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►B 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

(Text with EEA relevance)

(OJ L 173, 12.6.2014, p. 84)

Amended by:

		Official Journal		
		No	page	date
►M1	Regulation (EU) 2016/1033 of the European Parliament and of the Council of 23 June 2016	L 175	1	30.6.2016
►M2	Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019	L 314	1	5.12.2019
►M3	Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020	L 22	1	22.1.2021

Corrected by:

►C1 Corrigendum, OJ L 270, 15.10.2015, p. 4 (600/2014)
►C2 Corrigendum, OJ L 187, 12.7.2016, p. 30 (600/2014)
►C3 Corrigendum, OJ L 278, 27.10.2017, p. 54 (600/2014)

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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

(Text with EEA relevance)

TITLE I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter and scope

1. This Regulation establishes uniform requirements in relation to the following:

(a) disclosure of trade data to the public;

(b) reporting of transactions to the competent authorities;

(c) trading of derivatives on organised venues;

(d) non-discriminatory access to clearing and non-discriminatory access to trading in benchmarks;

(e) product intervention powers of competent authorities, ESMA and EBA and powers of ESMA on position management controls and position limits;

(f) provision of investment services or activities by third-country firms following an applicable equivalence decision by the Commission with or without a branch.

2. This Regulation applies to investment firms, authorised under Directive 2014/65/EU and credit institutions authorised under Directive 2013/36/EU of the European Parliament and of the Council ([1]) when providing investment services and/or performing investment activities and to market operators including any trading venues they operate.

3. Title V of this Regulation also applies to all financial counterparties as defined in Article 2(8) of Regulation (EU) No 648/2012 and to all non-financial counterparties falling under Article 10(1)(b) of that Regulation.

4. Title VI of this Regulation also applies to CCPs and persons with proprietary rights to benchmarks.

5. Title VIII of this Regulation applies to third-country firms providing investment services or activities within the Union following an applicable equivalence decision by the Commission with or without a branch.

([1]) 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 (OJ L 176, 27.6.2013, p. 338).

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5a. Title II and Title III of this Regulation shall not apply to securities financing transactions as defined in point (11) of Article 3 of Regulation (EU) 2015/2365 of the European Parliament and of the Council ([1]).

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6. Articles 8, 10, 18 and 21 shall not apply to regulated markets, market operators and investment firms in respect of a transaction where the counterparty is a member of the European System of Central Banks (ESCB) and where that transaction is entered into in performance of monetary, foreign exchange and financial stability policy which that member of the ESCB is legally empowered to pursue and where that member has given prior notification to its counterparty that the transaction is exempt.

7. Paragraph 6 shall not apply in respect of transactions entered into by any member of the ESCB in performance of their investment operations.

8. ESMA shall, in close cooperation with the ESCB, develop draft regulatory technical standards to specify the monetary, foreign exchange and financial stability policy operations and the types of transactions to which paragraphs 6 and 7 apply.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

9. The Commission shall be empowered to adopt delegated acts in accordance with Article 50 to extend the scope of paragraph 6 to other central banks.

To that end, the Commission shall, by 1 June 2015, submit a report to the European Parliament and to the Council assessing the treatment of transactions by third-country central banks which for the purposes of this paragraph includes the Bank for International Settlements. The report shall include an analysis of their statutory tasks and their trading volumes in the Union. The report shall:

(a) identify provisions applicable in the relevant third countries regarding the regulatory disclosure of central bank transactions, including transactions undertaken by members of the ESCB in those third countries, and

(b) assess the potential impact that regulatory disclosure requirements in the Union may have on third-country central bank transactions.

If the report concludes that the exemption provided for in paragraph 6 is necessary in respect of transactions where the counterparty is a third-country central bank carrying out monetary policy, foreign exchange and financial stability operations, the Commission shall provide that that exemption applies to that third-country central bank.

([1]) Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (OJ L 337, 23.12.2015, p. 1).

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Article 2

Definitions

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

(1) ‘investment firm’ means an investment firm as defined in Article 4(1)(1) of Directive 2014/65/EU;

(2) ‘investment services and activities’ means investment services and activities defined in Article 4(1)(2) of Directive 2014/65/EU;

(3) ‘ancillary services’ means ancillary services as defined in Article 4(1)(3) of Directive 2014/65/EU;

(4) ‘execution of orders on behalf of clients’ means execution on behalf of clients as defined in Article 4(1)(5) of Directive 2014/65/EU;

(5) ‘dealing on own account’ means dealing on own account as defined in Article 4(1)(6) of Directive 2014/65/EU;

(6) ‘market maker’ means a market maker as defined in Article 4(1)(7) of Directive 2014/65/EU;

(7) ‘client’ means a client as defined in Article 4(1)(9) of Directive 2014/65/EU;

(8) ‘professional client’ means a professional client as defined in Article 4(1)(10) of Directive 2014/65/EU;

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

(10) ‘market operator’ means a market operator as defined in Article 4(1)(18) of Directive 2014/65/EU;

(11) ‘multilateral system’ means a multilateral system as defined in Article 4(1)(19) of Directive 2014/65/EU;

(12) ‘systematic internaliser’ means a systematic internaliser as defined in Article 4(1)(20) of Directive 2014/65/EU;

(13) ‘regulated market’ means a regulated market as defined in Article 4(1)(21) of Directive 2014/65/EU;

(14) ‘multilateral trading facility’ or ‘MTF’ means a multilateral trading facility as defined in Article 4(1)(22) of Directive 2014/65/EU;

(15) ‘organised trading facility’ or ‘OTF’ means an organised trading facility as defined in Article 4(1)(23) of Directive 2014/65/EU;

(16) ‘trading venue’ means a trading venue as defined in Article 4(1)(24) of Directive 2014/65/EU;

(17) ‘liquid market’ means:

(a) for the purposes of Articles 9, 11, and 18, a market for a financial instrument or a class of financial instruments, where there are ready and willing buyers and sellers on a continuous basis, and where the market is assessed in accordance with the following criteria, taking into consideration the specific market structures of the particular financial instrument or of the particular class of financial instruments:

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(i) the average frequency and size of transactions over a range of market conditions, having regard to the nature and life cycle of products within the class of financial instrument;

(ii) the number and type of market participants, including the ratio of market participants to traded financial instruments in a particular product;

(iii) the average size of spreads, where available;

(b) for the purposes of Articles 4, 5 and 14, a market for a financial instrument that is traded daily where the market is assessed according to the following criteria:

(i) the free float;

(ii) the average daily number of transactions in those financial instruments;

(iii) the average daily turnover for those financial instruments;

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(18) 'competent authority' means a competent authority as defined in Article 4(1)(26) of Directive 2014/65/EU;

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(19) 'credit institution' means a credit institution as defined in Article 4(1)(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council ([1]);

(20) 'branch' means a branch as defined in Article 4(1)(30) of Directive 2014/65/EU;

(21) 'close links' means close links as defined in Article 4(1)(35) of Directive 2014/65/EU;

(22) 'management body' means a management body as defined in Article 4(1)(36) of Directive 2014/65/EU;

(23) 'structured deposit' means a structured deposit as defined in Article 4(1)(43) of Directive 2014/65/EU;

(24) 'transferable securities' means transferable securities as defined in Article 4(1)(44) of Directive 2014/65/EU;

(25) 'depositary receipts' means depositary receipts as defined in Article 4(1)(45) of Directive 2014/65/EU;

(26) 'exchange-traded fund' or 'ETF' means an exchange-traded fund as defined in Article 4(1)(46) of Directive 2014/65/EU;

(27) 'certificates' means those securities which are negotiable on the capital market and which in case of a repayment of investment by the issuer are ranked above shares but below unsecured bond instruments and other similar instruments;

(28) 'structured finance products' means those securities created to securitise and transfer credit risk associated with a pool of financial assets entitling the security holder to receive regular payments that depend on the cash flow from the underlying assets;

([1]) 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).

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(29) ‘derivatives’ means those financial instruments defined in point (44)(c) of Article 4(1) of Directive 2014/65/EU; and referred to in Annex I, Section C (4) to (10) thereto;

(30) ‘commodity derivatives’ means those financial instruments defined in point (44)(c) of Article 4(1) of Directive 2014/65/EU; which relate to a commodity or an underlying referred to in Section C(10) of Annex I to Directive 2014/65/EU; or in points (5), (6), (7) and (10) of Section C of Annex I thereto;

(31) ‘CCP’ means a CCP within the meaning of Article 2(1) of Regulation (EU) No 648/2012;

(32) ‘exchange-traded derivative’ means a derivative that is traded on a regulated market or on a third-country market considered to be equivalent to a regulated market in accordance with Article 28 of this Regulation, and as such does not fall within the definition of an OTC derivative as defined in Article 2(7) of Regulation (EU) No 648/2012;

(33) ‘actionable indication of interest’ means a message from one member or participant to another within a trading system in relation to available trading interest that contains all necessary information to agree on a trade;

(34) ‘approved publication arrangement’ or ‘APA’ means an approved publication arrangement as defined in Article 4(1)(52) of Directive 2014/65/EU;

(35) ‘consolidated tape provider’ or ‘CTP’ means a consolidated tape provider as defined in Article 4(1)(53) of Directive 2014/65/EU;

(36) ‘approved reporting mechanism’ or ‘ARM’ means an approved reporting mechanism as defined in Article 4(1)(54) of Directive 2014/65/EU;

(37) ‘home Member State’ means a home Member State as defined in Article 4(1)(55) of Directive 2014/65/EU;

(38) ‘host Member State’ means a host Member State as defined in Article 4(1)(56) of Directive 2014/65/EU;

(39) ‘benchmark’ means any rate, index or figure, made available to the public or published that is periodically or regularly determined by the application of a formula to, or on the basis of the value of one or more underlying assets or prices, including estimated prices, actual or estimated interest rates or other values, or surveys and by reference to which the amount payable under a financial instrument or the value of a financial instrument is determined.

(40) ‘interoperability arrangement’ means an interoperability arrangement as defined in Article 2(12) of Regulation (EU) No 648/2012;

(41) ‘third-country financial institution’ means an entity, the head office of which is established in a third country, that is authorised or licensed under the law of that third country to carry out any of the services or activities listed in Directive 2013/36/EU, Directive

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2014/65/EU; Directive 2009/138/EC of the European Parliament and of the Council [1], Directive 2009/65/EC of the European Parliament and of the Council [2], Directive 2003/41/EC of the European Parliament and of the Council [3] or Directive 2011/61/EU of the European Parliament and of the Council [4];

(42) 'third-country firm' means a third-country firm as defined in Article 4(1)(57) of Directive 2014/65/EU;

(43) 'wholesale energy product' means wholesale energy products as defined in Article 2(4) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council [5];

(44) 'agricultural commodity derivatives' means derivative contracts relating to products listed in Article 1 of, and Annex I, Parts I to XX and XXIV/1 to, Regulation (EU) No 1308/2013 of the European Parliament and of the Council [6];

(45) 'liquidity fragmentation' means a situation in which:

(a) participants in a trading venue are unable to conclude a transaction with one or more other participants in that venue because of the absence of clearing arrangements to which all participants have access; or

(b) a clearing member or its clients would be forced to hold their positions in a financial instrument in more than one CCP which would limit the potential for the netting of financial exposures;

(46) 'sovereign debt' means sovereign debt as defined in Article 4(1)(61) of Directive 2014/65/EU;

(47) 'portfolio compression' means a risk reduction service in which two or more counterparties wholly or partially terminate some or all of the derivatives submitted by those counterparties for inclusion in the portfolio compression and replace the terminated

[1] Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

[2] 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 (UCITS) (OJ L 302, 17.11.2009, p. 32).

[3] 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 (OJ L 235, 23.9.2003, p. 10).

[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. 1).

[5] Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (OJ L 326, 8.12.2011, p. 1).

[6] Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671).

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derivatives with another derivative whose combined notional value is less than the combined notional value of the terminated derivatives;

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(48) ‘exchange for physical’ 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;

(49) ‘package order’ means an order priced as a single unit:

(a) for the purpose of executing an exchange for physical; or

(b) in two or more financial instruments for the purpose of executing a package transaction;

(50) ‘package transaction’ means:

(a) an exchange for physical; or

(b) a transaction involving the execution of two or more component transactions in financial instruments and which fulfils all of the following criteria:

(i) the transaction is executed between two or more counterparties;

(ii) each component of the transaction bears meaningful economic or financial risk related to all the other components;

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

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2. The Commission shall be empowered to adopt delegated acts in accordance with Article 50 to specify certain technical elements of the definitions laid down in paragraph 1 to adjust them to market developments.

TITLE II

TRANSPARENCY FOR TRADING VENUES

CHAPTER 1

Transparency for equity instruments

Article 3

Pre-trade transparency requirements for trading venues in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments

1. Market operators and investment firms operating a trading venue shall make public current bid and offer prices and the depth of trading interests at those prices which are advertised through their systems for shares, depositary receipts, ETFs, certificates and other similar financial

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instruments traded on a trading venue. That requirement shall also apply to actionable indication of interests. Market operators and investment firms operating a trading venue shall make that information available to the public on a continuous basis during normal trading hours.

2. The transparency requirements referred to in paragraph 1 shall be calibrated for different types of trading systems including order-book, quote-driven, hybrid and periodic auction trading systems.

3. Market operators and investment firms operating a trading venue shall give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements they employ for making public the information referred to in paragraph 1 to investment firms which are obliged to publish their quotes in shares, depositary receipts, ETFs, certificates and other similar financial instruments pursuant to Article 14.

Article 4

Waivers for equity instruments

1. Competent authorities shall be able to waive the obligation for market operators and investment firms operating a trading venue to make public the information referred to in Article 3(1) for:

(a) systems matching orders based on a trading methodology by which the price of the financial instrument referred to in Article 3(1) is derived from the trading venue where that financial instrument was first admitted to trading or the most relevant market in terms of liquidity, where that reference price is widely published and is regarded by market participants as a reliable reference price. The continued use of that waiver shall be subject to the conditions set out in Article 5.

(b) systems that formalise negotiated transactions which are:

(i) made within the current volume weighted spread reflected on the order book or the quotes of the market makers of the trading venue operating that system, subject to the conditions set out in Article 5;

(ii) in an illiquid share, depositary receipt, ETF, certificate or other similar financial instrument that does not fall within the meaning of a liquid market, and are dealt within a percentage of a suitable reference price, being a percentage and a reference price set in advance by the system operator; or

(iii) subject to conditions other than the current market price of that financial instrument;

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(c) orders that are large in scale compared with normal market size;

(d) orders held in an order management facility of the trading venue pending disclosure.

2. The reference price referred to in paragraph 1(a) shall be established by obtaining:

(a) the midpoint within the current bid and offer prices of the trading venue where that financial instrument was first admitted to trading or the most relevant market in terms of liquidity; or

(b) when the price referred to in point (a) is not available, the opening or closing price of the relevant trading session.

Orders shall only reference the price referred to in point (b) outside the continuous trading phase of the relevant trading session.

3. Where trading venues operate systems which formalise negotiated transactions in accordance with paragraph 1(b)(i):

(a) those transactions shall be carried out in accordance with the rules of the trading venue;

(b) the trading venue shall ensure that arrangements, systems and procedures are in place to prevent and detect market abuse or attempted market abuse in relation to such negotiated transactions in accordance with Article 16 of Regulation (EU) No 596/2014;

(c) the trading venue shall establish, maintain and implement systems to detect any attempt to use the waiver to circumvent other requirements of this Regulation or Directive 2014/65/EU and to report attempts to the competent authority.

Where a competent authority grants a waiver in accordance with paragraph 1(b)(i) or (iii), that competent authority shall monitor the use of the waiver by the trading venue to ensure that the conditions for use of the waiver are respected.

4. Before granting a waiver in accordance with paragraph 1, competent authorities shall notify ESMA and other competent authorities of the intended use of each individual waiver and provide an explanation regarding its functioning, including the details of the trading venue where the reference price is established as referred to in paragraph 1(a). Notification of the intention to grant a waiver shall be made not less than four months before the waiver is intended to take effect. Within two months following receipt of the notification, ESMA shall issue a non-binding opinion to the competent authority in question assessing the compatibility of each waiver with the requirements established in paragraph 1 and specified in the regulatory technical standard adopted pursuant to paragraph 6. Where that competent authority grants a waiver and a competent authority of another Member State disagrees, that competent

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authority may refer the matter back to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010. ESMA shall monitor the application of the waivers and shall submit an annual report to the Commission on how they are applied in practice.

5. A competent authority may, either on its own initiative or upon request by another competent authority, withdraw a waiver granted under paragraph 1 as specified under paragraph 6,if it observes that the waiver is being used in a way that deviates from its original purpose or if it believes that the waiver is being used to circumvent the requirements established in this Article.

Competent authorities shall notify ESMA and other competent authorities of such withdrawal providing full reasons for their decision.

6. ESMA shall develop draft regulatory technical standards to specify the following:

(a) the range of bid and offer prices or designated market-maker quotes, and the depth of trading interest at those prices, to be made public for each class of financial instrument concerned in accordance with Article 3(1), taking into account the necessary calibration for different types of trading systems as referred to in Article 3(2);

(b) the most relevant market in terms of liquidity of a financial instrument in accordance with paragraph 1(a);

(c) the specific characteristics of a negotiated transaction in relation to the different ways the member or participant of a trading venue can execute such a transaction;

(d) the negotiated transactions that do not contribute to price formation which avail of the waiver provided for under paragraph 1(b)(iii);

(e) the size of orders that are large in scale and the type and the minimum size of orders held in an order management facility of a trading venue pending disclosure for which pre-trade disclosure may be waived under paragraph 1 for each class of financial instrument concerned;

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

7. Waivers granted by competent authorities in accordance with Article 29(2) and Article 44(2) of Directive 2004/39/EC and Articles 18, 19 and 20 of Regulation (EC) No 1287/2006 before ►**M1** 3 January 2018 ◄ shall be reviewed by ESMA by ►**M1** 3 January 2020 ◄. ESMA shall issue an opinion to the competent authority in question assessing the continued compatibility of each of those waivers with the requirements established in this Regulation and any delegated act and regulatory technical standard based on this Regulation.

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Article 5

Volume Cap Mechanism

1. In order to ensure that the use of the waivers provided for in Article 4(1)(a) and 4(1)(b)(i) does not unduly harm price formation, trading under those waivers is restricted as follows:

(a) the percentage of trading in a financial instrument carried out on a trading venue under those waivers shall be limited to 4 % of the total volume of trading in that financial instrument on all trading venues across the Union over the previous 12 months.

(b) overall Union trading in a financial instrument carried out under those waivers shall be limited to 8 % of the total volume of trading in that financial instrument on all trading venues across the Union over the previous 12 months.

That volume cap mechanism shall not apply to negotiated transactions which are in a share, depositary receipt, ETF, certificate or other similar financial instrument for which there is not a liquid market as determined in accordance with Article 2(1)(17)(b) and are dealt within a percentage of a suitable reference price as referred to in Article 4(1)(b)(ii), or to negotiated transactions that are subject to conditions other than the current market price of that financial instrument as referred to in Article 4(1)(b)(iii).

2. When the percentage of trading in a financial instrument carried out on a trading venue under the waivers has exceeded the limit referred to in paragraph 1(a), the competent authority that authorised the use of those waivers by that venue shall within two working days suspend their use on that venue in that financial instrument based on the data published by ESMA referred to in paragraph 4, for a period of six months.

3. When the percentage of trading in a financial instrument carried out on all trading venues across the Union under those waivers has exceeded the limit referred to in paragraph 1(b), all competent authorities shall within two working days suspend the use of those waivers across the Union for a period of six months.

4. ESMA shall publish within five working days of the end of each calendar month, the total volume of Union trading per financial instrument in the previous 12 months, the percentage of trading in a financial instrument carried out across the Union under those waivers and on each trading venue in the previous 12 months, and the methodology that is used to derive those percentages.

5. In the event that the report referred to in paragraph 4 identifies any trading venue where trading in any financial instrument carried out under the waivers has exceeded 3,75 % of the total trading in the Union in that financial instrument, based on the previous 12 months' trading, ESMA shall publish an additional report within five working

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days of the 15th day of the calendar month in which the report referred to in paragraph 4 is published. That report shall contain the information specified in paragraph 4 in respect of those financial instruments where 3,75 % has been exceeded.

6. In the event that the report referred to in paragraph 4 identifies that overall Union trading in any financial instrument carried out under the waivers has exceeded 7,75 % of the total Union trading in the financial instrument, based on the previous 12 months' trading, ESMA shall publish an additional report within five working days of the 15th on the day of the calendar month in which the report referred to in paragraph 4 is published. That report shall contain the information specified in paragraph 4 in respect of those financial instruments where 7,75 % has been exceeded.

7. In order to ensure a reliable basis for monitoring the trading taking place under those waivers and for determining whether the limits referred to in paragraph 1 have been exceeded, operators of trading venues shall be obligated to have in place systems and procedures to:

(a) enable the identification of all trades which have taken place on its venue under those waivers; and

(b) ensure it does not exceed the permitted percentage of trading allowed under those waivers as referred to in paragraph 1(a) under any circumstances.

8. The period for the publication of trading data by ESMA, and for which trading in a financial instrument under those waivers is to be monitored shall start on ►**M1** 3 January 2017 ◄. Without prejudice to Article 4(5), competent authorities shall be empowered to suspend the use of those waivers from the date of application of this Regulation and thereafter on a monthly basis.

9. ESMA shall develop draft regulatory technical standards to specify the method, including the flagging of transactions, by which it collates, calculates and publishes the transaction data, as outlined in paragraph 4, in order to provide an accurate measurement of the total volume of trading per financial instrument and the percentages of trading that use those waivers across the Union and per trading venue.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

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Article 6

Post-trade transparency requirements for trading venues in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments

1. Market operators and investment firms operating a trading venue shall make public the price, volume and time of the transactions executed in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on that trading venue. Market operators and investment firms operating a trading venue shall make details of all such transactions public as close to real-time as is technically possible.

2. Market operators and investment firms operating a trading venue shall give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements they employ for making public the information under paragraph 1 of this Article to investment firms which are obliged to publish the details of their transactions in shares, depositary receipts, ETFs, certificates and other similar financial instruments pursuant to Article 20.

Article 7

Authorisation of deferred publication

1. Competent authorities shall be able to authorise market operators and investment firms operating a trading venue to provide for deferred publication of the details of transactions based on their type or size.

In particular, the competent authorities may authorise the deferred publication in respect of transactions that are large in scale compared with the normal market size for that share, depositary receipt, ETF, certificate or other similar financial instrument or that class of share, depositary receipt, ETF, certificate or other similar financial instrument.

Market operators and investment firms operating a trading venue shall obtain the competent authority's prior approval of proposed arrangements for deferred trade-publication, and shall clearly disclose those arrangements to market participants and the public. ESMA shall monitor the application of those arrangements for deferred trade-publication and shall submit an annual report to the Commission on how they are applied in practice.

Where a competent authority authorises deferred publication and a competent authority of another Member State disagrees with the deferral or disagrees with the effective application of the authorisation granted, that competent authority may refer the matter back to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

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2. ESMA shall develop draft regulatory technical standards to specify the following in such a way as to enable the publication of information required under Article 64 of Directive 2014/65/EU:

(a) the details of transactions that investment firms, including systematic internalisers and market operators and investment firms operating a trading venue shall make available to the public for each class of financial instrument concerned in accordance with Article 6(1), including identifiers for the different types of transactions published under Article 6(1) and Article 20, distinguishing between those determined by factors linked primarily to the valuation of the financial instruments and those determined by other factors;

(b) the time limit that would be deemed in compliance with the obligation to publish as close to real time as possible including when trades are executed outside ordinary trading hours.

(c) the conditions for authorising investment firms, including systematic internalisers and market operators and investment firms operating a trading venue to provide for deferred publication of the details of transactions for each class of financial instruments concerned in accordance with paragraph 1 of this Article and with Article 20(1);

(d) the criteria to be applied when deciding the transactions for which, due to their size or the type, including liquidity profile of the share, depositary receipt, ETF, certificate or other similar financial instrument involved, deferred publication is allowed for each class of financial instrument concerned.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

CHAPTER 2

Transparency for non-equity instruments

Article 8

Pre-trade transparency requirements for trading venues in respect of bonds, structured finance products, emission allowances and derivatives

1. ►**M1** Market operators and investment firms operating a trading venue shall make public current bid and offer prices and the depth of trading interests at those prices which are advertised through their systems for bonds, and structured finance products, emission allowances, derivatives traded on a trading venue and package orders. ◄ That requirement shall also apply to actionable indication of interests. Market operators and investment firms operating a trading venue shall

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make that information available to the public on a continuous basis during normal trading hours. That publication obligation does not apply to those derivative transactions of non-financial counterparties which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the non-financial counterparty or of that group.

2. The transparency requirements referred to in paragraph 1 shall be calibrated for different types of trading systems, including order-book, quote-driven, hybrid, periodic auction trading and voice trading systems.

3. Market operators and investment firms operating a trading venue shall give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements they employ for making public the information referred to in paragraph 1 to investment firms which are obliged to publish their quotes in bonds, structured finance products, emission allowances and derivatives pursuant to Article 18.

4. Market operators and investment firms operating a trading venue shall, where a waiver is granted in accordance with Article 9(1)(b), make public at least indicative pre-trade bid and offer prices which are close to the price of the trading interests advertised through their systems in bonds, structured finance products, emission allowances and derivatives traded on a trading venue. Market operators and investment firms operating a trading venue shall make that information available to the public through appropriate electronic means on a continuous basis during normal trading hours. Those arrangements shall ensure that information is provided on reasonable commercial terms and on a non-discriminatory basis.

Article 9

Waivers for non-equity instruments

1. Competent authorities shall be able to waive the obligation for market operators and investment firms operating a trading venue to make public the information referred to in Article 8(1) for:

(a) orders that are large in scale compared with normal market size and orders held in an order management facility of the trading venue pending disclosure;

(b) actionable indications of interest in request-for-quote and voice trading systems that are above a size specific to the financial instrument, which would expose liquidity providers to undue risk and takes into account whether the relevant market participants are retail or wholesale investors;

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(c) derivatives which are not subject to the trading obligation specified in Article 28 and other financial instruments for which there is not a liquid market;

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(d) orders for the purpose of executing an exchange for physical;

(e) package orders that meet one of the following conditions:

(i) at least one of its components is a financial instrument for which there is not a liquid market, unless there is a liquid market for the package order as a whole;

(ii) at least one of its components is large in scale compared with the normal market size, unless there is a liquid market for the package order as a whole;

(iii) all of its components are executed on a request-for-quote or voice system and are above the size specific to the instrument.

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2. Before granting a waiver in accordance with paragraph 1, competent authorities shall notify ESMA and other competent authorities of the intended use of each individual waiver and provide an explanation regarding their functioning. Notification of the intention to grant a waiver shall be made not less than four months before the waiver is intended to take effect. Within two months following receipt of the notification, ESMA shall issue an opinion to the competent authority in question assessing the compatibility of the waiver with the requirements established in paragraph 1 and specified in the regulatory technical standards adopted pursuant to paragraph 5. Where that competent authority grants a waiver and a competent authority of another Member State disagrees, that competent authority may refer the matter back to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010. ESMA shall monitor the application of the waivers and submit an annual report to the Commission on how they are applied in practice.

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2a. Competent authorities shall be able to waive the obligation referred to in Article 8(1) for each individual component of a package order.

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3. Competent authorities, may, either on their own initiative or upon request by other competent authorities, withdraw a waiver granted under paragraph 1 if they observe that the waiver is being used in a way that deviates from its original purpose or if they consider that the waiver is being used to circumvent the requirements established in this Article.

Competent authorities shall notify ESMA and other competent authorities of such withdrawal without delay and before it takes effect, providing full reasons for their decision.

4. The competent authority responsible for supervising one or more trading venues on which a class of bond, structured finance product, emission allowance or derivative is traded may, where the liquidity of

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that class of financial instrument falls below a specified threshold, temporarily suspend the obligations referred to in Article 8. The specified threshold shall be defined on the basis of objective criteria specific to the market for the financial instrument concerned. Notification of such temporary suspension shall be published on the website of the relevant competent authority.

The temporary suspension shall be valid for an initial period not exceeding three months from the date of its publication on the website of the relevant competent authority. Such a suspension may be renewed for further periods not exceeding three months at a time if the grounds for the temporary suspension continue to be applicable. Where the temporary suspension is not renewed after that three-month period, it shall automatically lapse.

Before suspending or renewing the temporary suspension under this paragraph of the obligations referred to in Article 8, the relevant competent authority shall notify ESMA of its intention and provide an explanation. ESMA shall issue an opinion to the competent authority as soon as practicable on whether in its view the suspension or the renewal of the temporary suspension is justified in accordance with the first and second subparagraphs.

5. ESMA shall develop draft regulatory technical standards to specify the following:

(a) the parameters and methods for calculating the threshold of liquidity referred to in paragraph 4 in relation to the financial instrument. The parameters and methods for Member States to calculate the threshold shall be set in such a way that when the threshold is reached, it represents a significant decline in liquidity across all venues within the Union for the financial instrument concerned based on the criteria used under Article 2(1)(17);

(b) the range of bid and offer prices or quotes and the depth of trading interests at those prices, or indicative pre-trade bid and offer prices which are close to the price of the trading interest, to be made public for each class of financial instrument concerned in accordance with Article 8(1) and (4), taking into account the necessary calibration for different types of trading systems as referred to in Article 8(2);

(c) the size of orders that are large in scale and the type and the minimum size of orders held in an order management facility pending disclosure for which pre-trade disclosure may be waived under paragraph 1 for each class of financial instrument concerned;

(d) the size specific to the financial instrument referred to in paragraph 1(b) and the definition of request-for-quote and voice trading systems for which pre-trade disclosure may be waived under paragraph 1;

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When determining the size specific to the financial instrument that would expose liquidity providers to undue risk and takes into account whether the relevant market participants are retail or wholesale investors, in accordance with paragraph 1(b), ESMA shall take the following factors into account:

(i) whether, at such sizes, liquidity providers would be able to hedge their risks;

(ii) where a market in the financial instrument, or a class of financial instruments, consists in part of retail investors, the average value of transactions undertaken by those investors;

(e) the financial instruments or the classes of financial instruments for which there is not a liquid market where pre-trade disclosure may be waived under paragraph 1.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

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6. In order to ensure the consistent application of points (i) and (ii) of paragraph (1)(e), ESMA shall develop draft regulatory technical standards to establish a methodology for determining those package orders for which there is a liquid market. When developing such methodology for determining whether there is a liquid market for a package order as a whole, ESMA shall assess whether packages are standardised and frequently traded.

ESMA shall submit those draft regulatory technical standards to the Commission by 28 February 2017.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

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Article 10

Post-trade transparency requirements for trading venues in respect of bonds, structured finance products, emission allowances and derivatives

1. Market operators and investment firms operating a trading venue shall make public the price, volume and time of the transactions executed in respect of bonds, structured finance products, emission allowances and derivatives traded on a trading venue. Market operators and investment firms operating a trading venue shall make details of all such transactions public as close to real-time as is technically possible.

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2. Market operators and investment firms operating a trading venue shall give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements they employ for making public the information under paragraph 1 to investment firms which are obliged to publish the details of their transactions in bonds, structured finance products, emission allowances and derivatives pursuant to Article 21.

Article 11

Authorisation of deferred publication

1. Competent authorities shall be able to authorise market operators and investment firms operating a trading venue to provide for deferred publication of the details of transactions based on the size or type of the transaction.

In particular, the competent authorities may authorise the deferred publication in respect of transactions that:

(a) are large in scale compared with the normal market size for that bond, structured finance product, emission allowance or derivative traded on a trading venue, or for that class of bond, structured finance product, emission allowance or derivative traded on a trading venue; or

(b) are related to a bond, structured finance product, emission allowance or derivative traded on a trading venue, or a class of bond, structured finance product, emission allowance or derivative traded on a trading venue for which there is not a liquid market;

(c) are above a size specific to that bond, structured finance product, emission allowance or derivative traded on a trading venue, or that class of bond, structured finance product, emission allowance or derivative traded on a trading venue, which would expose liquidity providers to undue risk and takes into account whether the relevant market participants are retail or wholesale investors.

Market operators and investment firms operating a trading venue shall obtain the competent authority's prior approval of proposed arrangements for deferred trade-publication, and shall clearly disclose those arrangements to market participants and the public. ESMA shall monitor the application of those arrangements for deferred trade-publication and shall submit an annual report to the Commission on how they are used in practice.

2. The competent authority responsible for supervising one or more trading venues on which a class of bond, structured finance product, emission allowance or derivative is traded may, where the liquidity of that class of financial instrument falls below the threshold determined in

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accordance with the methodology as referred to in Article 9(5)(a), temporarily suspend the obligations referred to in Article 10. That threshold shall be defined based on objective criteria specific to the market for the financial instrument concerned. Such temporary suspension shall be published on the website of the relevant competent authority.

The temporary suspension shall be valid for an initial period not exceeding three months from the date of its publication on the website of the relevant competent authority. Such a suspension may be renewed for further periods not exceeding three months at a time if the grounds for the temporary suspension continue to be applicable. Where the temporary suspension is not renewed after that three-month period, it shall automatically lapse.

Before suspending or renewing the temporary suspension of the obligations referred to in Article 10, the relevant competent authority shall notify ESMA of its intention and provide an explanation. ESMA shall issue an opinion to the competent authority as soon as practicable on whether in its view the suspension or the renewal of the temporary suspension is justified in accordance with the first and second subparagraphs.

3. Competent authorities may, in conjunction with an authorisation of deferred publication:

(a) request the publication of limited details of a transaction or details of several transactions in an aggregated form, or a combination thereof, during the time period of deferral;

(b) allow the omission of the publication of the volume of an individual transaction during an extended time period of deferral;

(c) regarding non-equity instruments that are not sovereign debt, allow the publication of several transactions in an aggregated form during an extended time period of deferral;

(d) regarding sovereign debt instruments, allow the publication of several transactions in an aggregated form for an indefinite period of time.

In relation to sovereign debt instruments, points (b) and (d) may be used either separately or consecutively whereby once the volume omission extended period lapses, the volumes could then be published in aggregated form.

In relation to all other financial instruments, when the deferral time period lapses, the outstanding details of the transaction and all the details of the transactions on an individual basis shall be published.

4. ESMA shall develop draft regulatory technical standards to specify the following in such a way as to enable the publication of information required under Article 64 of Directive 2014/65/EU:

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(a) the details of transactions that investment firms, including systematic internalisers, and market operators and investment firms operating a trading venue shall make available to the public for each class of financial instrument concerned in accordance with Article 10(1), including identifiers for the different types of transactions published under Article 10(1) and Article 21(1), distinguishing between those determined by factors linked primarily to the valuation of the financial instruments and those determined by other factors;

(b) the time limit that would be deemed in compliance with the obligation to publish as close to real time as possible including when trades are executed outside ordinary trading hours;

(c) the conditions for authorising investment firms, including systematic internalisers, and market operators and investment firms operating a trading venue, to provide for deferred publication of the details of transactions for each class of financial instrument concerned in accordance with paragraph 1 of this Article and with Article 21(4);

(d) the criteria to be applied when determining the size or type of a transaction for which deferred publication and publication of limited details of a transaction, or publication of details of several transactions in an aggregated form, or omission of the publication of the volume of a transaction with particular reference to allowing an extended length of time of deferral for certain financial instruments depending on their liquidity, is allowed under paragraph 3.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

CHAPTER 3

Obligation to offer trade data on a separate and reasonable commercial basis

Article 12

Obligation to make pre-trade and post-trade data available separately

1. Market operators and investment firms operating a trading venue shall make the information published in accordance with Articles 3, 4 and 6 to 11 available to the public by offering pre-trade and post-trade transparency data separately.

2. ESMA shall develop draft regulatory technical standards to specify the offering of pre-trade and post-trade transparency data, including the level of disaggregation of the data to be made available to the public as referred to in paragraph 1.

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ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 13

Obligation to make pre-trade and post-trade data available on a reasonable commercial basis

1. Market operators and investment firms operating a trading venue shall make the information published in accordance with Articles 3, 4 and 6 to 11 available to the public on a reasonable commercial basis and ensure non-discriminatory access to the information. Such information shall be made available free of charge 15 minutes after publication.

2. The Commission shall adopt delegated acts in accordance with Article 50 clarifying what constitutes a reasonable commercial basis to make information public as referred to in paragraph 1.

TITLE III

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TRANSPARENCY FOR SYSTEMATIC INTERNALISERS AND INVESTMENT FIRMS TRADING OTC AND TICK SIZE REGIME FOR SYSTEMATIC INTERNALISERS

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Article 14

Obligation for systematic internalisers to make public firm quotes in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments

1. Investment firms shall make public firm quotes in respect of those shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on a trading venue for which they are systematic internalisers and for which there is a liquid market.

Where there is not a liquid market for the financial instruments referred to in the first subparagraph, systematic internalisers shall disclose quotes to their clients upon request.

2. This Article and Articles 15, 16 and 17 shall apply to systematic internalisers when they deal in sizes up to standard market size. Systematic internalisers shall not be subject to this Article and Articles 15, 16 and 17 when they deal in sizes above standard market size.

3. Systematic internalisers may decide the size or sizes at which they will quote. The minimum quote size shall be at least the equivalent of 10 % of the standard market size of a share, depositary receipt, ETF, certificate or other similar financial instrument traded on a trading venue. For a particular share, depositary receipt, ETF, certificate or other similar financial instrument traded on a trading venue each quote shall include a firm bid and offer price or prices for a size or

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sizes which could be up to standard market size for the class of shares, depositary receipts, ETFs, certificates or other similar financial instruments to which the financial instrument belongs. The price or prices shall reflect the prevailing market conditions for that share, depositary receipt, ETF, certificate or other similar financial instrument.

4. Shares, depositary receipts, ETFs, certificates and other similar financial instruments shall be grouped in classes on the basis of the arithmetic average value of the orders executed in the market for that financial instrument. The standard market size for each class of shares, depositary receipts, ETFs, certificates and other similar financial instruments shall be a size representative of the arithmetic average value of the orders executed in the market for the financial instruments included in each class.

5. The market for each share, depositary receipt, ETF, certificate or other similar financial instrument shall be comprised of all orders executed in the Union in respect of that financial instrument excluding those that are large in scale compared to normal market size.

6. The competent authority of the most relevant market in terms of liquidity as defined in Article 26 for each share, depositary receipt, ETF, certificate and other similar financial instrument shall determine at least annually, on the basis of the arithmetic average value of the orders executed in the market in respect of that financial instrument, the class to which it belongs. That information shall be made public to all market participants and communicated to ESMA which shall publish the information on its website.

7. In order to ensure the efficient valuation of shares, depositary receipts, ETFs, certificates and other similar financial instruments and maximise the possibility of investment firms to obtain the best deal for their clients, ESMA shall develop draft regulatory technical standards to specify further the arrangements for the publication of a firm quote as referred to in paragraph 1, the determination of whether prices reflect prevailing market conditions as referred to in paragraph 3, and of the standard market size as referred to in paragraphs 2 and 4.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

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Article 15

Execution of client orders

1. Systematic internalisers shall make public their quotes on a regular and continuous basis during normal trading hours. They may update their quotes at any time. They shall be allowed, under exceptional market conditions, to withdraw their quotes.

Member States shall require that firms that meet the definition of systematic internaliser notify their competent authority. Such notification shall be transmitted to ESMA. ESMA shall establish a list of all SIs in the Union.

The quotes shall be made public in a manner which is easily accessible to other market participants on a reasonable commercial basis.

2. Systematic internalisers shall, while complying with Article 27 of Directive 2014/65//EU, execute the orders they receive from their clients in relation to the shares, depositary receipts, ETFs, certificates and other similar financial instruments for which they are systematic internalisers at the quoted prices at the time of reception of the order.

However, in justified cases, they may execute those orders at a better price provided that the price falls within a public range close to market conditions.

3. Systematic internalisers may execute orders they receive from their professional clients at prices different than their quoted ones without having to comply with the requirements established in paragraph 2, in respect of transactions where execution in several securities is part of one transaction or in respect of orders that are subject to conditions other than the current market price.

4. Where a systematic internaliser quoting only one quote or whose highest quote is lower than the standard market size receives an order from a client of a size bigger than its quotation size, but lower than the standard market size, it may decide to execute that part of the order which exceeds its quotation size, provided that it is executed at the quoted price, except where otherwise permitted under the conditions laid down in paragraphs 2 and 3. Where the systematic internaliser is quoting in different sizes and receives an order between those sizes, which it chooses to execute, it shall execute the order at one of the quoted prices in compliance with Article 28 of Directive 2014/65/EU, except where otherwise permitted under the conditions of paragraphs 2 and 3 of this Article.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 50, clarifying what constitutes a reasonable commercial basis to make quotes public as referred to in paragraph 1.

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Article 16

Obligations of competent authorities

The competent authorities shall check the following:

(a) that investment firms regularly update bid and offer prices published in accordance with Article 14 and maintain prices which reflect the prevailing market conditions;

(b) that investment firms comply with the conditions for price improvement laid down in Article 15(2).

Article 17

Access to quotes

1. Systematic internalisers shall be allowed to decide, on the basis of their commercial policy and in an objective non-discriminatory way, the clients to whom they give access to their quotes. To that end there shall be clear standards for governing access to their quotes. Systematic internalisers may refuse to enter into or discontinue business relationships with clients on the basis of commercial considerations such as the client credit status, the counterparty risk and the final settlement of the transaction.

2. In order to limit the risk of exposure to multiple transactions from the same client, systematic internalisers shall be allowed to limit in a non-discriminatory way the number of transactions from the same client which they undertake to enter at the published conditions. They may, in a non-discriminatory way and in accordance with Article 28 of Directive 2014/65//EU, limit the total number of transactions from different clients at the same time provided that this is allowable only where the number and/or volume of orders sought by clients considerably exceeds the norm.

3. In order to ensure the efficient valuation of shares, depositary receipts, ETFs, certificates and other similar financial instruments and maximise the possibility for investment firms to obtain the best deal for their clients, the Commission shall adopt delegated acts in accordance with Article 50 specifying:

(a) the criteria specifying when a quote is published on a regular and continuous basis and is easily accessible as referred to in Article 15(1) as well as the means by which investment firms may comply with their obligation to make public their quotes, which shall include the following possibilities:

   (i) through the facilities of any regulated market which has admitted the financial instrument in question to trading;

   (ii) through an APA;

   (iii) through proprietary arrangements;

(b) the criteria specifying those transactions where execution in several securities is part of one transaction or those orders that are subject to conditions other than current market price as referred to in Article 15(3);

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(c) the criteria specifying what can be considered as exceptional market conditions that allow for the withdrawal of quotes as well as the conditions for updating quotes as referred to in Article 15(1);

(d) the criteria specifying when the number and/or volume of orders sought by clients considerably exceeds the norm as referred to in paragraph 2.

(e) the criteria specifying when prices fall within a public range close to market conditions as referred to in Article 15(2).

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Article 17a

Tick sizes

Systematic internalisers' quotes, price improvements on those quotes and execution prices shall comply with tick sizes set in accordance with Article 49 of Directive 2014/65/EU.

Application of tick sizes shall not prevent systematic internalisers matching orders large in scale at mid-point within the current bid and offer prices.

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Article 18

Obligation for systematic internalisers to make public firm quotes in respect of bonds, structured finance products, emission allowances and derivatives

1. Investment firms shall make public firm quotes in respect of bonds, structured finance products, emission allowances and derivatives traded on a trading venue for which they are systematic internalisers and for which there is a liquid market when the following conditions are fulfilled:

(a) they are prompted for a quote by a client of the systematic internaliser;

(b) they agree to provide a quote.

2. In relation to bonds, structured finance products, emission allowances and derivatives traded on a trading venue for which there is not a liquid market, systematic internalisers shall disclose quotes to their clients on request if they agree to provide a quote. That obligation may be waived where the conditions specified in Article 9(1) are met.

3. Systematic internalisers may update their quotes at any time. They may withdraw their quotes under exceptional market conditions.

4. Member States shall require that firms that meet the definition of systematic internaliser notify their competent authority. Such notification shall be transmitted to ESMA. ESMA shall establish a list of all systematic internalisers in the Union.

5. Systematic internalisers shall make the firm quotes published in accordance with paragraph 1 available to their other clients. Notwithstanding, they shall be allowed to decide, on the basis of their commercial policy and in an objective non-discriminatory way, the clients to whom they give access to their quotes. To that end, systematic internalisers shall have in place clear standards for governing access to

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their quotes. Systematic internalisers may refuse to enter into or discontinue business relationships with clients on the basis of commercial considerations such as the client credit status, the counterparty risk and the final settlement of the transaction.

6. Systematic internalisers shall undertake to enter into transactions under the published conditions with any other client to whom the quote is made available in accordance with paragraph 5 when the quoted size is at or below the size specific to the financial instrument determined in accordance with Article 9(5)(d).

Systematic internalisers shall not be subject to the obligation to publish a firm quote pursuant to paragraph 1 for financial instruments that fall below the threshold of liquidity determined in accordance with Article 9(4).

7. Systematic internalisers shall be allowed to establish non-discriminatory and transparent limits on the number of transactions they undertake to enter into with clients pursuant to any given quote.

8. The quotes published pursuant to paragraph 1 and 5 and those at or below the size referred to in paragraph 6 shall be made public in a manner which is easily accessible to other market participants on a reasonable commercial basis.

9. The quoted price or prices shall be such as to ensure that the systematic internaliser complies with its obligations under Article 27 of Directive 2014/65/EU, where applicable, and shall reflect prevailing market conditions in relation to prices at which transactions are concluded for the same or similar financial instruments on a trading venue.

However, in justified cases, they may execute orders at a better price provided that the price falls within a public range close to market conditions.

10. Systematic internalisers shall not be subject to this Article when they deal in sizes above the size specific to the financial instrument determined in accordance with Article 9(5)(d).

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11. In respect of a package order and without prejudice to paragraph 2, the obligations in this Article shall only apply to the package order as a whole and not to any component of the package order separately.

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Article 19

Monitoring by ESMA

1. Competent authorities and ESMA shall monitor the application of Article 18 regarding the sizes at which quotes are made available to clients of the investment firm and to other market participants relative to other trading activity of the firm, and the degree to which the quotes reflect prevailing market conditions in relation to transactions in the same or similar financial instruments on a trading venue. By ►M1 3 January 2020 ◄, ESMA shall submit a report to the Commission on the application of Article 18. In the event of significant

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quoting and trading activity just beyond the threshold referred to in Article 18(6) or outside prevailing market conditions, ESMA shall submit a report to the Commission before that date.

2. The Commission shall adopt delegated acts in accordance with Article 50 specifying the sizes referred to in Article 18(6) at which a firm shall enter into transactions with any other client to whom the quote is made available. The size specific to the financial instrument shall be determined in accordance with the criteria set in Article 9(5)(d).

3. The Commission shall adopt delegated acts in accordance with Article 50 clarifying what constitutes a reasonable commercial basis to make quotes public as referred to in Article 18(8).

Article 20

Post-trade disclosure by investment firms, including systematic internalisers, in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments

1. Investment firms which, either on own account or on behalf of clients, conclude transactions in shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on a trading venue, shall make public the volume and price of those transactions and the time at which they were concluded. That information shall be made public through an APA.

2. The information which is made public in accordance with paragraph 1 of this Article and the time-limits within which it is published shall comply with the requirements adopted pursuant to Article 6, including the regulatory technical standards adopted in accordance with Article 7(2)(a). Where the measures adopted pursuant to Article 7 provide for deferred publication for certain categories of transaction in shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on a trading venue, that possibility shall also apply to those transactions when undertaken outside trading venues.

3. ESMA shall develop draft regulatory technical standards to specify the following:

(a) identifiers for the different types of transactions published under this Article, distinguishing between those determined by factors linked primarily to the valuation of the financial instruments and those determined by other factors;

(b) the application of the obligation under paragraph 1 to transactions involving the use of those financial instruments for collateral, lending or other purposes where the exchange of financial instruments is determined by factors other than the current market valuation of the financial instrument;

(c) the party to a transaction that has to make the transaction public in accordance with paragraph 1 if both parties to the transaction are investment firms.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

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Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 21

Post-trade disclosure by investment firms, including systematic internalisers, in respect of bonds, structured finance products, emission allowances and derivatives

1. Investment firms which, either on own account or on behalf of clients, conclude transactions in bonds, structured finance products, emission allowances and derivatives traded on a trading venue shall make public the volume and price of those transactions and the time at which they were concluded. That information shall be made public through an APA.

2. Each individual transaction shall be made public once through a single APA.

3. The information which is made public in accordance with paragraph 1 and the time-limits within which it is published shall comply with the requirements adopted pursuant to Article 10, including the regulatory technical standards adopted in accordance with Article 11(4)(a) and (b).

4. Competent authorities shall be able to authorise investment firms to provide for deferred publication, or may request the publication of limited details of a transaction or details of several transactions in an aggregated form, or a combination thereof, during the time period of the deferral or may allow the omission of the publication of the volume for individual transactions during an extended time period of deferral, or in the case of non-equity financial instruments that are not sovereign debt, may allow the publication of several transactions in an aggregated form during an extended time period of deferral, or in the case of sovereign debt instruments may allow the publication of several transactions in an aggregated form for an indefinite period of time, and may temporarily suspend the obligations referred to in paragraph 1 on the same conditions as laid down in Article 11.

Where the measures adopted pursuant to Article 11 provide for deferred publication and publication of limited details or details in an aggregated form, or a combination thereof, or for omission of the publication of the volume for certain categories of transactions in bonds, structured finance products, emission allowances and derivatives traded on a trading venue, that possibility shall also apply to those transactions when undertaken outside trading venues.

5. ESMA shall develop draft regulatory technical standards in such a way as to enable the publication of information required under Article 64 of Directive 2014/65/EU to specify the following:

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(a) the identifiers for the different types of transactions published in accordance with this Article, distinguishing between those determined by factors linked primarily to the valuation of the financial instruments and those determined by other factors;

(b) the application of the obligation under paragraph 1 to transactions involving the use of those financial instruments for collateral, lending or other purposes where the exchange of financial instruments is determined by factors other than the current market valuation of the financial instrument;

(c) the party to a transaction that has to make the transaction public in accordance with paragraph 1 if both parties to the transaction are investment firms.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 22

Providing information for the purposes of transparency and other calculations

1. In order to carry out calculations for determining the requirements for the pre-trade and post-trade transparency and the trading obligation regimes imposed by Articles 3 to 11, Articles 14 to 21 and Article 32, which are applicable to financial instruments and for determining whether an investment firm is a systematic internaliser, competent authorities may require information from:

(a) trading venues;

(b) APAs; and

(c) CTPs.

2. Trading venues, APAs and CTPs shall store the necessary data for a sufficient period of time.

3. Competent authorities shall transmit to ESMA such information as ESMA requires to produce the reports referred to in Article 5(4), (5) and (6).

4. ESMA shall develop draft regulatory technical standards to specify the content and frequency of data requests and the formats and the timeframe in which trading venues, APAs and CTPs must respond to such requests in accordance with paragraph 1, the type of data that must be stored, and the minimum period of time for which trading venues, APAs and CTPs must store data in order to be able to respond to such requests in accordance with paragraph 2.

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ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 23

Trading obligation for investment firms

1. An investment firm shall ensure the trades it undertakes in shares admitted to trading on a regulated market or traded on a trading venue shall take place on a regulated market, MTF or systematic internaliser, or a third-country trading venue assessed as equivalent in accordance with Article 25(4)(a) of Directive 2014/65/EU, as appropriate, unless their characteristics include that they:

(a) are non-systematic, ad-hoc, irregular and infrequent; or

(b) are carried out between eligible and/or professional counterparties and do not contribute to the price discovery process.

2. An investment firm that operates an internal matching system which executes client orders in shares, depositary receipts, ETFs, certificates and other similar financial instruments on a multilateral basis must ensure it is authorised as an MTF under Directive 2014/65/EU and comply with all relevant provisions pertaining to such authorisations.

3. ESMA shall develop draft regulatory technical standards to specify the particular characteristics of those transactions in shares that do not contribute to the price discovery process as referred to in paragraph 1, taking into consideration cases such as:

(a) non-addressable liquidity trades; or

(b) where the exchange of such financial instruments is determined by factors other than the current market valuation of the financial instrument.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

TITLE IV

TRANSACTION REPORTING

Article 24

Obligation to uphold integrity of markets

Without prejudice to the allocation of responsibilities for enforcing Regulation (EU) No 596/2014, competent authorities coordinated by ESMA in accordance with Article 31 of Regulation (EU) No 1095/2010 shall monitor the activities of investment firms to ensure that they act honestly, fairly and professionally and in a manner which promotes the integrity of the market.

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Article 25

Obligation to maintain records

1. Investment firms shall keep at the disposal of the competent authority, for five years, the relevant data relating to all orders and all transactions in financial instruments which they have carried out, whether on own account or on behalf of a client. In the case of transactions carried out on behalf of clients, the records shall contain all the information and details of the identity of the client, and the information required under Directive 2005/60/EC of the European Parliament and of the Council [1]. ESMA may request access to that information in accordance with the procedure and under the conditions set out in Article 35 of Regulation (EU) No 1095/2010.

2. The operator of a trading venue shall keep at the disposal of the competent authority, for at least five years, the relevant data relating to all orders in financial instruments which are advertised through their systems. The records shall contain the relevant data that constitute the characteristics of the order, including those that link an order with the executed transaction(s) that stems from that order and the details of which shall be reported in accordance with Article 26(1) and (3). ESMA shall perform a facilitation and coordination role in relation to the access by competent authorities to information under this paragraph.

3. ESMA shall develop draft regulatory technical standards to specify the details of the relevant order data required to be maintained under paragraph 2 of this Article that is not referred to in Article 26.

Those draft regulatory technical standards shall include the identification code of the member or participant which transmitted the order, the identification code of the order, the date and time the order was transmitted, the characteristics of the order, including the type of order, the limit price if applicable, the validity period, any specific order instructions, details of any modification, cancellation, partial or full execution of the order, the agency or principal capacity.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 26

Obligation to report transactions

1. Investment firms which execute transactions in financial instruments shall report complete and accurate details of such transactions to the competent authority as quickly as possible, and no later than the close of the following working day.

[1] 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 (OJ L 309, 25.11.2005, p. 15).

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The competent authorities shall, in accordance with Article 85 of Directive 2014/65/EU, establish the necessary arrangements in order to ensure that the competent authority of the most relevant market in terms of liquidity for those financial instruments also receives that information.

The competent authorities shall make available to ESMA, upon request, any information reported in accordance with this Article.

2. The obligation laid down in paragraph 1 shall apply to:

(a) financial instruments which are admitted to trading or traded on a trading venue or for which a request for admission to trading has been made;

(b) financial instruments where the underlying is a financial instrument traded on a trading venue; and

(c) financial instruments where the underlying is an index or a basket composed of financial instruments traded on a trading venue

The obligation shall apply to transactions in financial instruments referred to in points (a) to (c) irrespective of whether or not such transactions are carried out on the trading venue.

3. The reports shall, in particular, include details of the names and numbers of the financial instruments bought or sold, the quantity, the dates and times of execution, the transaction prices, a designation to identify the clients on whose behalf the investment firm has executed that transaction, a designation to identify the persons and the computer algorithms within the investment firm responsible for the investment decision and the execution of the transaction, a designation to identify the applicable waiver under which the trade has taken place, means of identifying the investment firms concerned, and a designation to identify a short sale as defined in Article 2(1)(b) of Regulation (EU) No 236/2012 in respect of any shares and sovereign debt within the scope of Articles 12, 13 and 17 of that Regulation. For transactions not carried out on a trading venue, the reports shall include a designation identifying the types of transactions in accordance with the measures to be adopted pursuant to Article 20(3)(a) and Article 21(5)(a). For commodity derivatives, the reports shall indicate whether the transaction reduces risk in an objectively measurable way in accordance with Article 57 of Directive 2014/65/EU.

4. Investment firms which transmit orders shall include in the transmission of that order all the details as specified in paragraphs 1 and 3. Instead of including the mentioned details when transmitting orders, an investment firm may choose to report the transmitted order, if it is executed, as a transaction in accordance with the requirements under paragraph 1. In that case, the transaction report by the investment firm shall state that it pertains to a transmitted order.

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5. The operator of a trading venue shall report details of transactions in financial instruments traded on its platform which are executed through its systems by a firm which is not subject to this Regulation in accordance with paragraphs 1 and 3.

6. In reporting the designation to identify the clients as required under paragraphs 3 and 4, investment firms shall use a legal entity identifier established to identify clients that are legal persons.

ESMA shall develop by 3 January 2016 guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 to ensure that the application of legal entity identifiers within the Union complies with international standards, in particular those established by the Financial Stability Board.

7. The reports shall be made to the competent authority either by the investment firm itself, an ARM acting on its behalf or by the trading venue through whose system the transaction was completed, in accordance with paragraphs 1, 3 and 9.

Investment firms shall have responsibility for the completeness, accuracy and timely submission of the reports which are submitted to the competent authority.

By way of derogation from that responsibility, where an investment firm reports details of those transactions through an ARM which is acting on its behalf or a trading venue, the investment firm shall not be responsible for failures in the completeness, accuracy or timely submission of the reports which are attributable to the ARM or trading venue. In those cases and subject to Article 66(4) of Directive 2014/65/EU the ARM or trading venue shall be responsible for those failures.

Investment firms must nevertheless take reasonable steps to verify the completeness, accuracy and timeliness of the transaction reports which were submitted on their behalf.

The home Member State shall require the trading venue, when making reports on behalf of the investment firm, to have sound security mechanisms in place designed to guarantee the security and authentication of the means of transfer of information, to minimise the risk of data corruption and unauthorised access and to prevent information leakage maintaining the confidentiality of the data at all times. The home Member State shall require the trading venue to maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.

Trade-matching or reporting systems, including trade repositories registered or recognised in accordance with Title VI of Regulation (EU) No 648/2012, may be approved by the competent authority as an ARM in order to transmit transaction reports to the competent authority in accordance with paragraphs 1, 3 and 9.

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Where transactions have been reported to a trade repository in accordance with Article 9 of Regulation (EU) No 648/2012 which is approved as an ARM and where those reports contain the details required under paragraphs 1, 3 and 9 and are transmitted to the competent authority by the trade repository within the time limit set in paragraph 1, the obligation on the investment firm laid down in paragraph 1 shall be considered to have been complied with.

Where there are errors or omissions in the transaction reports, the ARM, investment firm or trading venue reporting the transaction shall correct the information and submit a corrected report to the competent authority.

8. When, in accordance with Article 35(8) of Directive 2014/65/EU, reports provided for under this Article are transmitted to the competent authority of the host Member State, it shall transmit that information to the competent authorities of the home Member State of the investment firm, unless the competent authorities of the home Member State decide that they do not want to receive that information.

9. ESMA shall develop draft regulatory technical standards to specify:

(a) data standards and formats for the information to be reported in accordance with paragraphs 1 and 3, including the methods and arrangements for reporting financial transactions and the form and content of such reports;

(b) the criteria for defining a relevant market in accordance with paragraph 1;

(c) the references of the financial instruments bought or sold, the quantity, the dates and times of execution, the transaction prices, the information and details of the identity of the client, a designation to identify the clients on whose behalf the investment firm has executed that transaction, a designation to identify the persons and the computer algorithms within the investment firm responsible for the investment decision and the execution of the transaction, a designation to identify the applicable waiver under which the trade has taken place, the means of identifying the investment firms concerned, the way in which the transaction was executed, data fields necessary for the processing and analysis of the transaction reports in accordance with paragraph 3; and

(d) the designation to identify short sales of shares and sovereign debt as referred to in paragraph 3;

(e) the relevant categories of financial instrument to be reported in accordance with paragraph 2;

(f) the conditions upon which legal entity identifiers are developed, attributed and maintained, by Member States in accordance with paragraph 6, and the conditions under which those legal entity identifiers are used by investment firms so as to provide, pursuant to paragraphs 3, 4 and 5, for the designation to identify the clients in the transaction reports they are required to establish pursuant to paragraph 1;

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(g) the application of transaction reporting obligations to branches of investment firms;

(h) what constitutes a transaction and execution of a transaction for the purposes of this Article.

(i) when an investment firm is deemed to have transmitted an order for the purposes of paragraph 4.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

10. By ►M1 3 January 2020 ◄, ESMA shall submit a report to the Commission on the functioning of this Article, including its interaction with the related reporting obligations under Regulation (EU) No 648/2012, and whether the content and format of transaction reports received and exchanged between competent authorities comprehensively enables monitoring of the activities of investment firms in accordance with Article 24 of this Regulation. The Commission may take steps to propose any changes, including providing for transactions to be transmitted only to a single system appointed by ESMA instead of to competent authorities. The Commission shall forward ESMA's report to the European Parliament and to the Council.

Article 27

Obligation to supply financial instrument reference data

1. With regard to financial instruments admitted to trading on regulated markets or traded on MTFs or OTFs, trading venues shall provide competent authorities with identifying reference data for the purposes of transaction reporting under Article 26.

With regard to other financial instruments covered by Article 26(2) traded on its system, each systematic internaliser shall provide its competent authority with reference data relating to those financial instruments.

Identifying reference data shall be made ready for submission to the competent authority in an electronic and standardised format before trading commences in the financial instrument that it refers to. The financial instrument reference data shall be updated whenever there are changes to the data with respect to a financial instrument. Those notifications are to be transmitted by competent authorities without delay to ESMA, which shall publish them immediately on its website. ESMA shall give competent authorities access to those reference data.

2. In order to allow competent authorities to monitor, pursuant to Article 26, the activities of investment firms to ensure that they act honestly, fairly and professionally and in a manner which promotes the integrity of the market, ESMA and the competent authorities shall establish the necessary arrangements in order to ensure that:

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(a) ESMA and the competent authorities effectively receive the financial instrument reference data pursuant to paragraph 1;

(b) the quality of the data so received is appropriate for the purpose of transaction reporting under Article 26;

(c) the financial instrument reference data received pursuant to paragraph 1 is efficiently exchanged between the relevant competent authorities.

3. ESMA shall develop draft regulatory technical standards to specify:

(a) data standards and formats for the financial instrument reference data in accordance with paragraph 1, including the methods and arrangements for supplying the data and any update thereto to competent authorities and transmitting it to ESMA in accordance with paragraph 1, and the form and content of such data;

(b) the technical measures that are necessary in relation to the arrangements to be made by ESMA and the competent authorities pursuant to paragraph 2.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

TITLE V

DERIVATIVES

Article 28

Obligation to trade on regulated markets, MTFs or OTFs

1. Financial counterparties as defined in Article 2(8) of Regulation (EU) No 648/2012 and non-financial counterparties that meet the conditions referred to in Article 10(1)(b) thereof shall conclude transactions which are neither intragroup transactions as defined in Article 3 of that Regulation nor transactions covered by the transitional provisions in Article 89 of that Regulation with other such financial counterparties or other such non-financial counterparties that meet the conditions referred to in Article 10(1)(b) of Regulation (EU) No 648/2012 in derivatives pertaining to a class of derivatives that has been declared subject to the trading obligation in accordance with the procedure set out in Article 32 and listed in the register referred to in Article 34 only on:

(a) regulated markets;

(b) MTFs;

(c) OTFs; or

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(d) third-country trading venues, provided that the Commission has adopted a decision in accordance with paragraph 4 and provided that the third country provides for an effective equivalent system for the recognition of trading venues authorised under Directive 2014/65/EU to admit to trading or trade derivatives declared subject to a trading obligation in that third country on a non-exclusive basis.

2. The trading obligation shall also apply to counterparties referred to in paragraph 1 which enter into derivatives transactions pertaining to a class of derivatives that has been declared subject to the trading obligation with third-country financial institutions or other third-country entities that would be subject to the clearing obligation if they were established in the Union. 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 any provision of this Regulation.

ESMA shall regularly monitor the activity in derivatives which have not been declared subject to the trading obligation as described in paragraph 1 in order to identify cases where a particular class of contracts may pose systemic risk and to prevent regulatory arbitrage between derivative transactions subject to the trading obligation and derivative transactions which are not subject to the trading obligation.

3. Derivatives declared subject to the trading obligation pursuant to paragraph 1 shall be eligible to be admitted to trading on a regulated market or to trade on any trading venue as referred to in paragraph 1 on a non-exclusive and non-discriminatory basis.

4. The Commission may, in accordance with the examination procedure referred to in Article 51(2) adopt decisions determining that the legal and supervisory framework of a third country ensures that a trading venue authorised in that third country complies with legally binding requirements which are equivalent to the requirements for the trading venues referred to in paragraph 1(a), (b) or (c) of this Article, resulting from this Regulation, Directive 2014/65/EU, and Regulation (EU) No 596/2014, and which are subject to effective supervision and enforcement in that third country.

Those decisions shall be for the sole purpose of determining eligibility as a trading venue for derivatives subject to the trading obligation.

The legal and supervisory framework of a third country is considered to have equivalent effect where that framework fulfils all the following conditions:

(a) trading venues in that third country are subject to authorisation and to effective supervision and enforcement on an ongoing basis;

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(b) trading venues have clear and transparent rules regarding admission of financial instruments to trading so that such financial instruments are capable of being traded in a fair, orderly and efficient manner, and are freely negotiable;

(c) issuers of financial instruments are subject to periodic and ongoing information requirements ensuring a high level of investor protection;

(d) it ensures market transparency and integrity via rules addressing market abuse in the form of insider dealing and market manipulation;

A decision of the Commission under this paragraph may be limited to a category or categories of trading venues. In that case, a third-country trading venue is only included in paragraph 1(d) if it falls within a category covered by the Commission's decision.

5. In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards to specify the types of contracts referred to in paragraph 2 which have a direct, substantial and foreseeable effect within the Union and the cases where the trading obligation is necessary or appropriate to prevent the evasion of any provision of this Regulation.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Where possible and appropriate, the regulatory technical standards referred to in this paragraph shall be identical to those adopted under Article 4(4) of Regulation (EU) No 648/2012.

Article 29

Clearing obligation for derivatives traded on regulated markets and timing of acceptance for clearing

1. The operator of a regulated market shall ensure that all transactions in derivatives that are concluded on that regulated market are cleared by a CCP.

2. CCPs, trading venues and investment firms which act as clearing members in accordance with Article 2(14) of Regulation (EU) No 648/2012 shall have in place effective systems, procedures and arrangements in relation to cleared derivatives to ensure that transactions in cleared derivatives are submitted and accepted for clearing as quickly as technologically practicable using automated systems.

In this paragraph, 'cleared derivatives' means

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(a) all derivatives which are to be cleared pursuant to the clearing obligation under paragraph 1 of this Article or pursuant to the clearing obligation under Article 4 of Regulation (EU) No 648/2012;

(b) all derivatives which are otherwise agreed by the relevant parties to be cleared.

3. ESMA shall develop draft regulatory technical standards to specify the minimum requirements for systems, procedures and arrangements, including the acceptance timeframes, under this Article taking into account the need to ensure proper management of operational or other risks.

ESMA shall have ongoing authority to develop further regulatory technical standards to update those in force if it considers that that is required as industry standards evolve.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first and second subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 30

Indirect Clearing Arrangements

1. Indirect clearing arrangements with regard to exchange-traded derivatives are permissible provided that those arrangements do not increase counterparty risk and ensure that the assets and positions of the counterparty benefit from protection with equivalent effect to that referred to in Articles 39 and 48 of Regulation (EU) No 648/2012.

2. ESMA shall develop draft regulatory technical standards to specify the types of indirect clearing service arrangements, where established, that meet the conditions referred to in paragraph 1, ensuring consistency with provisions established for OTC derivatives under Chapter II of Commission Delegated Regulation (EU) No 149/2013 ([1]).

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

([1]) 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).

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Article 31

Portfolio Compression

1. When providing portfolio compression, investment firms and market operators shall not be subject to the best execution obligation in Article 27 of Directive 2014/65/EU, the transparency obligations in Articles 8, 10, 18 and 21 of this Regulation and the obligation in Article 1(6) of Directive 2014/65/EU. The termination or replacement of the component derivatives in the portfolio compression shall not be subject to Article 28 of this Regulation.

2. Investment firms and market operators providing portfolio compression shall make public through an APA the volumes of transactions subject to portfolio compressions and the time they were concluded within the time limits specified in Article 10.

3. Investment firms and market operators providing portfolio compressions shall keep complete and accurate records of all portfolio compressions which they organise or participate in. Those records shall be made available promptly to the relevant competent authority or ESMA upon request.

4. The Commission may adopt by means of delegated acts in accordance with Article 50, measures specifying the following:

(a) the elements of portfolio compression,

(b) the information to be published pursuant to paragraph 2,

in such a way as to make use as far as possible of any existing record keeping, reporting or publication requirements.

Article 32

Trading obligation procedure

1. ESMA shall develop draft regulatory technical standards to specify the following:

(a) which of the class of derivatives declared subject to the clearing obligation in accordance with Article 5(2) and (4) of Regulation (EU) No 648/2012 or a relevant subset thereof shall be traded on the venues referred to in Article 28(1) of this Regulation;

(b) the date or dates from which the trading obligation takes effect, including any phase-in and the categories of counterparties to which the obligation applies where such phase-in and such categories of counterparties have been provided for in regulatory technical standards in accordance with Article 5(2)(b) of Regulation (EU) No 648/2012.

ESMA shall submit those draft regulatory technical standards to the Commission within six months after the adoption of the regulatory technical standards in accordance with Article 5(2) of Regulation (EU) No 648/2012 by the Commission.

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Before submitting the draft regulatory technical standards to the Commission for adoption, ESMA shall conduct a public consultation and, where appropriate, may consult third-country competent authorities.

Power is conferred to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

2. In order for the trading obligation to take effect:

(a) the class of derivatives pursuant to paragraph 1(a) or a relevant subset thereof must be admitted to trading or traded on at least one trading venue as referred to in Article 28(1), and

(b) there must be sufficient third-party buying and selling interest in the class of derivatives or a relevant subset thereof so that such a class of derivatives is considered sufficiently liquid to trade only on the venues referred to in Article 28(1).

3. In developing the draft regulatory technical standards referred to in paragraph 1, ESMA shall consider the class of derivatives or a relevant subset thereof as sufficiently liquid pursuant to the following criteria:

(a) the average frequency and size of trades over a range of market conditions, having regard to the nature and lifecycle of products within the class of derivatives;

(b) the number and type of active market participants including the ratio of market participants to products/contracts traded in a given product market;

(c) the average size of the spreads.

In preparing those draft regulatory technical standards, ESMA shall take into consideration the anticipated impact that trading obligation might have on the liquidity of a class of derivatives or a relevant subset thereof and the commercial activities of end users which are not financial entities.

ESMA shall determine whether the class of derivatives or relevant subset thereof is only sufficiently liquid in transactions below a certain size.

4. ESMA shall, on its own initiative, in accordance with the criteria set out in paragraph 2 and after conducting a public consultation, identify and notify to the Commission the classes of derivatives or individual derivative contracts that should be subject to the obligation to trade on the venues referred to in Article 28(1), but for which no CCP has yet received authorisation under Article 14 or 15 of Regulation (EU) No 648/2012 or which is not admitted to trading or traded on a trading venue referred to in Article 28(1).

Following the notification by ESMA referred to in the first subparagraph, the Commission may publish a call for development of proposals for the trading of those derivatives on the venues referred to in Article 28(1).

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5. ESMA shall in accordance with paragraph 1, submit to the Commission draft regulatory technical standards to amend, suspend or revoke existing regulatory technical standards whenever there is a material change in the criteria set out in paragraph 2. Before doing so, ESMA may, where appropriate, consult the competent authorities of third countries.

Power is conferred to the Commission to adopt regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

6. ESMA shall develop draft regulatory technical standards to specify the criteria referred to in paragraph 2(b).

ESMA shall submit drafts for those regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 33

Mechanism to avoid duplicative or conflicting rules

1. The Commission shall be assisted by ESMA in monitoring and preparing reports, at least on an annual basis, to the European Parliament and to the Council on the international application of principles laid down in Articles 28 and 29, in particular with regard to potential duplicative or conflicting requirements on market participants, and recommend possible actions.

2. The Commission may adopt implementing acts declaring that the legal, supervisory and enforcement arrangements of the relevant third country:

(a) are equivalent to the requirements resulting from Articles 28 and 29;

(b) ensure protection of professional secrecy that is equivalent to that set out in this Regulation;

(c) are being effectively applied and enforced in an equitable and non-distortive manner so as to ensure effective supervision and enforcement in that third country.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 51.

3. An implementing act on equivalence as referred to in paragraph 2 shall have the effect that counterparties entering into a transaction subject to this Regulation shall be deemed to have fulfilled the obligation contained in Articles 28 and 29 where at least one of the counterparties is established in that third country and the counterparties are in compliance with those legal, supervisory and enforcement arrangements of the relevant third country.

4. The Commission shall, in cooperation with ESMA, monitor the effective implementation by third countries, for which an implementing act on equivalence has been adopted, of the requirements equivalent to those contained in Articles 28 and 29 and regularly report, at least on an annual basis, to the European Parliament and to the Council.

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Within 30 calendar days of the presentation of the report where the report reveals a significant defect or inconsistency in the application of the equivalent requirements by third-country authorities, the Commission may withdraw the recognition as equivalent of the third-country legal framework in question. Where an implementing act on equivalence is withdrawn, transactions by counterparties shall automatically be subject again to all requirements contained in Articles 28 and 29 of this Regulation.

Article 34

Register of derivatives subject to the trading obligation

ESMA shall publish and maintain on its website a register specifying, in an exhaustive and unequivocal manner, the derivatives that are subject to the obligation to trade on the venues referred to in Article 28(1), the venues where they are admitted to trading or traded, and the dates from which the obligation takes effect.

TITLE VI

NON-DISCRIMINATORY CLEARING ACCESS FOR FINANCIAL INSTRUMENTS

Article 35

Non-discriminatory access to a CCP

1. Without prejudice to Article 7 of Regulation (EU) No 648/2012, a CCP shall accept to clear financial instruments on a non-discriminatory and transparent basis, including as regards collateral requirements and fees relating to access, regardless of the trading venue on which a transaction is executed. This in particular shall ensure that a trading venue has the right to non-discriminatory treatment of contracts traded on that trading venue in terms of:

(a) collateral requirements and netting of economically equivalent contracts, where the inclusion of such contracts in the close-out and other netting procedures of a CCP based on the applicable insolvency law would not endanger the smooth and orderly functioning, the validity or enforceability of such procedures; and

(b) cross-margining with correlated contracts cleared by the same CCP under a risk model that complies with Article 41 of Regulation (EU) No 648/2012.

A CCP may require that the trading venue comply with the operational and technical requirements established by the CCP including the risk management requirements. The requirement in this paragraph does not apply to any derivative contract that is already subject to the access obligations under Article 7 of Regulation (EU) No 648/2012.

A CCP is not bound by this Article if it is connected by close links to a trading venue which has given notification under Article 36(5).

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2. A request to access a CCP by a trading venue shall be formally submitted to a CCP, its relevant competent authority and the competent authority of the trading venue. The request shall specify to which types of financial instruments access is requested.

3. The CCP shall provide a written response to the trading venue within three months in the case of transferable securities and money market instruments, and within six months in the case of exchange-traded derivatives, either permitting access, under the condition that a relevant competent authority has granted access pursuant to paragraph 4, or denying access. The CCP may deny a request for access only under the conditions specified in paragraph 6(a). If a CCP denies access it shall provide full reasons in its response and inform its competent authority in writing of the decision. Where the trading venue is established in a different Member State to the CCP, the CCP shall also provide such notification and reasoning to the competent authority of the trading venue. The CCP shall make access possible within three months of providing a positive response to the access request.

4. The competent authority of the CCP or that of the trading venue shall grant a trading venue access to a CCP only where such access:

(a) would not require an interoperability arrangement, in the case of derivatives that are not OTC derivatives pursuant to Article 2(7) of Regulation (EU) No 648/2012; or

(b) would not threaten the smooth and orderly functioning of the markets, in particular due to liquidity fragmentation, or would not adversely affect systemic risk.

Nothing in point (a) of the first subparagraph shall prevent access being granted where the request referred to in paragraph 2 requires interoperability and the trading venue and all CCPs party to the proposed interoperability arrangement have consented to the arrangement and the risks to which the incumbent CCP is exposed to arising from inter-CCP positions are collateralised at a third party.

Where the need for an interoperability arrangement is the reason or is part of the reason for denying a request, the trading venue will advise the CCP and inform ESMA which other CCPs have access to the trading venue and ESMA will publish that information so that investment firms may choose to exercise their rights under Article 37 of Directive 2014/65/EU in respect of those CCPs in order to facilitate alternative access arrangements.

If a competent authority refuses access it shall issue its decision within two months following receipt of the request referred to in paragraph 2 and provide full reasons to the other competent authority, the CCP and the trading venue including the evidence on which the decision is based.

5. As regards transferable śecurities and money market instruments, a CCP that has been newly established and authorised as a CCP as defined in Article 2(1) of Regulation (EU) No 648/2012 to clear under Article 17 of Regulation (EU) No 648/2012 or recognised under Article 25 of Regulation (EU) No 648/2012 or authorised under a pre-existing national authorisation regime for a period of less than three years on 2 July 2014 may,

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before ►M1 3 January 2018 ◄, apply to its competent authority for permission to avail itself of transitional arrangements. The competent authority may decide that this Article does not apply to the CCP in respect of transferable securities and money market instruments, for a transitional period until ►M1 3 July 2020 ◄.

Where such a transitional period is approved, the CCP cannot benefit from the access rights under Article 36 or this Article in respect of transferable securities and money market instruments for the duration of that transitional arrangement. The competent authority shall notify members of the college of competent authorities for the CCP and ESMA when a transitional period is approved. ESMA shall publish a list of all notifications that it receives.

Where a CCP which has been approved for the transitional arrangements under this paragraph is connected by close links to one or more trading venues, those trading venues shall not benefit from access rights under Article 36 or this Article in respect of transferable securities and money market instruments for the duration of the transitional arrangement.

A CCP which is authorised during the three year period prior to entry into force, but is formed by a merger or acquisition involving at least one CCP authorised prior to that period, shall not be permitted to apply for the transitional arrangements under this paragraph.

6. ESMA shall develop draft regulatory technical standards to specify:

(a) the specific conditions under which an access request may be denied by a CCP, including the anticipated volume of transactions, the number and type of users, arrangements for managing operational risk and complexity or other factors creating significant undue risks;

(b) the conditions under which access must be permitted by a CCP, including confidentiality of information provided regarding financial instruments during the development phase, the non-discriminatory and transparent basis as regards clearing fees, collateral requirements and operational requirements regarding margining;

(c) the conditions under which granting access will threaten the smooth and orderly functioning of markets or would adversely affect systemic risk;

(d) the procedure for making a notification under paragraph 5;

(e) the conditions for non-discriminatory treatment in terms of how contracts traded on that trading venue are treated in terms of collateral requirements and netting of economically equivalent contracts and cross-margining with correlated contracts cleared by the same CCP.

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ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 36

Non-discriminatory access to a trading venue

1. Without prejudice to Article 8 of Regulation (EU) No 648/2012, a trading venue shall provide trade feeds on a non-discriminatory and transparent basis, including as regards fees related to access, upon request to any CCP authorised or recognised by Regulation (EU) No 648/2012 that wishes to clear transactions in financial instruments that are concluded on that trading venue. That requirement does not apply to any derivative contract that is already subject to the access obligations under Article 8 of Regulation (EU) No 648/2012.

A trading venue is not bound by this Article if it is connected by close links to a CCP which has given notification that it is availing of the transitional arrangements under Article 35(5).

2. A request to access a trading venue by a CCP shall be formally submitted to a trading venue, its relevant competent authority and the competent authority of the CCP.

3. The trading venue shall provide a written response to the CCP within three months in the case of transferable securities and money market instruments, and within six months in the case of exchange-traded derivatives, either permitting access, under the condition that the relevant competent authority has granted access pursuant to paragraph 4, or denying access. The trading venue may deny access only under the conditions specified under paragraph 6(a). When access is denied the trading venue shall provide full reasons in its response and inform its competent authority in writing of the decision. Where the CCP is established in a different Member State to the trading venue, the trading venue shall also provide such notification and reasoning to the competent authority of the CCP. The trading venue shall make access possible within three months of providing a positive response to the access request.

4. The competent authority of the trading venue or that of the CCP shall grant a CCP access to a trading venue only where such access:

(a) would not require an interoperability arrangement, in the case of derivatives that are not OTC derivatives pursuant to Article 2(7) of Regulation (EU) No 648/2012; or

(b) would not threaten the smooth and orderly functioning of the markets, in particular due to liquidity fragmentation and the trading venue has put in place adequate mechanisms to prevent such fragmentation, or would not adversely affect systemic risk.

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Nothing in point (a) of the first subparagraph shall prevent access being granted where the request referred to in paragraph 2 requires interoperability and the trading venue and all CCPs party to the proposed interoperability arrangement have consented to the arrangement and the risks to which the incumbent CCP is exposed to arising from inter-CCP positions are collateralised at a third party.

Where the need for an interoperability arrangement is the reason or is part of the reason for denying a request, the trading venue will advise the CCP and inform ESMA which other CCPs have access to the trading venue and ESMA will publish that information so that investment firms may choose to exercise their rights under Article 37 of Directive 2014/65/EU in respect of those CCPs in order to facilitate alternative access arrangements.

If a competent authority denies access it shall issue its decision within two months following receipt of the request referred to in paragraph 2 and provide full reasons to the other competent authority, the trading venue and the CCP including the evidence on which its decision is based.

5. As regards exchange-traded derivatives, a trading venue which falls below the relevant threshold in the calendar year preceding the entry into application of this Regulation, may, before the entry into application of this Regulation, notify ESMA and its competent authority that it does not wish to be bound by this Article for exchange-traded derivatives included within that threshold, for a period of thirty months from the application of this Regulation. A trading venue which remains below the relevant threshold in every year of that, or any further, thirty month period may, at the end of the period, notify ESMA and its competent authority that it wishes to continue to not be bound by this Article for further thirty months. Where notification is given the trading venue cannot benefit from the access rights under Article 35 or this Article for exchange-traded derivatives included within the relevant threshold, for the duration of the opt-out. ESMA shall publish a list of all notifications that it receives.

The relevant threshold for the opt-out is an annual notional amount traded of EUR 1 000 000 million. The notional amount shall be single-counted and shall include all transactions in exchange-traded derivatives concluded under the rules of the trading venue.

Where a trading venue is part of a group which is connected by close links, the threshold shall be calculated by adding the annual notional amount traded of all the trading venues in the group as a whole that are based in the Union.

Where a trading venue which has made a notification under this paragraph is connected by close links to one or more CCPs, those CCPs shall not benefit from access rights under Article 35 or this Article for exchange-traded derivatives within the relevant threshold, for the duration of the opt-out.

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6. ESMA shall develop draft regulatory technical standards to specify:

(a) the specific conditions under which an access request may be denied by a trading venue, including conditions based on the anticipated volume of transactions, the number of users, arrangements for managing operational risk and complexity or other factors creating significant undue risks;

(b) the conditions under which access shall be granted, including confidentiality of information provided regarding financial instruments during the development phase and the non-discriminatory and transparent basis as regards fees related to access;

(c) the conditions under which granting access will threaten the smooth and orderly functioning of the markets, or would adversely affect systemic risk;

(d) the procedure for making a notification under paragraph 5, including further specifications for calculation of the notional amount and the method by which ESMA may verify the calculation of the volumes and approve the opt-out.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 37

Non-discriminatory access to and obligation to licence benchmarks

1. Where the value of any financial instrument is calculated by reference to a benchmark, a person with proprietary rights to the benchmark shall ensure that CCPs and trading venues are permitted, for the purposes of trading and clearing, non-discriminatory access to:

(a) relevant price and data feeds and information on the composition, methodology and pricing of that benchmark for the purposes of clearing and trading; and

(b) licences.

A licence including access to information shall be granted on a fair, reasonable and non-discriminatory basis within three months following the request by a CCP or a trading venue.

Access shall be given at a reasonable commercial price taking into account the price at which access to the benchmark is granted or the intellectual property rights are licensed on equivalent terms to another CCP, trading venues or any related persons for the purposes of clearing and trading. Different prices can be charged to different CCPs, trading venues or any related persons only where objectively justified having regard to reasonable commercial grounds such as the quantity, scope or field of use demanded.

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2. Where a new benchmark is developed after ►M1 3 January 2018 ◄ the obligation to licence starts no later than 30 months after a financial instrument referencing that benchmark commenced trading or was admitted to trading. Where a person with proprietary rights to a new benchmark owns an existing benchmark, that person shall establish that compared to any such existing benchmark the new benchmark meets the following cumulative criteria:

(a) the new benchmark is not a mere copy or adaptation of any such existing benchmark and the methodology, including the underlying data, of the new benchmark is meaningfully different from any such existing benchmark; and

(b) the new benchmark is not a substitute for any such existing benchmark.

This paragraph shall be without prejudice to the application of competition rules and, in particular, Article 101 and 102 TFEU.

3. No CCP, trading venue or related entity may enter into an agreement with any provider of a benchmark the effect of which would be either:

(a) to prevent any other CCP or trading venue from obtaining access to such information or rights as referred to in paragraph 1; or

(b) to prevent any other CCP or trading venue from obtaining access to such a licence, as referred to in paragraph 1.

4. ESMA shall develop draft regulatory technical standards to specify:

(a) the information through licensing to be made available under paragraph 1(a) for the sole use of the CCP or trading venue;

(b) other conditions under which access is granted, including confidentiality of information provided;

(c) the standards guiding how a benchmark may be proven to be new in accordance with paragraph 2(a) and (b).

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 38

Access for third-country CCPs and trading venues

1. A trading venue established in a third country may request access to a CCP established in the Union only if the Commission has adopted a decision in accordance with Article 28(4) relating to that third country. A CCP established in a third country may request access to a trading venue in the Union subject to that CCP being recognised under Article 25 of Regulation (EU) No 648/2012 CCPs and trading venues

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established in third countries shall only be permitted to make use of the access rights in Articles 35 to 36 provided that the Commission has adopted a decision in accordance with paragraph 3 that the legal and supervisory framework of the third country is considered to provide for an effective equivalent system for permitting CCPs and trading venues authorised under foreign regimes access to CCPs and trading venues established in that third country.

2. CCPs and trading venues established in third countries may only request a licence and the access rights in accordance with Article 37 provided that the Commission has adopted a decision in accordance with paragraph 3 of this Article that the legal and supervisory framework of that third country is considered to provide for an effective equivalent system under which CCPs and trading venues authorised in foreign jurisdictions are permitted access on a fair reasonable and non-discriminatory basis to:

(a) relevant price and data feeds and information of composition, methodology and pricing of benchmarks for the purposes of clearing and trading; and

(b) licences,

from persons with proprietary rights to benchmarks established in that third country.

3. The Commission may, in accordance with the examination procedure referred to in Article 51, adopt decisions determining that the legal and supervisory framework of a third country ensures that a trading venue and CCP authorised in that third country complies with legally binding requirements which are equivalent to the requirements referred to in paragraph 2 of this Article and which are subject to effective supervision and enforcement in that third country.

The legal and supervisory framework of a third country is considered equivalent where that framework fulfils all the following conditions:

(a) trading venues in that third country are subject to authorisation and to effective supervision and enforcement on an ongoing basis;

(b) it provides for an effective equivalent system for permitting CCPs and trading venues authorised under foreign regimes access to CCPs and trading venues established in that third country;

(c) the legal and supervisory framework of that third country provides for an effective equivalent system under which CCPs and trading venues authorised in foreign jurisdictions are permitted access on a fair reasonable and non discriminatory basis to:

(i) relevant price and data feeds and information of composition, methodology and pricing of benchmarks for the purposes of clearing and trading; and

(ii) licences,

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from persons with proprietary rights to benchmarks established in that third country.

TITLE VII

SUPERVISORY MEASURES ON PRODUCT INTERVENTION AND POSITIONS

CHAPTER 1

Product monitoring and intervention

Article 39

Market monitoring

1. In accordance with Article 9(2) of Regulation (EU) No 1095/2010, ESMA shall monitor the market for financial instruments which are marketed, distributed or sold in the Union.

2. In accordance with Article 9(2) of Regulation (EU) No 1093/2010, EBA shall monitor the market for structured deposits which are marketed, distributed or sold in the Union.

3. Competent authorities shall monitor the market for financial instruments and structured deposits which are marketed, distributed or sold in or from their Member State.

Article 40

ESMA temporary intervention powers

1. In accordance with Article 9(5) of Regulation (EU) No 1095/2010, ESMA may, where the conditions in paragraphs 2 and 3 are fulfilled, temporarily prohibit or restrict in the Union:

(a) the marketing, distribution or sale of certain financial instruments or financial instruments with certain specified features; or

(b) a type of financial activity or practice.

A prohibition or restriction may apply in circumstances, or be subject to exceptions, specified by ESMA.

2. ESMA shall take a decision under paragraph 1 only if all of the following conditions are fulfilled:

(a) the proposed action addresses a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or commodity markets or to the stability of the whole or part of the financial system in the Union;

(b) regulatory requirements under Union law that are applicable to the relevant financial instrument or activity do not address the threat;

(c) a competent authority or competent authorities have not taken action to address the threat or the actions that have been taken do not adequately address the threat.

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Where the conditions set out in the first subparagraph are fulfilled, ESMA may impose the prohibition or restriction referred to in paragraph 1 on a precautionary basis before a financial instrument has been marketed, distributed or sold to clients.

3. When taking action under this Article, ESMA shall ensure that the action:

(a) does not have a detrimental effect on the efficiency of financial markets or on investors that is disproportionate to the benefits of the action;

(b) does not create a risk of regulatory arbitrage, and

(c) has been taken after consulting the public bodies competent for the oversight, administration and regulation of physical agricultural markets under Regulation (EC) No 1234/2007, where the measure relates to agricultural commodities derivatives.

Where a competent authority or competent authorities have taken a measure under Article 42, ESMA may take any of the measures referred to in paragraph 1 without issuing the opinion provided for in Article 43.

4. Before deciding to take any action under this Article, ESMA shall notify competent authorities of the action it proposes.

5. ESMA shall publish on its website notice of any decision to take any action under this Article. The notice shall specify details of the prohibition or restriction and specify a time after the publication of the notice from which the measures will take effect. A prohibition or restriction shall only apply to action taken after the measures take effect.

6. ESMA shall review a prohibition or restriction imposed under paragraph 1 at appropriate intervals and at least every three months. If the prohibition or restriction is not renewed after that three-month period it shall expire.

7. Action adopted by ESMA under this Article shall prevail over any previous action taken by a competent authority.

8. The Commission shall adopt delegated acts in accordance with Article 50 specifying criteria and factors to be taken into account by ESMA in determining when there is a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or commodity markets or to the stability of the whole or part of the financial system of the Union referred to in paragraph 2(a).

Those criteria and factors shall include:

(a) the degree of complexity of a financial instrument and the relation to the type of client to whom it is marketed and sold;

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(b) the size or the notional value of an issuance of financial instruments;

(c) the degree of innovation of a financial instrument, an activity or a practice;

(d) the leverage a financial instrument or practice provides.

Article 41

EBA temporary intervention powers

1. In accordance with Article 9(5) of Regulation (EU) No 1093/2010, EBA may where the conditions in paragraphs 2 and 3 are fulfilled, temporarily prohibit or restrict in the Union:

(a) the marketing, distribution or sale of certain structured deposits or structured deposits with certain specified features; or

(b) a type of financial activity or practice.

A prohibition or restriction may apply in circumstances, or be subject to exceptions, specified by EBA.

2. EBA shall take a decision under paragraph 1 only if all of the following conditions are fulfilled:

(a) the proposed action addresses a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system in the Union;

(b) regulatory requirements under Union law that are applicable to the relevant structured deposit or activity do not address the threat;

(c) a competent authority or competent authorities have not taken action to address the threat or the actions that have been taken do not adequately address the threat.

Where the conditions set out in the first subparagraph are fulfilled, EBA may impose the prohibition or restriction referred to in paragraph 1 on a precautionary basis before a structured deposit has been marketed, distributed or sold to clients.

3. When taking action under this Article, EBA shall ensure that the action:

(a) does not have a detrimental effect on the efficiency of financial markets or on investors that is disproportionate to the benefits of the action; and

(b) does not create a risk of regulatory arbitrage.

Where a competent authority or competent authorities have taken a measure under Article 42, EBA may take any of the measures referred to in paragraph 1 without issuing the opinion provided for in Article 43.

4. Before deciding to take any action under this Article, EBA shall notify competent authorities of the action it proposes.

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5. EBA shall publish on its website notice of any decision to take any action under this Article. The notice shall specify details of the prohibition or restriction and specify a time after the publication of the notice from which the measures will take effect. A prohibition or restriction shall only apply to action taken after the measures take effect.

6. EBA shall review a prohibition or restriction imposed under paragraph 1 at appropriate intervals and at least every three months. If the prohibition or restriction is not renewed after that three-month period it shall expire.

7. Action adopted by EBA under this Article shall prevail over any previous action taken by a competent authority.

8. The Commission shall adopt delegated acts in accordance with Article 50 to specify criteria and factors to be taken into account by EBA in determining when there is a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets and to the stability of the whole or part of the financial system of the Union referred to in paragraph 2(a).

Those criteria and factors shall include:

(a) the degree of complexity of a structured deposit and the relation to the type of client to whom it is marketed and sold;

(b) the size or the notional value of an issuance of structured deposits;

(c) the degree of innovation of a structured deposit, an activity or a practice;

(d) the leverage a structured deposit or practice provides.

Article 42

Product intervention by competent authorities

1. A competent authority may prohibit or restrict the following in or from that Member State:

(a) the marketing, distribution or sale of certain financial instruments or structured deposits or financial instruments or structured deposits with certain specified features; or

(b) a type of financial activity or practice.

2. A competent authority may take the action referred to in paragraph 1 if it is satisfied on reasonable grounds that:

(a) either

(i) a financial instrument, structured deposit or activity or practice gives rise to significant investor protection concerns or poses a threat to the orderly functioning and integrity of financial markets or commodity markets or to the stability of whole or part of the financial system within at least one Member State; or

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(ii) a derivative has a detrimental effect on the price formation mechanism in the underlying market;

(b) existing regulatory requirements under Union law applicable to the financial instrument, structured deposit or activity or practice do not sufficiently address the risks referred to in point (a) and the issue would not be better addressed by improved supervision or enforcement of existing requirements;

(c) the action is proportionate taking into account the nature of the risks identified, the level of sophistication of investors or market participants concerned and the likely effect of the action on investors and market participants who may hold, use or benefit from the financial instrument, structured deposit or activity or practice;

(d) the competent authority has properly consulted competent authorities in other Member States that may be significantly affected by the action;

(e) the action does not have a discriminatory effect on services or activities provided from another Member State; and

(f) it has properly consulted public bodies competent for the oversight, administration and regulation of physical agricultural markets under Regulation (EC) No 1234/2007, where a financial instrument or activity or practice poses a serious threat to the orderly functioning and integrity of the physical agricultural market.

Where the conditions set out in the first subparagraph are fulfilled, the competent authority may impose the prohibition or restriction referred to in paragraph 1 on a precautionary basis before a financial instrument or structured deposit has been marketed, distributed or sold to clients.

A prohibition or restriction may apply in circumstances, or be subject to exceptions, specified by the competent authority.

3. The competent authority shall not impose a prohibition or restriction under this Article unless, not less than one month before the measure is intended to take effect, it has notified all other competent authorities and ESMA in writing or through another medium agreed between the authorities the details of:

(a) the financial instrument or activity or practice to which the proposed action relates;

(b) the precise nature of the proposed prohibition or restriction and when it is intended to take effect; and

(c) the evidence upon which it has based its decision and upon which it is satisfied that each of the conditions in paragraph 2 are met.

4. In exceptional cases where the competent authority deems it necessary to take urgent action under this Article in order to prevent

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detriment arising from the financial instruments, structured deposits, practices or activities referred to in paragraph 1, the competent authority may take action on a provisional basis with no less than 24 hours' written notice, before the measure is intended to take effect, to all other competent authorities and ESMA or, for structured deposits, EBA, provided that all the criteria in this Article are met and that, in addition, it is clearly established that a one month notification period would not adequately address the specific concern or threat. The competent authority shall not take action on a provisional basis for a period exceeding three months.

5. The competent authority shall publish on its website notice of any decision to impose any prohibition or restriction referred to in paragraph 1. The notice shall specify details of the prohibition or restriction, a time after the publication of the notice from which the measures will take effect and the evidence upon which it is satisfied each of the conditions in paragraph 2 are met. The prohibition or restriction shall only apply in relation to actions taken after the publication of the notice.

6. The competent authority shall revoke a prohibition or restriction if the conditions in paragraph 2 no longer apply.

7. The Commission shall adopt delegated acts in accordance with Article 50 specifying criteria and factors to be taken into account by competent authorities in determining when there is a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or commodity markets or to the stability of the of the financial system within at least one Member State referred to in paragraph 2(a).

Those criteria and factors shall include:

(a) the degree of complexity of a financial instrument or structured deposit and the relation to the type of client to whom it is marketed, distributed and sold;

(b) the degree of innovation of a financial instrument or structured deposit, an activity or a practice;

(c) the leverage a financial instrument or structured deposit or practice provides;

(d) in relation to the orderly functioning and integrity of financial markets or commodity markets, the size or the notional value of an issuance of financial instruments or structured deposits.

Article 43

Coordination by ESMA and EBA

1. ESMA or, for structured deposits, EBA shall perform a facilitation and coordination role in relation to action taken by competent authorities under Article 42. In particular ESMA or, for structured deposits, EBA shall ensure that action taken by a competent authority is justified and proportionate and that where appropriate a consistent approach is taken by competent authorities.

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2. After receiving notification under Article 42 of any action that is to be imposed under that Article, ESMA or, for structured deposits, EBA shall adopt an opinion on whether the prohibition or restriction is justified and proportionate. If ESMA or, for structured deposits, EBA considers that the taking of a measure by other competent authorities is necessary to address the risk, it shall state this in its opinion. The opinion shall be published on ESMA's or, for structured deposits, EBA website.

3. Where a competent authority proposes to take, or takes, action contrary to an opinion adopted by ESMA or EBA under paragraph 2 or declines to take action contrary to such an opinion, it shall immediately publish on its website a notice fully explaining its reasons for so doing.

CHAPTER 2

Positions

Article 44

Coordination of national position management measures and position limits by ESMA

1. ESMA shall perform a facilitation and coordination role in relation to measures taken by competent authorities pursuant to Article 69(2)(o) and (p) of Directive 2014/65/EU. In particular, ESMA shall ensure that a consistent approach is taken by competent authorities with regard to when those powers are exercised, the nature and scope of the measures imposed, and the duration and follow-up of any measures.

2. After receiving notification of any measure under Article 79(5) of Directive 2014/65/EU, ESMA shall record the measure and the reasons therefor. In relation to measures taken pursuant to Article 69(2)(o) or (p) of Directive 2014/65/EU, it shall maintain and publish on its website a database with summaries of the measures in force including details of the person concerned, the applicable financial instruments, any limits on the size of positions the persons can hold at all times, any exemptions thereto granted in accordance with Article 57 of Directive 2014/65/EU, and the reasons therefor.

Article 45

Position management powers of ESMA

1. In accordance with Article 9(5) of Regulation (EU) No 1095/2010, ESMA shall, where both conditions in paragraph 2 are satisfied, take one or more of the following measures:

(a) request from any person all relevant information regarding the size and purpose of a position or exposure entered into via a derivative;

(b) after analysing the information obtained in accordance with point (a), require any such person to reduce the size of or to eliminate the position or exposure in accordance with the delegated act referred to in paragraph 10(b);

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(c) as a last resort, limit the ability of a person from entering into a commodity derivative.

2. ESMA shall take a decision under paragraph 1 only if both of the following conditions are fulfilled:

(a) the measures listed in paragraph 1 address a threat to the orderly functioning and integrity of financial markets, including commodity derivative markets in accordance with the objectives listed in Article 57(1) of Directive 2014/65/EU and including in relation to delivery arrangements for physical commodities, or to the stability of the whole or part of the financial system in the Union;

(b) a competent authority or competent authorities have not taken measures to address the threat or the measures taken do not sufficiently address the threat;

ESMA shall perform its assessment of the fulfilment of the conditions referred to in points (a) and (b) of the first subparagraph of this paragraph in accordance with the criteria and factors provided for in the delegated act referred to in paragraph 10(a) of this Article.

3. When taking measures referred to in paragraph 1 ESMA shall ensure that the measure:

(a) significantly addresses the threat to the orderly functioning and integrity of financial markets, including commodity derivative markets in accordance with the objectives listed in Article 57(1) of Directive 2014/65/EU and including in relation to delivery arrangements for physical commodities, or to the stability of the whole or part of the financial system in the Union or significantly improve the ability of competent authorities to monitor the threat as measured in accordance with the criteria and factors provided for in the delegated act referred to in paragraph 10(a) of this Article;

(b) does not create a risk of regulatory arbitrage as measured in accordance with paragraph 10(c) of this Article;

(c) does not have any of the following detrimental effects on the efficiency of financial markets that is disproportionate to the benefits of the measure: reducing liquidity in those markets, restraining the conditions for reducing risks directly related to the commercial activity of a non-financial counterparty, or creating uncertainty for market participants.

ESMA shall consult the Agency for the Cooperation of Energy Regulators established under Regulation (EC) No 713/2009 of the European Parliament and of the Council [1] before taking any measures related to wholesale energy products.

ESMA shall consult the public bodies competent for the oversight, administration and regulation of physical agricultural markets under Regulation (EC) No 1234/2007, before taking any measure related to agricultural commodity derivatives.

[1] Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators (OJ L 211, 14.8.2009, p. 1).

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4. Before deciding to undertake or renew any measure referred to in paragraph 1, ESMA shall notify relevant competent authorities of the measure it proposes. In the case of a request under points (a) or (b) of paragraph 1 the notification shall include the identity of the person or persons to whom it was addressed and the details and reasons therefor. In the event of a measure under paragraph 1(c) the notification shall include details of the person concerned, the applicable financial instruments, the relevant quantitative measures such as the maximum size of a position the person in question can enter into, and the reasons therefor.

5. The notification shall be made not less than 24 hours before the measure is intended to take effect or to be renewed. In exceptional circumstances, ESMA may make the notification less than 24 hours before the measure is intended to take effect where it is not possible to give 24 hours notice.

6. ESMA shall publish on its website notice of any decision to impose or renew any measure referred to in paragraph 1(c). The notice shall include details on the person concerned, the applicable financial instruments, the relevant quantitative measures such as the maximum size of a position the person in question can enter into, and the reasons therefor.

7. A measure referred to in paragraph 1(c) shall take effect when the notice is published or at a time specified in the notice that is after its publication and shall only apply to a transaction entered into after the measure takes effect.

8. ESMA shall review its measures referred to in paragraph 1(c) at appropriate intervals and at least every three months. If a measure is not renewed after that three month period, it shall automatically expire. Paragraphs 2 to 8 shall also apply to a renewal of measures.

9. A measure adopted by ESMA under this Article shall prevail over any previous measure taken by a competent authority under Article 69(2)(o) or (p) of Directive 2014/65/EU.

10. The Commission shall adopt in accordance with Article 50 delegated acts to specify criteria and factors to determine:

(a) the existence of a threat to the orderly functioning and integrity of financial markets, including commodity derivative markets in accordance with the objectives listed in Article 57(1) of Directive 2014/65/EU and including in relation to delivery arrangements for physical commodities, or to the stability of the whole or part of the financial system in the Union as referred to in paragraph 2(a) taking account of the degree to which positions are used to hedge positions in physical commodities or commodity contracts and the degree to which prices in underlying markets are set by reference to the prices of commodity derivatives;

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(b) the appropriate reduction of a position or exposure entered into via a derivative referred to in paragraph 1(b) of this Article;

(c) the situations where a risk of regulatory arbitrage as referred to in paragraph 3(b) of this Article could arise.

Those criteria and factors shall take into account the regulatory technical standards referred to in Article 57(3) of Directive 2014/65/EU and shall differentiate between situations where ESMA takes action because a competent authority has failed to act and those where ESMA addresses an additional risk which the competent authority is not able to sufficiently address pursuant to Article 69(2)(j) or (o) of Directive 2014/65/EU.

TITLE VIII

PROVISION OF SERVICES AND PERFORMANCE OF ACTIVITIES BY THIRD-COUNTRY FIRMS FOLLOWING AN EQUIVALENCE DECISION WITH OR WITHOUT A BRANCH

Article 46

General provisions

1. A third-country firm may provide investment services or perform investment activities with or without any ancillary services to eligible counterparties and to professional clients within the meaning of Section I of Annex II to Directive 2014/65/EU established throughout the Union without the establishment of a branch where it is registered in the register of third-country firms kept by ESMA in accordance with Article 47.

2. ESMA shall register a third-country firm that has applied for the provision of investment services or performance of activities throughout the Union in accordance with paragraph 1 only where the following conditions are met:

(a) the Commission has adopted a decision in accordance with Article 47(1);

(b) the firm is authorised in the jurisdiction where its head office is established to provide the investment services or activities to be provided in the Union and it is subject to effective supervision and enforcement ensuring a full compliance with the requirements applicable in that third country;

(c) cooperation arrangements have been established pursuant to Article 47(2).

3. Where a third-country firm is registered in accordance with this Article, Member States shall not impose any additional requirements on the third-country firm in respect of matters covered by this Regulation or by Directive 2014/65/EU and shall not treat third-country firms more favourably than Union firms.

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4. The third-country firm referred to in paragraph 1 shall submit its application to ESMA after the adoption by the Commission of the decision referred to in Article 47 determining that the legal and supervisory framework of the third country in which the third-country firm is authorised is equivalent to the requirements described in Article 47(1).

The applicant third-country firm shall provide ESMA with all information necessary for its registration. Within 30 working days of receipt of the application, ESMA shall assess whether the application is complete. If the application is not complete, ESMA shall set a deadline by which the applicant third-country firm is to provide additional information.

The registration decision shall be based on the conditions set out in paragraph 2.

Within 180 working days of the submission of a complete application, ESMA shall inform the applicant third-country firm in writing with a fully reasoned explanation whether the registration has been granted or refused.

Member States may allow third-country firms to provide investment services or perform investment activities together with ancillary services to eligible counterparties and professional clients within the meaning of Section I of Annex II to Directive 2014/65/EU in their territories in accordance with national regimes in the absence of the Commission decision in accordance with Article 47(1) or where such decision is no longer in effect.

5. Third-country firms providing services in accordance with this Article shall inform clients established in the Union, before the provision of any investment services, that they are not allowed to provide services to clients other than eligible counterparties and professional clients within the meaning of Section I of Annex II to Directive 2014/65/EU and that they are not subject to supervision in the Union. They shall indicate the name and the address of the competent authority responsible for supervision in the third country.

The information in the first subparagraph shall be provided in writing and in a prominent way.

Member States shall ensure that where an eligible counterparty or professional client within the meaning of Section I of Annex II to Directive 2014/65/EU established or situated in the Union initiates at its own exclusive initiative the provision of an investment service or activity by a third-country firm, this Article does not apply to the provision of that service or activity by the third-country firm to that person including a relationship specifically related to the provision of that service or activity. An initiative by such clients shall not entitle the third-country firm to market new categories of investment product or investment service to that individual.

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6. Third-country firms providing services or performing activities in accordance with this Article shall, before providing any service or performing any activity in relation to a client established in the Union, offer to submit any disputes relating to those services or activities to the jurisdiction of a court or arbitral tribunal in a Member State.

7. ESMA shall develop draft regulatory technical standards to specify the information that the applicant third-country firm shall provide to ESMA in its application for registration in accordance with paragraph 4 and the format of information to be provided in accordance with paragraph 5.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 47

Equivalence decision

1. The Commission may adopt a decision in accordance with the examination procedure referred to in Article 51(2) in relation to a third country stating that the legal and supervisory arrangements of that third country ensure that firms authorised in that third country comply with legally binding prudential and business conduct requirements which have equivalent effect to the requirements set out in this Regulation, in Directive 2013/36/EU and in Directive 2014/65/EU and in the implementing measures adopted under this Regulation and under those Directives and that the legal framework of that third country provides for an effective equivalent system for the recognition of investment firms authorised under third-country legal regimes.

The prudential and business conduct framework of a third country may be considered to have equivalent effect where that framework fulfils all the following conditions:

(a) firms providing investment services and activities in that third country are subject to authorisation and to effective supervision and enforcement on an ongoing basis;

(b) firms providing investment services and activities in that third country are subject to sufficient capital requirements and appropriate requirements applicable to shareholders and members of their management body;

(c) firms providing investment services and activities are subject to adequate organisational requirements in the area of internal control functions;

(d) firms providing investment services and activities are subject to appropriate conduct of business rules;

(e) it ensures market transparency and integrity by preventing market abuse in the form of insider dealing and market manipulation

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2. ESMA shall establish cooperation arrangements with the relevant competent authorities of third countries whose legal and supervisory frameworks have been recognised as effectively equivalent in accordance with paragraph 1. Such arrangements shall specify at least:

(a) the mechanism for the exchange of information between ESMA and the competent authorities of third countries concerned, including access to all information regarding the non-Union firms authorised in third countries that is requested by ESMA;

(b) the mechanism for prompt notification to ESMA where a third-country competent authority deems that a third-country firm that it is supervising and ESMA has registered in the register provided for in Article 48 infringes the conditions of its authorisation or other law to which it is obliged to adhere;

(c) the procedures concerning the coordination of supervisory activities including, where appropriate, on-site inspections.

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3. A third-country firm established in a country whose legal and supervisory framework has been recognised to be effectively equivalent in accordance with paragraph 1, and which is authorised in accordance with Article 39 of Directive 2014/65/EU shall be able to provide the services and activities covered under the authorisation to eligible counterparties and professional clients within the meaning of Section I of Annex II to Directive 2014/65/EU in other Member States of the Union without the establishment of new branches. For that purpose, it shall comply with the information requirements for the cross-border provision of services and activities in Article 34 of Directive 2014/65/EU.

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The branch shall remain subject to the supervision of the Member State where the branch is established in accordance with Article 39 of Directive 2014/65/EU. However, and without prejudice to the obligations to cooperate laid down in Directive 2014/65/EU, the competent authority of the Member State where the branch is established and the competent authority of the host Member State may establish proportionate cooperation agreements in order to ensure that the branch of the third-country firm providing investment services within the Union delivers the appropriate level of investor protection.

4. A third-country firm may no longer use the rights under Article 46(1) where the Commission adopts a decision in accordance with the examination procedure referred to in Article 51(2) withdrawing its decision under paragraph 1 of this Article in relation to that third country.

Article 48

Register

ESMA shall keep a register of the third-country firms allowed to provide investment services or perform investment activities in the Union in accordance with Article 46. The register shall be publicly accessible on the website of ESMA and shall contain information on the services or activities which the third-country firms are permitted to provide or perform and the reference of the competent authority responsible for their supervision in the third country.

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Article 49

Withdrawal of registration

1. ESMA shall withdraw the registration of a third-country firm in the register established in accordance with Article 48 where:

(a) ESMA has well-founded reasons based on documented evidence to believe that, in the provision of investment services and activities in the Union, the third-country firm is acting in a manner which is clearly prejudicial to the interests of investors or the orderly functioning of markets; or

(b) ESMA has well-founded reasons based on documented evidence to believe that, in the provision of investment services and activities in the Union, the third-country firm has seriously infringed the provisions applicable to it in the third country and on the basis of which the Commission has adopted the Decision in accordance with Article 47(1);

(c) ESMA has referred the matter to the competent authority of the third country and that third-country competent authority has not taken the appropriate measures needed to protect investors and the proper functioning of the markets in the Union or has failed to demonstrate that the third-country firm concerned complies with the requirements applicable to it in the third country; and

(d) ESMA has informed the third-country competent authority of its intention to withdraw the registration of the third-country firm at least 30 days before the withdrawal.

2. ESMA shall inform the Commission of any measure adopted in accordance with paragraph 1 without delay and shall publish its decision on its website.

3. The Commission shall assess whether the conditions under which a decision in accordance with Article 47(1) has been adopted continue to persist in relation to the third country concerned.

TITLE IX

DELEGATED AND IMPLEMENTING ACTS

CHAPTER 1

Delegated acts

Article 50

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 1(9), Article 2(2), Article 13(2), Article 15(5), Article 17(3), Article 19(2) and (3), Article 31(4), Article 40(8), Article 41(8), Article 42(7), Article 45(10) and Article 52(10) and (12) shall be conferred for an indeterminate period of time from 2 July 2014.

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3. The delegation of power referred to in Article 1(9), Article 2(2), Article 13(2), Article 15(5), Article 17(3), Article 19(2) and (3), Article 31(4), Article 40(8), Article 41(8), Article 42(7), Article 45(10) and Article 52(10) and (12) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 1(9), Article 2(2), Article 13(2), Article 15(5), Article 17(3), Article 19(2) and (3), Article 31(4), Article 40(8), Article 41(8), Article 42(7), Article 45(10) and Article 52(10) or (12) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.

CHAPTER 2

Implementing acts

Article 51

Committee procedure

1. The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC ([1]). That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

TITLE X

FINAL PROVISIONS

Article 52

Reports and review

1. By ►**M1** 3 March 2020 ◄, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the impact in practice of the transparency obligations established pursuant to Articles 3 to 13, in particular on the impact of the volume cap mechanism described in Article 5, including on the cost

([1]) Commission Decision 2001/528/EC of 6 June 2001 establishing the European Securities Committee (OJ L 191, 13.7.2001, p. 45).

▼B

of trading for eligible counterparties and professional clients and on trading of shares of small and mid-cap companies, and its effectiveness in ensuring that the use of the relevant waivers does not harm price formation and how any appropriate mechanism for imposing sanctions for infringements of the volume cap might operate, and on the application and continued appropriateness of the waivers to pre-trade transparency obligations established pursuant to Article 4(2) and (3) and Article 9(2) to (5).

2. The report referred to in paragraph 1 shall include the impact on European equity markets of the use of the waiver under Article 4(1)(a) and (b)(i) and the volume cap mechanism under Article 5, with particular reference to:

(a) the level and trend of non-lit order book trading within the Union since the introduction of this Regulation;

(b) the impact on the pre-trade transparent quoted spreads;

(c) the impact on the depth of liquidity on lit order books;

(d) the impact on competition and on investors within the Union;

(e) the impact on trading of shares of small and mid-cap companies;

(f) developments at international level and discussions with third countries and international organisations.

3. If the report concludes that the use of the waiver under Article 4(1)(a) and (b)(i) is harmful to price formation or to trading of shares of small and mid-cap companies, the Commission shall, where appropriate, make proposals, including amendments to this Regulation, regarding the use of those waivers. Such proposals shall include an impact assessment of the proposed amendments, and shall take into account the objectives of this Regulation and the effects on market disruption and competition, and potential impacts on investors in the Union.

4. By ►M1 3 March 2020 ◄, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the functioning of Article 26, including whether the content and format of transaction reports received and exchanged between competent authorities comprehensively enable to monitor the activities of investment firms in accordance with Article 26(1). The Commission may make any appropriate proposals, including providing for transactions to be reported to a system appointed by ESMA instead of to competent authorities, which allows relevant competent authorities to access all the information reported pursuant to this Article for the purposes of this Regulation and of Directive 2014/65/EU and the detection of insider dealing and market abuse in accordance with Regulation (EU) No 596/2014.

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5. By ►M1 3 March 2020 ◄, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on appropriate solutions to reduce information asymmetries between market participants as well as tools for regulators to better monitor quotation activities on trading venues. That report shall at least assess the feasibility of developing a European best bid and offer system for consolidated quotes to fulfil those objectives.

6. By ►M1 3 March 2020 ◄, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the progress made in moving trading in standardised OTC derivatives to exchanges or electronic trading platforms pursuant to Articles 25 and 28.

7. By ►M1 3 July 2020 ◄, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the development in prices for pre-trade and post-trade transparency data from regulated markets, MTFs, OTFs, APAs and CTPs.

8. By ►M1 3 July 2020 ◄, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council reviewing the interoperability provisions in Article 36 of this Regulation and of Article 8 of Regulation (EU) No 648/2012.

9. By ►M1 3 July 2020 ◄, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the application of Articles 35 and 36 of this Regulation and of Articles 7 and 8 of Regulation (EU) No 648/2012.

By ►M1 3 July 2022 ◄, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the application of Article 37.

10. By ►M1 3 July 2020 ◄, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the impact of Article 35 and 36 of this Regulation on newly established and authorised CCPs as referred to in Article 35(5) and trading venues connected to those CCPs by close links and whether the transitional arrangement provided for in Article 35(5) shall be extended, weighing the possible benefits to consumers of improving competition and the degree of choice available to market participants against the possible disproportionate effect of those provisions on newly established and authorised CCPs and the constraints of local market participants in accessing global CCPs and the smooth functioning of the market.

Subject to the conclusions of that report, the Commission may adopt a delegated act in accordance with Article 50 to extend the transitional period in accordance with Article 35(5) by a maximum of 30 months.

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11. By ►M1 3 July 2020 ◄, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on whether the threshold laid down in Article 36(5) remains appropriate and whether the opt out mechanism in respect of exchange-traded derivatives is to remain available.

12. By 3 July 2016, the Commission shall, based on a risk assessment carried out by ESMA in consultation with the ESRB, submit a report to the European Parliament and to the Council assessing the need to temporarily exclude exchange-traded derivatives from the scope of Article 35 and 36. That report shall take into account risks, if any, resulting from open access provisions regarding exchange-traded derivatives to the overall stability and orderly functioning of the financial markets throughout the Union.

Subject to the conclusions of that report, the Commission may adopt a delegated act in accordance with Article 50 to exclude exchange-traded derivatives from the scope of Articles 35 and 36 for up to thirty months following ►M1 3 January 2018 ◄.

Article 53

Amendment of Regulation (EU) No 648/2012

Regulation (EU) No 648/2012 is amended as follows:

(1) in Article 5(2), the following subparagraph is added:

‘In the developing of the draft regulatory technical standards under this paragraph ESMA shall not prejudice the transitional provision relating to C6 energy derivative contracts as laid down in Article 95 of Directive 2014/65/EU (*).

(*) 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).’;

(2) Article 7 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. A CCP that has been authorised to clear OTC derivative contracts shall accept clearing such contracts on a non-discriminatory and transparent basis, including as regards collateral requirements and fees related to access, regardless of the trading venue. This in particular shall ensure that a trading venue has the right to non-discriminatory treatment in terms of how contracts traded on that trading venue are treated in terms of:

(a) collateral requirements and netting of economically equivalent contracts, where the inclusion of such contracts in the close-out and other netting procedures of a CCP based on the applicable insolvency law would not endanger the smooth and orderly functioning, the validity or enforceability of such procedures; and

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(b) cross-margining with correlated contracts cleared by the same CCP under a risk model that complies with Article 41.

A CCP may require that a trading venue comply with the operational and technical requirements established by the CCP, including the risk-management requirements.';

(b) the following paragraph is added:

'6. The conditions laid down in paragraph 1 regarding non-discriminatory treatment in terms of how contracts traded on that trading venue are treated in terms of collateral requirements and netting of economically equivalent contracts and cross-margining with correlated contracts cleared by the same CCP shall be further specified by the technical standards adopted pursuant to Article 35(6)(e) of Regulation (EU) No 600/2014 (*).';

(3) In Article 81(3), the following subparagraph is added:

'A trade repository shall transmit data to competent authorities in accordance with the requirements under Article 26 of Regulation (EU) No 600/2014 (*)'.

Article 54

Transitional provisions

1. Third-country firms shall be able to continue to provide services and activities in Member States, in accordance with national regimes until three years after the adoption by the Commission of a decision in relation to the relevant third country in accordance with Article 47.

2. ►**M3** If the Commission assesses that there is no need to exclude exchange-traded derivatives from the scope of Articles 35 and 36 in accordance with Article 52(12), a CCP or a trading venue may, before 11 February 2021, apply to its competent authority for permission to avail itself of transitional arrangements. The competent authority, taking into account the risks resulting from the application of the access rights under Article 35 or 36 as regards exchange-traded derivatives to the orderly functioning of the relevant CCP or trading venue, may decide that Article 35 or 36 would not apply to the relevant CCP or trading venue, respectively, in respect of exchange-traded derivatives, for a transitional period until 3 July 2021. Where such a transitional period is approved, the CCP or trading venue shall not benefit from the access rights under Article 35 or 36, as regards exchange-traded derivatives for the duration of that period. The competent authority shall notify ESMA and, in the case of a CCP, the college of competent authorities for that CCP, when a transitional period is approved. ◄

(*) 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)

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Where a CCP which has been approved for the transitional arrangements, is connected by close links to one or more trading venues, those trading venues shall not benefit from access rights under Article 35 or 36 for exchange-traded derivatives for the duration of that transitional period.

Where a trading venue, which has been approved for the transitional arrangements, is connected by close links to one or more CCPs, those CCPs shall not benefit from access rights under Article 35 or 36 for exchange-traded derivatives for the duration of that transitional period.

Article 55

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*.

▼M1

This Regulation shall apply from 3 January 2018.

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►C1 Notwithstanding the second paragraph, Article 1(8) and (9), Article 2(2), Article 4(6), Article 5(6) and (9), ◄ Article 7(2), Article 9(5), Article 11(4), Article 12(2), Article 13(2), Article 14(7), Article 15(5), Article 17(3), Article 19(2) and (3), Article 20(3), Article 21(5), Article 22(4), Article 23(3), Article 25(3), Article 26(9), Article 27(3), Article 28(4), Article 28(5), Article 29(3), Article 30(2), Article 31(4), Article 32(1), (5) and(6), Article 33(2), Article 35(6), Article 36(6), Article 37(4), Article 38(3), Article 40(8), Article 41(8), Article 42(7), Article 45(10), Article 46(7), Article 47(1) and (4), Article 52(10) and (12) and Article 54(1) shall apply immediately following the entry into force of this Regulation.

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Notwithstanding the second paragraph, Article 37(1), (2) and (3) shall apply from 3 January 2020.

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