	Price currency	Currency in which the trading price is expressed (applicable if the price is expressed as monetary value) for the financial instrument related to the order.	{CURRENCYCODE_3}
30	Currency of leg 2	In the case of multi-currency or cross-currency swaps the currency in which leg 2 of the contract is denominated. For swaptions where the underlying swap is multi-currency, the currency in which leg 2 of the swap is denominated. This field is only applicable to interest rate and currency derivatives contracts	{CURRENCYCODE_3}
31	Price notation	Indication as to whether the price is expressed in monetary value, in percentage or in yield	'MONE' – Monetary 'PERC' – Percentage 'YIEL' – Yield

Section J – Order instructions			
32	Buy-sell indicator	To show if the order is to buy or sell.	'BUYI' – buy
		In case of options and swaptions, the buyer shall be the counterparty that holds the right to exercise the option and the seller shall be the counterparty that sells the option and receives a premium.	'SELL' – sell
		In case of futures and forwards other than futures and forwards relating to currencies, the buyer shall be the counterparty buying the instrument and the seller the counterparty selling the instrument.	
		In the case of swaps relating to securities, the buyer shall be the counterparty that gets the risk of price movement of the underlying security and receives the security amount. The seller shall be the counterparty paying the security amount.	
		In the case of swaps related to interest rates or inflation indices, the buyer shall be the counterparty paying the fixed rate. The seller shall be the counterparty receiving the fixed rate. In case of basis swaps (float-to-float interest rate swaps), the buyer shall be the counterparty that pays the spread and the seller the counterparty that receives the spread.	
		In the case of swaps and forwards related to currencies and of cross currency swaps, the buyer shall be the counterparty receiving the currency which is first when sorted alphabetically by ISO 4217 standard and the seller shall be the counterparty delivering this currency.	
		In the case of swap related to dividends, the buyer shall be the counterparty receiving the equivalent actual dividend payments. The seller is the counterparty paying the dividend and receiving the fixed rate.	
		In the case of derivative instruments for the transfer of credit risk except options and swaptions, the buyer shall be the counterparty buying the protection. The seller is the counterparty selling the protection.	
		In case of derivative contracts related to commodities, the buyer shall be the counterparty that receives the commodity specified in the report and the seller the counterparty delivering this commodity.	
		In case of forward rate agreements, the buyer shall be the counterparty paying the fixed rate and the seller the counterparty receiving the fixed rate	

		For an increase in notional the buyer shall be the same as the acquirer of the financial instrument in the original transaction and the seller shall be the same as the disposer of the financial instrument in the original transaction.	
		For a decrease in notional the buyer shall be the same as the disposer of the financial instrument in the original transaction and the seller shall be the same as the acquirer of the financial instrument in the original transaction.	
33	Order status	To identify orders that are active/inactive/suspended, firm/indicative (assigned to quotes only)/implicit/rerouted. Active – non-quote orders that are tradable. Inactive – non-quote orders that are not tradable. Firm/Indicative - Assigned to quotes only. Indicative quotes mean that they are visible but cannot be executed. This includes warrants in some trading venue. Firm quotes can be executed. Implicit – Used for strategy orders that are derived from implied in or implied out functionality. Routed – Used for orders that are routed by the trading venue to other venues.	'ACTI'- active or 'INAC'- inactive or 'FIRM'- firm quotes or 'INDI'- indicative quotes or 'IMPL'- implied strategy orders or 'ROUT'- routed orders. If multiple statuses are applicable, this field shall be populated with multiple flags separated by comma.
34	Quantity notation	Indication as to whether the quantity reported is expressed in number of units, in nominal value or in monetary value.	'UNIT' - Number of units 'NOML' - Nominal value 'MONE' - Monetary value
35	Quantity currency	Currency in which the quantity is expressed. (Only applicable if quantity is expressed as nominal or monetary value).	{CURRENCYCODE_3}
36	Initial quantity	The number of units of the financial instrument, or the number of derivative contracts in the order. The nominal or monetary value of the financial instrument. For spread bets, the quantity shall be the monetary value wagered per point movement in the underlying financial instrument. For increase or decrease in notional derivative contracts, the number shall reflect the absolute value of the change and shall be expressed as a positive number. For credit default swaps, the quantity shall be the notional amount for which the protection is acquired or disposed of.	{DECIMAL-18/17} in case the quantity is expressed as number of units {DECIMAL-18/5} in case the quantity is expressed as monetary or nominal value

37	Remaining quantity including hidden	The total quantity that remains in the order book after a partial execution or any other event affecting the order. On a partial fill order event this is the total remaining volume after that partial execution. On an order entry this will equal the initial quantity.	{DECIMAL-18/17} in case the quantity is expressed as number of units {DECIMAL-18/5} in case the quantity is expressed as monetary or nominal value
38	Displayed quantity	The quantity that is visible (as opposed to hidden) in the order book.	{DECIMAL-18/17} in case the quantity is expressed as number of units {DECIMAL-18/5} in case the quantity is expressed as monetary or nominal value
39	Traded quantity	Where there is a partial or full execution this field shall be populated with the executed quantity.	{DECIMAL-18/17} in case the quantity is expressed as number of units {DECIMAL-18/5} in case the quantity is expressed as monetary or nominal value
40	Minimum Acceptable Quantity (MAQ)	This is the minimum acceptable quantity for an order to be filled which can consist of multiple partial executions and is normally only for non-persistent order types. This field shall be left blank if not relevant.	{DECIMAL-18/17} in case the quantity is expressed as number of units {DECIMAL-18/5} in case the quantity is expressed as monetary or nominal value
41	Minimum executable size (MES)	This is the minimum execution size of any individual potential execution. This field shall be left blank if not relevant.	{DECIMAL-18/17} in case the quantity is expressed as number of units {DECIMAL-18/5} in case the quantity is expressed as monetary or nominal value
42	MES first execution only	Specification as to whether the MES is relevant only for the first execution. This field shall be left blank if field 41 is not populated.	'true' 'false'
43	Passive only indicator	Indicates if the order is submitted to the trading venue with a characteristic/flag, such that the order shall not immediately execute against any contra visible orders.	'true' 'false'
44	Passive or aggressive indicator	On partial fill and fill order events, indicates whether the order was already resting on the order book and providing liquidity (passive) or the order initiated the trade and thus took liquidity (aggressive). This field shall be left blank if not relevant.	"PASV" – passive or "AGRE" – aggressive.
45	Self-Execution Prevention	Indicates if the order has been entered with self-execution prevention criteria so that it would not execute with an order on the opposite side of the book entered by the same member or participant.	'true' 'false'
46	Strategy Linked Order	The alphanumerical code used to link all connected orders that are part of a strategy	{ALPHANUM-50}

		identification	pursuant to Article 7(2) of this Regulation.	
47	Routing Strategy		The applicable routing strategy as per the trading venue specification. This field shall be left blank if not relevant.	{ALPHANUM-50}
48	Trading venue transaction identification code		Alphanumerical code assigned by the trading venue to the transaction pursuant to Article 12 of this Regulation. The trading venue transaction identification code shall be unique, consistent and persistent per ISO10383 segment MIC and per trading day. Where the trading venue does not use segment MICs, the trading venue transaction identification code shall be unique, consistent and persistent per operating MIC per trading day. The components of the transaction identification code shall not disclose the identity of the counterparties to the transaction for which the code is maintained.	{ALPHANUM-52}
Section K – Trading phases, indicative auction price and volume				
49	Trading phases		The name of each of the different trading phases during which an order is present in the order book including trading halts, circuit breakers and suspensions.	{ALPHANUM-50}
50	Indicative auction price		The price at which each auction is due to uncross in respect to the financial instrument for which one or more orders have been placed.	{DECIMAL-18/5} in case the price is expressed as monetary or nominal value. Where price reported in monetary terms, it shall be provided in the major currency unit. DECIMAL-11/10} in case the price is expressed as a percentage or yield.
51	Indicative auction volume		The volume (number of units of the financial instrument) that can be executed at the indicative auction price in field 50 if the auction ended at that precise moment of time.	{DECIMAL-18/17} in case the quantity is expressed as number of units {DECIMAL-18/5} in case the quantity is expressed as monetary or nominal value

RTS 25: Draft regulatory technical standards on clock synchronization

EUROPEAN COMMISSION

Brussels, XXX
[…](2012) XXX draft

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

[…]

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU[1], and in particular the third subparagraph of Article 50(2) thereof,

Whereas:

(1)   Clock synchronisation has a direct impact in many areas. In particular it contributes to ensuring that post-trade transparency data can readily be part of a reliable consolidated tape. It is also essential for conducting cross-venue monitoring of orders and detecting instances of market abuse and allows for a clearer comparison between the transaction and the market conditions prevailing at the time of their execution.

(2)   The number of orders received every second by a trading venue can be very high, much higher than that of executed transactions. This may extend to several thousands of orders per second depending on the trading venue, the type of members or participants or clients of a given trading venue, and the financial instruments' volatility and liquidity. As a result, a time granularity of one second would not be sufficient for the purposes of effective market manipulation surveillance of certain types of trading activities. Therefore, it is necessary to establish minimum granularity requirements for recording the date and time of reportable events by operators of trading venues and their members or participants.

(3)   Competent authorities need to be able to reconstruct all events relating to an order throughout the lifetime of each order in an accurate time sequence. Competent authorities need to be able to reconstruct these events over multiple trading venues on a consolidated level to be able to conduct effective cross-venue monitoring on market abuse. It is therefore necessary to establish a common reference time and rules on

_____

[1] OJ L 173, 12.6.2014, p. 349.

maximum divergence from the common reference time to ensure that all operators of trading venues and their members or participants are recording the date and time based on the same time source and in accordance with consistent standards. It is also necessary to provide for accurate time stamping to allow competent authorities to distinguish between different reportable events which may otherwise appear to have taken place at the same time.

(4)   There are however, trading models for which increased accuracy might not be relevant or feasible. Voice trading systems or request for quote systems where the response requires human intervention or does not allow algorithmic trading, or systems which are used for concluding negotiated transactions should be subject to different accuracy standards. Trading venues operating those trading systems are not typically susceptible to the high volume of events that can happen within the same second, meaning that it is not necessary to impose a finer granularity to time stamping of those events since it is less likely that there would be multiple events occurring at the same time. In addition, trades on those trading venues may be agreed using manual methods which can take time to agree. In those trading venues there is also an inherent delay between the moment when the trade is executed and the moment when the trade is recorded in the trading system, meaning that applying more stringent accuracy requirements would not necessarily lead to more meaningful and accurate record keeping by the operator of the trading venue, its members or participants.

(5)   Competent authorities need to understand how trading venues and their members or participants are ensuring their traceability to Coordinated Universal Time (UTC). This is because of the complexity of the different systems and the number of alternative methods that can be used to synchronise to UTC. Given that clock drift can be affected by many different elements, it is also appropriate to determine an acceptance level for the maximum divergence from UTC.

(6)   This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(7)   ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[2],

---

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

Article 1

Reference time

Operators of trading venues and their members or participants shall synchronise the business clocks they use to record the date and time of any reportable event with the Coordinated Universal Time (UTC) issued and maintained by the timing centres listed in the latest Bureau International des Poids et Mesures Annual Report on Time Activities. Operators of trading venues and their members or participants may also synchronise the business clocks they use to record the date and time of any reportable event with UTC disseminated by a satellite system, provided that any offset from UTC is accounted for and removed from the timestamp.

Article 2

Level of accuracy for operators of trading venues

1.   Operators of trading venues shall ensure that their business clocks adhere to the levels of accuracy specified in Table 1 of the Annex according to the gateway to gateway latency of each of their trading systems.

Gateway to gateway latency shall be the time measured from the moment a message is received by an outer gateway of the trading venue's system, sent through the order submission protocol, processed by the matching engine, and then sent back until an acknowledgement is sent from the gateway.

2.   By derogation from paragraph 1 of this Article, operators of trading venues that operate a voice trading system, request for quote system where the response requires human intervention or does not allow algorithmic trading, or a system that formalises negotiated transactions in accordance with Article 4(1)(b) of Regulation (EU) No 600/2014 shall ensure that their business clocks do not diverge by more than one second from UTC referred to in Article 1(1) of this Regulation. The operator of the trading venue shall ensure that times are recorded to at least a one second granularity.

3.   Operators of trading venues that operate multiple types of trading systems shall ensure that each system adheres to the level of accuracy applicable to that system in accordance with paragraphs 1 and 2.

Article 3

Level of accuracy for members or participants of a trading venue

1. Members or participants of trading venues shall ensure that their business clocks used to record the time of reportable events adhere to the level of accuracy specified in Table 2 of the Annex.

2. Members or participants of trading venues that engage in multiple types of trading activities shall ensure that the systems that they use to record reportable events adhere to the level of accuracy applicable to each of these trading activities in accordance with the requirements set out in Table 2 of the Annex.

Article 4

Compliance with the maximum divergence requirements

Operators of trading venues and their members or participants shall establish a system of traceability to UTC. They shall be able to demonstrate traceability to UTC by documenting the system design, functioning and specifications. They shall be able to identify the exact point at which a timestamp is applied and demonstrate that the point within the system where the timestamp is applied remains consistent. Reviews of the compliance with this Regulation of the traceability system shall be conducted at least once a year.

Article 5

Entry into force

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

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

Done at Brussels,

For the Commission
The President

[For the Commission
On behalf of the President

[Position]

Annex

Table 1

Level of accuracy for operators of trading venues

Gateway-to-gateway latency time of the trading system	Maximum divergence from UTC	Granularity of the timestamp
> 1 millisecond	1 millisecond	1 millisecond or better
=< 1 millisecond	100 microseconds	1 microsecond or better

Table 2

Level of accuracy for members or participants of a trading venue

Type of trading activity	Description	Maximum divergence from UTC	Granularity of the timestamp
Activity using high frequency algorithmic trading technique	High frequency algorithmic trading technique.	100 microseconds	1 microsecond or better
Activity on voice trading systems	Voice trading systems as defined in Article 1(7) of RTS transparency requirements in respects of bonds, structured financial products ect...	1 second	1 second or better
Activity on request for quote systems where the response requires human intervention or where the system does not allow algorithmic trading	Request for quotes systems as defined in Article 1(6) of RTS 9 transparency requirements in respects of bonds, structured financial products ect...	1 second	1 second or better
Activity of concluding negotiated transactions	Negotiated transaction as defined under Article 4(1)(b) of Regulation (EU) 600/2014	1 second	1 second or better
Any other trading activity	All other trading activity not covered by this table.	1 millisecond	1 millisecond or better

CHAPTER 8: POST-TRADING ISSUES

RTS 26: Draft regulatory technical standards on the obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing (STP)

EUROPEAN COMMISSION

Brussels, XXX
[…](2012) XXX draft

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

[…]

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards specifying the obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May on markets in financial instruments and amending Regulation (EU) No 648/2012, and in particular Article 29(3) thereof,

Whereas:

(1)   In order to manage operational and other risks, when transactions in cleared derivatives are submitted and accepted for clearing and to provide certainty to counterparties as soon as possible, it is important to determine whether a cleared derivative transaction can be cleared by a CCP at an early stage, and to the extent possible before the transaction is entered into.

(2)   In order to apply scalable technical solutions ensuring that transactions in cleared derivatives can be submitted and accepted for clearing as quickly as technologically practicable, the information needed by a trading venue and a CCP to perform their tasks should be pre-determined and clearly set in the documentation of the trading venue and the CCP.

(3)   In order to appropriately price a cleared derivative transaction, counterparties take into account that centrally cleared transactions are subject to a different collateral regime than non-centrally cleared transactions, regardless of whether the transaction is cleared because it is mandated to be cleared or whether the transaction is cleared because the relevant parties have otherwise agreed for it to be cleared. Therefore, counterparties should benefit from having the same process and the same requirements for both mandatorily cleared and voluntarily cleared derivative transactions to ensure cleared derivative transactions are submitted and accepted for clearing as soon as technologically practicable.

(4)   When cleared derivative transactions are entered into on a trading venue, in order to identify before a transaction is entered into whether the transaction can be cleared by a CCP, the trading venue and the CCP should have rules to ensure a transaction that is entered into can be automatically cleared, otherwise the trading venue should provide the ability to clearing members of the CCP to check orders against the limits set for their clients. When a trading venue or a clearing member are using the services of a service provider to perform part or all of the pre-trade checks applicable in this Regulation, the trading venue and the clearing member remain responsible for complying with the requirements applicable to each of them.

(5)   The time granted to a trading venue to process a cleared derivative transaction should be shorter for electronically traded cleared derivative transactions than for non-electronically traded cleared derivative transactions as the level of automated processing should be higher in the former case.

(6)   A trading venue should send the information related to cleared derivative transactions to a CCP in a pre-agreed electronic format, for both electronically traded and non-electronically traded cleared derivative transactions. Therefore, the time granted to a CCP to decide whether a cleared derivative transaction can be accepted for clearing should be the same for electronically traded and non-electronically traded cleared derivative transactions.

(7)   The processing of cleared derivative transactions entered into on a bilateral basis is usually less automated than the processing of cleared derivative transactions entered into on a trading venue. Therefore, the time granted to counterparties to submit a cleared derivative transaction entered into on a bilateral basis to a CCP should be longer than the time granted for a cleared derivative transaction executed on a trading venue.

(8)   In order to manage the credit risks related to cleared derivative transactions that are entered into on a bilateral basis, a CCP should allow a clearing member to review the transaction details of its client and to decide whether to accept it. As the process between a CCP and a clearing member is usually automated, this process should require limited time.

(9)   CCPs as well as clearing members manage credit risk associated to the build-up of current exposures resulting from the clearing of cleared derivatives. Typically, this includes the setting of limits by the CCP or the clearing member per counterparty in order to mitigate the associated exposure risk, which can result in new requests to clear certain cleared derivative transactions not being accepted by the clearing member or by the CCP. Ensuring that cleared derivative transactions are submitted to clearing as quickly as technologically practicable does not eliminate the risk that some of these cleared derivative transactions could not be accepted for clearing under specific circumstances. Therefore, when cleared derivative transactions are not accepted for

clearing, counterparties should have clarity on the treatment of the not accepted transaction in order to take the status of the not accepted transaction into account when hedging their risk and continuing on with their usual activity.

(10) As the processing of a cleared derivative transaction executed electronically on a trading venue and submitted for clearing to a CCP requires limited time, the time for the market to move and for the value and the risk of the cleared derivative transaction to change in between the order and the non-acceptance would also be very limited, therefore there should be no or extremely limited damage suffered by the counterparties whose transactions are not accepted by the CCP. To provide certainty to counterparties, cleared derivative transactions executed electronically on a trading venue and not accepted by a CCP should be considered void.

(11) As the processing of cleared derivative transactions other than cleared derivative transactions executed electronically on a trading venue usually takes some time, this period of time may be sufficiently long for the market to have moved and for the value and the risk of the cleared derivative transaction to have changed significantly in the meantime, therefore the voiding of the transaction could not be applied as the appropriate treatment for all non-acceptances. To provide certainty on the treatment of such transactions not accepted by a CCP, the counterparties should still know in advance how the transaction is to be treated, relying on the rules of the trading venue or on the contractual arrangements between the counterparties where appropriate.

(12) When a cleared derivative transaction is not accepted for clearing for reasons other than credit reasons, the counterparties may still want to be counterparties to a cleared derivative transaction with the same economic terms and that could be accepted for clearing if not for these non-credit reasons. When both counterparties agree to re-submit the transaction, as long as it is within a relatively short period of time from the first submission, and that it allows the investigation and the resolution of the non-credit reasons why the transaction was not accepted, a second submission in the form of a new cleared derivative transaction with the same economic terms would still ensure proper management of operational or other risks.

(13) The new legislation of the European Parliament and of the Council on markets in financial instruments set out in Directive 2014/65/EU and Regulation (EU) No 600/2014 of the European Parliament and of the Council[1] applies from 3 January 2017. To ensure consistency and legal certainty, this Regulation should apply from the same date.

---

[1] Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

(14)   This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(15)   ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[2],

HAS ADOPTED THIS REGULATION:

Article 1

Arrangements to facilitate the transfer of information

1.   A trading venue shall detail in its rules the information it needs from counterparties to a cleared derivative transaction in order to submit that cleared derivative transaction to a CCP for clearing and the format in which that information shall be provided.

2.   A CCP shall detail in its rules the information it needs from counterparties to a cleared derivative transaction and from trading venues in order to clear a cleared derivative transaction submitted to it and the format in which that information shall be provided.

Article 2

Pre-trade check for cleared derivative transactions executed on a trading venue

1.   Trading venues and clearing members shall subject orders for the execution of cleared derivative transactions on a trading venue to the requirements set out in paragraphs 2 and 3, except where all the conditions set out in points (a), (b) and (c) are satisfied:

  (a) the rules of the trading venue require that each member or participant of the trading venue, which is not a clearing member of a CCP through which the cleared derivative transaction is cleared, has a contractual arrangement with a clearing member of the CCP under which the clearing member automatically becomes counterparty to the cleared derivative transaction;

---

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

(b) the rules of the CCP provide that the cleared derivative transaction executed on a trading venue is cleared automaticallyand immediately, with the clearing member referred to in point (a) becoming the counterparty to the CCP;

(c) the rules of the trading venue provide that the member or participant of the trading venue or its client becomes counterparty to the cleared derivative transaction, pursuant to direct or indirect clearing arrangements.

2.   A trading venue shall provide tools to ensure pre-execution screening on an order-by-order basis by each clearing member of the limits set and maintained by that clearing member for its client pursuant to Commission Delegated Regulation (EU) xxx (MiFIR RTS 6 Regulation number OJ L […], […], p. […])).

3.   A trading venue shall ensure before the execution of the order that the order of the client is within the limits applicable to this client in accordance with paragraph 2:

(a) within 60 seconds from the receipt of the order when the order is entered into electronically;

(b) within 10 minutes from the receipt of the order when the order is not entered into electronically.

When the order is not within the limits applicable to the client in accordance with paragraph 2, the trading venue shall inform the client and the clearing member that the order cannot be executed:

(c) on a real time basis when the order is entered into electronically;

(d) within 5 minutes from when the order was checked against the applicable limits as per the first sub paragraph, when the order is not entered into electronically.

Article 3

Timeframes for the transfer of information for cleared derivative transactions executed on a trading venue

1.   The trading venue, the CCP and the clearing member shall be subject to the requirements set out in paragraphs 2 to 5 of this Article except where all the requirements of Article 2(1) are met.

2.   For cleared derivative transactions that are executed on a trading venue electronically, the trading venue shall send the information related to each transaction to the CCP within 10 seconds from the execution of the transaction.

3. For cleared derivative transactions that are executed on a trading venue non-electronically, the trading venue shall send the information related to each transaction to the CCP within 10 minutes from the execution of the transaction.

4. A CCP shall accept or not accept the clearing of a cleared derivative transaction executed on a trading venue within 10 seconds from receiving the information from the trading venue and inform the clearing member and the trading venue of a non-acceptance on a real time basis.

5. The clearing member and the trading venue shall inform the counterparty that executed the cleared derivative transaction on the trading venue of the non-acceptance as soon as the CCP has informed them of a non-acceptance.

Article 4

Timeframes for the transfer of information for cleared derivative transactions executed on a bilateral basis

1. For cleared derivative transactions executed by counterparties on a bilateral basis, the clearing member shall:

  (a) obtain evidence from its client of the execution timeframe of the transaction they clear;

  (b) ensure that the counterparties send to the CCP the information referred to in Article 1(2) related to the transaction within 30 minutes from the execution of the transaction.

2. For cleared derivative transactions executed by counterparties on a bilateral basis, the CCP shall send to its clearing member the information referred to in point (b) of paragraph 1 related to the transaction within 60 seconds from receiving this information from the counterparties. The clearing member shall accept or not accept the transaction within 60 seconds from receiving the information from the CCP.

3. The CCP shall accept or not accept the clearing of a cleared derivative transaction executed on a bilateral basis within 10 seconds from the receipt of the clearing member's acceptance or non-acceptance.

4. However, paragraphs 2 and 3 of this Article shall not apply where all the following conditions are met:

  (a) the rules of the CCP ensure the setting and the maintenance on a regular basis of limits by a clearing member for its client pursuant to Commission Delegated Regulation (EU) xxx (MiFIR RTS 6 Regulation number OJ L […], […], p. […]);

(b) the rules of the CCP provide that a cleared derivative transaction that is within the limits in accordance with point (a) is cleared automatically by the CCP within 60 seconds from receiving the information on the cleared derivative transaction from the counterparties.

5. The CCP that does not accept the clearing of a cleared derivative transaction executed on a bilateral basis shall inform the clearing member of the non-acceptance on a real time basis. The clearing member shall inform of the non-acceptance the counterparty that executed the transaction as soon as it is informed by the CCP.

Article 5

Treatment of cleared derivative transactions not accepted for clearing

1. Where a cleared derivative transaction that is executed on a trading venue electronically is not accepted by the CCP, the trading venue shall void such contract.

2. Where a cleared derivative transaction, other than cleared derivative transactions that are executed on a trading venue electronically, is not accepted by the CCP, the treatment of the transaction shall be governed by:

  (a) the rules of the trading venue when the contract is submitted to clearing in accordance with the rules of the trading venue;

  (b) the agreement between the counterparties in the other situations.

3. Without prejudice to paragraphs 1 and 2 of this Article, when the non-acceptance is due to a technical or clerical problem, the cleared derivative transaction can be submitted for clearing once more within one hour from the previous submission in the form of a new transaction but with the same economic terms, provided that both counterparties have agreed to this second submission. The trading venue, on which the cleared derivative transaction was initially executed shall not be subject to the requirements of Article 8 of Regulation (EU) No 600/2014 for the submission to clearing of the new cleared derivative transaction.

Article 6

Entry into force and application

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

It shall apply from 3 January 2017.

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

Done at Brussels,

For the Commission
The President

[For the Commission
On behalf of the President

[Position]

CHAPTER 9: BEST EXECUTION

RTS 27: Draft regulatory technical standards under Article 27(10)(a) of MiFID II

EUROPEAN COMMISSION

Brussels, XXX
[…](2012) XXX draft

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

[…]

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the data to be provided by execution venues on the quality of execution of transactions

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU[1] and in particular point (a) of the first subparagraph of Article 27(10) thereof,

Whereas:

(1)   With a view to provide the public, and including investment firms, with relevant data on execution quality to help them determine the best way to execute client orders, it is important to set out the specific content, the format and the periodicity of data relating to the quality of execution to be published on financial instruments subject to the trading obligation in Articles 23 and 28 Regulation (EU) No 600/2014 of the European Parliament and of the Council([2]) by trading venues and systematic internalisers and for other financial instruments by execution venues. In this respect, due regard should be given to the type of execution venue and the type of financial instrument concerned.

(2)   In order to fully assess the extent of the quality of execution of transactions that take place in the European Union, it is appropriate that execution venues which can be selected by investment firms for the execution of the orders of their clients are required to comply with requirements on data to be provided by execution venues in accordance with this Regulation. To this effect, these execution venues should include regulated markets, multilateral trading facilities, systematic internalisers, market makers or other liquidity providers, which are identified as execution venues in accordance with Article 44 of Commission Directive 2006/73/EC. Organised trading

---

[1] OJ L 173, 12.6.2014, p. 349.
[2] Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

facilities should also be included in order to take account of the recognition of these venues as trading venues in accordance with Directive 2014/65/EC.

(3)   Differences in the type of execution venue and financial instruments require that the content of reporting should vary depending on several factors. It is appropriate to differentiate the amount and nature of reported data according to trading systems, trading modes and trading platforms to provide a proper context for the quality of execution obtained.

(4)   To avoid inappropriate comparison between execution venues and ensure the relevance of collected data, execution venues should submit separate reports corresponding to segments that operate different order books or that are regulated differently or use different market segment identifiers.

(5)   In order to provide an accurate picture of the quality of execution that effectively occurred, trading venues should not publish among executed trades those traded over the counter and reported onto the trading venue.

(6)   When reporting as execution venues for financial instruments not subject to the trading obligations, market makers and other liquidity providers should only publish information on the orders executed or any price quoted for their clients, when offered or executed over the counter, or executed pursuant to Article 4 and 9 of Regulation (EU) No 600/2014 except orders held in an order management facility of a trading venue pending disclosure.

(7)   It is appropriate to consider that other liquidity providers should include firms that hold themselves out as being willing to deal on own account, and which provide liquidity as part of their normal business activity, whether or not they have formal agreements in place or commit to providing liquidity on a continuous basis.

(8)   In order to have clear transparency on the quality of execution for transactions in relation to price, it is appropriate to require that when publishing information on price, the price should exclude all commissions or accrued interest when relevant.

(9)   In determining appropriate information for assessing price quality, both daily average levels and point-in-time information should be required. This will provide participants with an appropriate context and a more complete picture when analysing the quality of execution obtained. In order to allow for price comparisons between financial instruments it is also necessary to specify the currency code of any reported transaction.

(10)   To ensure regulatory consistency, it is not appropriate to require trading venues to provide details of transactions that are still, at the time of publication, subject to a deferral of publication in compliance with requirements on post trade transparency. It

is also appropriate that systematic internalisers, market makers and other liquidity providers be exempt from publishing point-in-time transaction data for any transactions above standard market size or size specific to the financial instrument in order to avoid those venues becoming subject to undue risk of disclosing commercially sensitive information that might hinder their ability to hedge exposures and provide liquidity. For shares, exchanges traded funds and certificates deemed to be illiquid under Regulation (EU) No 600/2014, the standard market size threshold to be used will be the minimum available standard market size for that type of financial instrument. To avoid uncertainty, it is appropriate to clarify that reference to large in scale and size specific to the financial instrument follow the same meaning as set out in the post trade transparency requirements.

(11) It is essential for the public to have full transparency on all costs charged when executing an order through a given venue. In determining the total costs relevant to execution it is necessary to specify all the relevant costs in the execution of a client order related to the use of a specific venue and for which the client pays directly or indirectly. Those costs should include execution fees, including fees for the submission, modification or cancellation of orders or quotes withdrawals, as well as any fees related to market data access or use of terminals. The relevant costs may also include clearing or settlement fees or any other fees paid to third parties involved in the execution of the order when they are part of the services provided by the execution venue. Information on costs should also include taxes or levies directly invoiced to, or incurred by the venue on behalf of the members or users of the execution venue or the client to whom the order refers.

(12) Likelihood of execution indicates the probability of execution of a particular type of order and is supported by details on trading volumes in a particular instrument or other characteristics of orders and transactions. Information on likelihood of execution should allow for the calculation of metrics such as the relative market size of a venue in a particular financial instrument or a class of financial instruments. Likelihood of execution should also be assessed with data on failed transactions or cancelled or modified orders. These metrics should allow participants to assess the likelihood of execution of a specific financial instrument on a specific venue.

(13) Speed of execution may have different meanings for the different types of execution venues as the measurement of speed varies by both trading systems and trading platform. For continuous auction order books, speed of execution should be expressed in mili-seconds while for other trading systems it is appropriate to use larger units of time. It is also appropriate to exclude the latency of a particular participant's connection to the execution venue, as this is outside of the control of the execution venue itself.

(14) In order to compare the quality of execution for orders of different size, execution venues should be required to report on transactions within several size ranges. The

thresholds for these ranges must be dependent on the type of financial instrument and its liquidity to ensure that they provide an adequate sample of executions in a size that is typical in that instrument.

(15)   It is important that execution venues collect data throughout the normal hours of their operation. Reporting should therefore be made without charge in a machine readable electronic format via an internet website to enable the public to download, search, sort and analyse all the provided data.

(16)   The reports by execution venues should be complemented by the output of a consolidated tape provider established by Directive 2014/65/EU thus allowing for the development of enhanced measures of execution quality.

(17)   The new legislation of the European Parliament and of the Council on markets in financial instruments set out in Directive 2014/65/EU and Regulation (EU) No 600/2014 applies from 3 January 2017. To ensure consistency and legal certainty, this Regulation should apply from the same date.

(18)   This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(19)   ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[3].

HAS ADOPTED THIS REGULATION:

Article 1

Scope of the Regulation

This Regulation shall apply to trading venues, systematic internalisers, market makers, or other liquidity providers.

Article 2

---

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

Definitions

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

(a) 'Trading system' means the way in which an execution venue executes orders as continuous auction order book, continuous quote driven, request for quote and any trading systems not covered by the foregoing;

(b) 'Size Specific to the financial instrument' should be understood, in the case of instruments for which there is no liquid market, in accordance with Article 11, of Regulation (EU) No 600/2014 for post trade transparency purposes.

Article 3

General information

1.   Each trading venue and systematic internaliser shall publish for each financial instrument subject to the trading obligation in Article 23 and 28 of Regulation (EU) No 600/2014 for each market segment it operates and each execution venue shall publish for each other financial instrument for each market segment it operates, the following general information as regards the type of execution venue:

(a) name and venue identifier of the execution venue;

(b) country of location of the competent authority;

(c) name of the market segment and market segment identifier;

(d) date of the trading day;

(e) nature, number and average duration of any outage, within the venue's normal trading period, that interrupted trading across all instruments available to trade at the venue on that date

(f) nature, number, and average duration of any scheduled auctions within the venue's normal trading period on that date;

(g) number of failed transactions on that date;

(h) value of failed transactions expressed as a percentage of total value of transactions that were executed on that date.

2.   Each trading venue and systematic internaliser shall publish for each market segment it operates for each financial instrument subject to the trading obligation in Article 23 and 28

of Regulation (EU) No 600/2014 and each execution venue shall publish for each market segment it operates and for each other financial instrument, the following general information:

(a) for financial instruments that have identifiers as set out in Annex I, Table 2,

    (i) name and financial instrument identifier;

    (ii) instrument classification;

    (iii) currency.

(b) for financial instruments that do not have identifiers as set out in Annex I, Table 2

    (i) the name and a written description of the instrument, including the currency of the underlying instrument, price multiplier, price notation, quantity notation and delivery type;

    (ii) instrument classification;

    (iii) currency.

3.   For the purpose of this Article:

(a) failed transaction means a transaction that was voided by the execution venue;

(b) price multiplier means the number of units of the underlying instrument represented by a single derivative contract;

(c) price notation means an indication as to whether the price of the transaction is expressed in monetary value, in percentage or in yield;

(d) quantity notation means an indication as to whether the quantity of the transaction is expressed in number of units or in nominal value or in monetary value;

(e) delivery type means an indication as to whether the financial instrument is settled physically or in cash including instances when the counterparty may choose or when it is determined by a third party.

Article 4

Price

1.   Each trading venue and systematic internaliser shall publish for each financial instrument subject to the trading obligation in Article 23 and 28 of Regulation (EU) No 600/2014 for each market segment it operates and each execution venue shall publish for each

other financial instrument for each market segment it operates, the following information as regards price for each trading day orders were executed on the financial instrument:

(a) Intra-day information

    (i) for trading venues, within each size range as set out in Article 9, the simple average price of all transactions that were executed in the two minutes starting at each of the reference times 9.30.00, 11.30.00, 13.30.00 and 15.30.00 UTC on that date;

    (ii) for systematic internalisers, market makers and other liquidity providers, the simple average price of all transactions within size range 1 as set out in Article 9, that were executed in the two minutes starting at each of the reference times 9.30.00, 11.30.00, 13.30.00 and 15.30.00 UTC on that date;

    (iii) total value of trades executed during the two minute period referred to in points (i) and (ii);

    (iv) for trading venues, if no transactions occurred during the first two minutes of the relevant time periods referred to in point (i), the price of the first transaction executed within each size range as set out in Article 9, if any, after each of the reference times in point (i) on that date;

    (v) for systematic internalisers, market makers and other liquidity providers if no transactions occurred during the first two minutes of the relevant time periods referred to in point (ii), the price of the first transaction executed within size range 1 as set out in Article 9, if any, after each of the reference times in point (ii) on that date;

    (vi) execution time for each transaction referred to in points (iv) and (v);

    (vii) transaction size in terms of value for each executed transaction referred to in points (iv) and (v);

    (viii) trading system and trading mode under which the transactions referred to in points (iv) and (v) were executed;

    (ix) trading platform on which the transactions referred to in (iv) and (v) were executed;

    (x) best bid and offer or the suitable reference price at the time of execution for each executed transaction referred to in points (iv) and (v).

(b) Daily information

      (i)   simple average and volume-weighted average transaction price, if more than one transaction occurred;

      (ii) highest executed price, if more than two transactions occurred;

      (iii) lowest executed price, if more than two transactions occurred.

2.   For the purpose of this Article:

  (a) trading mode means scheduled opening, closing or intra-day auction, unscheduled auction, trading at close, trading out of main session, or trade reporting;

  (b) trading platform means the type of platform the execution venue operates: electronic, voice or outcry.

Article 5

Costs

Each trading venue and systematic internaliser shall publish for each financial instrument subject to the trading obligation in Article 23 and 28 of Regulation (EU) No 600/2014 for each market segment it operates and each execution venue shall publish for each other financial instrument for each market segment it operates, the following information as regards costs applied by the execution venue to any members or users of the venue:

  (a) a description of the nature and level of all components of costs applied by the execution venue, before any rebates or discounts are applied by the execution venue, and information on how those costs differ according to the user or financial instrument involved and the relevant amounts by which they differ. The components of costs shall include:

      (i)   execution fees;

      (ii) fees for the submission, modification or cancellation of orders or quotes withdrawals;

      (iii) fees related to market data access and use of terminals;

      (iv) any clearing and settlement fees and any other fees paid to third parties involved in the execution of the order.

  (b) a description of the nature and level of any rebates, discounts or other payments offered to users of the execution venue including information on how those rebates, discounts or other payments differ according to the user or financial instrument involved and the amounts by which they differ;

(c) a description of the nature and amount or, where the amount cannot be ascertained, the method for calculating that amount of any non-monetary benefits offered to users of the execution venue including information on how those non-monetary benefits differ according to the user or financial instrument involved and the value by which they differ;

(d) a description of the nature and level of any taxes or levies invoiced to, or incurred by the execution venue on behalf of, the members or user of the venue;

(e) link to the website of the venue or to another source where further information on costs is available;

(f) total value of all rebates, discounts, non-monetary benefits or other payments as set out under (b) and (c), expressed as a percentage of the total traded value during the reporting period;

(g) total value of all costs as set out in point (a), excluding the total value of rebates and discounts, non-monetary benefits or other payment as set out in point (b) and (c) of paragraph 1, expressed as a percentage of the total traded value during the reporting period.

Article 6

Likelihood of execution

Each trading venue and systematic internaliser shall publish for each financial instrument subject to the trading obligation in Article 23 and 28 of Regulation (EU) No 600/2014 for each market segment it operates and each execution venue shall publish for each market segment it operates and for each other financial instrument for each market segment it operates, the following information as regards likelihood of execution for each trading day:

(a) number of orders or requests for quotes that were received;

(b) number and value of transactions that were executed, if more than one;

(c) number of orders or request for quotes received that were cancelled or withdrawn excluding passive orders with instructions to expire or to be cancelled at the end of the day;

(d) number of orders or request for quotes received, that were modified on that date;

(e) median transaction size on that date if more than one transaction occurred;

(f) median size of all orders or requests for quote on that date if more than one order or request for quote was received;

(g) number of designated market makers.

Article 7

Additional information for continuous auction order book and continuous quote driven execution venues

1. Where an execution venue operates under a continuous auction order book, continuous quote driven trading system or any other type of trading system for which that information is available, each trading venue and systematic internaliser shall publish for each financial instrument subject to the trading obligation in Article 23 and 28 of Regulation (EU) No 600/2014 for each market segment it operates and each execution venue shall publish for each other financial instrument for each market segment it operates, the following additional information at the reference times as specified in points (i) and (ii) of Article 4(1)(a) for each trading day:

(a) best bid and offer price and corresponding volumes;

(b) book depth for three price increments.

2. Where an execution venue operates under a continuous auction order book, continuous quote trading system or any other type of trading system for which that information is available, each trading venue and systematic internaliser shall publish for each financial instrument subject to the trading obligation in Article 23 and 28 of Regulation (EU) No 600/2014 for each market segment it operates and each execution venue shall publish for each other financial instrument for each market segment it operates, the following additional information for each trading day:

(a) average effective spread;

(b) average volume at best bid and offer;

(c) average spread at best bid and offer;

(d) number of cancellations at best bid and offer;

(e) number of modifications at best bid and offer;

(f) average book depth for 3 price increments;

(g) mean and median time elapsed between an aggressive order or quote acceptance being received by the execution venue and the subsequent total or partial execution;

(h) average speed of execution for unmodified passive orders at best bid and offer;

(i) number of Fill or Kill orders that failed;

(j) number of Immediate or Cancel orders that got zero fill;

(k) number and value of transactions that were executed on the trading venue that are Large in Scale pursuant to Article 4 or 9 of Regulation (EU) No 600/2014;

(l) number and value of transactions that were executed on the trading venue pursuant to Article 4 or Article 9 of Regulation (EU) No 600/2014, except for orders that are held in an order management facility of the trading venue pending disclosure and not included under point (k);

(m) number and average duration of trading interruptions as the result of any volatility auction or circuit breaker which occurred within the venue's normal trading period;

(n) nature, number and average duration of any trading suspension that occurred as a result of a decision by the venue within the venue's normal trading period, outside of any that were reported under Article 3(1)(e).

3. For the purpose of this Article:

(a) book depth means the total available liquidity expressed as the product of price and volume of all bids and offers for a specified number of price increments from the mid-point of the best bid and offer,

(b) average effective spread means the average of twice the difference between the actual execution price compared with mid-point of best bid and offer at time of receipt, for market orders or marketable limit orders,

(c) average speed of execution for unmodified passive orders at best bid and offer means the average time elapsed between a limit order that matches the best bid and offer being received by the execution venue, and the subsequent execution of this order,

(d) aggressive order means an order entered into the order book that took liquidity,

(e) passive order means an order entered onto the order book that provided liquidity,

(f) immediate or cancel order means an order which is executed upon its entering into the order book and which does not remain in the order book for any remaining quantity that has not been executed,

(g) fill or kill order means an order which is executed upon its entering into the order book provided that it can be fully filled. In the event the order can only be partially executed, then it is automatically rejected and is not executed.

4.   Where an execution venue operates, in whole or in part, under a continuous quote trading system, each trading venue and systematic internaliser shall publish for each financial instrument subject to the trading obligation in Article 23 and 28 of Regulation (EU) No 600/2014 for each market segment it operates and each execution venue shall publish for each other financial instrument for each market segment it operates:

(a) the number and average duration, during the venue's normal trading hours, of any periods lasting more than 15 minutes during which no bid or offers were provided for each trading day;

(b) average quote presence expressed in percentage of the venue's normal trading period on that date.

Article 8

Additional information to be published for request for quote execution venues

1.   Where the execution venue operates under a request for quote trading system, or any other type of trading system for which that information is available each trading venue and systematic internaliser shall publish for each market segment it operates and for each financial instrument subject to the trading obligation in Article 23 and 28 of Regulation (EU) No 600/2014 and each execution venue shall publish for each market segment it operates and for each other financial instrument for each market segment it operates the following additional information for each trading day:

(a) the mean amount of time and median amount of time elapsed between the acceptance of a quote and execution, for all transactions in that financial instrument, and;

(b) the mean amount of time and median amount of time elapsed between a request for a quote and provision of any corresponding quotes, for all quotes in that financial instrument.

Article 9

Determination of reporting ranges

1.   Execution venues shall report the executed transactions specified in Article 4 for the following ranges:

(a) For all financial instruments other than money market instruments

(i)   range 1: greater than EUR 0 and less than or equal to the Standard Market Size or the Size Specific to the financial instrument;

(ii)   range 2: greater than the Standard Market Size or the Size Specific to the financial instrument and less than or equal to Large in Scale;

(iii) range 3: greater than Large in Scale.

(b)   For illiquid shares, exchange traded funds or certificates

(i)   range 1: greater than EUR 0 and less than or equal to the smallest available Standard Market Size in that type of instrument;

(ii)   range 2: greater than the smallest available Standard Market Size in that type of instrument and less than or equal to Large in Scale;

(iii) range 3: greater than Large in Scale.

(c)   For money market instruments:

(i)   range 1: greater than EUR 0 and less than or equal to EUR 10million;

(ii)   range 2: greater than EUR 10million and less than or equal to EUR 50million;

(iii) range 3: greater than EUR 50million.

2.   For the purposes of this Regulation, 'Large in Scale' means an order large in scale in accordance with Article 7 and 11 of Regulation (EU) No 600/2014.

Article 10

Format for publication

1.   Execution venues shall publish, for each trading day that the execution venue is open for trading, the information in accordance with the templates set out in Annex I, in a machine-readable electronic format, available for downloading by the public.

(a)   Tables 1 and 2 set out the format for the identification information to be published in accordance with Article 3;

(b)   Table 3 and 4 sets out the format for the price information to be published in accordance with Article 4;

(c)   Table 5 sets out the format for the costs information to be published in accordance with Article 5;

(d) Table 6 sets out the format for the likelihood of execution information to be published in accordance with Article 6;

(e) Table 7 sets out the format for the additional information by continuous auction order book, continuous quote driven execution venues to be published in accordance with Article 7(1);

(f) Table 8 sets out the format for the additional information by continuous auction order book, continuous quote driven execution venues to be published in accordance with Article 7(2) and 7(4);

(g) Table 9 sets out the format for the additional information by request for quote execution venues to be published in accordance with Article 8.

Article 11

Periodicity of the information to be published

Execution venues shall publish the information four times a year and no later than three months after the end of each quarter:

(a) by 30 June, information regarding the time period 1 January to 31 March;

(b) by 30 September, information regarding the time period 1 April to 30 June;

(c) by 31 December, information regarding the time period 1 July to 30 September;

(d) by 31 March, information regarding the time period 1 October to 31 December.

Article 12

Entry into force

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

It shall apply from 3 January 2017.

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

EN **EN**

Done at Brussels,

For the Commission
The President

[For the Commission
On behalf of the President

[Position]

Annex I

Table 1 - identification information to be published in accordance with Article 3

Venue	Name	Identifier (ISO 10383 Market Identifier Code (MIC) or the Legal Entity Identifier (LEI)	
Country of Competent Authority	Name		
Market Segment	Name	Identifier (ISO 10383 market segment MIC)	
Date	ISO 8601		
Outages	Nature	Number	Average duration
Scheduled Auction	Nature	Number	Average duration
Failed Transactions		Number	Value (as % of total value of transactions executed on that day)

Table 2 - identification information to be published in accordance with Article 3

Financial Instrument	Name	Identifier(ISO 6166)
Written description of financial instrument, if no identifier available (including the currency of the underlying instrument, price multiplier, price notation, quantity notation and delivery type)		
Instrument classification	(ISO 10962 CFI code)	
Currency	(ISO 4217)	

Table 3 - price information to be published in accordance with Article 4(1)(a)

Time (T)	Size Range	All trades executed within first two minutes after time T		First transaction after time T (if no transactions within first two minutes after time T)						
		Simple average executed price (excluding commissions and accrued interest)	Total value executed	Price	Time of execution	Transaction size	Trading System	Trading Mode	Trading platform	best bid and offer or suitable reference price at time of execution
09.30.00	1									
	2									
	3									
11.30.00	1									
	2									
	3									
13.30.00	1									
	2									
	3									
15.30.00	1									
	2									
	3									

Table 4 - price information to be published in accordance with Article 4(1)(b)

simple average transaction price	
volume-weighted transaction price	
highest executed price	
lowest executed price	

Table 5 - costs information to be published in accordance with Article 5

Information required under Article 5(a) to (d)	(Description)
Total value of all rebates, discounts, or other payments offered (as % of total traded value during the reporting period)	%
Total value of all costs (as a % of total traded value during the reporting period volume)	%
Link to a website or other source where further information on costs is available	

Table 6 - price information to be published in accordance with Article 6

Number of orders or request for quotes received	
Number of transactions executed	
Total value of transactions executed	
Number of orders or request for quotes received cancelled or withdrawn	
Number of orders or request for quotes received modified	
Median transaction size	
Median size of all orders or requests for quote	
Number of designated market makers	

Table 7 - likelihood of execution information to be published in accordance with Article 7(1)

Time	Best Bid Price	Best Offer Price	Bid Size	Offer Size	Book depth within 3 price increments
9.30.00					
11.30.00					
13.30.00					
15.30.00					

Table 8 - information required under Article 7(2) and 7(4)

Average effective spread	
Average volume at best bid and offer	
Average spread at best bid and offer	
Number of cancellations at best bid and offer	
Number of modifications at best bid and offer	
Average book depth at 3 price increments	
Mean time elapsed (to the mili-second) between an aggressive order or quote acceptance being received by the execution venue and the subsequent total or partial execution	
Median time elapsed (to the mili-second) between a market order being received by the execution venue and the subsequent total or partial execution	
Average speed of execution for unmodified passive orders at best bid and offer	
Number of Fill or Kill orders that failed	
Number of Immediate or Cancel orders that got zero fill	
Number of transactions executed on the trading venue that are Large in Scale pursuant to Article 4 or 9 of Regulation (EU) No 600/2014	
Value of transactions executed on the trading venue that are Large in Scale pursuant to Article 4 or 9 of Regulation (EU) No 600/2014	
Number of transactions that were executed on the trading venue pursuant to Article 4 or 9 of MiFIR, except for orders that are held in an order management facility of the trading venue pending disclosure and not Large in Scale	
Value of transactions that were executed on the trading venue pursuant to Article 4 or 9 of MiFIR, except for orders that are held in an order management facility of the trading venue pending disclosure and not Large in Scale	
Number of trading interruptions	

Average duration of trading interruptions	
Number of suspensions	
Nature of suspensions	
Average duration of suspensions	
For continuous quote venues, number of periods during which no quotes were provided	
For continuous quote venues, average duration of periods during which no quotes were provided	
Average quote presence	

Table 9 - information required under Article 8

Mean time elapsed between acceptance and execution	
Median time elapsed between acceptance and execution	
Mean time elapsed between request and provision of any corresponding quotes	
Median time elapsed between request and provision of any corresponding quotes	

RTS 28: Draft regulatory technical standards under Article 27(10)(b) of MiFID II

EUROPEAN COMMISSION

Brussels, XXX
[…](2012) XXX draft

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

[…]

COMMISSION DELEGATED REGULATION (EU) …/..

of [date]

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments and amending Directive 2004/92/EC and Directive 2011/61/EU[1] , and in particular point (b) of the first subparagraph of Article 27(10)

Whereas:

(1)   It is essential to enable the public and investors to evaluate the quality of an investment firm's execution practices and the identity of the top five execution venues in terms of trading volumes where those investment firms executed client orders in the preceding year. In order to make meaningful comparisons and analyse the choice of top five execution venues it is necessary that information be published by investment firms specifically in respect of each class of financial instruments. In order to be able to fully evaluate the order flow of client orders to execution venues, investors and the public should be able to clearly identify where the investment firm itself was one of the top five execution venues for each class of financial instrument.

(2)   In order to fully assess the extent of the quality of execution being obtained on execution venues used by investment firms to execute client orders, including execution venues in third countries, it is appropriate to require investment firms to publish information required under this Regulation in relation to trading venues, market makers or other liquidity providers or any entity that performs a similar function in a third country to the functions performed by any of the foregoing.

(3)   In order to provide very precise and comparable information, it is necessary to set out classes of financial instruments based on their characteristics relevant for publication

---

[1] OJ L 173, 12.6.2014, p. 349.

purposes. A class of financial instruments should be narrow enough to reveal differences in order execution behaviour between classes but at the same time broad enough to ensure that the reporting obligation on investment firms is proportionate. Given the breadth of the equity class of financial instruments, it is appropriate to divide this class into subclasses based on liquidity. As liquidity is an essential factor governing execution behaviours and as execution venues are often competing to attract flows of the most frequently traded stocks, it is appropriate that equity instruments are classified according to their liquidity as determined under the tick size regime as set out under Regulation (EU) No 600/2014.

(4)   When publishing the identity of the top five execution venues on which they execute client orders it is appropriate for investment firms to publish information about the volume and number of orders executed on each execution venue, so that investors may be able to form an opinion as to the flow of client orders from the firm to execution venue. Where, for one or several classes of financial instruments, an investment firm only executes a very small number of orders, information on the top five execution venues would not be very meaningful nor representative of order execution arrangements. It is therefore appropriate to require investment firms to clearly indicate the classes of financial instruments for which they execute a very small number of orders.

(5)   To prevent potentially market sensitive disclosures on the volume of business being conducted by the investment firm, the volume of execution and the number of executed orders should be expressed as a percentage of the investment firm's total execution volumes and number of executed orders in that class of financial instrument, respectively, rather than as absolute values.

(6)   It is appropriate to require investment firms to publish information which is relevant to their order execution behaviour. To ensure that investment firms are not held accountable for order execution decisions for which they are not responsible, it is appropriate for them to disclose the percentage of orders executed on each of the top five execution venues where the choice of execution venue has been specified by clients.

(7)   There are several factors which may potentially influence the order execution behaviour of investment firms such as close links between investment firms and execution venues. Given the potential materiality of these factors it is appropriate to require analysis of such factors in assessing the quality of execution obtained on all execution venues.

(8)   The different order types can be an important factor explaining how and why investment firms are executing their orders on a given execution venue. It also may impact the way an investment firm will set its execution strategies including programming of smart order routers to meet those orders' specific purposes. It is

therefore appropriate that a distinction between those categories be clearly marked in the report.

(9)   In order to properly analyse information it is important that users are in a position to differentiate between the execution venues used for professional client orders and for retail client orders, given the notable differences in how firms obtain the best possible result for retail clients as compared to professional clients, namely that investment firms must predominantly assess the factors of price and cost when executing orders from retail clients. It is therefore appropriate that information on the top five execution venues be provided distinctly for retail clients and professional clients so that that a qualitative assessment can be made of the order flow to such venues.

(10)   Securities financing transactions include a variety of secured transactions such as lending or borrowing securities, repurchase or reverse repurchase transactions and buy-sell back or sell-buy back transactions. Securities lending is primarily driven by demand for specific securities and is used, for instance, in transactions where securities are used to borrow or to lend cash or settlement purposes. SFTs are therefore used as a source of funding, for liquidity, and collateral management. The rationale for those transactions is therefore specific: in such transactions, securities are not bought or sold for their expected price movements but sought after or provided as collateral, making their economic justification very different from other types of transactions. Due to the specific nature of securities financing transactions, and given that their large size would likely distort the more representative set of client transactions (i.e. those not involving securities financing transactions), it is necessary to maintain separate evidence of such executions. To this effect, investment firms executing securities financing transactions should not include them in the same table concerning the top five execution venues on which they execute other client orders. It is therefore appropriate that investment firms summarise and make public the top five execution venues in terms of trading volumes where they executed securities financing transactions in a separate report so that that a qualitative assessment can be made of the order flow to such venues.

(11)   It is appropriate that investment firms should publish an assessment of quality of execution obtained on all venues used by the firm. This information will provide a clear picture of the execution strategies and tools used to assess the quality of execution obtained on those venues. This information will also allow investors to assess the effectiveness of the monitoring carried out by investment firms in relation to those execution venues.

(12)   In specifically assessing the quality of execution obtained on all execution venues in relation to cost, it is appropriate that investment firms also perform an analysis of the arrangements it has with these venues in relation to payments made or received and to discounts, rebates or non-monetary benefits received. Such an assessment should also

allow the public to consider how such arrangements impact the costs faced by the investor and how they comply with Article 27(2) of Directive 2004/65/EC.

(13)   It is also appropriate to determine the scope of such publication and its essential features, including the use that investment firms make of the data on execution quality available from execution venues under Regulation **(RTS under 27(10)(a)).

(14)   Information on identity of execution venues and on the quality of execution should be published annually and refer to order execution behaviour for each class of financial instruments in order to capture relevant changes within the preceding calendar year.

(15)   Investment firms should not be prevented from adopting an additional level of reporting which is more granular, provided that in such case the additional report does not replace but complements what is required in this Regulation.

(16)   The new legislation of the European Parliament and of the Council on markets in financial instruments set out in Directive 2014/65/EU and Regulation (EU) No 600/2014 applies from 3 January 2017. To ensure consistency and legal certainty, this Regulation should apply from the same date.

(17)   This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(18)   ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[2],

HAS ADOPTED THIS REGULATION:

Article 1

Scope of the Regulation

This Regulation shall apply to investment firms in relation to client orders   executed on trading venues, systematic internalisers, market makers or other liquidity providers or entities that perform a similar function to those performed by any of the foregoing in a third country.

---

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

Article 2

Information on the top five execution venues and quality of execution obtained

1.   Investment firms shall publish for each class of financial instruments as referred to in Annex 1, the top five execution venues in terms of trading volumes for all executed client orders for retail clients, excluding orders in Securities Financing Transactions, as set out in Annex II (Table 1) the following information:

  (a) class of financial instruments;

  (b) venue name and identifier;

  (c) volume of client orders executed on that execution venue expressed as a percentage of total executed volume;

  (d) number of client orders executed on that execution venue expressed as a percentage of total executed orders;

  (e) percentage of the executed orders referred to in point (d) that were passive and aggressive orders;

  (f) percentage of orders referred to in point (d) that were directed orders;

  (g) notification of whether it has executed an average of less than one trade per business day in the previous year in that class of financial instruments.

2.   Investment firms shall publish for each class of financial instruments as referred to in Annex 1, the top five execution venues in terms of trading volumes for all executed client orders for professional clients, excluding orders in Securities Financing Transactions, as set out in Annex II (Table 2) the following information:

  (a) class of financial instruments;

  (b) venue name and identifier;

  (c) volume of client orders executed on that execution venue expressed as a percentage of total executed volume;

  (d) number of client orders executed on that execution venue expressed as a percentage of total executed orders;

  (e) percentage of the executed orders referred to in point (d) that were passive and aggressive orders;

(f) percentage of orders referred to in point (d) that were directed orders

(g) notification of whether it has executed an average of less than one trade per business day in the previous year in that class of financial instruments

3. Investment firms shall publish for each class of financial instruments as referred to in Annex 1, the top five execution venues in terms of trading volumes for all executed client orders in Securities Financing Transactions, as set out in Annex II (Table 3) the following information:

(a) volume of client orders executed on that execution venue expressed as a percentage of total executed volume;

(b) number of client orders executed on that execution venue expressed as a percentage of total executed orders;

(c) notification where it has executed an average of less than one trade per business day in the previous year in that class of financial instruments.

4. An investment firm shall publish for each class of financial instruments, a summary of the analysis and conclusions it draws from its detailed monitoring of the quality of execution obtained on the execution venues where it executed all client orders in the previous year. This information shall include:

(a) an explanation of the relative importance the firm gave to the execution factors of price, costs, speed, likelihood of execution or any other consideration including qualitative factors when making assessments of the quality of execution;

(b) a description of any close links, conflicts of interests, and common ownerships with respect to any execution venues used to execute orders;

(c) a description of any specific arrangements with any execution venues regarding payments made or received, discounts, rebates or non-monetary benefits received;

(d) an explanation of the factors that led to a change in the list of execution venues listed in the firm's execution policy, if such a change occurred;

(e) an explanation of how order execution differs according to client categorisation, where the firm treats such category of client differently and where it may affect the order execution arrangements;

(f) an explanation of when other criteria were given precedence over immediate price and cost when executing retail client orders and how these other criteria were instrumental in delivering the best possible result in terms of the total consideration to the client;

(g) an explanation of how the investment firm has used any data or tools relating to the quality of execution including any data published under 27(10)(a) of Directive 2014/65/EU.

(h) An explanation of how the investment firm has used, if applicable, output of a consolidated tape provider established under Article 65 of Directive 2014/65/EU which will allow for the development of enhanced measures of execution quality or any other algorithms used to optimise and assess execution performances.

5.   For the purpose of this Article:

(a) passive order means an order entered onto the order book that provided liquidity,

(b) aggressive order means an order entered onto the order book that took liquidity, and

(c) directed order means an order where a specific execution venue was specified by the client prior to the execution of the order.

Article 3

Format

Investment firms shall publish the information required in accordance with Article 2(1) to (4) on their websites, by filling in the templates set out in Annex II, in a machine-readable electronic format, available for downloading by the public and the information in accordance with Article 2(4) in an electronic format available for downloading by the public.

Article 4

Entry into force

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

It shall apply from 3 January 2017.

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

Done at Brussels,

For the Commission
The President

[For the Commission
On behalf of the President

[Position]

Annex I: Classes of financial instruments

(a) Equities – Shares & Depositary Receipts

    (i) Tick size liquidity bands 5 and 6 (from 2000 trades per day)

    (ii) Tick size liquidity bands 3 and 4 (from 80 to 1999 trades per day)

    (iii) Tick size liquidity band 1 and 2 (from 0 to 79 trades per day)

(b) Debt instruments

    (i) Bonds

    (ii) Money markets instruments

(c) Interest rates derivatives

    (i) Futures and options admitted to trading on a trading venue

    (ii) Swaps, forwards, and other interest rates derivatives

(d) credit derivatives

    (i) Futures and options admitted to trading on a trading venue

    (ii) Other credit derivatives

(e) currency derivatives

    (i) Futures and options admitted to trading on a trading venue

    (ii) Swaps, forwards, and other currency derivatives

(f) Structured finance instruments

(g) Equity Derivatives

    (i) Options and Futures admitted to trading on a trading venue

    (ii) Swaps and other equity derivatives

(h) Securitized Derivatives

    (i) Warrants and Certificate Derivatives

    (ii) Other securitized derivatives

(i) Commodities Derivatives

    (i) Options and Futures admitted to trading on a trading venue

    (ii) Other commodities derivatives

(j) Contracts for difference

(k) Exchange traded products (Exchange traded funds, exchange traded notes and exchange traded commodities)

(l) Emission allowances

(m) Other instruments

Annex II

Table 1

Class of Instrument					
Notification if <1 average trade per business day in the previous year	Y / N				
Top five execution venues ranked in terms of trading volumes (descending order)	Proportion of volume traded as a percentage of total in that class	Proportion of orders executed as percentage of total in that class	Percentage of passive orders	Percentage of aggressive orders	Percentage of directed orders
Name and Venue Identifier (MIC or LEI)					
Name and Venue identifier (MIC or LEI)					
Name and venue identifier (MIC or LEI)					
Name and venue identifier (MIC or LEI)					
Name and venue identifier (MIC or LEI)					

Table 2

Class of Instrument					
Notification if <1 average trade per business day in the previous year	Y / N				
Top 5 Venues ranked in terms of volume (descending order)	Proportion of volume traded as a percentage of total in that class	Proportion of orders executed as percentage of total in that class	Percentage of passive orders	Percentage of aggressive orders	Percentage of directed orders
Name and Venue Identifier(MIC or LEI)					
Name and Venue identifier(MIC or LEI)					
Name and venue identifier(MIC or LEI)					
Name and venue identifier(MIC or LEI)					
Name and venue identifier(MIC or LEI)					

Table 3

Class of Instrument		
Notification if <1 average trade per business day in the previous year	**Yes / No**	
Top 5 Venues ranked in terms of volume (descending order)	Proportion of volume executed as a percentage of total in that class	Proportion of orders executed as percentage of total in that class
Name and Venue Identifier(MIC or LEI)		
Name and Venue identifier(MIC or LEI)		
Name and venue identifier(MIC or LEI)		
Name and venue identifier(MIC or LEI)		
Name and venue identifier(MIC or LEI)		

552