Official Journal of the European Union

L 87

English edition

Legislation

Volume 60

31 March 2017

Contents

[1] Text with EEA relevance.

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

[1] Text with EEA relevance.

[1] Text with EEA relevance.

DIRECTIVES

[1] Text with EEA relevance.

II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2017/565

of 25 April 2016

supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU [1], and in particular Article 2(3), the second subparagraph of Article 4(1)(2), and Articles 4(2), 16(12), 23(4), 24(13), 25(8), 27(9), 28(3), 30(5), 31(4), 32(4), 33(8), 52(4), 54(4), 58(6), 64(7), 65(7) and 79(8) thereof,

Whereas:

(1) Directive 2014/65/EU establishes the framework for a regulatory regime for financial markets in the Union, governing operating conditions relating to the performance by investment firms of investment services and, where appropriate, ancillary services and investment activities; organisational requirements for investment firms performing such services and activities, for regulated markets and data reporting services providers; reporting requirements in respect of transactions in financial instruments; position limits and position management controls in commodity derivatives; transparency requirements in respect of transactions in financial instruments.

(2) Directive 2014/65/EU empowers the Commission to adopt a number of delegated acts. It is important that all the detailed supplementing rules regarding the authorisation, ongoing operation, market transparency and integrity, which are inextricably-linked aspects inherent to the taking up and pursuit of the services and activities covered by Directive 2014/65/EU, begin to apply at the same time as Directive 2014/65/EU so that the new requirements can operate effectively. To ensure coherence and to facilitate a comprehensive view and compact access to the provisions by persons subject to those obligations as well as by investors, it is desirable to include the delegated acts related to the above-mentioned rules in this Regulation.

(3) It is necessary to further specify the criteria to determine under what circumstances contracts in relation to wholesale energy products must be physically settled for the purposes of the limitation of scope set out in Section C(6) of Annex I to Directive 2014/65/EU. In order to ensure that the scope of this exemption is limited to avoid loopholes it is necessary that such contracts require that both buyer and seller should have proportionate arrangements in place to make or receive delivery of the underlying commodity upon the expiry of the contract. In order to avoid loopholes in case of balancing agreements with the Transmission System Operator in the areas

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

of electricity and gas, such balancing arrangements should only be considered as a proportionate arrangement if the parties to the arrangement have the obligation to physically deliver electricity or gas. Contracts should also establish clear obligations for physical delivery which cannot be offset whilst recognising that forms of operational netting as defined in Regulation (EU) No 1227/2011 of the European Parliament and of the Council ([1]) or national law should not considered as offsetting. Contracts which must be physically settled should be permitted to deliver in a variety of methods however all methods should involve a form of transfer of right of an ownership nature of the relevant underlying commodity or a relevant quantity thereof.

(4) In order to clarify when a contract in relation to wholesale energy product must be physically settled, it is necessary to further specify when certain circumstances such as force majeure or bona fide inability to settle provisions are present, and which should not alter the characterisation of those contracts as 'must be physically settled'. It is important to also clarify how oil and coal energy derivatives should be understood for the purposes of Section C(6) of Annex I to Directive 2014/65/EU. In this context, contracts related to oil shale should not be understood to be coal energy derivatives.

(5) A derivative contract should only be considered to be a financial instrument under Section C(7) of Annex I to Directive 2014/65/EU if it relates to a commodity and meets a set of criteria for determining whether a contract should be considered as having the characteristics of other derivative financial instruments and as not being for commercial purposes. This should include contracts which are standardised and traded on venues, or contracts equivalent thereof where all the terms of such contracts are equivalent to contracts traded on venues. In this case, terms of these contracts should also be understood to include provisions such as quality of the commodity or place of delivery.

(6) In order to provide clarity on the definitions of contracts relating to underlying variables set out in Section C(10) of Directive 2014/65/EU, criteria should be provided relating to their terms and underlying variables in those contracts. The inclusion of actuarial statistics in the list of underlyings should not be understood as extending the scope of those contracts to insurance and reinsurance.

(7) Directive 2014/65/EU establishes the general framework for a regulatory regime for financial markets in the Union, setting out in Section C of Annex I the list of financial instruments covered. Section C(4) of Annex I to Directive 2014/65/EU includes financial instruments relating to a currency which are therefore under the scope of this Directive.

(8) In order to ensure the uniform application of Directive 2014/65/EU, it is necessary to clarify the definitions laid down in Section C(4) of Annex I to Directive 2014/65/EU for other derivative contracts relating to currencies and to clarify that spot contracts relating to currencies are not other derivative instruments for the purposes of Section C(4) of Annex I to Directive 2014/65/EU.

(9) The settlement period for a spot contract is generally accepted in most main currencies as taking place within 2 days or less, but where this is not market practice it is necessary to make provision to allow settlement to take place in accordance with normal market practice. In such cases, physical settlement does not require the use of paper money and can include electronic settlement.

(10) Foreign exchange contracts may also be used for the purpose of effecting payment and those contracts should not be considered financial instruments provided they are not traded on a trading venue. Therefore it is appropriate to consider as spot contracts those foreign exchange contracts that are used to effect payment for financial instruments where the settlement period for those contracts is more than 2 trading days and less than 5 trading days. It is also appropriate to consider as means of payments those foreign exchange contracts that are entered into for the purpose of achieving certainty about the level of payments for goods, services and real investment. This will result in excluding from the definition of financial instruments foreign exchange contracts entered into by non-financial firms receiving payments in foreign currency for exports of identifiable goods and services and non-financial firms making payments in foreign currency to import specific goods and services.

([1]) 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).

(11) Payment netting is essential to the effective and efficient operation of currency settlement systems and therefore the classification of a foreign currency contract as a spot transaction should not require that each foreign currency spot contract is settled independently.

(12) Non deliverable forwards are contracts for the difference between an exchange rate agreed before and the actual spot rate at maturity and therefore should not be considered to be spot contracts, regardless of their settlement period.

(13) A contract for the exchange of one currency against another currency should be understood as relating to a direct and unconditional exchange of those currencies. In the case of a contract with multiple exchanges, each exchange should be considered separately. However an option or a swap on a currency should not be considered a contract for the sale or exchange of a currency and therefore could not constitute either a spot contract or means of payment regardless of the duration of the swap or option and regardless of whether it is traded on a trading venue or not.

(14) Advice about financial instruments addressed to the general public should not be considered as a personal recommendation for the purposes of the definition of 'investment advice' in Directive 2014/65/EU. In view of the growing number of intermediaries providing personal recommendations through the use of distribution channels, it should be clarified that a recommendation issued, even exclusively, through distribution channels, such as internet, could qualify as a personal recommendation. Therefore, situations in which, for instance, email correspondence is used to provide personal recommendations to a specific person, rather than to address information to the public in general, may amount to investment advice.

(15) Generic advice about a type of financial instrument is not considered investment advice for the purposes of Directive 2014/65/EU. However, if an investment firm provides generic advice to a client about a type of financial instrument which it presents as suitable for, or based on a consideration of the circumstances of, that client, and that advice is not in fact suitable for the client, or is not based on a consideration of his circumstances, the firm is likely to be acting in contravention of Article 24(1) or (3) of Directive 2014/65/EU In particular, a firm which gives a client such advice would be likely to contravene the requirement of Article 24(1) to act honestly, fairly and professionally in accordance with the best interests of its clients. Similarly or alternatively, such advice would be likely to contravene the requirement of Article 24(3) that information addressed by a firm to a client should be fair, clear and not misleading.

(16) Acts carried out by an investment firm that are preparatory to the provision of an investment service or carrying out an investment activity should be considered as an integral part of that service or activity. This would include, for example, the provision of generic advice by an investment firm to clients or potential clients prior to or in the course of the provision of investment advice or any other investment service or activity.

(17) The provision of a general recommendation about a transaction in a financial instrument or a type of financial instrument constitutes the provision of an ancillary service within Section B(5) of Annex I to Directive 2014/65/EU, and consequently Directive 2014/65/EU and its protections apply to the provision of that recommendation.

(18) In order to ensure the objective and effective application of the definition of systematic internalisers in the Union in accordance with Article 4(1)(20) of Directive 2014/65/EU, further specifications should be provided on the applicable pre-set limits for the purposes of what constitutes frequent systematic and substantial over the counter (OTC) trading. Pre-set limits should be set at an appropriate level to ensure that OTC trading of such a size that it had a material effect on price formation is within scope while at the same time excluding OTC trading of such a small size that it would be disproportionate to require the obligation to comply with the requirements applicable to systematic internalisers.

(19) Pursuant to Directive 2014/65/EU, a systematic internaliser should not be allowed to bring together third party buying and selling interests in functionally the same way as a trading venue. A systematic internaliser should not consist of an internal matching system which executes client orders on a multilateral basis, an activity which

requires authorisation as a multilateral trading facility (MTF). An internal matching system in this context is a system for matching client orders which results in the investment firm undertaking matched principal transactions on a regular and not occasional basis.

(20) For reasons of clarity and legal certainty and to ensure a uniform application, it is appropriate to provide supplementary provisions in relation to the definitions in relation to algorithmic trading, high frequency algorithmic trading techniques and direct electronic access. In automated trading, various technical arrangements are deployed. It is essential to clarify how those arrangements are to be categorised in relation to the definitions of algorithmic trading and direct electronic access. The trading processes based on direct electronic access are not mutually exclusive to those involving algorithmic trading or its sub-segment high frequency algorithmic trading technique. The trading of a person having direct electronic access may therefore also fall under the algorithmic trading including the high frequency algorithmic trading technique definition.

(21) Algorithmic trading in accordance with Article 4(1)(39) of Directive 2014/65/EU should include arrangements where the system makes decisions, other than only determining the trading venue or venues on which the order should be submitted, at any stage of the trading processes including at the stage of initiating, generating, routing or executing orders. Therefore, it should be clarified that algorithmic trading, which encompasses trading with no or limited human intervention, should refer not only to the automatic generation of orders but also to the optimisation of order-execution processes by automated means.

(22) Algorithmic trading should encompass smart order routers (SORs) where such devices use algorithms for optimisation of order execution processes that determine parameters of the order other than the venue or venues where the order should be submitted. Algorithmic trading should not encompass automated order routers (AOR) where, although using algorithms, such devices only determine the trading venue or venues where the order should be submitted without changing any other parameter of the order.

(23) High frequency algorithmic trading technique in accordance with Article 4(1)(40) of Directive 2014/65/EU, which is a subset of algorithmic trading, should be further specified through the establishment of criteria to define high message intraday rates which constitutes orders quotes or modifications or cancellations thereof. Using absolute quantitative thresholds on the basis of messaging rates provides legal certainty by allowing firms and competent authorities to assess the individual trading activity of firms. The level and scope of these thresholds should be sufficiently broad to cover trading which constitute high frequency trading technique, including those in relation to single instruments and multiple instruments.

(24) Since the use of high frequency algorithmic trading technique is predominantly common in liquid instruments, only instruments for which there is a liquid market should be included in the calculation of high intraday message rate. Also, given that high frequency algorithmic trading technique is a subset of algorithmic trading, messages introduced for the purpose of trading that fulfil the criteria in Article 17(4) of Directive 2014/65/EU should be included in the calculation of intraday message rates. In order not to capture trading activity other than high frequency algorithmic trading techniques, having regard to the characteristics of such trading as set out in recital 61 of Directive 2014/65/EU, in particular that such trading is typically done by traders using their own capital to implement more traditional trading strategies such as market making or arbitrage through the use of sophisticated technology, only messages introduced for the purposes of dealing on own account, and not those introduced for the purposes of receiving and transmitting orders or executing orders of behalf of clients, should be included in the calculation of high intraday message rates. However, messages introduced through other techniques than those relying on trading on own account should be included in the calculation of high intraday message rate where, viewed as a whole and taking into account all circumstances, the execution of the technique is structured in such a way as to avoid the execution taking place on own account, such as through the transmission of orders between entities within the same group. In order to take into account, when determining what constitutes high message intra-day rates, the identity of the client ultimately behind the activity, messages which were originated by clients of DEA providers should be excluded from the calculation of high intraday message rate in relation to such providers.

(25) The definition of direct electronic access should be further specified. The definition of direct electronic access should not encompass any other activity beyond the provision of direct market access and sponsored access. Therefore, arrangements where client orders are intermediated through electronic means by members or participants of a trading venue such as online brokerage and arrangements where clients have direct electronic access to a trading venue should be distinguished.

(26) In case of order intermediation, submitters of orders do not have sufficient control over the parameters of the arrangement for market access and should therefore not fall within scope of direct electronic access. Therefore, arrangements that allow clients to transmit orders to an investment firm in an electronic format, such as online brokerage, should be not be considered direct electronic access provided that clients do not have the ability to determine the fraction of a second of order entry and the life time of orders within that time frame.

(27) Arrangements where the client of a member or participant of a trading venue, including the client of a direct clients of organised trading facilities (OTFs), submit their orders through arrangements for optimisation of order execution processes that determine parameters of the order other than the venue or venues where the order should be submitted through SORs embedded into the provider's infrastructure and not on the client's infrastructure should be excluded from the scope of direct electronic access since the client of the provider does not have control over the time of submission of the order and its lifetime. The characterisation of direct electronic access when deploying smart order routers should therefore be dependent on whether the smart order router is embedded in the clients' systems and not in that of the provider.

(28) The rules for the implementation of the regime governing organisational requirements for investment firms performing investment services and, where appropriate, ancillary services and investment activities on a professional basis, for regulated markets, and data reporting services providers should be consistent with the aim of Directive 2014/65/EU. They should be designed to ensure a high level of integrity, competence and soundness among investment firms and entities that operate regulated markets, MTFs or OTFs, and to be applied in a uniform manner.

(29) It is necessary to specify concrete organisational requirements and procedures for investment firms performing such services or activities. In particular, rigorous procedures should be provided for with regard to matters such as compliance, risk management, complaints handling, personal transactions, outsourcing and the identification, management and disclosure of conflicts of interest.

(30) The organisational requirements and conditions for authorisation for investment firms should be set out in the form of a set of rules that ensures the uniform application of the relevant provisions of Directive 2014/65/EU. This is necessary in order to ensure that investment firms have equal access on equivalent terms to all markets in the Union and to eliminate obstacles, linked to authorisation procedures, to cross-border activities in the field of investment services.

(31) The rules for the implementation of the regime governing operating conditions for the performance of investment and ancillary services and investment activities should reflect the aim underlying that regime. They should be designed to ensure a high level of investor protection to be applied in a uniform manner through the introduction of clear standards and requirements governing the relationship between an investment firm and its client. On the other hand, as regards investor protection, and in particular the provision of investors with information or the seeking of information from investors, the retail or professional nature of the client or potential client concerned should be taken into account.

(32) In order to ensure the uniform application of the various relevant provisions of Directive 2014/65/EU, it is necessary to establish a harmonised set of organisational requirements and operating conditions for investment firms.

(33) Investment firms vary widely in their size, their structure and the nature of their business. A regulatory regime should be adapted to that diversity while imposing certain fundamental regulatory requirements which are appropriate for all firms. Regulated entities should comply with their high level obligations and design and adopt measures that are best suited to their particular nature and circumstances.

(34) It is appropriate to set out common criteria for assessing whether an investment service is provided by a person in an incidental manner in the course of a professional activity, in order to ensure a harmonised and strict implementation of the exemption granted by Directive 2014/65/EU. The exemption should only apply if the investment service has an intrinsic connection to the main area of the professional activity and is subordinated thereto.

(35) The organisational requirements established under Directive 2014/65/EU should be without prejudice to systems established by national law for the registration or monitoring by competent authorities or firms of individuals working within investment firms.

(36) For the purposes of requiring an investment firm to establish, implement and maintain an adequate risk management policy, the risks relating to the firm's activities, processes and systems should include the risks associated with the outsourcing of critical or important functions. Those risks should include those associated with the firm's relationship with the service provider, and the potential risks posed where the outsourced functions of multiple investment firms or other regulated entities are concentrated within a limited number of service providers.

(37) The fact that risk management and compliance functions are performed by the same person does not necessarily jeopardise the independent functioning of each function. The conditions that persons involved in the compliance function should not also be involved in the performance of the functions that they monitor, and that the method of determining the remuneration of such persons should not be likely to compromise their objectivity, may not be proportionate in the case of small investment firms. However, they would only be disproportionate for larger firms in exceptional circumstances.

(38) Clients or potential clients should be enabled to express their dissatisfaction with investment services provided by investment firms in the interests of investor protection as well as strengthening investment firms' compliance with their obligations. Clients' or potential clients' complaints should be handled effectively and in an independent manner by a complaints management function. In line with the principle of proportionality, that function could be carried out by the compliance function.

(39) Investment firms are required to collect and maintain information relating to clients and services provided to clients. Where those requirements involve the collection and processing of personal data, the respect of the right to the protection of personal data in accordance with Directive 95/46/EC of the European Parliament and of the Council ([1]) and Directive 2002/58/EC of the European Parliament and of the Council ([2]) which govern the processing of personal data carried out in application of this Directive should be ensured. Processing of personal data by the European Securities and Markets Authority (ESMA) in the application of this Regulation is subject to Regulation (EC) No 45/2001 of the European Parliament and of the Council ([3]).

(40) A definition of remuneration should be introduced in order to ensure the efficient and consistent application of the conflicts of interest and conduct of business requirements in the area of remuneration and should include all forms of financial or non-financial benefits or payments provided directly or indirectly by firms to relevant persons in the provision of investment or ancillary services to clients, such as cash, shares, options, cancellations of loans to relevant persons at dismissal, pension contributions, remuneration by third parties for instance through carried interest models, wage increases or promotions, health insurance, discounts or special allowances, generous expense accounts or seminars in exotic destinations.

(41) In order to ensure that clients' interests are not impaired, investment firms should design and implement remuneration policies to all persons who could have an impact on the service provided or corporate behaviour of the firm, including persons who are front-office staff, sales force staff or other staff indirectly involved in the provision of investment or ancillary services. Persons overseeing the sales forces, such as line managers, who may be incentivised to pressure sales staff, or financial analysts whose literature may be used by sales staff to entice clients to make investment decisions or persons involved in complaints-handling or in product design and development should also be included in the scope of relevant persons concerned by remuneration rules. Relevant persons should also include tied agents. When determining the remuneration for tied agents, firms should take the tied agents' special status and the respective national specificities into consideration. However, in such cases, firms' remuneration policies and practices should still define appropriate criteria to be used to assess the performance of relevant persons, including qualitative criteria encouraging the relevant persons to act in the best interests of the client.

(42) Where successive personal transactions are carried out on behalf of a person in accordance with prior instructions given by that person, obligations relating to personal transactions should not apply separately to

([1]) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

([2]) Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (OJ L 201, 31.7.2002, p. 37).

([3]) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

each such successive transaction if those instructions remain in force and unchanged. Similarly, those obligations should not apply to the termination or withdrawal of such instructions, provided that any financial instruments which had previously been acquired pursuant to the instructions are not disposed of at the same time as the instructions terminate or are withdrawn. However, those obligations should apply in relation to a personal transaction, or the commencement of successive personal transactions, carried out on behalf of the same person if those instructions are changed or if new instructions are issued.

(43) Competent authorities should not make the authorisation to provide investment services or activities subject to a general prohibition on the outsourcing of one or more critical or important functions. Investment firms should be allowed to outsource such functions if the outsourcing arrangements established by the firm comply with certain conditions.

(44) The outsourcing of investment services or activities or critical and important functions is capable of constituting a material change of the conditions for the authorisation of the investment firm, as referred to in Article 21(2) of Directive 2014/65/EU. If such outsourcing arrangements are to be put in place after the investment firm has obtained an authorisation according to Chapter I of Title II of Directive 2014/65/EU, those arrangements should be notified to the competent authority where required by Article 21(2) of that Directive.

(45) The circumstances which should be treated as giving rise to a conflict of interest should cover cases where there is a conflict between the interests of the firm or certain persons connected to the firm or the firm's group and the duty the firm owes to a client; or between the differing interests of two or more of its clients, to each of whom the firm owes a duty. It is not enough that the firm may gain a benefit if there is not also a possible disadvantage to a client, or that one client to whom the firm owes a duty may make a gain or avoid a loss without there being a concomitant possible loss to another such client.

(46) Conflicts of interest should be regulated only where an investment service or ancillary service is provided by an investment firm. The status of the client to whom the service is provided — as either retail, professional or eligible counterparty — should be irrelevant for that purpose.

(47) In complying with its obligation to draw up a conflict of interest policy under Directive 2014/65/EU which identifies circumstances which constitute or may give rise to a conflict of interest, the investment firm should pay special attention to the activities of investment research and advice, proprietary trading, portfolio management and corporate finance business, including underwriting or selling in an offering of securities and advising on mergers and acquisitions. In particular, such special attention is appropriate where the firm or a person directly or indirectly linked by control to the firm performs a combination of two or more of those activities.

(48) Investment firms should aim to identify and prevent or manage the conflicts of interest arising in relation to their various business lines and their group's activities under a comprehensive conflicts of interest policy. While disclosure of specific conflicts of interest is required by Article 23(2) of Directive 2014/65/EU, it should be a measure of last resort to be used only where the organisational and administrative arrangements established by the investment firm to prevent or manage its conflicts of interest in accordance with Article 23(1) of Directive 2014/65/EU are not sufficient to ensure, with reasonable confidence, that the risks of damage to the interests of the client are prevented. Over-reliance on disclosure without adequate consideration as to how conflicts may appropriately be prevented or managed should not be permitted. The disclosure of conflicts of interest by an investment firm should not exempt it from the obligation to maintain and operate the effective organisational and administrative arrangements required under Article 16(3) of Directive 2014/65/EU.

(49) Firms should always comply with the inducements rules under Article 24 of Directive 2014/65/EU, including when providing placing services. In particular, fees received by investment firms placing the financial instruments issued to its investment clients should comply with these provisions and laddering and spinning should be considered as abusive practices.

(50) Investment research should be a sub-category of the type of information defined as a recommendation in Regulation (EU) No 596/2014 of the European Parliament and of the Council ([1]) (market abuse).

([1]) Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse Regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

(51) The measures and arrangements adopted by an investment firm to manage the conflicts of interests that might arise from the production and dissemination of material that is presented as investment research should be appropriate to protect the objectivity and independence of financial analysts and of the investment research they produce. Those measures and arrangements should ensure that financial analysts enjoy an adequate degree of independence from the interests of persons whose responsibilities or business interests may reasonably be considered to conflict with the interests of the persons to whom the investment research is disseminated.

(52) Persons whose responsibilities or business interests may reasonably be considered to conflict with the interests of the persons to whom investment research is disseminated should include corporate finance personnel and persons involved in sales and trading on behalf of clients or the firm.

(53) Exceptional circumstances in which financial analysts and other persons connected with the investment firm who are involved in the production of investment research may, with prior written approval, undertake personal transactions in instruments to which the research relates should include those circumstances where, for personal reasons relating to financial hardship, the financial analyst or other person is required to liquidate a position.

(54) Fees, commissions, monetary or non-monetary benefits received by the firm providing investment research from any third party should only be acceptable when they are provided in accordance with requirements specified in Article 24(9) of Directive 2014/65/EU and Article 13 of Commission Delegated Directive (EU) 2017/593 ([1]).

(55) The concept of dissemination of investment research to clients or the public should not include dissemination exclusively to persons within the group of the investment firm. Current recommendations should be considered to be those recommendations contained in investment research which have not been withdrawn and which have not lapsed. The substantial alteration of investment research produced by a third party should be governed by the same requirements as the production of research.

(56) Financial analysts should not engage in activities other than the preparation of investment research where engaging in such activities are inconsistent with the maintenance of that person's objectivity. These include participating in investment banking activities such as corporate finance business and underwriting, participating in 'pitches' for new business or 'road shows' for new issues of financial instruments; or being otherwise involved in the preparation of issuer marketing.

(57) Given the specificities of underwriting and placing services and the potential for conflicts of interest to arise in relation to such services, more detailed and tailored requirements should be specified in this Regulation. In particular, such requirements should ensure that the underwriting and placing process is managed in a way which respects the interests of different actors. Investment firms should ensure that their own interests or interests of their other clients do not improperly influence the quality of services provided to the issuer client. Such arrangements should be explained to that client, along with other relevant information about the offering process, before the firm accepts to undertake the offering.

(58) Investment firms engaged in underwriting or placing activities should have appropriate arrangements in place to ensure that the pricing process, including book-building, is not detrimental to the issuer's interests.

(59) The placing process involves the exercise of judgement by an investment firm as to the allocation of an issue, and is based on the particular facts and circumstances of the arrangements, which raises conflicts of interest concerns. The firm should have in place effective organisational requirements to ensure that allocations made as part of the placing process do not result in the firm's interest being placed ahead of the interests of the issuer client, or the interests of one investment client over those of another investment client. In particular, firms should clearly set out the process for developing allocation recommendations in an allocation policy.

(60) Requirements imposed by this Regulation, including those relating to personal transactions, to dealing with knowledge of investment research and to the production or dissemination of investment research, should apply without prejudice to requirements of Directive 2014/65/EU and Regulation (EU) No 596/2014 and their respective implementing measures.

([1]) Commission Delegated Directive (EU) 2017/593 of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits (see page 500 of this Official Journal).

(61) This Regulation sets out requirements regarding information addressed to clients or potential clients, including marketing communications, in order to ensure that such information be fair, clear and not misleading in accordance with Article 24(3) of Directive 2014/65/EU.

(62) Nothing in this Regulation requires competent authorities to approve the content and form of marketing communications. However, neither does it prevent them from doing so, insofar as any such pre-approval is based only on compliance with the obligation in Directive 2014/65/EU that information to clients or potential clients, including marketing communications, should be fair, clear and not misleading.

(63) Information requirements should be established which take account of the status of a client as either retail, professional or eligible counterparty. An objective of Directive 2014/65/EU is to ensure a proportionate balance between investor protection and the disclosure obligations which apply to investment firms. To this end, it is appropriate to establish less stringent specific information requirements with respect to professional clients than to retail clients.

(64) Investment firms should provide clients or potential clients with the necessary information on the nature of financial instruments and the risks associated with investing in them so that their clients are properly informed The level of detail of the information to be provided may vary according to whether the client is a retail client or a professional client and the nature and risk profile of the financial instruments that are being offered, but should always include any essential elements. Member States may specify the precise terms, or the contents, of the description of risks required under this Regulation, taking into account the information requirements set out in Regulation (EU) No 1286/2014 of the European Parliament and of the Council ([1]).

(65) The conditions with which information addressed by investment firms to clients and potential clients must comply in order to be fair, clear and not misleading should apply to communications intended for retail or professional clients in a way that is appropriate and proportionate, taking into account, for example, the means of communication, and the information that the communication is intended to convey to the clients or potential clients. In particular, it would not be appropriate to apply such conditions to marketing communications which consist only of one or more of the following: the name of the firm, a logo or other image associated with the firm, a contact point, a reference to the types of investment services provided by the firm.

(66) In order to improve the consistency of information received by investors, investment firms should ensure that the information provided to each client is consistently presented in the same language throughout all forms of information and marketing material provided to that client. However, this should not imply a requirement for firms to translate prospectuses, prepared in accordance with Directive 2003/71/EC of the European Parliament and of the Council ([2]) or Directive 2009/65/EC of the European Parliament and of the Council ([3]), provided to clients.

(67) In order to provide a fair and balanced presentation of benefits and risks, investment firms should always give a clear and prominent indication of any relevant risks, including drawbacks and weaknesses, when referencing any potential benefits of a service or financial instrument.

(68) Information should be considered to be misleading if it has a tendency to mislead the person or persons to whom it is addressed or by whom it is likely to be received, regardless of whether the person who provides the information considers or intends it to be misleading.

(69) In cases where an investment firm is required to provide information to a client before the provision of a service, each transaction in respect of the same type of financial instrument should not be considered as the provision of a new or different service.

(70) Detailed information on whether investment advice is provided on an independent basis, on the broad or restricted analysis of different types of instruments and on the selection process used should help clients assess the scope of the advice provided. Sufficient details on the number of financial instruments analysed by the firms

([1]) Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352, 9.12.2014, p. 1).

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

([3]) Directive 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).

should be provided to clients. The number and variety of financial instruments to be considered, other than the ones provided by the investment firm or entities close to the firm, should be proportionate to the scope of the advice to be given, client preferences and needs. However, irrespective of the scope of services offered, all assessments should be based on an adequate number of financial instruments available on the market to allow an appropriate consideration of what the market offers as alternatives.

(71) The scope of the advice given by investment firms on an independent basis could range from broad and general to specialist and specific. In order to ensure that the scope of the advice allows for a fair and appropriate comparison between different financial instruments, investment advisers specialising in certain categories of financial instruments and focusing on criteria that are not based on the technical structure of the instrument per se, such as 'green' or 'ethical' investments, should comply with certain conditions if they present themselves as independent advisers.

(72) Enabling the same adviser to provide both independent and non-independent advice could create confusion for the client. In order to ensure clients' understanding of the nature and basis of investment advice provided, certain organisational requirements should also be established.

(73) The provision by an investment firm to a client of a copy of a prospectus that has been drawn up and published in accordance with Directive 2003/71/EC should not be treated as the provision by the firm of information to a client for the purposes of the operating conditions under Directive 2014/65/EU which relate to the quality and contents of such information, if the firm is not responsible under that Directive for the information given in the prospectus.

(74) Directive 2014/65/EU strengthens investment firms' obligations to disclose information on all costs and charges and extends these obligations to relationships with professional clients and eligible counterparties. In order to ensure that all categories of clients benefit from such increased transparency on costs and charges, investment firms should be allowed, in certain situations, when providing investment services to professional clients or eligible counterparties, to agree with these clients to limit the detailed requirements set out in this Regulation. This however should never lead to disapplying the obligations imposed on investment firms pursuant to Article 24(4) of Directive 2014/65/EU. In this respect, investment firms should inform professional clients about all costs and charges as set out in this Regulation, when the services of investment advice or portfolio management are provided or when, irrespective of the investment service provided, the financial instruments concerned embed a derivative. Investment firms should also inform eligible counterparties about all costs and charges as set out in this Regulation when, irrespective of the investment service provided, the financial instrument concerned embeds a derivative and intends to be distributed to their clients. However, in other cases, when providing investment services to professional clients or eligible counterparties, investment firms may agree, for instance, at the request of the client concerned, not to provide the illustration showing the cumulative effect of costs on return or an indication of the currency involved and the applicable conversion rates and costs where any part of the total costs and charges is expressed in foreign currency.

(75) Taking into account the overarching obligation to act in accordance with the best interest of clients and the importance of informing clients, on an *ex-ante* basis, of all costs and charges to be incurred, the reference to financial instruments recommended or marketed should include in particular investment firms providing investment advice or portfolio management services, firms providing general recommendation concerning financial instruments or promoting certain financial instruments in the provision of investment and ancillary services to clients. This would for instance be the case for investment firms that have entered into distribution or placement agreements with a product manufacturer or issuer.

(76) In accordance with the overarching obligation to act in accordance with the best interest of clients and taking into account the obligations resulting from specific Union legislation regulating certain financial instruments (in particular, units in collective investment undertakings and packaged retail and insurance-based investment products (PRIIPs) investment firms should disclose and aggregate all costs and charges, including the costs of the financial instrument, in all cases where investment firms are obliged to provide the client with information about the costs of a financial instrument in accordance with Union legislation.

(77) Where investment firms have not marketed or recommended a financial instrument or are not required under Union law to provide clients with information about costs of a financial instrument, they may not be in the position to take into account all the costs associated with that financial instrument. Even in these residual instances, investment firms should inform clients, on an ex-ante basis, about all costs and charges associated to

the investment service and the price of acquiring the relevant financial instrument. Furthermore, investment firms should comply with any other obligations to provide appropriate information about the risks of the relevant financial instrument in accordance with Article 24(4)(b) of Directive 2014/65/EU or to provide clients, on an ex-post basis, with adequate reports on the services provided in accordance with Article 25(6) of Directive 2014/65/EU, including cost elements.

(78) In order to ensure clients' awareness of all costs and charges to be incurred as well as evaluation of such information and comparison with different financial instruments and investment services, investment firms should provide clients with clear and comprehensible information on all costs and charges in good time before the provision of services. *Ex-ante* information about the costs related to the financial instrument or ancillary service can be provided based on an assumed investment amount. However, the costs and charges disclosed should represent the costs the client would actually incur based on that assumed investment amount. For example, if an investment firm offers a range of ongoing services with different charges associated with each service, the firm should disclose the costs associated with the service the client subscribed to. For ex-post disclosures, information related to costs and charges should reflect the client's actual investment amount at the time the disclosure is produced.

(79) In order to ensure investors receive information about all costs and charges pursuant to Article 24(4) of Directive 2014/65/EU, the underlying market risk should be understood as relating only to movements in the value of capital invested caused directly by movements in the value of underlying assets. Transactions costs and ongoing charges on financial instruments should therefore also be included in the required aggregation of costs and charges and should be estimated using reasonable assumptions, accompanied by an explanation that such estimations are based on assumptions and may deviate from costs and charges that will actually be incurred. Following the same objective of full disclosure, practices where there is 'netting' of costs should not be excluded from the obligation to provide information on costs and charges. The costs and charges disclosure is underpinned by the principle that every difference between the price of a position for the firm and the respective price for the client should be disclosed, including mark-ups and mark-downs.

(80) While investment firms should aggregate all costs and charges in accordance with Article 24(4) of Directive 2014/65/EU and provide clients with the overall costs expressed both as a monetary amount and as a percentage, investment firms should, in addition, be allowed to provide clients or prospective clients with separate figures comprising aggregated initial costs and charges, aggregated on-going costs and charges and aggregated exit costs.

(81) Investment firms distributing financial instruments, in relation to which information on costs and charges is insufficient, should additionally inform their clients about those costs as well as all the other costs and associated charges relating to the provision of investment services in relation to those financial instruments in order to safeguard clients' rights to full disclosure of costs and charges. This would be the case for investment firms distributing units in collective investment undertakings for which transaction costs have not been provided by for example units in UCITS management company. In such cases, the investment firms should liaise with UCITS management companies to obtain the relevant information.

(82) In order to improve transparency for clients on the associated costs of their investments and the performance of their investments against the relevant costs and charges over time, periodic *ex-post* disclosure should also be provided where the investment firms have or have had an ongoing relationship with the client during the year. *Ex-post* disclosure on all the relevant costs and charges should be provided on a personalised basis. The *ex-post* periodic disclosure may be made by building on existing reporting obligations, such as obligations for firms providing execution of orders other than portfolio management, portfolio management or holding client financial instruments or funds.

(83) The information which an investment firm is required to give to clients concerning costs and associated charges includes information about the arrangements for payment or performance of the agreement for the provision of investment services and any other agreement relating to a financial instrument that is being offered. For this purpose, arrangements for payment will generally be relevant where a financial instrument contract is terminated by cash settlement. Arrangements for performance will generally be relevant where, upon termination, a financial instrument requires the delivery of shares, bonds, a warrant, bullion or another instrument or commodity.

(84) It is necessary to introduce different requirements for the application of the suitability assessment set out in Article 25(2) of Directive 2014/65/EU and the appropriateness assessment set out in Article 25(3) of that Directive. These tests are different in scope with regards to the investment services to which they relate, and have different functions and characteristics.

(85) Investment firms should include in the suitability report and draw clients' attention to information on whether the recommended services or instruments are likely to require the retail client to seek a periodic review of their arrangements. This includes situations where a client is likely to need to seek advice to bring a portfolio of investments back in line with the original recommended allocation where there is a probability that the portfolio could deviate from the target asset allocation.

(86) In order to take market developments into account and ensure the same level of investor protection, it should be clarified that investment firms should remain responsible for undertaking suitability assessments where investment advice or portfolio management services are provided in whole or in part through an automated or semi-automated system.

(87) In accordance with the suitability assessment requirement under Article 25(2) of Directive 2014/65/EU, it should also be clarified that investment firms should undertake a suitability assessment not only in relation to recommendations to buy a financial instrument are made but for all decisions whether to trade including whether or not to buy, hold or sell an investment.

(88) For the purposes of Article 25(2) of Directive 2014/65/EU, a transaction may be unsuitable for the client or potential client due to the risks of the associated financial instruments, the type of transaction, the characteristics of the order or the frequency of the trading. A series of transactions, each of which are suitable when viewed in isolation may be unsuitable if the recommendation or the decisions to trade are made with a frequency that is not in the best interests of the client. In the case of portfolio management, a transaction might also be unsuitable if it would result in an unsuitable portfolio.

(89) A recommendation or request made, or advice given, by a portfolio manager to a client to the effect that the client should give or alter a mandate to the portfolio manager that defines the limits of the portfolio manager's discretion should be considered a recommendation as referred to in of Article 25(2) of Directive 2014/65/EU.

(90) In order to provide legal certainty and enable clients to better understand the nature of the services provided, investment firms that provide investment or ancillary services to clients should enter into a written basic agreement with the client, setting out the essential rights and obligations of the firm and the client.

(91) This Regulation should not require competent authorities to approve the content of the basic agreement between an investment firm and its clients. Nor should it prevent them from doing so, insofar as any such approval is based only on the firm's compliance with its obligations under Directive 2014/65/EU to act honestly, fairly and professionally in accordance with the best interests of its clients, and to establish a record that sets out the rights and obligations of investment firms and their clients, and the other terms on which firms will provide services to their clients.

(92) The records an investment firm is required to keep should be adapted to the type of business and the range of investment services and activities performed, provided that the record-keeping obligations set out in Directive 2014/65/EU, Regulation (EU) No 600/2014 of the European Parliament and of the Council ([1]), Regulation (EU) No 596/2014, Directive 2014/57/EU of the European Parliament and of the Council ([2]) and this Regulation are fulfilled and that competent authorities are able to fulfil their supervisory tasks and perform enforcement actions in view of ensuring both investor protection and market integrity.

(93) In light of the importance of reports and periodic communications for all clients, and the extension of Article 25(6) of Directive 2014/65/EU to the relationship to eligible counterparties, the reporting requirements set in this Regulation should apply to all categories of clients. Taking into account the nature of the interactions with eligible counterparties, investment firms should be allowed to enter into agreements determining the specific content and timing of reporting different from the ones applicable for retail and professional clients.

([1]) Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

([2]) Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive) (OJ L 173, 12.6.2014, p. 179).

(94) In cases where an investment firm providing portfolio management services is required to provide clients or potential clients with information on the types of financial instruments that may be included in the client portfolio and the types of transactions that may be carried out in such instruments, such information should state separately whether the investment firm will be mandated to invest in financial instruments not admitted to trading on a regulated market, in derivatives, or in illiquid or highly volatile instruments; or to undertake short sales, purchases with borrowed funds, securities financing transactions, or any transactions involving margin payments, deposit of collateral or foreign exchange risk.

(95) Clients should be informed of the performance of their portfolio and depreciations of their initial investments. In the case of portfolio management, this trigger should be set at the depreciation of 10 %, and thereafter at multiples of 10 %, of the overall value of the overall portfolio and should not apply to individual holdings.

(96) For the purposes of the reporting obligations in respect of portfolio management, a contingent liability transaction should involve any actual or potential liability for the client that exceeds the cost of acquiring the instrument.

(97) For the purposes of the provisions on reporting to clients, a reference to the type of the order should be understood as referring to its status as a limit order, market order, or other specific type of order.

(98) For the purposes of the provisions on reporting to clients, a reference to the nature of the order should be understood as referring to orders to subscribe for securities, or to exercise an option, or similar client order.

(99) When establishing its execution policy in accordance with Article 27(4) of Directive 2014/65/EU, an investment firm should determine the relative importance of the factors mentioned in Article 27(1) of that Directive, or at least establish the process by which it determines the relative importance of these factors, so that it can deliver the best possible result to its clients. In order to give effect to that policy, an investment firm should select the execution venues that enable it to obtain on a consistent basis the best possible result for the execution of client orders. In order to comply with the legal obligation of best execution, investment firms, when applying the criteria for best execution for professional clients, will typically not use the same execution venues for securities financing transactions (SFTs) and other transactions. This is because the SFTs are used as a source of funding subject to a commitment that the borrower will return equivalent securities on a future date and the terms of SFTs are typically defined bilaterally between the counterparties ahead of the execution. Therefore, the choice of execution venues for SFTs is more limited than in the case of other transactions, given that it depends on the particular terms defined in advance between the counterparties and on whether there is a specific demand on those execution venues for the financial instruments involved. As a result, the order execution policy established by investment firms should take into account the particular characteristics of SFTs and it should list separately execution venues used for SFTs. An investment firm should apply its execution policy to each client order that it executes with a view to obtaining the best possible result for the client in accordance with that policy.

(100) In order to ensure that investment firms who transmit or place clients' orders with other entities for execution act in the best interest of their clients in accordance with Article 24(1) of Directive 2014/65/EU and with Article 24(4) of Directive 2014/65/EU to provide appropriate information to clients on the firm and its services, investment firms should provide clients with appropriate information on the top five entities for each class of financial instruments to which they transmit or place clients' orders and provide clients with information on the execution quality, in accordance with Article 27(6) of Directive 2014/65/EU and respective implementing measures. Investment firms transmitting or placing orders with other entities for execution may select a single entity for execution only where they are able to show that this allows them to obtain the best possible result for their clients on a consistent basis and where they can reasonably expect that the selected entity will enable them to obtain results for clients that are at least as good as the results that they reasonably could expect from using alternative entities for execution. This reasonable expectation should be supported by relevant data published in accordance with Article 27 of Directive 2014/65/EU or by internal analysis conducted by these investment firms.

(101) For the purposes of ensuring that an investment firm obtains the best possible result for the client when executing a retail client order in the absence of specific client instructions, the firm should take into consideration all factors that will allow it to deliver the best possible result in terms of the total consideration, representing the price of the financial instrument and the costs related to execution. Speed, likelihood of execution and settlement,

the size and nature of the order, market impact and any other implicit transaction costs may be given precedence over the immediate price and cost consideration only insofar as they are instrumental in delivering the best possible result in terms of the total consideration to the retail client.

(102) When an investment firm executes an order following specific instructions from the client, it should be treated as having satisfied its best execution obligations only in respect of the part or aspect of the order to which the client instructions relate. The fact that the client has given specific instructions which cover one part or aspect of the order should not be treated as releasing the investment firm from its best execution obligations in respect of any other parts or aspects of the client order that are not covered by such instructions. An investment firm should not induce a client to instruct it to execute an order in a particular way, by expressly indicating or implicitly suggesting the content of the instruction to the client, when the firm ought reasonably to know that an instruction to that effect is likely to prevent it from obtaining the best possible result for that client. However, this should not prevent a firm inviting a client to choose between two or more specified trading venues, provided that those venues are consistent with the execution policy of the firm.

(103) Dealing on own account with clients by an investment firm should be considered as the execution of client orders, and therefore subject to the requirements under Directive 2014/65/EU and this Regulation and, in particular, those obligations in relation to best execution. However, if an investment firm provides a quote to a client and that quote would meet the investment firm's obligations under Article 27(1) of Directive 2014/65/EU if the firm executed that quote at the time the quote was provided, then the firm should meet those same obligations if it executes its quote after the client accepts it, provided that, taking into account the changing market conditions and the time elapsed between the offer and acceptance of the quote, the quote is not manifestly out of date.

(104) The obligation to deliver the best possible result when executing client orders applies in relation to all types of financial instruments. However, given the differences in market structures or the structure of financial instruments, it may be difficult to identify and apply a uniform standard of and procedure for best execution that would be valid and effective for all classes of instrument. Best execution obligations should therefore be applied in a manner that takes into account the different circumstances associated with the execution of orders related to particular types of financial instruments. For example, transactions involving a customised OTC financial instrument that involve a unique contractual relationship tailored to the circumstances of the client and the investment firm may not be comparable for best execution purposes with transactions involving shares traded on centralised execution venues. As best execution obligations apply to all financial instruments, irrespective of whether they are traded on trading venues or OTC, investment firms should gather relevant market data in order to check whether the OTC price offered for a client is fair and delivers on best execution obligation.

(105) The provisions of this Regulation as to execution policy should be without prejudice to the general obligation of an investment firm under Article 27(7) of Directive 2014/65/EU to monitor the effectiveness of its order execution arrangements and policy and assess the venues in its execution policy on a regular basis.

(106) This Regulation should not require a duplication of effort as to best execution between an investment firm which provides the service of reception and transmission of order or portfolio management and any investment firm to which that investment firm transmits its orders for execution.

(107) The best execution obligation under Directive 2014/65/EU requires investment firms to take all sufficient steps to obtain the best possible result for their clients. The quality of execution, which includes aspects such as the speed and likelihood of execution such as fill rate) and the availability and incidence of price improvement, is an important factor in the delivery of best execution. Availability, comparability and consolidation of data related to execution quality provided by the various execution venues is crucial in enabling investment firms and investors to identify those execution venues that deliver the highest quality of execution for their clients. In order to obtain best execution result for a client, investment firms should compare and analyse relevant data including that made public in accordance with Article 27(3) of Directive 2014/65/EU and respective implementing measures.

(108) Investment firms executing orders should be able to include a single execution venue in their policy only where they are able to show that this allows them to obtain best execution for their clients on a consistent basis. Investment firms should select a single execution venue only where they can reasonably expect that the selected execution venue will enable them to obtain results for clients that are at least as good as the results that they

reasonably could expect from using alternative execution venues. This reasonable expectation must be supported by relevant data published in accordance with Article 27 of Directive 2014/65/EU or by other internal analyses conducts by the firms.

(109) The reallocation of transactions should be considered as detrimental to a client if, as an effect of that reallocation, unfair precedence is given to the investment firm or to any particular client.

(110) Without prejudice to Regulation (EU) No 596/2014, for the purposes of the provisions of this Regulation concerning client order handling, client orders should not be treated as otherwise comparable if they are received by different media and it would not be practicable for them to be treated sequentially. Any use by an investment firm of information relating to a pending client order in order to deal on own account in the financial instruments to which the client order relates, or in related financial instruments, should be considered a misuse of that information. However, the mere fact that market makers or bodies authorised to act as counterparties confine themselves to pursuing their legitimate business of buying and selling financial instruments, or that persons authorised to execute orders on behalf of third parties confine themselves to carrying out an order dutifully, should not in itself be deemed to constitute a misuse of information.

(111) When assessing whether a market fulfils the requirement laid down in point (a) of Article 33(3) of Directive 2014/65/EU that at least 50 % of the issuers admitted to trading on that market are small and medium-size enterprises (SMEs), a flexible approach should be taken by competent authorities with regard to markets with no previous operating history, newly created SMEs whose financial instruments have been admitted to trading for less than three years and issuers exclusively of non-equity financial instruments.

(112) Given the diversity in operating models of existing MTFs with a focus on SMEs in the Union, and to ensure the success of the new category of SME growth market, it is appropriate to grant SME growth markets an appropriate degree of flexibility in evaluating the appropriateness of issuers for admission on their venue. In any case, an SME growth market should not have rules that impose greater burdens on issuers than those applicable to issuers on regulated markets.

(113) With regard to the content of the admission document which an issuer is required to produce upon initial admission to trading of its securities on an SME growth market, where the requirement to publish a prospectus pursuant to Directive 2003/71/EC does not apply, it is appropriate that competent authorities retain discretion to assess whether the rules set out by the operator of the SME growth market achieve the proper information of investors. While full responsibility for the information featured in the admission document should lie with the issuer, it should be for the operator of an SME growth market to define how the admission document should be appropriately reviewed. This should not necessarily involve a formal approval by the competent authority or the operator.

(114) The publication by issuers of annual and half-yearly financial reports represents an appropriate minimum standard of transparency which is coherent with the prevailing best practice in existing markets focusing on SMEs. As to the content of financial reports, the operator of an SME growth market should be free to prescribe the use of International Financial Reporting Standards or financial reporting standards permitted by local laws and regulations, or both, by issuers whose financial instruments are traded on its venue. Deadlines for publishing financial reports should be less onerous than those prescribed by Directive 2004/109/EC of the European Parliament and of the Council [1] as less stringent timeframes appear better suited to the needs and circumstances of SMEs.

(115) Since the rules on dissemination of information about issuers on regulated markets under Directive 2004/109/EC would be too burdensome for issuers on SME growth markets, it is appropriate that the website of the operator of the SME growth market becomes the point of convergence for investors seeking information on the issuers traded on that venue. A publication on the website of the operator of the SME growth market can also be effected by providing a direct link to the website of the issuer in case the information is published there, if the link goes directly to the relevant part of the website of the issuer where the regulatory information can be easily found by investors.

[1] Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).

(116) It is necessary to further specify when a suspension or a removal from trading of a financial instrument is likely to cause significant damages to the investor's interest or to the orderly functioning of the market. Convergence in that field is necessary to ensure that market participants in a Member State where trading in financial instruments has been suspended or financial instruments have been removed are not disadvantaged in comparison to market participants in another Member State, where trading is still ongoing.

(117) To ensure the necessary level of convergence, it is appropriate to specify a list of circumstances constituting significant damage to investors' interests and the orderly functioning of the market which could be the basis of a decision by a national competent authority, a market operator operating a regulated market or an investment firm or a market operator operating an MTF or an OTF not to demand the suspension or removal of a financial instrument from trading, or not to follow a notification thereto. It is appropriate for such a list to be non-exhaustive as it will thus provide national competent authorities with a framework for the exercise of their judgement and will leave them a necessary degree of flexibility in the assessment of individual cases.

(118) Articles 31(2) and 54(2) of Directive 2014/65/EU respectively require investment firms and market operators operating an MTF or an OTF, and market operators of regulated markets to immediately inform their national competent authorities under certain circumstances. This requirement is intended to ensure that national competent authorities can fulfil their regulatory tasks and are informed in a timely manner about relevant incidents which may have a negative impact on the functioning and integrity of the markets. The information received from operators of trading venues should enable national competent authorities to identify and assess the risks for the markets and their participants as well as to react efficiently and to take action if necessary.

(119) It is appropriate to set up a non-exhaustive list of high-level circumstances where significant infringements of the rules of a trading venue, disorderly trading conditions or system disruptions in relation to a financial instrument may be assumed, thus triggering the obligation for the operators of trading venues to immediately inform their competent authorities as set out in Articles 31(2) and 54(2) of Directive 2014/65/EU. For that purpose, reference to the 'rules of a trading venue' should be understood in a broad sense and should comprise all rules, rulings, orders as well as general terms and conditions of contractual agreements between the trading venue and its participants which contain the conditions for trading and admission to the trading venue.

(120) With regard to conduct that may indicate abusive behaviour within the scope of Regulation (EU) No 596/2014, it is also appropriate to set up a non-exhaustive list of signals of insider dealing and market manipulation which should be taken into account by the operator of a trading venue when examining transactions or orders to trade in order to determine whether the obligation to inform the relevant national competent authority applies, as set out in Articles 31(2) and 54(2) of Directive 2014/65/EU. For that purpose, reference to 'order to trade' should encompass all types of orders, including initial orders, modifications, updates and cancellations of orders, irrespective of whether or not they have been executed and irrespective of the means used to access the trading venue.

(121) The list of signals of insider dealing and market manipulation should be neither exhaustive nor determinative of market abuse or attempts of market abuse, as each of the signals may not necessarily constitute market abuse or attempts of market abuse *per se*. Transactions or orders to trade meeting one or more signals may be conducted for legitimate reasons or in compliance with the rules of the trading venue.

(122) In order to provide transparency to market stakeholders whilst preventing market abuse and preserving confidentiality of the identities of position holders, the publication of aggregate weekly position reports on positions referred to in Article 58(1)(a) of Directive 2014/65/EU should only apply to contracts that are traded by a certain number of persons, above certain sizes as specified in this Regulation.

(123) In order to ensure that market data is provided on a reasonable commercial basis in a uniform manner in the Union, this Regulation specifies the conditions that APAs and CTPs must fulfil. These conditions are based on the objective to ensure that the obligation to provide market data on a reasonable commercial basis is sufficiently clear to allow for an effective and uniform application whilst taking into account different operating models and costs structures of data providers.

(124) To ensure that fees for market data are set at a reasonable level, the fulfilment of the obligation to provide market data on a reasonable commercial basis requires that prices be based on a reasonable relationship to the cost of producing and disseminating that data. Therefore, without prejudice to the application of competition rules, data providers should determine their fees on the basis of their costs whilst being allowed to obtain a reasonable margin, based on factors such as the operating profit margin, the return on costs, the return on operating assets and the return on capital. Where data providers incur joint costs for data provision and the provision of other services, costs of data provision may include an appropriate share of costs arising from any other relevant service provided. Since specifying the exact cost is very complex, cost allocation and cost apportionment methodologies should be specified instead, leaving the specification of those costs to the discretion of market data providers.

(125) Market data should be provided on a non-discriminatory basis, which requires that the same price and other terms and conditions should be offered to all customers who are in the same category according to published objective criteria.

(126) To allow data users to obtain market data without having to buy other services, market data should be offered unbundled from other services. To avoid that data users are charged more than once for the same market data when buying data from different market data distributors, market data should be offered on a per user basis unless doing so would be disproportionate to the cost of such way of offering that data in respect of the scale and the scope of the market data provided by the APA and the CTP.

(127) In order to allow for data users and competent authorities to effectively assess whether market data is provided on a reasonable commercial basis, it is necessary that all the essential conditions for its provision are disclosed to the public. Data providers should therefore disclose information about their fees and the content of the market data As well as the cost accounting methodologies used to determine their costs without having to disclose their actual costs.

(128) It is appropriate to set the criteria for determining when the operations of a regulated market, an MTF or an OTF are of substantial importance in a host Member State so as to avoid creating an obligation on a trading venue to deal with or be made subject to the supervision of more than one competent authority where this would not be necessary according to Directive 2014/65/EU. For MTFs and OTFs, it is appropriate that only MTFs and OTFs with a significant market share be considered as being of substantial importance, so that not any relocation or acquisition of an economically insignificant MTF or OTF automatically triggers the establishment of the cooperation arrangements set out in Article 79(2) of Directive 2014/65/EU.

(129) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union (Charter). Accordingly, this Regulation should be interpreted and applied in accordance with those rights and principles in particular the right to protection of personal data, the freedom to conduct business, the right to consumer protection, the right to effective remedy and to a fair trial. Any processing of personal data under this Regulation should respect fundamental rights, including the right to respect for private and family life and the right to protection of personal data under Articles 7 and 8 of the Charter of Fundamental Rights of the European Union and must be in compliance with the Directive 95/46/EC and Regulation (EC) No 45/2001.

(130) ESMA, established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council ([1]) has been consulted for technical advice.

(131) In order to allow competent authorities and investment firms to adapt to the new requirements contained in this Regulation so that they can be applied in an efficient and effective manner, the starting date of application of this Regulation should be aligned with the entry into application date of Directive 2014/65/EU,

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

HAS ADOPTED THIS REGULATION:

CHAPTER I

SCOPE AND DEFINITIONS

Article 1

Subject-matter and scope

1. Chapter II, and Sections 1 to 4, Articles 59(4) and 60 and Sections 6 and 8 of Chapter III and, to the extent they relate to those provisions, Chapter I and Section 9 of Chapter III and Chapter IV of this Regulation shall apply to management companies in accordance with Article 6(4) of Directive 2009/65/EC and Article 6(6) of Directive 2011/61/EU of the European Parliament and of the Council ([1]).

2. References to investment firms shall encompass credit institutions and references to financial instruments shall encompass structured deposits in relation to all the requirements referred to in Article 1(3) and 1(4) of Directive 2014/65/EU and their implementing provisions as set out under this Regulation.

Article 2

Definitions

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

(1) 'relevant person' in relation to an investment firm, means any of the following:

(a) a director, partner or equivalent, manager or tied agent of the firm;

(b) a director, partner or equivalent, or manager of any tied agent of the firm;

(c) an employee of the firm or of a tied agent of the firm, as well as any other natural person whose services are placed at the disposal and under the control of the firm or a tied agent of the firm and who is involved in the provision by the firm of investment services and activities;

(d) a natural person who is directly involved in the provision of services to the investment firm or to its tied agent under an outsourcing arrangement for the purpose of the provision by the firm of investment services and activities;

(2) 'financial analyst' means a relevant person who produces the substance of investment research;

(3) 'outsourcing' means an arrangement of any form between an investment firm and a service provider by which that service provider performs a process, a service or an activity which would otherwise be undertaken by the investment firm itself;

(3a) 'person with whom a relevant person has a family relationship' means any of the following:

(a) the spouse of the relevant person or any partner of that person considered by national law as equivalent to a spouse;

(b) a dependent child or stepchild of the relevant person;

(c) any other relative of the relevant person who has shared the same household as that person for at least one year on the date of the personal transaction concerned;

(4) 'securities financing transaction' means security financing transaction as defined in Article 3(11) of Regulation (EU) 2015/2365 of the European Parliament and of the Council ([2]).

(5) 'remuneration' means all forms of payments or financial or non-financial benefits provided directly or indirectly by firms to relevant persons in the provision of investment or ancillary services to clients;

(6) 'commodity' means any goods of a fungible nature that are capable of being delivered, including metals and their ores and alloys, agricultural products, and energy such as electricity.

([1]) 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).

([2]) 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).

Article 3

Conditions applying to the provision of information

1. Where, for the purposes of this Regulation, information is required to be provided in a durable medium as defined in Article 4(1) point 62 of Directive 2014/65/EU investment firms shall have the right to provide that information in a durable medium other than on paper only if:

(a) the provision of that information in that medium is appropriate to the context in which the business between the firm and the client is, or is to be, carried on; and

(b) the person to whom the information is to be provided, when offered the choice between information on paper or in that other durable medium, specifically chooses the provision of the information in that other medium.

2. Where, pursuant to Article 46, 47, 48, 49, 50 or 66(3) of this Regulation, an investment firm provides information to a client by means of a website and that information is not addressed personally to the client, investment firms shall ensure that the following conditions are satisfied:

(a) the provision of that information in that medium is appropriate to the context in which the business between the firm and the client is, or is to be, carried on;

(b) the client must specifically consent to the provision of that information in that form;

(c) the client must be notified electronically of the address of the website, and the place on the website where the information may be accessed;

(d) the information must be up to date;

(e) the information must be accessible continuously by means of that website for such period of time as the client may reasonably need to inspect it.

3. For the purposes of this Article, the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the firm and the client is, or is to be, carried on where there is evidence that the client has regular access to the internet. The provision by the client of an e-mail address for the purposes of the carrying on of that business shall be treated as such evidence.

Article 4

Provision of investment service in an incidental manner

(Article 2(1) of Directive 2014/65/EU)

For the purpose of the exemption in point (c) of Article 2(1) of Directive 2014/65/EU, an investment service shall be deemed to be provided in an incidental manner in the course of a professional activity where the following conditions are satisfied:

(a) a close and factual connection exists between the professional activity and the provision of the investment service to the same client, such that the investment service can be regarded as accessory to the main professional activity;

(b) the provision of investment services to the clients of the main professional activity does not aim to provide a systematic source of income to the person providing the professional activity; and

(c) the person providing the professional activity does not market or otherwise promote his ability to provide investment services, except where these are disclosed to clients as being accessory to the main professional activity.

Article 5

Wholesale energy products that must be physically settled

(Article 4(1)(2) of Directive 2014/65/EU)

1. For the purposes of Section C(6) of Annex I to Directive 2014/65/EU, a wholesale energy product must be physically settled where all the following conditions are satisfied:

(a) it contains provisions which ensure that parties to the contract have proportionate arrangements in place to be able to make or take delivery of the underlying commodity; a balancing agreement with the Transmission System Operator in the area of electricity and gas shall be considered a proportionate arrangement where the parties to the agreement have to ensure physical delivery of electricity or gas.

(b) it establishes unconditional, unrestricted and enforceable obligations of the parties to the contract to deliver and take delivery of the underlying commodity;

(c) it does not allow either party to replace physical delivery with cash settlement;

(d) the obligations under the contract cannot be offset against obligations from other contracts between the parties concerned, without prejudice to the rights of the parties to the contract, to net their cash payment obligations.

For the purposes of point (d), operational netting in power and gas markets shall not be considered as offsetting of obligations under a contract against obligations from other contracts.

2. Operational netting shall be understood as any nomination of quantities of power and gas to be fed into a gridwork upon being so required by the rules or requests of a Transmission System Operator as defined in Article 2(4) of Directive 2009/72/EC of the European Parliament and of the Council [1] for an entity performing an equivalent function to a Transmission System Operator at the national level. Any nomination of quantities based on operational netting shall not be at the discretion of the parties to the contract.

3. For the purposes of Section C(6) of Annex I to Directive 2014/65/EU, force majeure shall include any exceptional event or a set of circumstances which are outside the control of the parties to the contract, which the parties to the contract could not have reasonably foreseen or avoided by the exercise of appropriate and reasonable due diligence and which prevent one or both parties to the contract from fulfilling their contractual obligations.

4. For the purposes of Section C(6) of Annex I to Directive 2014/65/EU bona fide inability to settle shall include any event or set of circumstances, not qualifying as force majeure as referred to in paragraph 3, which are objectively and expressly defined in the contract terms, for one or both parties to the contract, acting in good faith, not to fulfil their contractual obligations.

5. The existence of force majeure or bona fide inability to settle provisions shall not prevent a contract from being considered as 'physically settled' for the purposes of Section C(6) of Annex I to Directive 2014/65/EU.

6. The existence of default clauses providing that a party is entitled to financial compensation in the case of non- or defective performance of the contract shall not prevent the contract from being considered as 'physically settled' within the meaning of Section C(6) of Annex I to Directive 2014/65/EU.

7. The delivery methods for the contracts being considered as 'physically settled' within the meaning of Section C(6) of Annex I to Directive 2014/65/EU shall include at least:

(a) physical delivery of the relevant commodities themselves;

(b) delivery of a document giving rights of an ownership nature to the relevant commodities or the relevant quantity of the commodities concerned;

(c) other methods of bringing about the transfer of rights of an ownership nature in relation to the relevant quantity of goods without physically delivering them, including notification, scheduling or nomination to the operator of an energy supply network, that entitles the recipient to the relevant quantity of the goods.

Article 6

Energy derivative contracts relating to oil and coal and wholesale energy products

(Article 4(1)(2) of Directive 2014/65/EU)

1. For the purposes of Section C(6) of Annex I to Directive 2014/65/EU, energy derivative contracts relating to oil shall be contracts with mineral oil, of any description and petroleum gases, whether in liquid or vapour form, including products, components and derivatives of oil and oil transport fuels, including those with biofuel additives, as an underlying.

[1] Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ L 211, 14.8.2009, p. 55).

2. For the purposes of Section C(6) of Annex I to Directive 2014/65/EU, energy derivative contracts relating to coal shall be contracts with coal, defined as a black or dark-brown combustible mineral substance consisting of carbonised vegetable matter, used as a fuel, as an underlying.

3. For the purposes of Section C(6) of Annex I to Directive 2014/65/EU derivative contracts that have the characteristics of wholesale energy products as defined in Article 2(4) of Regulation (EU) No 1227/2011 shall be derivatives with electricity or natural gas as an underlying, in accordance with points (b) and (d) of Article 2(4) of that Regulation.

Article 7

Other derivative financial instruments

(Article 4(1)(2) of Directive 2014/65/EU)

1. For the purposes of Section C(7) of Annex I to Directive 2014/65/EU, a contract which is not a spot contract in accordance with paragraph 2 and which is not for commercial purposes as laid down in paragraph 4 shall be considered as having the characteristics of other derivative financial instruments where it satisfies the following conditions:

(a) it meets one of the following criteria:

(i) it is traded on a third country trading venue that performs a similar function to a regulated market, an MTF or an OTF;

(ii) it is expressly stated to be traded on, or is subject to the rules of, a regulated market, an MTF, an OTF or such a third country trading venue;

(iii) it is equivalent to a contract traded on a regulated market, MTF, an OTF or such a third country trading venue, with regards to the price, the lot, the delivery date and other contractual terms;

(b) it is standardised so that the price, the lot, the delivery date and other terms are determined principally by reference to regularly published prices, standard lots or standard delivery dates.

2. A spot contract for the purposes of paragraph 1 shall be a contract for the sale of a commodity, asset or right, under the terms of which delivery is scheduled to be made within the longer of the following periods:

(a) 2 trading days;

(b) the period generally accepted in the market for that commodity, asset or right as the standard delivery period.

A contract shall not be considered a spot contract where, irrespective of its explicit terms, there is an understanding between the parties to the contract that delivery of the underlying is to be postponed and not to be performed within the period referred to in paragraph 2.

3. For the purposes of Section C(10) of Annex I to Directive 2004/39/EC of the European Parliament and of the Council ([1]), a derivative contract relating to an underlying referred to in that Section or in Article 8 of this Regulation shall be considered to have the characteristics of other derivative financial instruments where one of the following conditions is satisfied:

(a) it is settled in cash or may be settled in cash at the option of one or more of the parties, otherwise than by reason of a default or other termination event;

(b) it is traded on a regulated market, an MTF, an OTF, or a third country trading venue that performs a similar function to a regulated market, MTF or an OTF;

(c) the conditions laid down in paragraph 1 are satisfied in relation to that contract.

([1]) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

4. A contract shall be considered to be for commercial purposes for the purposes of Section C(7) of Annex I to Directive 2014/65/EU, and as not having the characteristics of other derivative financial instruments for the purposes of Sections C(7) and (10) of that Annex, where the following conditions are both met:

(a) it is entered into with or by an operator or administrator of an energy transmission grid, energy balancing mechanism or pipeline network,

(b) it is necessary to keep in balance the supplies and uses of energy at a given time, including the case when the reserve capacity contracted by an electricity transmission system operator as defined in Article 2(4) of Directive 2009/72/EC is being transferred from one prequalified balancing service provider to another prequalified balancing service provider with the consent of the relevant transmission system operator.

Article 8

Derivatives under Section C(10) of Annex I to Directive 2014/65/EU

(Article 4(1)(2) of Directive 2014/65/EU)

In addition to derivative contracts expressly referred to in Section C(10) of Annex I to Directive 2014/65/EU, a derivative contract shall be subject to the provisions in that Section where it meets the criteria set out in that Section and in Article 7(3) of this Regulation and it relates to any of the following:

(a) telecommunications bandwidth;

(b) commodity storage capacity;

(c) transmission or transportation capacity relating to commodities, whether cable, pipeline or other means with the exception of transmission rights related to electricity transmission cross zonal capacities when they are, on the primary market, entered into with or by a transmission system operator or any persons acting as service providers on their behalf and in order to allocate the transmission capacity;

(d) an allowance, credit, permit, right or similar asset which is directly linked to the supply, distribution or consumption of energy derived from renewable resources, except where the contract is already within the scope of Section C of Annex I to Directive 2014/65/EU;

(e) a geological, environmental or other physical variable, except if the contract is relating to any units recognised for compliance with the requirements of Directive 2003/87/EC of the European Parliament and of the Council [1];

(f) any other asset or right of a fungible nature, other than a right to receive a service, that is capable of being transferred;

(g) an index or measure related to the price or value of, or volume of transactions in any asset, right, service or obligation;

(h) an index or measure based on actuarial statistics.

Article 9

Investment advice

(Article 4(1)(4) of Directive 2014/65/EU)

For the purposes of the definition of 'investment advice' in Article 4(1)(4) of Directive 2014/65/EU, a personal recommendation shall be considered a recommendation that is made to a person in his capacity as an investor or potential investor, or in his capacity as an agent for an investor or potential investor.

That recommendation shall be presented as suitable for that person, or shall be based on a consideration of the circumstances of that person, and shall constitute a recommendation to take one of the following sets of steps:

(a) to buy, sell, subscribe for, exchange, redeem, hold or underwrite a particular financial instrument;

[1] Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

(b) to exercise or not to exercise any right conferred by a particular financial instrument to buy, sell, subscribe for, exchange, or redeem a financial instrument.

A recommendation shall not be considered a personal recommendation if it is issued exclusively to the public.

Article 10

Characteristics of other derivative contracts relating to currencies

1. For the purposes of Section C(4) of Annex I to Directive 2014/65/EU, other derivative contracts relating to a currency shall not be a financial instrument where the contract is one of the following:

(a) a spot contract within the meaning of paragraph 2 of this Article,

(b) a means of payment that:

(i) must be settled physically otherwise than by reason of a default or other termination event;

(ii) is entered into by at least a person which is not a financial counterparty within the meaning of Article 2(8) of Regulation (EU) No 648/2012 of the European Parliament and of the Council ([1]);

(iii) is entered into in order to facilitate payment for identifiable goods, services or direct investment; and

(iv) is not traded on a trading venue.

2. A spot contract for the purposes of paragraph 1 shall be a contract for the exchange of one currency against another currency, under the terms of which delivery is scheduled to be made within the longer of the following periods:

(a) 2 trading days in respect of any pair of the major currencies set out in paragraph 3;

(b) for any pair of currencies where at least one currency is not a major currency, the longer of 2 trading days or the period generally accepted in the market for that currency pair as the standard delivery period;

(c) where the contract for the exchange of those currencies is used for the main purpose of the sale or purchase of a transferable security or a unit in a collective investment undertaking, the period generally accepted in the market for the settlement of that transferable security or a unit in a collective investment undertaking as the standard delivery period or 5 trading days, whichever is shorter.

A contract shall not be considered a spot contract where, irrespective of its explicit terms, there is an understanding between the parties to the contract that delivery of the currency is to be postponed and not to be performed within the period set out in the first subparagraph.

3. The major currencies for the purposes of paragraph 2 shall only include the US dollar, Euro, Japanese yen, Pound sterling, Australian dollar, Swiss franc, Canadian dollar, Hong Kong dollar, Swedish krona, New Zealand dollar, Singapore dollar, Norwegian krone, Mexican peso, Croatian kuna, Bulgarian lev, Czech koruna, Danish krone, Hungarian forint, Polish złoty and Romanian leu.

4. For the purposes of paragraph 2, a trading day shall mean any day of normal trading in the jurisdiction of both the currencies that are exchanged pursuant to the contract for the exchange of those currencies and in the jurisdiction of a third currency where any of the following conditions are met:

(a) the exchange of those currencies involves converting them through that third currency for the purposes of liquidity;

(b) the standard delivery period for the exchange of those currencies references the jurisdiction of that third currency.

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

Article 11

Money-market instruments

(Article 4(1)(17) of Directive 2014/65/EU)

Money-market instruments in accordance with Article 4(1)(17) of Directive 2014/65/EU, shall include treasury bills, certificates of deposits, commercial papers and other instruments with substantively equivalent features where they have the following characteristics:

(a) they have a value that can be determined at any time;

(b) they are not derivatives;

(c) they have a maturity at issuance of 397 days or less.

Article 12

Systematic internalisers for shares, depositary receipts, ETFs, certificates and other similar financial instruments

(Article 4(1)(20) of Directive 2014/65/EU)

An investment firm shall be considered to be a systematic internaliser in accordance with Article 4(1)(20) of Directive 2014/65/EU in respect of each share, depositary receipt, exchange traded fund (ETF), certificate and other similar financial instrument where it internalises according to the following criteria:

(a) on a frequent and systematic basis in the financial instrument for which there is a liquid market as defined in Article 2(1)(17)(b) of Regulation (EU) No 600/2014 where during the past 6 months:

   (i) the number of OTC transactions carried out by it on own account when executing client orders is equal to or larger than 0,4 % of the total number of transactions in the relevant financial instrument executed in the Union on any trading venue or OTC during the same period;

   (ii) the OTC transactions carried out by it on own account when executing client orders in the relevant financial instrument take place on average on a daily basis;

(b) on a frequent and systematic basis in the financial instrument for which there is not a liquid market as defined in Article 2(1)(17)(b) of Regulation (EU) No 600/2014 where during the past 6 months the OTC transactions carried out by it on own account when executing client orders takes place on average on a daily basis;

(c) on a substantial basis in the financial instrument where the size of OTC trading carried out by it on own account when executing client orders is, during the past 6 months, equal to or larger than either:

   (i) 15 % of the total turnover in that financial instrument executed by the investment firm on own account or on behalf of clients and executed on a trading venue or OTC;

   (ii) 0,4 % of the total turnover in that financial instrument executed in the Union on a trading venue or OTC.

Article 13

Systematic internalisers for bonds

(Article 4(1)(20) of Directive 2014/65/EU)

An investment firm shall be considered to be a systematic internaliser in accordance with Article 4(1)(20) of Directive 2014/65/EU in respect of all bonds belonging to a class of bonds issued by the same entity or by any entity within the same group where, in relation to any such bond, it internalises according to the following criteria:

(a) on a frequent and systematic basis in a bond for which there is a liquid market as defined in Article 2(1)(17)(a) of Regulation (EU) No 600/2014 where during the past 6 months:

   (i) the number of OTC transactions carried out by it on own account when executing client orders is equal to or larger than 2,5 % of the total number of transactions in the relevant bond executed in the Union on any trading venue or OTC during the same period;

(ii) the OTC transactions carried out by it on own account when executing client orders in the relevant financial instrument take place on average once a week;

(b) on a frequent and systematic basis in a bond for which there is not a liquid market as defined in Article 2(1)(17)(a) of Regulation (EU) No 600/2014 where during the past 6 months the OTC transactions carried out by it on own account when executing client orders take place on average once a week;

(c) on a substantial basis in a bond where the size of OTC trading carried out by it on own account when executing client orders is, during the past 6 months, equal to or larger than any of the following:

(i) 25 % of the total turnover in that bond executed by the investment firm on own account or on behalf of clients and executed on a trading venue or OTC;

(ii) 1 % of the total turnover in that bond executed in the Union on a trading venue or OTC.

Article 14

Systematic internalisers for structured finance products

(Article 4(1)(20) of Directive 2014/65/EU)

An investment firm shall be considered to be a systematic internaliser in accordance with Article 4(1)(20) of Directive 2014/65/EU in respect of all structured finance products belonging to a class of structured finance products issued by the same entity or by any entity within the same group where, in relation to any such structured finance product, it internalises according to the following criteria:

(a) on a frequent and systematic basis in a structured finance product for which there is a liquid market as defined in Article 2(1)(17)(a) of Regulation (EU) No 600/2014 where during the past 6 months:

(i) the number of OTC transactions carried out by it on own account when executing client orders is equal to or larger than 4 % of the total number of transactions in the relevant structured finance product executed in the Union on any trading venue or OTC during the same period;

(ii) the OTC transactions carried out by it on own account when executing client orders in the relevant financial instrument take place on average once a week;

(b) on a frequent and systematic basis in a structured finance product for which there is not a liquid market as defined in Article 2(1)(17)(a) of Regulation (EU) No 600/2014 where during the past 6 months the OTC transactions carried out by it on own account when executing client orders take place on average once a week;

(c) on a substantial basis in a structured finance product where the size of OTC trading carried out by it on own account when executing client orders is, during the past 6 months, equal to or larger than any of the following:

(i) 30 % of the total turnover in that structured finance product executed by the investment firm on own account or on behalf of clients and executed on a trading venue or OTC;

(ii) 2,25 % of the total turnover in that structured finance product executed in the Union on a trading venue or OTC.

Article 15

Systematic internalisers for derivatives

(Article 4(1)(20) of Directive 2014/65/EU)

An investment firm shall be considered to be a systematic internaliser in accordance with Article 4(1)(20) of Directive 2014/65/EU in respect of all derivatives belonging to a class of derivatives where, in relation to any such derivative, it internalises according to the following criteria:

(a) on a frequent and systematic basis in a derivative for which there is a liquid market as defined in Article 2(1)(17)(a) of Regulation (EU) No 600/2014 where during the past 6 months:

(i) the number of OTC transactions carried out by it on own account when executing client orders is equal to or larger than 2,5 % of the total number of transactions in the relevant class of derivatives executed in the Union on any trading venue or OTC during the same period;

(ii) the OTC transactions carried out by it on own account when executing client orders in this class of derivatives take place on average once a week;

(b) on a frequent and systematic basis in a derivative for which there is not a liquid market as defined in Article 2(1)(17)(a) of Regulation (EU) No 600/2014 where during the past 6 months the OTC transactions carried out by it on own account in the relevant class of derivative when executing client orders takes place on average once a week;

(c) on a substantial basis in a derivative where the size of OTC trading carried out by it on own account when executing client orders is, during the past 6 months, equal to or larger than any of the following:

(i) 25 % of the total turnover in that class of derivatives executed by the investment firm on own account or on behalf of clients and executed on a trading venue or OTC; or

(ii) 1 % of the total turnover in that class of derivatives executed in the Union on a trading venue or OTC.

Article 16

Systematic internalisers for emission allowances

(Article 4(1)(20) of Directive 2014/65/EU)

An investment firm shall be considered to be a systematic internaliser in accordance with Article 4(1)(20) of Directive 2014/65/EU in respect of emission allowances where, in relation to any such instrument, it internalises according to the following criteria:

(a) on a frequent and systematic basis in an emission allowance for which there is a liquid market as defined in Article 2(1)(17)(a) of Regulation (EU) No 600/2014 where during the past 6 months:

(i) the number of OTC transactions carried out by it on own account when executing client orders is equal to or larger than 4 % of the total number of transactions in the relevant type of emission allowances executed in the Union on any trading venue or OTC during the same period;

(ii) the OTC transactions carried out by it on own account when executing client orders in this type of emission allowances take place on average once a week;

(b) on a frequent and systematic basis in an emission allowance for which there is not a liquid market as defined in Article 2(1)(17)(a) of Regulation (EU) No 600/2014 where during the past 6 months the OTC transactions carried out by it on own account in the relevant type of emission allowances when executing client orders takes place on average once a week;

(c) on a substantial basis in an emission allowance where the size of OTC trading carried out by it on own account when executing client orders is, during the past 6 months, equal to or larger than any of the following:

(i) 30 % of the total turnover in that type of emission allowances executed by the investment firm on own account or on behalf of clients and executed on a trading venue or OTC;

(ii) 2,25 % of the total turnover in that type of emission allowance executed in the Union on a trading venue or OTC.

Article 17

Relevant assessment periods

(Article 4(1)(20) of Directive 2014/65/EU)

The conditions set out in Articles 12 to 16 shall be assessed on a quarterly basis on the basis of data from the past 6 months. The assessment period shall start on the first working day of the months of January, April, July and October.

Newly issued instruments shall only be considered in the assessment when historical data covers a period of at least three months in the case of shares, depositary receipts, ETFs, certificates and other similar financial instruments, and six weeks in the case of bonds, structured finance products and derivatives.

Article 18

Algorithmic trading

(Article 4(1)(39) of Directive 2014/65/EU)

For the purposes of further specifying the definition of algorithmic trading in accordance with Article 4(1)(39) of Directive 2014/65/EU, a system shall be considered as having no or limited human intervention where, for any order or quote generation process or any process to optimise order-execution, an automated system makes decisions at any of the stages of initiating, generating, routing or executing orders or quotes according to pre-determined parameters.

Article 19

High frequency algorithmic trading technique

(Article 4(1)(40) of Directive 2014/65/EU)

1. A high message intraday rate in accordance with Article 4(1)(40) of Directive 2014/65/EU shall consist of the submission on average of any of the following:

(a) at least 2 messages per second with respect to any single financial instrument traded on a trading venue;

(b) at least 4 messages per second with respect to all financial instruments traded on a trading venue.

2. For the purposes of paragraph 1, messages concerning financial instruments for which there is a liquid market in accordance with Article 2(1)(17) of Regulation (EU) No 600/2014 shall be included in the calculation. Messages introduced for the purpose of trading that fulfil the criteria in Article 17(4) of Directive 2014/65/EU shall be included in the calculation.

3. For the purposes of paragraph 1, messages introduced for the purpose of dealing on own account shall be included in the calculation. Messages introduced through other trading techniques than those relying on dealing on own account shall be included in the calculation where the firm's execution technique is structured in such a way as to avoid that the execution takes place on own account.

4. For the purposes of paragraph 1, for the calculation of high message intraday rate in relation to DEA providers, messages submitted by their DEA clients shall be excluded from the calculations.

5. For the purposes of paragraph 1, trading venues shall make available to the firms concerned, on request, estimates of the average number of messages per second on a monthly basis two weeks after the end of each calendar month, thereby taking into account all messages submitted during the preceding 12 months.

Article 20

Direct electronic access

(Article 4(1)(41) of Directive 2014/65/EU)

1. A person shall be considered not capable of electronically transmitting orders relating to a financial instrument directly to a trading venue in accordance with Article 4(1)(41) of Directive 2014/65/EU where that person cannot exercise discretion regarding the exact fraction of a second of order entry and the lifetime of the order within that timeframe.

2. A person shall be considered not capable of such direct electronic order transmission where it takes place through arrangements for optimisation of order execution processes that determine the parameters of the order other than the venue or venues where the order should be submitted, unless these arrangements are embedded into the clients' systems and not into those of the member or participant of a regulated market or of an MTF or a client of an OTF.

CHAPTER II

ORGANISATIONAL REQUIREMENTS

SECTION 1

Organisation

Article 21

General organisational requirements

(Article 16(2) to (10) of Directive 2014/65/EU)

1. Investment firms shall comply with the following organisational requirements:

(a) establish, implement and maintain decision-making procedures and an organisational structure which clearly and in documented manner specifies reporting lines and allocates functions and responsibilities;

(b) ensure that their relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities;

(c) establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the investment firm;

(d) employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them;

(e) establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the investment firm;

(f) maintain adequate and orderly records of their business and internal organisation;

(g) ensure that the performance of multiple functions by their relevant persons does not and is not likely to prevent those persons from discharging any particular function soundly, honestly, and professionally.

When complying with the requirements set out in the this paragraph, investment firms shall take into account the nature, scale and complexity of the business of the firm, and the nature and range of investment services and activities undertaken in the course of that business.

2. Investment firms shall establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question.

3. Investment firms shall establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to their systems and procedures, the preservation of essential data and functions, and the maintenance of investment services and activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of their investment services and activities.

4. Investment firms shall establish, implement and maintain accounting policies and procedures that enable them, at the request of the competent authority, to deliver in a timely manner to the competent authority financial reports which reflect a true and fair view of their financial position and which comply with all applicable accounting standards and rules.

5. Investment firms shall monitor and, on a regular basis, evaluate the adequacy and effectiveness of their systems, internal control mechanisms and arrangements established in accordance with paragraphs 1 to 4, and take appropriate measures to address any deficiencies.

Article 22

Compliance

(Article 16(2) of Directive 2014/65/EU)

1. Investment firms shall establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the firm to comply with its obligations under Directive 2014/65/EU, as well as the associated risks, and put in place adequate measures and procedures designed to minimise such risk and to enable the competent authorities to exercise their powers effectively under that Directive.

Investment firms shall take into account the nature, scale and complexity of the business of the firm, and the nature and range of investment services and activities undertaken in the course of that business.

2. Investment firms shall establish and maintain a permanent and effective compliance function which operates independently and which has the following responsibilities:

(a) to monitor on a permanent basis and to assess, on a regular basis, the adequacy and effectiveness of the measures, policies and procedures put in place in accordance with the first subparagraph of paragraph 1, and the actions taken to address any deficiencies in the firm's compliance with its obligations;

(b) to advise and assist the relevant persons responsible for carrying out investment services and activities to comply with the firm's obligations under Directive 2014/65/EU;

(c) to report to the management body, on at least an annual basis, on the implementation and effectiveness of the overall control environment for investment services and activities, on the risks that have been identified and on the complaints-handling reporting as well as remedies undertaken or to be undertaken;

(d) to monitor the operations of the complaints-handling process and consider complaints as a source of relevant information in the context of its general monitoring responsibilities.

In order to comply with points (a) and (b) of this paragraph, the compliance function shall conduct an assessment on the basis of which it shall establish a risk-based monitoring programme that takes into consideration all areas of the investment firm's investment services, activities and any relevant ancillary services, including relevant information gathered in relation to the monitoring of complaints handling. The monitoring programme shall establish priorities determined by the compliance risk assessment ensuring that compliance risk is comprehensively monitored.

3. In order to enable the compliance function referred to in paragraph 2 to discharge its responsibilities properly and independently, investment firms shall ensure that the following conditions are satisfied:

(a) the compliance function has the necessary authority, resources, expertise and access to all relevant information;

(b) a compliance officer is appointed and replaced by the management body and is responsible for the compliance function and for any reporting as to compliance required by Directive 2014/65/EU and Article 25(2) of this Regulation;

(c) the compliance function reports on an ad-hoc basis directly to the management body where it detects a significant risk of failure by the firm to comply with its obligations under Directive 2014/65/EU;

(d) the relevant persons involved in the compliance function are not involved in the performance of services or activities they monitor;

(e) the method of determining the remuneration of the relevant persons involved in the compliance function does not compromise their objectivity and is not likely to do so.

4. An investment firm shall not be required to comply with point (d) or point (e) of paragraph 3 where it is able to demonstrate that in view of the nature, scale and complexity of its business, and the nature and range of investment services and activities, the requirements under point (d) or (e) are not proportionate and that its compliance function continues to be effective. In that case, the investment firm shall assess whether the effectiveness of the compliance function is compromised. The assessment shall be reviewed on a regular basis.

Article 23

Risk management

(Article 16(5) of Directive 2014/65/EU)

1. Investment firms shall take the following actions relating to risk management:

(a) establish, implement and maintain adequate risk management policies and procedures which identify the risks relating to the firm's activities, processes and systems, and where appropriate, set the level of risk tolerated by the firm;

(b) adopt effective arrangements, processes and mechanisms to manage the risks relating to the firm's activities, processes and systems, in light of that level of risk tolerance;

(c) monitor the following:

(i) the adequacy and effectiveness of the investment firm's risk management policies and procedures;

(ii) the level of compliance by the investment firm and its relevant persons with the arrangements, processes and mechanisms adopted in accordance with point (b);

(iii) the adequacy and effectiveness of measures taken to address any deficiencies in those policies, procedures, arrangements, processes and mechanisms, including failures by the relevant persons to comply with such arrangements, processes and mechanisms or follow such policies and procedures.

2. Investment firms shall, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of the investment services and activities undertaken in the course of that business, establish and maintain a risk management function that operates independently and carries out the following tasks:

(a) implementation of the policy and procedures referred to in paragraph 1;

(b) provision of reports and advice to senior management in accordance with Article 25(2).

Where an investment firm does not establish and maintain a risk management function under the first sub-paragraph, it shall be able to demonstrate upon request that the policies and procedures which it is has adopted in accordance with paragraph 1 satisfy the requirements therein.

Article 24

Internal audit

(Article 16(5) of Directive 2014/65/EU)

Investment firms shall, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of investment services and activities undertaken in the course of that business, establish and maintain an internal audit function which is separate and independent from the other functions and activities of the investment firm and which has the following responsibilities:

(a) establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the investment firm's systems, internal control mechanisms and arrangements;

(b) issue recommendations based on the result of work carried out in accordance with point (a) and verify compliance with those recommendations;

(c) report in relation to internal audit matters in accordance with Article 25(2).

Article 25

Responsibility of senior management

(Article 16(2) of Directive 2014/65/EU)

1. Investment firms shall, when allocating functions internally, ensure that senior management, and, where applicable, the supervisory function, are responsible for ensuring that the firm complies with its obligations under Directive 2014/65/EU. In particular, senior management and, where applicable, the supervisory function shall be required to assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations under Directive 2014/65/EU and to take appropriate measures to address any deficiencies.

The allocation of significant functions among senior managers shall clearly establish who is responsible for overseeing and maintaining the firm's organisational requirements. Records of the allocation of significant functions shall be kept up-to-date.

2. Investment firms shall ensure that their senior management receive on a frequent basis, and at least annually, written reports on the matters covered by Articles 22, 23 and 24 indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies.

3. Investment firms shall ensure that where there is a supervisory function, it receives written reports on the matters covered by Articles 22, 23 and 24 on a regular basis.

4. For the purposes of this Article, the supervisory function shall be the function within an investment firm responsible for the supervision of its senior management.

Article 26

Complaints handling

(Article 16(2) of Directive 2014/65/EU)

1. Investment firms shall establish, implement and maintain effective and transparent complaints management policies and procedures for the prompt handling of clients' or potential clients' complaints. Investment firms shall keep a record of the complaints received and the measures taken for their resolution.

The complaints management policy shall provide clear, accurate and up-to-date information about the complaints-handling process. This policy shall be endorsed by the firm's management body.

2. Investment firms shall publish the details of the process to be followed when handling a complaint. Such details shall include information about the complaints management policy and the contact details of the complaints management function. The information shall be provided to clients or potential clients, on request, or when acknowledging a complaint. Investment firms shall enable clients and potential clients to submit complaints free of charge.

3. Investment firms shall establish a complaints management function responsible for the investigation of complaints. This function may be carried out by the compliance function.

4. When handling a complaint, investment firms shall communicate with clients or potential clients clearly, in plain language that is easy to understand and shall reply to the complaint without undue delay.

5. Investment firms shall communicate the firm's position on the complaint to clients or potential clients and inform the clients or potential clients about their options, including that they may be able to refer the complaint to an alternative dispute resolution entity, as defined in Article 4(h) of Directive 2013/11/EU of the European Parliament and the Council ([1]) on consumer ADR or that the client may be able to take civil action.

6. Investment firms shall provide information on complaints and complaints-handling to the relevant competent authorities and, where applicable under national law, to an alternative dispute resolution (ADR) entity.

7. Investment firms' compliance function shall analyse complaints and complaints-handling data to ensure that they identify and address any risks or issues.

Article 27

Remuneration policies and practices

(Articles 16, 23 and 24 of Directive 2014/65/EU)

1. Investment firms shall define and implement remuneration policies and practices under appropriate internal procedures taking into account the interests of all the clients of the firm, with a view to ensuring that clients are treated fairly and their interests are not impaired by the remuneration practices adopted by the firm in the short, medium or long term.

Remuneration policies and practices shall be designed in such a way so as not to create a conflict of interest or incentive that may lead relevant persons to favour their own interests or the firm's interests to the potential detriment of any client.

([1]) Directive 2013/11/EU of the European Parliament and the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) (OJ L 165, 18.6.2013, p. 63).

2. Investment firms shall ensure that their remuneration policies and practices apply to all relevant persons with an impact, directly or indirectly, on investment and ancillary services provided by the investment firm or on its corporate behaviour, regardless of the type of clients, to the extent that the remuneration of such persons and similar incentives may create a conflict of interest that encourages them to act against the interests of any of the firm's clients.

3. The management body of the investment firm shall approve, after taking advice from the compliance function, the firm's remuneration policy. The senior management of the investment firm shall be responsible for the day-to-day implementation of the remuneration policy and the monitoring of compliance risks related to the policy.

4. Remuneration and similar incentives shall not be solely or predominantly based on quantitative commercial criteria, and shall take fully into account appropriate qualitative criteria reflecting compliance with the applicable regulations, the fair treatment of clients and the quality of services provided to clients.

A balance between fixed and variable components of remuneration shall be maintained at all times, so that the remuneration structure does not favour the interests of the investment firm or its relevant persons against the interests of any client.

Article 28

Scope of personal transactions

(Article 16(2) of Directive 2014/65/EU)

For the purposes of Article 29 and Article 37, a personal transaction shall be a trade in a financial instrument effected by or on behalf of a relevant person, where at least one of the following criteria are met:

(a) the relevant person is acting outside the scope of the activities he carries out in his professional capacity;

(b) the trade is carried out for the account of any of the following persons:

  (i) the relevant person;

  (ii) any person with whom he has a family relationship, or with whom he has close links;

  (iii) a person in respect of whom the relevant person has a direct or indirect material interest in the outcome of the trade, other than obtaining a fee or commission for the execution of the trade.

Article 29

Personal transactions

(Article 16(2) of Directive 2014/65/EU)

1. Investment firms shall establish, implement and maintain adequate arrangements aimed at preventing the activities set out in paragraphs 2, 3 and 4 in the case of any relevant person who is involved in activities that may give rise to a conflict of interest, or who has access to inside information within the meaning of Article 7(1) of Regulation (EU) No 596/2014 or to other confidential information relating to clients or transactions with or for clients by virtue of an activity carried out by him on behalf of the firm.

2. Investment firms shall ensure that relevant persons do not enter into a personal transaction which meets at least one of the following criteria:

(a) that person is prohibited from entering into it under Regulation (EU) No 596/2014;

(b) it involves the misuse or improper disclosure of that confidential information;

(c) it conflicts or is likely to conflict with an obligation of the investment firm under Directive 2014/65/EU.

3. Investment firms shall ensure that relevant persons do not advise or recommend, other than in the proper course of employment or contract for services, any other person to enter into a transaction in financial instruments which, if it were a personal transaction of the relevant person, would be covered by paragraph 2 or Article 37(2)(a) or (b) or Article 67(3).

4. Without prejudice to Article 10(1) of Regulation (EU) No 596/2014, investment firms shall ensure that relevant persons do not disclose, other than in the normal course of his employment or contract for services, any information or opinion to any other person where the relevant person knows, or reasonably ought to know, that as a result of that disclosure that other person will or would be likely to take either of the following steps:

(a) to enter into a transaction in financial instruments which, if it were a personal transaction of the relevant person, would be covered by paragraphs 2 or 3 or Article 37(2)(a) or (b) or Article 67(3);

(b) to advise or procure another person to enter into such a transaction.

5. The arrangements required under paragraph 1 shall be designed to ensure that:

(a) each relevant person covered by paragraphs 1, 2, 3 and 4 is aware of the restrictions on personal transactions, and of the measures established by the investment firm in connection with personal transactions and disclosure, in accordance with paragraphs 1, 2,3 and 4.

(b) the firm is informed promptly of any personal transaction entered into by a relevant person, either by notification of that transaction or by other procedures enabling the firm to identify such transactions;

(c) a record is kept of the personal transaction notified to the firm or identified by it, including any authorisation or prohibition in connection with such a transaction.

In the case of outsourcing arrangements, the investment firm shall ensure that the firm to which the activity is outsourced maintains a record of personal transactions entered into by any relevant person and provides that information to the investment firm promptly on request.

6. Paragraphs 1 to 5 shall not apply to the following personal transactions:

(a) personal transactions effected under a discretionary portfolio management service where there is no prior communication in connection with the transaction between the portfolio manager and the relevant person or other person for whose account the transaction is executed;

(b) personal transactions in undertakings for collective investments in transferable securities (UCITS) or AIFs that are subject to supervision under the law of a Member State which requires an equivalent level of risk spreading in their assets, where the relevant person and any other person for whose account the transactions are effected are not involved in the management of that undertaking.

SECTION 2

Outsourcing

Article 30

Scope of critical and important operational functions

(Article 16(2) and first subparagraph of Article 16(5) of Directive 2014/65/EU)

1. For the purposes of the first subparagraph of Article 16(5) of Directive 2014/65/EU, an operational function shall be regarded as critical or important where a defect or failure in its performance would materially impair the continuing compliance of an investment firm with the conditions and obligations of its authorisation or its other obligations under Directive 2014/65/EU, or its financial performance, or the soundness or the continuity of its investment services and activities.

2. Without prejudice to the status of any other function, the following functions shall not be considered as critical or important for the purposes of paragraph 1:

(a) the provision to the firm of advisory services, and other services which do not form part of the investment business of the firm, including the provision of legal advice to the firm, the training of personnel of the firm, billing services and the security of the firm's premises and personnel;

(b) the purchase of standardised services, including market information services and the provision of price feeds.

Article 31

Outsourcing critical or important operational functions

(Article 16(2) and of Article 16(5) first subparagraph of Directive 2014/65/EU)

1. Investment firms outsourcing critical or important operational functions shall remain fully responsible for discharging all of their obligations under Directive 2014/65/EU and shall comply with the following conditions:

(a) the outsourcing does not result in the delegation by senior management of its responsibility;

(b) the relationship and obligations of the investment firm towards its clients under the terms of Directive 2014/65/EU is not altered;

(c) the conditions with which the investment firm must comply in order to be authorised in accordance with Article 5 of Directive 2014/65/EU, and to remain so, are not undermined;

(d) none of the other conditions subject to which the firm's authorisation was granted is removed or modified.

2. Investment firms shall exercise due skill, care and diligence when entering into, managing or terminating any arrangement for the outsourcing to a service provider of critical or important operational functions and shall take the necessary steps to ensure that the following conditions are satisfied:

(a) the service provider has the ability, capacity, sufficient resources, appropriate organisational structure supporting the performance of the outsourced functions, and any authorisation required by law to perform the outsourced functions, reliably and professionally;

(b) the service provider carries out the outsourced services effectively and in compliance with applicable law and regulatory requirements, and to this end the firm has established methods and procedures for assessing the standard of performance of the service provider and for reviewing on an ongoing basis the services provided by the service provider;

(c) the service provider properly supervises the carrying out of the outsourced functions, and adequately manage the risks associated with the outsourcing;

(d) appropriate action is taken where it appears that the service provider may not be carrying out the functions effectively or in compliance with applicable laws and regulatory requirements;

(e) the investment firm effectively supervises the outsourced functions or services and manage the risks associated with the outsourcing and to this end the firm retains the necessary expertise and resources to supervise the outsourced functions effectively and manage those risks;

(f) the service provider has disclosed to the investment firm any development that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with applicable laws and regulatory requirements;

(g) the investment firm is able to terminate the arrangement for outsourcing where necessary, with immediate effect when this is in the interests of its clients, without detriment to the continuity and quality of its provision of services to clients;

(h) the service provider cooperates with the competent authorities of the investment firm in connection with the outsourced functions;

(i) the investment firm, its auditors and the relevant competent authorities have effective access to data related to the outsourced functions, as well as to the relevant business premises of the service provider, where necessary for the purpose of effective oversight in accordance with this article, and the competent authorities are able to exercise those rights of access;

(j) the service provider protects any confidential information relating to the investment firm and its clients;

(k) the investment firm and the service provider have established, implemented and maintained a contingency plan for disaster recovery and periodic testing of backup facilities, where that is necessary having regard to the function, service or activity that has been outsourced;

(l) the investment firm has ensured that the continuity and quality of the outsourced functions or services are maintained also in the event of termination of the outsourcing either by transferring the outsourced functions or services to another third party or by performing them itself.

3. The respective rights and obligations of the investment firms and of the service provider shall be clearly allocated and set out in a written agreement. In particular, the investment firm shall keep its instruction and termination rights, its rights of information, and its right to inspections and access to books and premises. The agreement shall ensure that outsourcing by the service provider only takes place with the consent, in writing, of the investment firm.

4. Where the investment firm and the service provider are members of the same group, the investment firm may, for the purposes of complying with this Article and Article 32, take into account the extent to which the firm controls the service provider or has the ability to influence its actions.

5. Investment firms shall make available on request to the competent authority all information necessary to enable the authority to supervise the compliance of the performance of the outsourced functions with the requirements of Directive 2014/65/EU and its implementing measures.

Article 32

Service providers located in third countries

(Article 16(2) and first subparagraph of Article 16(5) of Directive 2014/65/EU)

1. In addition to the requirements set out in Article 31, where an investment firm outsources functions related to the investment service of portfolio management provided to clients to a service provider located in a third country, that investment firm ensures that the following conditions are satisfied:

(a) the service provider is authorised or registered in its home country to provide that service and is effectively supervised by a competent authority in that third country;

(b) there is an appropriate cooperation agreement between the competent authority of the investment firm and the supervisory authority of the service provider.

2. The cooperation agreement referred to in point (b) of paragraph 1 shall ensure that the competent authorities of the investment firm are able, at least, to:

(a) obtain on request the information necessary to carry out their supervisory tasks pursuant to Directive 2014/65/EU and Regulation (EU) No 600/2014;

(b) obtain access to the documents relevant for the performance of their supervisory duties maintained in the third country;

(c) receive information from the supervisory authority in the third country as soon as possible for the purpose of investigating apparent breaches of the requirements of Directive 2014/65/EU and its implementing measures and Regulation (EU) No 600/2014;

(d) cooperate with regard to enforcement, in accordance with the national and international law applicable to the supervisory authority of the third country and the competent authorities in the Union in cases of breach of the requirements of Directive 2014/65/EU and its implementing measures and relevant national law.

3. Competent authorities shall publish on their website a list of the supervisory authorities in third countries with which they have a cooperation agreement referred to in point (b) of paragraph 1.

Competent authorities shall update cooperation agreements concluded before the date of entry into application of this Regulation within six months from that date.

SECTION 3

Conflicts of interest

Article 33

Conflicts of interest potentially detrimental to a client

(Articles 16(3) and 23 of Directive 2014/65/EU)

For the purposes of identifying the types of conflict of interest that arise in the course of providing investment and ancillary services or a combination thereof and whose existence may damage the interests of a client, investment firms shall take into account, by way of minimum criteria, whether the investment firm or a relevant person, or a person directly or indirectly linked by control to the firm, is in any of the following situations, whether as a result of providing investment or ancillary services or investment activities or otherwise:

(a) the firm or that person is likely to make a financial gain, or avoid a financial loss, at the expense of the client;

(b) the firm or that person has an interest in the outcome of a service provided to the client or of a transaction carried out on behalf of the client, which is distinct from the client's interest in that outcome;

(c) the firm or that person has a financial or other incentive to favour the interest of another client or group of clients over the interests of the client;

(d) the firm or that person carries on the same business as the client;

(e) the firm or that person receives or will receive from a person other than the client an inducement in relation to a service provided to the client, in the form of monetary or non-monetary benefits or services.

Article 34

Conflicts of interest policy

(Articles 16(3) and 23 of Directive 2014/65/EU)

1. Investment firms shall establish, implement and maintain an effective conflicts of interest policy set out in writing and appropriate to the size and organisation of the firm and the nature, scale and complexity of its business.

Where the firm is a member of a group, the policy shall also take into account any circumstances, of which the firm is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.

2. The conflicts of interest policy established in accordance with paragraph 1 shall include the following content:

(a) it must identify, with reference to the specific investment services and activities and ancillary services carried out by or on behalf of the investment firm, the circumstances which constitute or may give rise to a conflict of interest entailing a risk of damage to the interests of one or more clients;

(b) it must specify procedures to be followed and measures to be adopted in order to prevent or manage such conflicts.

3. The procedures and measures referred to in paragraph 2(b) shall be designed to ensure that relevant persons engaged in different business activities involving a conflict of interest of the kind specified in paragraph 2(a) carry on those activities at a level of independence appropriate to the size and activities of the investment firm and of the group to which it belongs, and to the risk of damage to the interests of clients.

For the purposes of paragraph 2(b), the procedures to be followed and measures to be adopted shall include at least those items in the following list that are necessary for the firm to ensure the requisite degree of independence:

(a) effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more clients;

(b) the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services to, clients whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the firm;

(c) the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;

(d) measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out investment or ancillary services or activities;

(e) measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate investment or ancillary services or activities where such involvement may impair the proper management of conflicts of interest.

4. Investment firms shall ensure that disclosure to clients, pursuant to Article 23(2) of Directive 2014/65/EU, is a measure of last resort that shall be used only where the effective organisational and administrative arrangements established by the investment firm to prevent or manage its conflicts of interest in accordance with Article 23 of Directive 2014/65/EU are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the client will be prevented.

The disclosure shall clearly state that the organisational and administrative arrangements established by the investment firm to prevent or manage that conflict are not sufficient to ensure, with reasonable confidence, that the risks of damage to the interests of the client will be prevented. The disclosure shall include specific description of the conflicts of interest that arise in the provision of investment and/or ancillary services, taking into account the nature of the client to whom the disclosure is being made. The description shall explain the general nature and sources of conflicts of interest, as well as the risks to the client that arise as a result of the conflicts of interest and the steps undertaken to mitigate these risks, in sufficient detail to enable that client to take an informed decision with respect to the investment or ancillary service in the context of which the conflicts of interest arise.

5. Investment firms shall assess and periodically review, on an at least annual basis, the conflicts of interest policy established in accordance with paragraphs 1 to 4 and shall take all appropriate measures to address any deficiencies. Over-reliance on disclosure of conflicts of interest shall be considered a deficiency in the investment firm's conflicts of interest policy.

Article 35

Record of services or activities giving rise to detrimental conflict of interest

(Article 16(6) of Directive 2014/65/EU)

Investment firms shall keep and regularly update a record of the kinds of investment or ancillary service or investment activity carried out by or on behalf of the firm in which a conflict of interest entailing a risk of damage to the interests of one or more clients has arisen or, in the case of an ongoing service or activity, may arise.

Senior management shall receive on a frequent basis, and at least annually, written reports on situations referred to in this Article.

Article 36

Investment research and marketing communications

(Article 24(3) of Directive 2014/65/EU)

1. For the purposes of Article 37 investment research shall be research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers of financial instruments, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public, and in relation to which the following conditions are met:

(a) the research or information is labelled or described as investment research or in similar terms, or is otherwise presented as an objective or independent explanation of the matters contained in the recommendation;

(b) if the recommendation in question were made by an investment firm to a client, it would not constitute the provision of investment advice for the purposes of Directive 2014/65/EU.

2. A recommendation of the type covered by point (35) of Article 3(1) of Regulation (EU) No 596/2014 that does not meet the conditions set out in paragraph 1 shall be treated as a marketing communication for the purposes of Directive 2014/65/EU and investment firms that produce or disseminate that recommendation shall ensure that it is clearly identified as such.

Additionally, firms shall ensure that any such recommendation contains a clear and prominent statement that (or, in the case of an oral recommendation, to the effect that) it has not been prepared in accordance with legal requirements designed to promote the independence of investment research, and that it is not subject to any prohibition on dealing ahead of the dissemination of investment research.

Article 37

Additional organisational requirements in relation to investment research or marketing communications

(Article 16(3) of Directive 2014/65/EU)

1. Investment firms which produce, or arrange for the production of, investment research that is intended or likely to be subsequently disseminated to clients of the firm or to the public, under their own responsibility or that of a member of their group, shall ensure the implementation of all the measures set out in Article 34(3) in relation to the financial analysts involved in the production of the investment research and other relevant persons whose responsibilities or business interests may conflict with the interests of the persons to whom the investment research is disseminated.

The obligations in the first subparagraph shall also apply in relation to recommendations referred to in Article 36(2).

2. Investment firms referred to in the first subparagraph of paragraph 1 shall have in place arrangements designed to ensure that the following conditions are satisfied:

(a) financial analysts and other relevant persons do not undertake personal transactions or trade, other than as market makers acting in good faith and in the ordinary course of market making or in the execution of an unsolicited client order, on behalf of any other person, including the investment firm, in financial instruments to which investment research relates, or in any related financial instruments, with knowledge of the likely timing or content of that investment research which is not publicly available or available to clients and cannot readily be inferred from information that is so available, until the recipients of the investment research have had a reasonable opportunity to act on it;

(b) in circumstances not covered by point (a), financial analysts and any other relevant persons involved in the production of investment research do not undertake personal transactions in financial instruments to which the investment research relates, or in any related financial instruments, contrary to current recommendations, except in exceptional circumstances and with the prior approval of a member of the firm's legal or compliance function;

(c) a physical separation exists between the financial analysts involved in the production of investment research and other relevant persons whose responsibilities or business interests may conflict with the interests of the persons to whom the investment research is disseminated or, when considered not appropriate to the size and organisation of the firm as well as the nature, scale and complexity of its business, the establishment and implementation of appropriate alternative information barriers;

(d) the investment firms themselves, financial analysts, and other relevant persons involved in the production of the investment research do not accept inducements from those with a material interest in the subject-matter of the investment research;

(e) the investment firms themselves, financial analysts, and other relevant persons involved in the production of the investment research do not promise issuers favourable research coverage;

(f) before the dissemination of investment research issuers, relevant persons other than financial analysts, and any other persons are not permitted to review a draft of the investment research for the purpose of verifying the accuracy of factual statements made in that research, or for any purpose other than verifying compliance with the firm's legal obligations, where the draft includes a recommendation or a target price.

For the purposes of this paragraph, 'related financial instrument' shall be any financial instrument the price of which is closely affected by price movements in another financial instrument which is the subject of investment research, and includes a derivative on that other financial instrument.

3. Investment firms which disseminate investment research produced by another person to the public or to clients shall be exempt from complying with paragraph 1 if the following criteria are met:

(a) the person that produces the investment research is not a member of the group to which the investment firm belongs;

(b) the investment firm does not substantially alter the recommendations within the investment research;

(c) the investment firm does not present the investment research as having been produced by it;

(d) the investment firm verifies that the producer of the research is subject to requirements equivalent to the requirements under this Regulation in relation to the production of that research, or has established a policy setting such requirements.

Article 38

Additional general requirements in relation to underwriting or placing

(Articles 16(3), 23 and 24 of Directive 2014/65/EU)

1. Investment firms which provide advice on corporate finance strategy, as set out in Section B(3) of Annex I, and provide the service of underwriting or placing of financial instruments, shall, before accepting a mandate to manage the offering, have arrangements in place to inform the issuer client of the following:

(a) the various financing alternatives available with the firm, and an indication of the amount of transaction fees associated with each alternative;

(b) the timing and the process with regard to the corporate finance advice on pricing of the offer;

(c) the timing and the process with regard to the corporate finance advice on placing of the offering;

(d) details of the targeted investors, to whom the firm intends to offer the financial instruments;

(e) the job titles and departments of the relevant individuals involved in the provision of corporate finance advice on the price and allotment of financial instruments; and

(f) firm's arrangements to prevent or manage conflicts of interest that may arise where the firm places the relevant financial instruments with its investment clients or with its own proprietary book.

2. Investment firms shall have in place a centralised process to identify all underwriting and placing operations of the firm and record such information, including the date on which the firm was informed of potential underwriting and placing operations. Firms shall identify all potential conflicts of interest arising from other activities of the investment firm, or group, and implement appropriate management procedures. In cases where an investment firm cannot manage a conflict of interest by way of implementing appropriate procedures, the investment firm shall not engage in the operation.

3. Investment firms providing execution and research services as well as carrying out underwriting and placing activities shall ensure adequate controls are in place to manage any potential conflicts of interest between these activities and between their different clients receiving those services.

Article 39

Additional requirements in relation to pricing of offerings in relation to issuance of financial instruments

(Articles 16(3), 23 and 24 of Directive 2014/65/EU)

1. Investment firms shall have in place systems, controls and procedures to identify and prevent or manage conflicts of interest that arise in relation to possible under-pricing or over-pricing of an issue or involvement of relevant parties in the process. In particular, investment firms shall as a minimum requirement establish, implement and maintain internal arrangements to ensure both of the following:

(a) that the pricing of the offer does not promote the interests of other clients or firm's own interests, in a way that may conflict with the issuer client's interests; and

(b) the prevention or management of a situation where persons responsible for providing services to the firm's investment clients are directly involved in decisions about corporate finance advice on pricing to the issuer client.

2. Investment firms shall provide clients with information about how the recommendation as to the price of the offering and the timings involved is determined. In particular, the firm shall inform and engage with the issuer client about any hedging or stabilisation strategies it intends to undertake with respect to the offering, including how these strategies may impact the issuer clients' interests. During the offering process, firms shall also take all reasonable steps to keep the issuer client informed about developments with respect to the pricing of the issue.

Article 40

Additional requirements in relation to placing

(Articles 16(3), 23 and 24 of Directive 2014/65/EU)

1. Investment firms placing financial instruments shall establish, implement and maintain effective arrangements to prevent recommendations on placing from being inappropriately influenced by any existing or future relationships.

2. Investment firms shall establish, implement and maintain effective internal arrangements to prevent or manage conflicts of interests that arise where persons responsible for providing services to the firm's investment clients are directly involved in decisions about recommendations to the issuer client on allocation.

3. Investment firms shall not accept any third-party payments or benefits unless such payments or benefits comply with the inducements requirements laid down in Article 24 of Directive 2014/65/EU. In particular, the following practices shall be considered not compliant with those requirements and shall therefore be considered not acceptable:

(a) an allocation made to incentivise the payment of disproportionately high fees for unrelated services provided by the investment firm ('laddering'), such as disproportionately high fees or commissions paid by an investment client, or disproportionately high volumes of business at normal levels of commission provided by the investment client as a compensation for receiving an allocation of the issue;

(b) an allocation made to a senior executive or a corporate officer of an existing or potential issuer client, in consideration for the future or past award of corporate finance business ('spinning');

(c) an allocation that is expressly or implicitly conditional on the receipt of future orders or the purchase of any other service from the investment firm by an investment client, or any entity of which the investor is a corporate officer.

4. Investment firms shall establish, implement and maintain an allocation policy that sets out the process for developing allocation recommendations. The allocation policy shall be provided to the issuer client before agreeing to undertake any placing services. The policy shall set out relevant information that is available at that stage, about the proposed allocation methodology for the issue.

5. Investment firms shall involve the issuer client in discussions about the placing process in order for the firm to be able to understand and take into account the client's interests and objectives. The investment firm shall obtain the issuer client's agreement to its proposed allocation per type of client for the transaction in accordance with the allocation policy.

Article 41

Additional requirements in relation to advice, distribution and self-placement

(Articles 16(3), 23 and 24 of Directive 2014/65/EU)

1. Investment firms shall have in place systems, controls and procedures to identify and manage the conflicts of interest that arise when providing investment service to an investment client to participate in a new issue, where the investment firm receives commissions, fees or any monetary or non-monetary benefits in relation to arranging the issuance. Any commissions, fees or monetary or non-monetary benefits shall comply with the requirements in Article 24(7), 24(8) and 24(9) of Directive 2014/65/EU and be documented in the investment firm's conflicts of interest policies and reflected in the firm's inducements arrangements.

2. Investment firms engaging in the placement of financial instruments issued by themselves or by entities within the same group, to their own clients, including their existing depositor clients in the case of credit institutions, or investment funds managed by entities of their group, shall establish, implement and maintain clear and effective arrangements for the identification, prevention or management of the potential conflicts of interest that arise in relation to this type of activity. Such arrangements shall include consideration of refraining from engaging in the activity, where conflicts of interest cannot be appropriately managed so as to prevent any adverse effects on clients.

3. When disclosure of conflicts of interest is required, investment firms shall comply with the requirements in Article 34(4), including an explanation of the nature and source of the conflicts of interest inherent to this type of activity, providing details about the specific risks related to such practices in order to enable clients to make an informed investment decision.

4. Investment firms which offer financial instruments issued that are by themselves or other group entities to their clients and that are included in the calculation of prudential requirements specified in Regulation (EU) No 575/2013 of the European Parliament and of the Council ([1]), Directive 2013/36/EU of the European Parliament and of the Council ([2]) or Directive 2014/59/EU of the European Parliament and of the Council ([3]), shall provide those clients with additional information explaining the differences between the financial instrument and bank deposits in terms of yield, risk, liquidity and any protection provided in accordance with Directive 2014/49/EU of the European Parliament and of the Council ([4]).

Article 42

Additional requirements in relation to lending or provision of credit in the context of underwriting or placement

(Articles 16(3), 23 and 24 of Directive 2014/65/EU)

1. Where any previous lending or credit to the issuer client by an investment firm, or an entity within the same group, may be repaid with the proceeds of an issue, the investment firm shall have arrangements in place to identify and prevent or manage any conflicts of interest that may arise as a result.

2. Where the arrangements taken to manage conflicts of interest prove insufficient to ensure that the risk of damage to the issuer client would be prevented, investment firms shall disclose to the issuer client the specific conflicts of interest that have arisen in relation to their, or group entities', activities in a capacity of credit provider, and their activities related to the securities offering.

([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).

([2]) 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).

([3]) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

([4]) Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173, 12.6.2014, p. 149).

3. Investment firms' conflict of interest policy shall require the sharing of information about the issuer's financial situation with group entities acting as credit providers, provided this would not breach information barriers set up by the firm to protect the interests of a client.

Article 43

Record keeping in relation to underwriting or placing

(Articles 16(3), 23 and 24 of Directive 2014/65/EU)

Investment firms shall keep records of the content and timing of instructions received from clients. A record of the allocation decisions taken for each operation shall be kept to provide for a complete audit trail between the movements registered in clients' accounts and the instructions received by the investment firm. In particular, the final allocation made to each investment client shall be clearly justified and recorded. The complete audit trail of the material steps in the underwriting and placing process shall be made available to competent authorities upon request.

CHAPTER III

OPERATING CONDITIONS FOR INVESTMENT FIRMS

SECTION 1

Information to clients and potential clients

Article 44

Fair, clear and not misleading information requirements

(Article 24(3) of Directive 2014/65/EU)

1. Investment firms shall ensure that all information they address to, or disseminate in such a way that it is likely to be received by, retail or professional clients or potential retail or professional clients, including marketing communications, satisfies the conditions laid down in paragraphs 2 to 8.

2. Investment firm shall ensure that the information referred to in paragraph 1 complies with the following conditions:

(a) the information includes the name of the investment firm,

(b) the information is accurate and always gives a fair and prominent indication of any relevant risks when referencing any potential benefits of an investment service or financial instrument,

(c) the information uses a font size in the indication of relevant risks that is at least equal to the predominant font size used throughout the information provided, as well as a layout ensuring such indication is prominent,

(d) the information is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received,

(e) the information does not disguise, diminish or obscure important items, statements or warnings,

(f) the information is consistently presented in the same language throughout all forms of information and marketing materials that are provided to each client, unless the client has accepted to receive information in more than one language,

(g) the information is up-to-date and relevant to the means of communication used.

3. Where the information compares investment or ancillary services, financial instruments, or persons providing investment or ancillary services, investment firms shall ensure that the following conditions are satisfied:

(a) the comparison is meaningful and presented in a fair and balanced way;

(b) the sources of the information used for the comparison are specified;

(c) the key facts and assumptions used to make the comparison are included.

4. Where the information contains an indication of past performance of a financial instrument, a financial index or an investment service, investment firms shall ensure that the following conditions are satisfied:

(a) that indication is not the most prominent feature of the communication;

(b) the information must include appropriate performance information which covers the preceding 5 years, or the whole period for which the financial instrument has been offered, the financial index has been established, or the investment service has been provided where less than five years, or such longer period as the firm may decide, and in every case that performance information is based on complete 12-month periods;

(c) the reference period and the source of information is clearly stated;

(d) the information contains a prominent warning that the figures refer to the past and that past performance is not a reliable indicator of future results;

(e) where the indication relies on figures denominated in a currency other than that of the Member State in which the retail client or potential retail client is resident, the currency is clearly stated, together with a warning that the return may increase or decrease as a result of currency fluctuations;

(f) where the indication is based on gross performance, the effect of commissions, fees or other charges are disclosed.

5. Where the information includes or refers to simulated past performance, investment firms shall ensure that the information relates to a financial instrument or a financial index, and the following conditions are satisfied:

(a) the simulated past performance is based on the actual past performance of one or more financial instruments or financial indices which are the same as, or substantially the same as, or underlie, the financial instrument concerned;

(b) in respect of the actual past performance referred to in point (a), the conditions set out in points (a) to (c), (e) and (f) of paragraph 4 are satisfied;

(c) the information contains a prominent warning that the figures refer to simulated past performance and that past performance is not a reliable indicator of future performance.

6. Where the information contains information on future performance, investment firms shall ensure that the following conditions are satisfied:

(a) the information is not based on or refer to simulated past performance;

(b) the information is based on reasonable assumptions supported by objective data;

(c) where the information is based on gross performance, the effect of commissions, fees or other charges is disclosed;

(d) the information is based on performance scenarios in different market conditions (both negative and positive scenarios), and reflects the nature and risks of the specific types of instruments included in the analysis;

(e) the information contains a prominent warning that such forecasts are not a reliable indicator of future performance.

7. Where the information refers to a particular tax treatment, it shall prominently state that the tax treatment depends on the individual circumstances of each client and may be subject to change in the future.

8. The information shall not use the name of any competent authority in such a way that would indicate or suggest endorsement or approval by that authority of the products or services of the investment firm.

Article 45

Information concerning client categorisation

(Article 24(4) of Directive 2014/65/EU)

1. Investment firms shall notify new clients, and existing clients that the investment firm has newly categorised as required by Directive 2014/65/EU, of their categorisation as a retail client, a professional client or an eligible counterparty in accordance with that Directive.

2. Investment firms shall inform clients in a durable medium about any right that client has to request a different categorisation and about any limitations to the level of client protection that a different categorisation would entail.

3. Investment firms may, either on their own initiative or at the request of the client concerned treat a client in the following manner:

(a) as a professional or retail client where that client might otherwise be classified as an eligible counterparty pursuant to Article 30(2) of Directive 2014/65/EU;

(b) a retail client where that client that is considered a professional client pursuant to Section I of Annex II to Directive 2014/65/EU.

Article 46

General requirements for information to clients

(Article 24(4) of Directive 2014/65/EU)

1. Investment firms shall, in good time before a client or potential client is bound by any agreement for the provision of investment services or ancillary services or before the provision of those services, whichever is the earlier to provide that client or potential client with the following information:

(a) the terms of any such agreement;

(b) the information required by Article 47 relating to that agreement or to those investment or ancillary services.

2. Investment firms shall, in good time before the provision of investment services or ancillary services to clients or potential clients, to provide the information required under Articles 47 to 50.

3. The information referred to in paragraphs 1 and 2 shall be provided in a durable medium or by means of a website (where it does not constitute a durable medium) provided that the conditions specified in Article 3(2) are satisfied.

4. Investment firms shall notify a client in good time about any material change to the information provided under Articles 47 to 50 which is relevant to a service that the firm is providing to that client. That notification shall be given in a durable medium if the information to which it relates is given in a durable medium.

5. Investment firms shall ensure that information contained in a marketing communication is consistent with any information the firm provides to clients in the course of carrying on investment and ancillary services.

6. Marketing communications containing an offer or invitation of the following nature and specifying the manner of response or including a form by which any response may be made, shall include such of the information referred to in Articles 47 to 50 as is relevant to that offer or invitation:

(a) an offer to enter into an agreement in relation to a financial instrument or investment service or ancillary service with any person who responds to the communication;

(b) an invitation to any person who responds to the communication to make an offer to enter into an agreement in relation to a financial instrument or investment service or ancillary service.

However, the first subparagraph shall not apply if, in order to respond to an offer or invitation contained in the marketing communication, the potential client must refer to another document or documents, which, alone or in combination, contain that information.

Article 47

Information about the investment firm and its services for clients and potential clients

(Article 24(4) of Directive 2014/65/EU)

1. Investment firms shall provide clients or potential clients with the following general information, where relevant:

(a) the name and address of the investment firm, and the contact details necessary to enable clients to communicate effectively with the firm;

(b) the languages in which the client may communicate with the investment firm, and receive documents and other information from the firm;

(c) the methods of communication to be used between the investment firm and the client including, where relevant, those for the sending and reception of orders;

(d) a statement of the fact that the investment firm is authorised and the name and contact address of the competent authority that has authorised it;

(e) where the investment firm is acting through a tied agent, a statement of this fact specifying the Member State in which that agent is registered;

(f) the nature, frequency and timing of the reports on the performance of the service to be provided by the investment firm to the client in accordance with Article 25(6) of Directive 2014/65/EU;

(g) where the investment firm holds client financial instruments or client funds, a summary description of the steps which it takes to ensure their protection, including summary details of any relevant investor compensation or deposit guarantee scheme which applies to the firm by virtue of its activities in a Member State;

(h) a description, which may be provided in summary form, of the conflicts of interest policy maintained by the firm in accordance with Article 34;

(i) at the request of the client, further details of that conflicts of interest policy in a durable medium or by means of a website (where that does not constitute a durable medium) provided that the conditions set out Article 3(2) are satisfied.

The information listed in points (a) to (i) shall be provided in good time before the provision of investment services or ancillary services to clients or potential clients.

2. When providing the service of portfolio management, investment firms shall establish an appropriate method of evaluation and comparison such as a meaningful benchmark, based on the investment objectives of the client and the types of financial instruments included in the client portfolio, so as to enable the client for whom the service is provided to assess the firm's performance.

3. Where investment firms propose to provide portfolio management services to a client or potential client, they shall provide the client, in addition to the information required under paragraph 1, with such of the following information as is applicable:

(a) information on the method and frequency of valuation of the financial instruments in the client portfolio;

(b) details of any delegation of the discretionary management of all or part of the financial instruments or funds in the client portfolio;

(c) a specification of any benchmark against which the performance of the client portfolio will be compared;

(d) the types of financial instrument that may be included in the client portfolio and types of transaction that may be carried out in such instruments, including any limits;

(e) the management objectives, the level of risk to be reflected in the manager's exercise of discretion, and any specific constraints on that discretion.

The information listed in points (a) to (e) shall be provided in good time before the provision of investment services or ancillary services to clients or potential clients.

Article 48

Information about financial instruments

(Article 24(4) of Directive 2014/65/EU)

1. Investment firms shall provide clients or potential clients in good time before the provision of investment services or ancillary services to clients or potential clients with a general description of the nature and risks of financial instruments, taking into account, in particular, the client's categorisation as either a retail client, professional client or eligible counterparty. That description shall explain the nature of the specific type of instrument concerned, the functioning and performance of the financial instrument in different market conditions, including both positive and negative conditions, as well as the risks particular to that specific type of instrument in sufficient detail to enable the client to take investment decisions on an informed basis.

2. The description of risks referred to in paragraph 1 shall include, where relevant to the specific type of instrument concerned and the status and level of knowledge of the client, the following elements:

(a) the risks associated with that type of financial instrument including an explanation of leverage and its effects and the risk of losing the entire investment including the risks associated with insolvency of the issuer or related events, such as bail in;

(b) the volatility of the price of such instruments and any limitations on the available market for such instruments;

(c) information on impediments or restrictions for disinvestment, for example as may be the case for illiquid financial instruments or financial instruments with a fixed investment term, including an illustration of the possible exit methods and consequences of any exit, possible constraints and the estimated time frame for the sale of the financial instrument before recovering the initial costs of the transaction in that type of financial instruments;

(d) the fact that an investor might assume, as a result of transactions in such instruments, financial commitments and other additional obligations, including contingent liabilities, additional to the cost of acquiring the instruments;

(e) any margin requirements or similar obligations, applicable to instruments of that type.

3. Where an investment firm provides a retail client or potential retail client with information about a financial instrument that is the subject of a current offer to the public and a prospectus has been published in connection with that offer in accordance with Directive 2003/71/EC, that firm shall in good time before the provision of investment services or ancillary services to clients or potential clients inform the client or potential client where that prospectus is made available to the public.

4. Where a financial instrument is composed of two or more different financial instruments or services, the investment firm shall provide an adequate description of the legal nature of the financial instrument, the components of that instrument and the way in which the interaction between the components affects the risks of the investment.

5. In the case of financial instruments that incorporate a guarantee or capital protection, the investment firm shall provide a client or a potential client with information about the scope and nature of such guarantee or capital protection. When the guarantee is provided by a third party, information about the guarantee shall include sufficient detail about the guarantor and the guarantee to enable the client or potential client to make a fair assessment of the guarantee.

Article 49

Information concerning safeguarding of client financial instruments or client funds

(Article 24(4) of Directive 2014/65/EU)

1. Investment firms holding financial instruments or funds belonging to clients shall provide those clients or potential clients with the information specified in paragraphs 2 to 7 where relevant.

2. The investment firm shall inform the client or potential client where the financial instruments or funds of that client may be held by a third party on behalf of the investment firm and of the responsibility of the investment firm under the applicable national law for any acts or omissions of the third party and the consequences for the client of the insolvency of the third party.

3. Where financial instruments of the client or potential client may, if permitted by national law, be held in an omnibus account by a third party, the investment firm shall inform the client of this fact and shall provide a prominent warning of the resulting risks.

4. The investment firm shall inform the client or potential client where it is not possible under national law for client financial instruments held with a third party to be separately identifiable from the proprietary financial instruments of that third party or of the investment firm and shall provide a prominent warning of the resulting risks.

5. The investment firm shall inform the client or potential client where accounts that contain financial instruments or funds belonging to that client or potential client are or will be subject to the law of a jurisdiction other than that of a Member State and shall indicate that the rights of the client or potential client relating to those financial instruments or funds may differ accordingly.

6. An investment firm shall inform the client about the existence and the terms of any security interest or lien which the firm has or may have over the client's financial instruments or funds, or any right of set-off it holds in relation to those instruments or funds. Where applicable, it shall also inform the client of the fact that a depository may have a security interest or lien over, or right of set-off in relation to those instruments or funds.

7. An investment firm, before entering into securities financing transactions in relation to financial instruments held by it on behalf of a client, or before otherwise using such financial instruments for its own account or the account of another client shall in good time before the use of those instruments provide the client, in a durable medium, with clear, full and accurate information on the obligations and responsibilities of the investment firm with respect to the use of those financial instruments, including the terms for their restitution, and on the risks involved.

Article 50

Information on costs and associated charges

(Article 24(4) of Directive 2014/65/EU)

1. For the purposes of providing information to clients on all costs and charges pursuant to Article 24(4) of Directive 2014/65/EU, investment firms shall comply with the detailed requirements in paragraphs 2 to 10.

Without prejudice to the obligations set out in Article 24(4) of Directive 2014/65/EU, investment firms providing investment services to professional clients shall have the right to agree to a limited application of the detailed requirements set out in this Article with these clients. Investment firms shall not be allowed to agree such limitations when the services of investment advice or portfolio management are provided or when, irrespective of the investment service provided, the financial instruments concerned embed a derivative.

Without prejudice to the obligations set out in Article 24(4) of Directive 2014/65/EU, investment firms providing investment services to eligible counterparties shall have the right to agree to a limited application of the detailed requirements set out in this Article, except when, irrespective of the investment service provided, the financial instruments concerned embed a derivative and the eligible counterparty intends to offer them to its clients.

2. For ex-ante and ex-post disclosure of information on costs and charges to clients, investment firms shall aggregate the following:

(a) all costs and associated charges charged by the investment firm or other parties where the client has been directed to such other parties, for the investment services(s) and/or ancillary services provided to the client; and

(b) all costs and associated charges associated with the manufacturing and managing of the financial instruments.

Costs referred to in points (a) and (b) are listed in Annex II to this Regulation. For the purposes of point (a), third party payments received by investment firms in connection with the investment service provided to a client shall be itemised separately and the aggregated costs and charges shall be totalled and expressed both as a cash amount and as a percentage.

3. Where any part of the total costs and charges is to be paid in or represents an amount of foreign currency, investment firms shall provide an indication of the currency involved and the applicable currency conversion rates and costs. Investments firms shall also inform about the arrangements for payment or other performance.

4. In relation to the disclosure of product costs and charges that are not included in the UCITS KIID, the investment firms shall calculate and disclose these costs, for example, by liaising with UCITS management companies to obtain the relevant information.

5. The obligation to provide in good time a full ex-ante disclosure of information about the aggregated costs and charges related to the financial instrument and to the investment or ancillary service provided shall apply to investment firms in the following situations:

(a) where the investment firm recommends or markets financial instruments to clients; or

(b) where the investment firm providing any investment services is required to provide clients with a UCITS KIID or PRIIPs KID in relation to the relevant financial instruments, in accordance with relevant Union legislation.

6. Investment firms that do not recommend or market a financial instrument to the client or are not obliged to provide the client with a KID/KIID in accordance with relevant Union legislation shall inform their clients about all costs and charges relating to the investment and/or ancillary service provided.

7. Where more than one investment firm provides investment or ancillary services to the client, each investment firm shall provide information about the costs of the investment or ancillary services it provides. An investment firm that recommends or markets to its clients the services provided by another firm, shall aggregate the cost and charges of its services together with the cost and charges of the services provided by the other firm. An investment firm shall take into account the costs and charges associated to the provision of other investment or ancillary services by other firms where it has directed the client to these other firms.

8. Where calculating costs and charges on an ex-ante basis, investment firms shall use actually incurred costs as a proxy for the expected costs and charges. Where actual costs are not available, the investment firm shall make reasonable estimations of these costs. Investment firms shall review ex-ante assumptions based on the ex-post experience and shall make adjustment to these assumptions, where necessary.

9. Investment firms shall provide annual ex-post information about all costs and charges related to both the financial instrument(s) and investment and ancillary service(s) where they have recommended or marketed the financial instrument(s) or where they have provided the client with the KID/KIID in relation to the financial instrument(s) and they have or have had an ongoing relationship with the client during the year. Such information shall be based on costs incurred and shall be provided on a personalised basis.

Investment firms may choose to provide such aggregated information on costs and charges of the investment services and the financial instruments together with any existing periodic reporting to clients.

10. Investment firms shall provide their clients with an illustration showing the cumulative effect of costs on return when providing investment services. Such an illustration shall be provided both on an ex-ante and ex-post basis. Investment firms shall ensure that the illustration meets the following requirements:

(a) the illustration shows the effect of the overall costs and charges on the return of the investment;

(b) the illustration shows any anticipated spikes or fluctuations in the costs; and

(c) the illustration is accompanied by a description of the illustration.

Article 51

Information provided in accordance with Directive 2009/65/EU and Regulation (EU) No 1286/2014

(Article 24(4) of Directive 2014/65/EU)

Investment firms distributing units in collective investment undertakings or PRIIPs shall additionally inform their clients about any other costs and associated charges related to the product which may have not been included in the UCITS KID or PRIIPs KID and about the costs and charges relating to their provision of investment services in relation to that financial instrument.

SECTION 2

Investment advice

Article 52

Information about investment advice

(Article 24(4) of Directive 2014/65/EU)

1. Investment firms shall explain in a clear and concise way whether and why investment advice qualifies as independent or non-independent and the type and nature of the restrictions that apply, including, when providing investment advice on an independent basis, the prohibition to receive and retain inducements.

Where advice is offered or provided to the same client on both an independent and non-independent basis, investment firms shall explain the scope of both services to allow investors to understand the differences between them and not present itself f as an independent investment adviser for the overall activity. Firms shall not give undue prominence to their independent investment advice services over non-independent investment services in their communications with clients.

2. Investment firms providing investment advice, on an independent or non-independent basis, shall explain to the client the range of financial instruments that may be recommended, including the firm's relationship with the issuers or providers of the instruments.

3. Investment firms shall provide a description of the types of financial instruments considered, the range of financial instruments and providers analysed per each type of instrument according to the scope of the service, and, when providing independent advice, how the service provided satisfies the conditions for the provision of investment advice on an independent basis and the factors taken into consideration in the selection process used by the investment firm to recommend financial instruments, such as risks, costs and complexity of the financial instruments.

4. When the range of financial instruments assessed by the investment firm providing investment advice on an independent basis includes the investment firm's own financial instruments or those issued or provided by entities having close links or any other close legal or economic relationship with the investment firm as well as other issuers or providers which are not linked or related, the investment firm shall distinguish, for each type of financial instrument, the range of the financial instruments issued or provided by entities not having any links with the investment firm.

5. Investments firms providing a periodic assessment of the suitability of the recommendations provided pursuant to Article 54(12) shall disclose all of the following:

(a) the frequency and extent of the periodic suitability assessment and where relevant, the conditions that trigger that assessment;

(b) the extent to which the information previously collected will be subject to reassessment; and

(c) the way in which an updated recommendation will be communicated to the client.

Article 53

Investment advice on an independent basis

(Article 24(4) and 24(7) of Directive 2014/65/EU)

1. Investment firms providing investment advice on an independent basis shall define and implement a selection process to assess and compare a sufficient range of financial instruments available on the market in accordance with Article 24(7)(a) of Directive 2014/65/EU. The selection process shall include the following elements:

(a) the number and variety of financial instruments considered is proportionate to the scope of investment advice services offered by the independent investment adviser;

(b) the number and variety of financial instruments considered is adequately representative of financial instruments available on the market;

(c) the quantity of financial instruments issued by the investment firm itself or by entities closely linked to the investment firm itself is proportionate to the total amount of financial instruments considered; and

(d) the criteria for selecting the various financial instruments shall include all relevant aspects such as risks, costs and complexity as well as the characteristics of the investment firm's clients, and shall ensure that the selection of the instruments that may be recommended is not biased.

Where such a comparison is not possible due to the business model or the specific scope of the service provided, the investment firm providing investment advice shall not present itself as independent.

2. An investment firm that provides investment advice on an independent basis and that focuses on certain categories or a specified range of financial instruments shall comply with the following requirements:

(a) the firm shall market itself in a way that is intended only to attract clients with a preference for those categories or range of financial instruments;

(b) the firm shall require clients to indicate that they are only interested in investing in the specified category or range of financial instruments; and

(c) prior to the provision of the service, the firm shall ensure that its service is appropriate for each new client on the basis that its business model matches the client's needs and objectives, and the range of financial instruments that are suitable for the client. Where this is not the case the firm shall not provide such a service to the client.

3. An investment firm offering investment advice on both an independent basis and on a non-independent basis shall comply with the following obligations:

(a) in good time before the provision of its services, the investment firm has informed its clients, in a durable medium, whether the advice will be independent or non-independent in accordance with Article 24(4)(a) of Directive 2014/65/EU and the relevant implementing measures;

(b) the investment firm has presented itself as independent for the services for which it provides investment advice on an independent basis;

(c) the investment firms has adequate organisational requirements and controls in place to ensure that both types of advice services and advisers are clearly separated from each other and that clients are not likely to be confused about the type of advice that they are receiving and are given the type of advice that is appropriate for them. The investment firm shall not allow a natural person to provide both independent and non-independent advice.

SECTION 3

Assessment of suitability and appropriateness

Article 54

Assessment of suitability and suitability reports

(Article 25(2) of Directive 2014/65/EU)

1. Investment firms shall not create any ambiguity or confusion about their responsibilities in the process when assessing the suitability of investment services or financial instruments in accordance with Article 25(2) of Directive 2014/65/EU. When undertaking the suitability assessment, the firm shall inform clients or potential clients, clearly and simply, that the reason for assessing suitability is to enable the firm to act in the client's best interest.

Where investment advice or portfolio management services are provided in whole or in part through an automated or semi-automated system, the responsibility to undertake the suitability assessment shall lie with the investment firm providing the service and shall not be reduced by the use of an electronic system in making the personal recommendation or decision to trade.

2. Investment firms shall determine the extent of the information to be collected from clients in light of all the features of the investment advice or portfolio management services to be provided to those clients. Investment firms shall obtain from clients or potential clients such information as is necessary for the firm to understand the essential facts about the client and to have a reasonable basis for determining, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of providing a portfolio management service, satisfies the following criteria:

(a) it meets the investment objectives of the client in question, including client's risk tolerance;

(b) it is such that the client is able financially to bear any related investment risks consistent with his investment objectives;

(c) it is such that the client has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.

3. Where an investment firm provides an investment service to a professional client it shall be entitled to assume that in relation to the products, transactions and services for which it is so classified, the client has the necessary level of experience and knowledge for the purposes of point (c) of paragraph 2.

Where that investment service consists in the provision of investment advice to a professional client covered by Section 1 of Annex II to Directive 2014/65/EU, the investment firm shall be entitled to assume for the purposes of point (b) of paragraph 2 that the client is able financially to bear any related investment risks consistent with the investment objectives of that client.

4. The information regarding the financial situation of the client or potential client shall include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments.

5. The information regarding the investment objectives of the client or potential client shall include, where relevant, information on the length of time for which the client wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.

6. Where a client is a legal person or a group of two or more natural persons or where one or more natural persons are represented by another natural person, the investment firm shall establish and implement policy as to who should be subject to the suitability assessment and how this assessment will be done in practice, including from whom information about knowledge and experience, financial situation and investment objectives should be collected. The investment firm shall record this policy.

Where a natural person is represented by another natural person or where a legal person having requested treatment as professional client in accordance with Section 2 of Annex II to Directive 2014/65/EU is to be considered for the suitability assessment, the financial situation and investment objectives shall be those of the legal person or, in relation to the natural person, the underlying client rather than of the representative. The knowledge and experience shall be that of the representative of the natural person or the person authorised to carry out transactions on behalf of the underlying client.

7. Investment firms shall take reasonable steps to ensure that the information collected about their clients or potential clients is reliable. This shall include, but shall not be limited to, the following:

(a) ensuring clients are aware of the importance of providing accurate and up-to-date information;

(b) ensuring all tools, such as risk assessment profiling tools or tools to assess a client's knowledge and experience, employed in the suitability assessment process are fit-for-purpose and are appropriately designed for use with their clients, with any limitations identified and actively mitigated through the suitability assessment process;

(c) ensuring questions used in the process are likely to be understood by clients, capture an accurate reflection of the client's objectives and needs, and the information necessary to undertake the suitability assessment; and

(d) taking steps, as appropriate, to ensure the consistency of client information, such as by considering whether there are obvious inaccuracies in the information provided by clients.

Investment firms having an on-going relationship with the client, such as by providing an ongoing advice or portfolio management service, shall have, and be able to demonstrate, appropriate policies and procedures to maintain adequate and up-to-date information about clients to the extent necessary to fulfil the requirements under paragraph 2.

8. Where, when providing the investment service of investment advice or portfolio management, an investment firm does not obtain the information required under Article 25(2) of Directive 2014/65/EU, the firm shall not recommend investment services or financial instruments to the client or potential client.

9. Investment firms shall have, and be able to demonstrate, adequate policies and procedures in place to ensure that they understand the nature, features, including costs and risks of investment services and financial instruments selected for their clients and that they assess, while taking into account cost and complexity, whether equivalent investment services or financial instruments can meet their client's profile.

10. When providing the investment service of investment advice or portfolio management, an investment firm shall not recommend or decide to trade where none of the services or instruments are suitable for the client.

11. When providing investment advice or portfolio management services that involve switching investments, either by selling an instrument and buying another or by exercising a right to make a change in regard to an existing instrument, investment firms shall collect the necessary information on the client's existing investments and the recommended new investments and shall undertake an analysis of the costs and benefits of the switch, such that they are reasonably able to demonstrate that the benefits of switching are greater than the costs.

12. When providing investment advice, investment firms shall provide a report to the retail client that includes an outline of the advice given and how the recommendation provided is suitable for the retail client, including how it meets the client's objectives and personal circumstances with reference to the investment term required, client's knowledge and experience and client's attitude to risk and capacity for loss.

Investment firms shall draw clients' attention to and shall include in the suitability report information on whether the recommended services or instruments are likely to require the retail client to seek a periodic review of their arrangements.

Where an investment firm provides a service that involves periodic suitability assessments and reports, the subsequent reports after the initial service is established may only cover changes in the services or instruments involved and/or the circumstances of the client and may not need to repeat all the details of the first report.

13. Investment firms providing a periodic suitability assessment shall review, in order to enhance the service, the suitability of the recommendations given at least annually. The frequency of this assessment shall be increased depending on the risk profile of the client and the type of financial instruments recommended.

Article 55

Provisions common to the assessment of suitability or appropriateness

(Article 25(2) and 25(3) of Directive 2014/65/EU)

1. Investment firms shall ensure that the information regarding a client's or potential client's knowledge and experience in the investment field includes the following, to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved:

(a) the types of service, transaction and financial instrument with which the client is familiar;

(b) the nature, volume, and frequency of the client's transactions in financial instruments and the period over which they have been carried out;

(c) the level of education, and profession or relevant former profession of the client or potential client.

2. An investment firm shall not discourage a client or potential client from providing information required for the purposes of Article 25(2) and (3) of Directive 2014/65/EU.

3. An investment firm shall be entitled to rely on the information provided by its clients or potential clients unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.

Article 56

Assessment of appropriateness and related record-keeping obligations

(Article 25(3) and 25(5) of Directive 2014/65/EU)

1. Investment firms, shall determine whether that client has the necessary experience and knowledge in order to understand the risks involved in relation to the product or investment service offered or demanded when assessing whether an investment service as referred to in Article 25(3) of Directive 2014/65/EU is appropriate for a client.

An investment firm shall be entitled to assume that a professional client has the necessary experience and knowledge in order to understand the risks involved in relation to those particular investment services or transactions, or types of transaction or product, for which the client is classified as a professional client.

2. Investment firms shall maintain records of the appropriateness assessments undertaken which shall include the following:

(a) the result of the appropriateness assessment;

(b) any warning given to the client where the investment service or product purchase was assessed as potentially inappropriate for the client, whether the client asked to proceed with the transaction despite the warning and, where applicable, whether the firm accepted the client's request to proceed with the transaction;

(c) any warning given to the client where the client did not provide sufficient information to enable the firm to undertake an appropriateness assessment, whether the client asked to proceed with the transaction despite this warning and, where applicable, whether the firm accepted the client's request to proceed with the transaction.

Article 57

Provision of services in non-complex instruments

(Article 25(4) of Directive 2014/65/EU)

A financial instrument which is not explicitly specified in Article 25(4)(a) of Directive 2014/65/EU shall be considered as non-complex for the purposes of Article 25(4)(a)(vi) of Directive 2014/65/EU if it satisfies the following criteria:

(a) it does not fall within Article 4(1)(44)(c) of, or points (4) to (11) of Section C of Annex I to Directive 2014/65/EU;

(b) there are frequent opportunities to dispose of, redeem, or otherwise realise that instrument at prices that are publicly available to market participants and that are either market prices or prices made available, or validated, by valuation systems independent of the issuer;

(c) it does not involve any actual or potential liability for the client that exceeds the cost of acquiring the instrument;

(d) it does not incorporate a clause, condition or trigger that could fundamentally alter the nature or risk of the investment or pay out profile, such as investments that incorporate a right to convert the instrument into a different investment;

(e) it does not include any explicit or implicit exit charges that have the effect of making the investment illiquid even though there are technically frequent opportunities to dispose of, redeem or otherwise realise it;

(f) adequately comprehensive information on its characteristics is publicly available and is likely to be readily understood so as to enable the average retail client to make an informed judgment as to whether to enter into a transaction in that instrument.

Article 58

Retail and Professional Client agreements

(Article 24(1) and 25(5) of Directive 2014/65/EU)

Investment firms providing any investment service or the ancillary service referred to in Section B(1) of Annex I to Directive 2014/65/EU to a client after the date of application of this Regulation shall enter into a written basic agreement with the client, in paper or another durable medium, with the client setting out the essential rights and obligations of the firm and the client. Investment firms providing investment advice shall comply with this obligation only where a periodic assessment of the suitability of the financial instruments or services recommended is performed.

The written agreement shall set out the essential rights and obligations of the parties, and shall include the following:

(a) a description of the services, and where relevant the nature and extent of the investment advice, to be provided;

(b) in case of portfolio management services, the types of financial instruments that may be purchased and sold and the types of transactions that may be undertaken on behalf of the client, as well as any instruments or transactions prohibited; and

(c) a description of the main features of any services referred to in Section B(1) of Annex I to Directive 2014/65/EU to be provided, including where applicable the role of the firm with respect to corporate actions relating to client instruments and the terms on which securities financing transactions involving client securities will generate a return for the client.

SECTION 4

Reporting to clients

Article 59

Reporting obligations in respect of execution of orders other than for portfolio management

(Article 25(6) of Directive 2014/65/EU)

1. Investment firms having carried out an order on behalf of a client, other than for portfolio management, shall, in respect of that order:

(a) promptly provide the client, in a durable medium, with the essential information concerning the execution of that order;

(b) send a notice to the client in a durable medium confirming execution of the order as soon as possible and no later than the first business day following execution or, where the confirmation is received by the investment firm from a third party, no later than the first business day following receipt of the confirmation from the third party.

Point (b) shall not apply where the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the client by another person.

Points (a) and (b) shall not apply where orders executed on behalf of clients relate to bonds funding mortgage loan agreements with the said clients, in which case the report on the transaction shall be made at the same time as the terms of the mortgage loan are communicated, but no later than one month after the execution of the order.

2. In addition to the requirements under paragraph 1, investment firms shall supply the client, on request, with information about the status of his order.

3. In the case of client orders relating to units or shares in a collective investment undertaking which are executed periodically, investment firms shall either take the action specified in point (b) of paragraph 1 or provide the client, at least once every six months, with the information listed in paragraph 4 in respect of those transactions.

4. The notice referred to in point (b) of paragraph 1 shall include such of the following information as is applicable and, where relevant, in accordance with the regulatory technical standards on reporting obligations adopted in accordance with Article 26 of Regulation (EU) No 600/2014:

(a) the reporting firm identification;

(b) the name or other designation of the client;

(c) the trading day;

(d) the trading time;

(e) the type of the order;

(f) the venue identification;

(g) the instrument identification;

(h) the buy/sell indicator;

(i) the nature of the order if other than buy/sell;

(j) the quantity;

(k) the unit price;

(l) the total consideration;

(m) a total sum of the commissions and expenses charged and, where the client so requests, an itemised breakdown including, where relevant, the amount of any mark-up or mark-down imposed where the transaction was executed by an investment firm when dealing on own account, and the investment firm owes a duty of best execution to the client;

(n) the rate of exchange obtained where the transaction involves a conversion of currency;

(o) the client's responsibilities in relation to the settlement of the transaction, including the time limit for payment or delivery as well as the appropriate account details where these details and responsibilities have not previously been notified to the client;

(p) where the client's counterparty was the investment firm itself or any person in the investment firm's group or another client of the investment firm, the fact that this was the case unless the order was executed through a trading system that facilitates anonymous trading.

For the purposes of point (k), where the order is executed in tranches, the investment firm may supply the client with information about the price of each tranche or the average price. Where the average price is provided, the investment firm shall supply the client with information about the price of each tranche upon request.

5. The investment firm may provide the client with the information referred to in paragraph 4 using standard codes if it also provides an explanation of the codes used.

Article 60

Reporting obligations in respect of portfolio management

(Article 25(6) of Directive 2014/65/EU)

1. Investments firms which provide the service of portfolio management to clients shall provide each such client with a periodic statement in a durable medium of the portfolio management activities carried out on behalf of that client unless such a statement is provided by another person.

2. The periodic statement required under paragraph 1 shall provide a fair and balanced review of the activities undertaken and of the performance of the portfolio during the reporting period and shall include, where relevant, the following information:

(a) the name of the investment firm;

(b) the name or other designation of the client's account;

(c) a statement of the contents and the valuation of the portfolio, including details of each financial instrument held, its market value, or fair value if market value is unavailable and the cash balance at the beginning and at the end of the reporting period, and the performance of the portfolio during the reporting period;

(d) the total amount of fees and charges incurred during the reporting period, itemising at least total management fees and total costs associated with execution, and including, where relevant, a statement that a more detailed breakdown will be provided on request;

(e) a comparison of performance during the period covered by the statement with the investment performance benchmark (if any) agreed between the investment firm and the client;

(f) the total amount of dividends, interest and other payments received during the reporting period in relation to the client's portfolio;

(g) information about other corporate actions giving rights in relation to financial instruments held in the portfolio;

(h) for each transaction executed during the period, the information referred to in Article 59(4)(c) to (l) where relevant, unless the client elects to receive information about executed transactions on a transaction-by-transaction basis, in which case paragraph 4 of this Article shall apply.

3. The periodic statement referred to in paragraph 1 shall be provided once every three months, except in the following cases:

(a) where the investment firm provides its clients with access to an online system, which qualifies as a durable medium, where up-to-date valuations of the client's portfolio can be accessed and where the client can easily access the information required by Article 63(2) and the firm has evidence that the client has accessed a valuation of their portfolio at least once during the relevant quarter;

(b) in cases where paragraph 4 applies, the periodic statement must be provided at least once every 12 months;

(c) where the agreement between an investment firm and a client for a portfolio management service authorises a leveraged portfolio, the periodic statement must be provided at least once a month.

The exception provided for in point (b) shall not apply in the case of transactions in financial instruments covered by Article 4(1)(44)(c) of, or any of points 4 to 11 of Section C in Annex I to Directive 2014/65/EU.

4. Investment firms, in cases where the client elects to receive information about executed transactions on a transaction-by-transaction basis, shall provide promptly to the client, on the execution of a transaction by the portfolio manager, the essential information concerning that transaction in a durable medium.

The investment firm shall send the client a notice confirming the transaction and containing the information referred to in Article 59(4) no later than the first business day following that execution or, where the confirmation is received by the investment firm from a third party, no later than the first business day following receipt of the confirmation from the third party.

The second subparagraph shall not apply where the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the client by another person.

Article 61

Reporting obligations in respect of eligible counterparties

(Article 24(4) and Article 25(6) of Directive 2014/65/EU)

The requirements applicable to reports for retail and professional clients under Articles 49 and 59 shall apply unless investment firms enter into agreements with eligible counterparties to determine content and timing of reporting.

Article 62

Additional reporting obligations for portfolio management or contingent liability transactions

(Article 25(6) of Directive 2014/65/EU)

1. Investment firms providing the service of portfolio management shall inform the client where the overall value of the portfolio, as evaluated at the beginning of each reporting period, depreciates by 10 % and thereafter at multiples of 10 %, no later than the end of the business day in which the threshold is exceeded or, in a case where the threshold is exceeded on a non-business day, the close of the next business day.

2. Investment firms that hold a retail client account that includes positions in leveraged financial instruments or contingent liability transactions shall inform the client, where the initial value of each instrument depreciates by 10 % and thereafter at multiples of 10 %. Reporting under this paragraph should be on an instrument-by-instrument basis, unless otherwise agreed with the client, and shall take place no later than the end of the business day in which the threshold is exceeded or, in a case where the threshold is exceeded on a non-business day, the close of the next business day.

Article 63

Statements of client financial instruments or client funds

(Article 25(6) of Directive 2014/65/EU)

1. Investment firms that hold client financial instruments or client funds shall send at least on a quarterly basis, to each client for whom they hold financial instruments or funds, a statement in a durable medium of those financial instruments or funds unless such a statement has been provided in any other periodic statement. Upon client request, firms shall provide such statement more frequently at a commercial cost.

The first subparagraph shall not apply to a credit institution authorised under Directive 2000/12/EC of the European Parliament and of the Council ([1]) in respect of deposits within the meaning of that Directive held by that institution.

([1]) Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions (OJ L 126, 26.5.2000, p. 1).

2. The statement of client assets referred to in paragraph 1 shall include the following information:

(a) details of all the financial instruments or funds held by the investment firm for the client at the end of the period covered by the statement;

(b) the extent to which any client financial instruments or client funds have been the subject of securities financing transactions;

(c) the extent of any benefit that has accrued to the client by virtue of participation in any securities financing transactions, and the basis on which that benefit has accrued;

(d) a clear indication of the assets or funds which are subject to the rules of Directive 2014/65/EU and its implementing measures and those that are not, such as those that are subject to Title Transfer Collateral Agreement;

(e) a clear indication of which assets are affected by some peculiarities in their ownership status, for instance due to a security interest;

(f) the market or estimated value, when the market value is not available, of the financial instruments included in the statement with a clear indication of the fact that the absence of a market price is likely to be indicative of a lack of liquidity. The evaluation of the estimated value shall be performed by the firm on a best effort basis.

In cases where the portfolio of a client includes the proceeds of one or more unsettled transactions, the information referred to in point (a) may be based either on the trade date or the settlement date, provided that the same basis is applied consistently to all such information in the statement.

The periodic statement of client assets referred to in paragraph 1 shall not be provided where the investment firm provides its clients with access to an online system, which qualifies as a durable medium, where up-to-date statements of client's financial instruments or funds can be easily accessed by the client and the firm has evidence that the client has accessed this statement at least once during the relevant quarter.

3. Investment firms which hold financial instruments or funds and which carry out the service of portfolio management for a client may include the statement of client assets referred to in paragraph 1 in the periodic statement it provides to that client pursuant to Article 60(1).

SECTION 5

Best execution

Article 64

Best execution criteria

(Articles 27(1) and 24(1) of Directive 2014/65/EU)

1. When executing client orders, investment firms shall take into account the following criteria for determining the relative importance of the factors referred to in Article 27(1) of Directive 2014/65/EU:

(a) the characteristics of the client including the categorisation of the client as retail or professional;

(b) the characteristics of the client order, including where the order involves a securities financing transaction (SFT);

(c) the characteristics of financial instruments that are the subject of that order;

(d) the characteristics of the execution venues to which that order can be directed.

For the purposes of this Article and Articles 65 and 66, 'execution venue' includes a regulated market, an MTF, an OTF, a systematic internaliser, or a market maker or other liquidity provider or an entity that performs a similar function in a third country to the functions performed by any of the foregoing.

2. An investment firm satisfies its obligation under Article 27(1) of Directive 2014/65/EU to take all sufficient steps to obtain the best possible result for a client to the extent that it executes an order or a specific aspect of an order following specific instructions from the client relating to the order or the specific aspect of the order.

3. Investment firms shall not structure or charge their commissions in such a way as to discriminate unfairly between execution venues.

4. When executing orders or taking decision to deal in OTC products including bespoke products, the investment firm shall check the fairness of the price proposed to the client, by gathering market data used in the estimation of the price of such product and, where possible, by comparing with similar or comparable products.

Article 65

Duty of investment firms carrying out portfolio management and reception and transmission of orders to act in the best interests of the client

(Article 24(1) and 24(4) of Directive 2014/65/EU)

1. Investment firms, when providing portfolio management, shall comply with the obligation under Article 24(1) of Directive 2014/65/EU to act in accordance with the best interests of their clients when placing orders with other entities for execution that result from decisions by the investment firm to deal in financial instruments on behalf of its client.

2. Investment firms, when providing the service of reception and transmission of orders, shall comply with the obligation under Article 24(1) of Directive 2014/65/EU to act in accordance with the best interests of their clients when transmitting client orders to other entities for execution.

3. In order to comply with paragraphs 1 or 2, investment firms shall comply with paragraphs 4 to 7 of this Article and Article 64(4).

4. Investment firms shall take all sufficient steps to obtain the best possible result for their clients taking into account the factors referred to in Article 27(1) of Directive 2014/65/EU. The relative importance of these factors shall be determined by reference to the criteria set out in Article 64(1) and, for retail clients, to the requirement under Article 27(1) of Directive 2014/65/EU.

An investment firm satisfies its obligations under paragraph 1 or 2, and is not required to take the steps mentioned in this paragraph, to the extent that it follows specific instructions from its client when placing an order with, or transmitting an order to, another entity for execution.

5. Investment firms shall establish and implement a policy that enables them to comply with the obligation in paragraph 4. The policy shall identify, in respect of each class of instruments, the entities with which the orders are placed or to which the investment firm transmits orders for execution. The entities identified shall have execution arrangements that enable the investment firm to comply with its obligations under this Article when it places or transmits orders to that entity for execution.

6. Investment firms shall provide information to their clients on the policy established in accordance with paragraph 5 and paragraphs 2 to 9 of Article 66. Investment firms shall provide clients with appropriate information about the firm and its services and the entities chosen for execution. In particular, when the investment firm select other firms to provide order execution services, it shall summarise and make public, on an annual basis, for each class of financial instruments, the top five investment firms in terms of trading volumes where it transmitted or placed client orders for execution in the preceding year and information on the quality of execution obtained. The information shall be consistent with the information published in accordance with the technical standards developed under Article 27(10)(b) of Directive 2014/65/EU.

Upon reasonable request from a client, investment firms shall provide its clients or potential clients with information about entities where the orders are transmitted or placed for execution.

7. Investment firms shall monitor on a regular basis the effectiveness of the policy established in accordance with paragraph 5 and, in particular, shall monitor the execution quality of the entities identified in that policy and, where appropriate, correct any deficiencies.

Investment firms shall review the policy and arrangements at least annually. Such a review shall also be carried out whenever a material change occurs that affects the firm's ability to continue to obtain the best possible result for their clients.

Investment firms shall assess whether a material change has occurred and shall consider making changes to the execution venues or entities on which they place significant reliance in meeting the overarching best execution requirement.

A material change shall be a significant event that could impact parameters of best execution such as cost, price, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order.

8. This Article shall not apply where the investment firm that provides the service of portfolio management or reception and transmission of orders also executes the orders received or the decisions to deal on behalf of its client's portfolio. In those cases Article 27 of Directive 2014/65/EU shall apply.

Article 66

Execution policy

(Article 27(5) and (7) of Directive 2014/65/EU)

1. Investment firms shall review, at least on an annual basis execution policy established pursuant to Article 27(4) of Directive 2014/65/EU, as well as their order execution arrangements.

Such a review shall also be carried out whenever a material change as defined in Article 65(7) occurs that affects the firm's ability to continue to obtain the best possible result for the execution of its client orders on a consistent basis using the venues included in its execution policy. An investment firm shall assess whether a material change has occurred and shall consider making changes to the relative importance of the best execution factors in meeting the overarching best execution requirement.

2. The information on the execution policy shall be customised depending on the class of financial instrument and type of the service provided and shall include information set out in paragraphs 3 to 9.

3. Investment firms shall provide clients with the following details on their execution policy in good time prior to the provision of the service:

(a) an account of the relative importance the investment firm assigns, in accordance with the criteria specified in Article 59(1), to the factors referred to in Article 27(1) of Directive 2014/65/EU, or the process by which the firm determines the relative importance of those factors.

(b) a list of the execution venues on which the firm places significant reliance in meeting its obligation to take all reasonable steps to obtain on a consistent basis the best possible result for the execution of client orders and specifying which execution venues are used for each class of financial instruments, for retail client orders, professional client orders and SFTs;

(c) a list of factors used to select an execution venue, including qualitative factors such as clearing schemes, circuit breakers, scheduled actions, or any other relevant consideration, and the relative importance of each factor; The information about the factors used to select an execution venue for execution shall be consistent with the controls used by the firm to demonstrate to clients that best execution has been achieved in a consistent basis when reviewing the adequacy of its policy and arrangements;

(d) how the execution factors of price costs, speed, likelihood of execution and any other relevant factors are considered as part of all sufficient steps to obtain the best possible result for the client;

(e) where applicable, information that the firm executes orders outside a trading venue, the consequences, for example counterparty risk arising from execution outside a trading venue, and upon client request, additional information about the consequences of this means of execution;

(f) a clear and prominent warning that any specific instructions from a client may prevent the firm from taking the steps that it has designed and implemented in its execution policy to obtain the best possible result for the execution of those orders in respect of the elements covered by those instructions;

(g) a summary of the selection process for execution venues, execution strategies employed, the procedures and process used to analyse the quality of execution obtained and how the firms monitor and verify that the best possible results were obtained for clients.

That information shall be provided in a durable medium, or by means of a website (where that does not constitute a durable medium) provided that the conditions specified in Article 3(2) are satisfied.

4. Where investment firms apply different fees depending on the execution venue, the firm shall explain these differences in sufficient detail in order to allow the client to understand the advantages and the disadvantages of the choice of a single execution venue.

5. Where investment firms invite clients to choose an execution venue, fair, clear and not misleading information shall be provided to prevent the client from choosing one execution venue rather than another on the sole basis of the price policy applied by the firm.

6. Investment firms shall only receive third-party payments that comply with Article 24(9) of Directive 2014/65/EU and shall inform clients about the inducements that the firm may receive from the execution venues. The information shall specify the fees charged by the investment firm to all counterparties involved in the transaction, and where the fees vary depending on the client, the information shall indicate the maximum fees or range of the fees that may be payable.

7. Where an investment firm charges more than one participant in a transaction, in compliance with Article 24(9) of Directive 2014/65/EU and its implementing measures, the firm shall inform its clients of the value of any monetary or non-monetary benefits received by the firm.

8. Where a client makes reasonable and proportionate requests for information about its policies or arrangements and how they are reviewed to an investment firm, that investment firm shall answer clearly and within a reasonable time.

9. Where an investment firm executes orders for retail clients, it shall provide those clients with a summary of the relevant policy, focused on the total costs they incur. The summary shall also provide a link to the most recent execution quality data published in accordance with Article 27(3) of Directive 2014/65/EU for each execution venue listed by the investment firm in its execution policy.

SECTION 6

Client order handling

Article 67

General principles

(Articles 28(1) and 24(1) of Directive 2014/65/EU)

1. Investment firms shall satisfy the following conditions when carrying out client orders:

(a) ensure that orders executed on behalf of clients are promptly and accurately recorded and allocated;

(b) carry out otherwise comparable client orders sequentially and promptly unless the characteristics of the order or prevailing market conditions make this impracticable, or the interests of the client require otherwise;

(c) inform a retail client about any material difficulty relevant to the proper carrying out of orders promptly upon becoming aware of the difficulty.

2. Where an investment firm is responsible for overseeing or arranging the settlement of an executed order, it shall take all reasonable steps to ensure that any client financial instruments or client funds received in settlement of that executed order are promptly and correctly delivered to the account of the appropriate client.

3. An investment firm shall not misuse information relating to pending client orders, and shall take all reasonable steps to prevent the misuse of such information by any of its relevant persons.

Article 68

Aggregation and allocation of orders

(Articles 28(1) and 24(1) of Directive 2014/65/EU)

1. Investment firms shall not carry out a client order or a transaction for own account in aggregation with another client order unless the following conditions are met:

(a) it is unlikely that the aggregation of orders and transactions will work overall to the disadvantage of any client whose order is to be aggregated;

(b) it is disclosed to each client whose order is to be aggregated that the effect of aggregation may work to its disadvantage in relation to a particular order;

(c) an order allocation policy is established and effectively implemented, providing for the fair allocation of aggregated orders and transactions, including how the volume and price of orders determines allocations and the treatment of partial executions.

2. Where an investment firm aggregates an order with one or more other client orders and the aggregated order is partially executed, it shall allocate the related trades in accordance with its order allocation policy.

Article 69

Aggregation and allocation of transactions for own account

(Articles 28(1) and 24(1) of Directive 2014/65/EU)

1. Investment firms which have aggregated transactions for own account with one or more client orders shall not allocate the related trades in a way that is detrimental to a client.

2. Where an investment firm aggregates a client order with a transaction for own account and the aggregated order is partially executed, it shall allocate the related trades to the client in priority to the firm.

Where an investment firm is able to demonstrate on reasonable grounds that without the combination it would not have been able to carry out the order on such advantageous terms, or at all, it may allocate the transaction for own account proportionally, in accordance with its order allocation policy referred to in Article 68(1)(c).

3. As part of the order allocation policy referred to in Article 68(1)(c), investment firms shall put in place procedures designed to prevent the reallocation, in a way that is detrimental to the client, of transactions for own account which are executed in combination with client orders.

Article 70

Prompt fair and expeditious execution of client orders and publication of unexecuted client limit orders for shares traded on a trading venue

(Article 28 of Directive 2014/65/EU)

1. A client limit order in respect of shares admitted to trading on a regulated market or traded on a trading venue which have not been immediately executed under prevailing market conditions as referred to in Article 28(2) of Directive 2014/65/EU shall be considered available to the public when the investment firm has submitted the order for execution to a regulated market or a MTF or the order has been published by a data reporting services provider located in one Member State and can be easily executed as soon as market conditions allow.

2. Regulated markets and MTFs shall be prioritised according to the firm's execution policy to ensure execution as soon as market conditions allow.

SECTION 7

Eligible counterparties

Article 71

Eligible counterparties

(Article 30 of Directive 2014/65/EU)

1. In addition to the categories which are explicitly set out in Article 30(2) of Directive 2014/65/EU, Member States may recognise as eligible counterparty, in accordance with Article 30(3) of that Directive, an undertaking falling within a category of clients who are to be considered professional clients in accordance with paragraphs 1, 2 and 3 of Section I of Annex II to that Directive.

2. Where, pursuant to the second subparagraph of Article 30(2) of Directive 2014/65/EU, an eligible counterparty requests treatment as a client whose business with an investment firm is subject to Articles 24, 25, 27 and 28 of that Directive, the request should be made in writing, and shall indicate whether the treatment as retail client or professional client refers to one or more investment services or transactions, or one or more types of transaction or product.

3. Where an eligible counterparty requests treatment as a client whose business with an investment firm is subject to Articles 24, 25, 27 and 28 of Directive 2014/65/EU, but does not expressly request treatment as a retail client, the firm shall treat that eligible counterparty as a professional client.

4. Where the eligible counterparty expressly requests treatment as a retail client, the investment firm shall treat the eligible counterparty as a retail client, applying the provisions in respect of requests of non-professional treatment specified in the second, third and fourth sub-paragraphs of Section I of Annex II to Directive 2014/65/EU.

5. Where a client requests to be treated as an eligible counterparty, in accordance with Article 30(3) of Directive 2014/65/EU, the following procedure shall be followed:

(a) the investment firm shall provide the client with a clear written warning of the consequences for the client of such a request, including the protections they may lose;

(b) the client shall confirm in writing the request to be treated as an eligible counterparty either generally or in respect of one or more investment services or a transaction or type of transaction or product and that they are aware of the consequences of the protection they may lose as a result of the request.

SECTION 8

Record-keeping

Article 72

Retention of records

(Article 16(6) of Directive 2014/65/EU)

1. The records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority, and in such a form and manner that the following conditions are met:

(a) the competent authority is able to access them readily and to reconstitute each key stage of the processing of each transaction;

(b) it is possible for any corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained;

(c) it is not possible for the records otherwise to be manipulated or altered;

(d) it allows IT or any other efficient exploitation when the analysis of the data cannot be easily carried out due to the volume and the nature of the data; and

(e) the firm's arrangements comply with the record keeping requirements irrespective of the technology used.

2. Investment firms shall keep at least the records identified in Annex I to this Regulation depending upon the nature of their activities.

The list of records identified in Annex I to this Regulation is without prejudice to any other record-keeping obligations arising from other legislation.

3. Investment firms shall also keep records of any policies and procedures they are required to maintain pursuant to Directive 2014/65/EU, Regulation (EU) No 600/2014, Directive 2014/57/EU and Regulation (EU) No 596/2014 and their respective implementing measures in writing.

Competent authorities may require investment firms to keep additional records to the list identified in Annex I to this Regulation.

Article 73

Record keeping of rights and obligations of the investment firm and the client

(Article 25(5) of Directive 2014/65/EU)

Records which set out the respective rights and obligations of the investment firm and the client under an agreement to provide services, or the terms on which the firm provides services to the client, shall be retained for at least the duration of the relationship with the client.

Article 74

Record keeping of client orders and decision to deal

(Article 16(6) of Directive 2014/65/EU)

An investment firm shall, in relation to every initial order received from a client and in relation to every initial decision to deal taken, immediately record and keep at the disposal of the competent authority at least the details set out in Section 1 of Annex IV to this Regulation to the extent they are applicable to the order or decision to deal in question.

Where the details set out in Section 1 of Annex IV to this Regulation are also prescribed under Articles 25 and 26 of Regulation (EU) No 600/2014, these details should be maintained in a consistent way and according to the same standards prescribed under Articles 25 and 26 of Regulation (EU) No 600/2014.

Article 75

Record keeping of transactions and order processing

(Article 16(6) of Directive 2014/65/EU)

Investment firms shall, immediately after receiving a client order or making a decision to deal to the extent they are applicable to the order or decision to deal in question, record and keep at the disposal of the competent authority at least the details set out in Section 2 of Annex IV.

Where the details set out in Section 2 of Annex IV are also prescribed under Articles 25 and 26 of Regulation (EU) No 600/2014, they shall be maintained in a consistent way and according to the same standards prescribed under Articles 25 and 26 of Regulation (EU) No 600/2014.

Article 76

Recording of telephone conversations or electronic communications

(Article 16(7) of Directive 2014/65/EU)

1. Investment firms shall establish, implement and maintain an effective recording of telephone conversations and electronic communications policy, set out in writing, and appropriate to the size and organisation of the firm, and the nature, scale and complexity of its business. The policy shall include the following content:

(a) the identification of the telephone conversations and electronic communications, including relevant internal telephone conversations and electronic communications, that are subject to the recording requirements in accordance with Article 16(7) of Directive 2014/65/EU; and

(b) the specification of the procedures to be followed and measures to be adopted to ensure the firm's compliance with the third and eighth subparagraphs of Article 16(7) of Directive 2014/65/EU where exceptional circumstances arise and the firm is unable to record the conversation/communication on devices issued, accepted or permitted by the firm. Evidence of such circumstances shall be retained and shall be accessible to competent authorities.

2. Investment firms shall ensure that the management body has effective oversight and control over the policies and procedures relating to the firm's recording of telephone conversations and electronic communications.

3. Investment firms shall ensure that the arrangements to comply with recording requirements are technology-neutral. Firms shall periodically evaluate the effectiveness of the firm's policies and procedures and adopt any such alternative or additional measures and procedures as are necessary and appropriate. At a minimum, such adoption of alternative or additional measures shall occur when a new medium of communication is accepted or permitted for use by the firm.

4. Investment firms shall keep and regularly update a record of those individuals who have firm devices or privately owned devices that have been approved for use by the firm.

5. Investment firms shall educate and train employees in procedures governing the requirements in Article 16(7) of Directive 2014/65/EU.

6. To monitor compliance with the recording and record-keeping requirements in accordance with Article 16(7) of Directive 2014/65/EU, investment firms shall periodically monitor the records of transactions and orders subject to these requirements, including relevant conversations. Such monitoring shall be risk based and proportionate.

7. Investment firms shall demonstrate the policies, procedures and management oversight of the recording rules to the relevant competent authorities upon request.

8. Before investment firms provide investment services and activities relating to the reception, transmission and execution of orders to new and existing clients, firms shall inform the client of the following:

(a) that the conversations and communications are being recorded; and

(b) that a copy of the recording of such conversations with the client and communications with the client will be available on request for a period of five years and, where requested by the competent authority, for a period of up to seven years.

The information referred to in the first sub-paragraph shall be presented in the same language(s) as that used to provide investment services to clients.

9. Investment firms shall record in a durable medium all relevant information related to relevant face-to-face conversations with clients. The information recorded shall include at least the following:

(a) date and time of meetings;

(b) location of meetings;

(c) identity of the attendees;

(d) initiator of the meetings; and

(e) relevant information about the client order including the price, volume, type of order and when it shall be transmitted or executed.

10. Records shall be stored in a durable medium, which allows them to be replayed or copied and must be retained in a format that does not allow the original record to be altered or deleted.

Records shall be stored in a medium so that they are readily accessible and available to clients on request.

Firms shall ensure the quality, accuracy and completeness of the records of all telephone recordings and electronic communications.

11. The period of time for the retention of a record shall begin on the date when the record is created.

SECTION 9

SME growth markets

Article 77

Qualification as an SME

(Article 4(1)(13) of Directive 2014/65/EU)

1. An issuer whose shares have been admitted to trading for less than three years shall be deemed an SME for the purpose of point (a) of Article 33(3) of Directive 2014/65/EU where its market capitalisation is below EUR 200 million based on any of the following:

(a) the closing share price of the first day of trading, if its shares have been admitted to trading for less than one year;

(b) the last closing share price of the first year of trading, if its shares have been admitted to trading for more than one year but less than two years;

(c) the average of the last closing share prices of each of the first two years of trading, if its shares have been admitted to trading for more than two years but less than three years.

2. An issuer which has no equity instrument traded on any trading venue shall be deemed an SME for the purpose of Article 4(1)(13) of Directive 2014/65/EU if, according to its last annual or consolidated accounts, it meets at least two of the following three criteria: an average number of employees during the financial year of less than 250, a total balance sheet not exceeding EUR 43 000 000 and an annual net turnover not exceeding EUR 50 000 000.

Article 78

Registration as an SME growth market

(Article 33(3) of Directive 2014/65/EU)

1. When determining whether at least 50 % of the issuers admitted to trading on an MTF are SMEs for the purposes of registration as an SME growth market in accordance with point (a) of Article 33(3) of Directive 2014/65/EU, the competent authority of the home Member State of the operator of an MTF shall calculate the average ratio of SMEs over the total number of issuers whose financial instruments are admitted to trading on that market. The average ratio shall be calculated on 31 December of the previous calendar year as the average of the twelve end-of-month ratios of that calendar year.

Without prejudice to the other conditions for registration specified in points (b) to (g) of Article 33(3) of Directive 2014/65/EU, the competent authority shall register as an SME growth market an applicant with no previous operating history and, after three calendar years have elapsed, shall verify that it complies with the minimum proportion of SMEs, as determined in accordance with the first subparagraph.

2. With regard to the criteria laid out in points (b), (c), (d) and (f) of Article 33(3) of Directive 2014/65/EU, the competent authority of the home Member State of the operator of an MTF shall not register the MTF as an SME growth market unless it is satisfied that the MTF:

(a) has established and applies rules providing for objective and transparent criteria for the initial and ongoing admission to trading of issuers on its venue;

(b) has an operating model which is appropriate for the performance of its functions and ensures the maintenance of fair and orderly trading in the financial instruments admitted to trading on its venue;

(c) has established and applies rules that require an issuer seeking admission of its financial instruments to trading on the MTF, to publish, in cases where Directive 2003/71/EC does not apply, an appropriate admission document, drawn up under the responsibility of the issuer and clearly stating whether or not it has been approved or reviewed and by whom;

(d) has established and applies rules that define the minimum content of the admission document referred to under point (c), in such a way that sufficient information is provided to investors to enable them to make an informed assessment of the financial position and prospects of the issuer, and the rights attaching to its securities;

(e) requires the issuer to state, in the admission document referred to under point (c), whether or not, in its opinion, its working capital is sufficient for its present requirements or, if not, how it proposes to provide the additional working capital needed;

(f) has made arrangements for the admission document referred to under point (c) to be subject to an appropriate review of its completeness, consistency and comprehensibility;

(g) requires the issuers whose securities are traded on its venue to publish annual financial reports within 6 months after the end of each financial year, and half yearly financial reports within 4 months after the end of the first 6 months of each financial year;

(h) ensures dissemination to the public of prospectuses drawn up in accordance with Directive 2003/71/EC, admission documents referred to under point (c), financial reports referred to under point (g) and information defined in Article 7(1) of Regulation (EU) No 596/2014 publicly disclosed by the issuers whose securities are traded on its venue, by publishing them on its website, or providing thereon a direct link to the page of the website of the issuers where such documents, reports and information are published;

(i) ensures that the regulatory information referred to under point (h) and direct links remain available on its website for a period of at least five years.

Article 79

Deregistration as an SME growth market

(Article 33(3) of Directive 2014/65/EU)

1. With regard to the proportion of SMEs, and without prejudice to the other conditions specified in points (b) to (g) of Article 33(3) of Directive 2014/65/EU and in Article 78(2) of this Regulation, an SME growth market shall only be deregistered by the competent authority of its home Member State where the proportion of SMEs, as determined in accordance with the first subparagraph of Article 78(1) of this Regulation, falls below 50 % for three consecutive calendar years.

2. With regard to the conditions specified in points (b) to (g) of Article 33(3) of Directive 2014/65/EU and in Article 78(2) of this Regulation, the operator of an SME growth market shall be deregistered by the competent authority of its home Member State where such conditions are no longer satisfied.

CHAPTER IV

OPERATING OBLIGATIONS FOR TRADING VENUES

Article 80

Circumstances constituting significant damage to investors' interests and the orderly functioning of the market

(Articles 32(1), 32(2), 52(1) and 52(2) of Directive 2014/65/EU)

1. For the purpose of Articles 32(1), 32(2), 52(1) and 52(2) of Directive 2014/65/EU, a suspension or a removal from trading of a financial instrument shall be deemed likely to cause significant damage to investors' interests or the orderly functioning of the market at least in the following circumstances:

(a) where it would create a systemic risk undermining financial stability, such as where the need exists to unwind a dominant market position, or where settlement obligations would not be met in a significant volume;

(b) where the continuation of trading on the market is necessary to perform critical post-trade risk management functions when there is a need for the liquidation of financial instruments due to the default of a clearing member under the default procedures of a CCP and a CCP would be exposed to unacceptable risks as a result of an inability to calculate margin requirements;

(c) where the financial viability of the issuer would be threatened, such as where it is involved in a corporate transaction or capital raising.

2. For the purpose of determining whether a suspension or a removal is likely to cause significant damage to the investors' interest or the orderly functioning of the markets in any particular case, the national competent authority, a market operator operating a regulated market or an investment firm or a market operator operating an MTF or an OTF shall consider all relevant factors, including:

(a) the relevance of the market in terms of liquidity where the consequences of the actions are likely to be more significant where those markets are more relevant in terms of liquidity than in other markets;

(b) the nature of the envisaged action where actions with a sustained or lasting impact on the ability of investors to trade a financial instrument on trading venues, such as removals, are likely to have a greater impact on investors than other actions;

(c) the knock-on effects of a suspension or removal of sufficiently related derivatives, indices or benchmarks for which the removed or suspended instrument serves as an underlying or constituent;

(d) the effects of a suspension on the interests of market end users who are not financial counterparties, such as entities trading in financial instruments to hedge commercial risks.

3. The factors set out in paragraph 2 shall also be taken into consideration where a national competent authority, a market operator operating a regulated market or an investment firm or a market operator operating an MTF or an OTF decides not to suspend or remove a financial instrument on the basis of circumstances not covered by the list of paragraph 1.

Article 81

Circumstances where significant infringements of the rules of a trading venue or disorderly trading conditions or system disruptions in relation to a financial instrument may be assumed

(Articles 31(2) and 54(2) of Directive 2014/65/EU)

1. When assessing whether the requirement to immediately inform their competent authorities of significant infringements of the rules of their trading venue or disorderly trading conditions or system disruptions in relation to a financial instrument applies, operators of trading venues shall consider the signals listed in Section A of Annex III to this Regulation.

2. Information shall only be required in cases of significant events which have the potential to jeopardise the role and function of trading venues as part of the financial market infrastructure.

Article 82

Circumstances where a conduct indicating behaviour that is prohibited under Regulation (EU) No 596/2014 may be assumed

(Articles 31(2) and 54(2) of Directive 2014/65/EU)

1. When assessing whether the requirement to immediately inform their competent authorities of conduct that may indicate behaviour that is prohibited under Regulation (EU) No 596/2014 applies, operators of trading venues shall consider the signals listed in Section B of Annex III to this Regulation.

2. The operator of one or several trading venues where a financial instrument and/or related financial instrument are traded shall apply a proportionate approach and shall exercise judgment on the signals triggered, including any relevant signals not specifically included in Section B of Annex III to this Regulation, before informing the relevant national competent authority, taking into account the following:

(a) the deviations from the usual trading pattern of the financial instruments admitted to trading or traded on its trading venue; and

(b) the information available or accessible to the operator, whether that be internally as part of the operations of the trading venue or publicly available.

3. The operator of one or several trading venues shall take into account front running behaviours, which consist in a market member or participant trading, for its own account, ahead of its client, and shall use for that purpose the order book data required to be recorded by the trading venue pursuant to Article 25 of Regulation (EU) No 600/2014, in particular those relating to the way the member or participant conducts its trading activity.

CHAPTER V

POSITION REPORTING IN COMMODITY DERIVATIVES

Article 83

Position reporting

(Article 58(1) of Directive 2014/65/EU)

1. For the purpose of the weekly reports referred to in Art 58(1)(a) of Directive 2014/65/EU, the obligation for a trading venue to make public such a report shall apply when both of the following two thresholds are met:

(a) 20 open position holders exist in a given contract on a given trading venue; and

(b) the absolute amount of the gross long or short volume of total open interest, expressed in the number of lots of the relevant commodity derivative, exceeds a level of four times the deliverable supply in the same commodity derivative, expressed in number of lots.

Where the commodity derivative does not have a physically deliverable underlying asset and for emission allowances and derivatives thereof, point (b) shall not apply.

2. The threshold set out in point (a) of paragraph 1 shall apply in aggregate on the basis of all of the categories of persons regardless of the numbers of position holders in any single category of persons.

3. For contracts where there are less than five position holders active in a given category of persons, the number of position holders in that category shall not be published.

4. For contracts that meet the conditions set out in points (a) and (b) of paragraph 1 for the first time, trading venues shall publish the contracts first weekly report as soon as it is feasibly practical, and in any event no later than 3 weeks from the date on which the thresholds are first triggered.

5. Where the conditions set out in points (a) and (b) of paragraph 1 are no longer met, trading venues shall continue to publish the weekly reports for a period of three months. The obligation to publish the weekly report no longer applies where the conditions set out in points (a) and (b) of paragraph 1 have not been met continuously upon expiry of that period.

CHAPTER VI

DATA PROVISION OBLIGATIONS FOR DATA REPORTING SERVICE PROVIDERS

Article 84

Obligation to provide market data on a reasonable commercial basis

(Article 64(1) and 65(1) of Directive 2014/65/EU)

1. For the purposes of making market data containing the information set out in Articles 6, 20 and 21 of Regulation (EU) No 600/2014 available to the public on a reasonable commercial basis in accordance with Articles 64(1) and 65(1) of Directive 2014/65/EU, approved publication arrangements (APAs) and consolidated tape providers (CTPs) shall comply with the obligations set out in Articles 85 to 89.

2. Articles 85, 86(2), 87, 88(2) and 89 shall not apply to APAs or CTPs that make market data available to the public free of charge.

Article 85

Provision of market data on the basis of cost

(Article 64(1) and 65(1) of Directive 2014/65/EU)

1. The price of market data shall be based on the cost of producing and disseminating such data and may include a reasonable margin.

2. The costs of producing and disseminating market data may include an appropriate share of joint costs for other service provided by APAs and CTPs.

Article 86

Obligation to provide market data on a non-discriminatory basis

(Article 64(1) and 65(1) of Directive 2014/65/EU)

1. APAs and CTPs shall make market data available at the same price and on the same terms and conditions to all customers falling within the same category in accordance with published objective criteria.

2. Any differentials in prices charged to different categories of customers shall be proportionate to the value which the market data represent to those customers, taking into account:

(a) the scope and scale of the market data including the number of financial instruments covered and trading volume;

(b) the use made by the customer of the market data, including whether it is used for the customer's own trading activities, for resale or for data aggregation.

3. For the purposes of paragraph 1, APAs and CTPs shall have scalable capacities in place to ensure that customers can obtain timely access to market data at all times on a non-discriminatory basis.

Article 87

Per user fees

(Article 64(1) and 65(1) of Directive 2014/65/EU)

1. APAs and CTPs shall charge for the use of market data on the basis of the use made by individual end-users of the market data ('per user basis'). APAs and CTPs shall have arrangements in place to ensure that each individual use of market data is charged only once.

2. By way of derogation from paragraph 1, APAs and CTPs may decide not to make market data available on a per user basis where to charge on a per user basis is disproportionate to the cost of making market data available, having regard to the scale and scope of the market data.

3. APAs or CTPs shall provide grounds for the refusal to make market data available on a per user basis and shall publish those grounds on their webpage.

Article 88

Unbundling and disaggregating market data

(Article 64(1) and 65(1) of Directive 2014/65/EU)

1. APAs and CTPs shall make market data available without being bundled with other services.

2. Prices for market data shall be charged on the basis of the level of market data disaggregation provided for in Article 12(1) of Regulation (EU) No 600/2014 as further specified in Articles of Commission Delegated Regulation (EU) 2017/572 ([1]).

Article 89

Transparency obligation

(Article 64(1) and 65(1) of Directive 2014/65/EU)

1. APAs and CTPs shall disclose and make easily available to the public the price and other terms and conditions for the provision of the market data in a manner which is easily accessible.

2. The disclosure shall include the following:

(a) current price lists, including the following information:

(i) fees per display user;

(ii) non-display fees;

(iii) discount policies;

(iv) fees associated with licence conditions;

(v) fees for pre-trade and for post-trade market data;

(vi) fees for other subsets of information, including those required in accordance with the regulatory technical standards pursuant to Article 12(2) of Regulation (EU) No 600/2014;

(vii) other contractual terms and conditions;

(b) advance disclosure with a minimum of 90 days' notice of future price changes;

(c) information on the content of the market data including the following information:

(i) the number of instruments covered;

(ii) the total turnover of instruments covered;

(iii) pre-trade and post-trade market data ratio;

(iv) information on any data provided in addition to market data;

(v) the date of the last licence fee adaption for market data provided;

(d) revenue obtained from making market data available and the proportion of that revenue compared to total revenue of the APA or CTP;

(e) information on how the price was set, including the cost accounting methodologies used and information about the specific principles according to which direct and variable joint costs are allocated and fixed joint costs are apportioned, between the production and dissemination of market data and other services provided by APAs and CTPs.

CHAPTER VII

COMPETENT AUTHORITIES AND FINAL PROVISIONS

Article 90

Determination of the substantial importance of the operations of a trading venue in a host Member State

(Article 79(2) of Directive 2014/65/EU)

1. The operations of a regulated market in a host Member State shall be considered to be of substantial importance for the functioning of the securities markets and the protection of investors in that host Member State where at least one of the following criteria is met:

(a) the host Member State has formerly been the home Member State of the regulated market in question;

([1]) Commission Delegated Regulation (EU) 2017/572 of 2 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on the specification of the offering of pre-and post-trade data and the level of disaggregation of data (see page 142 of this Official Journal).

(b) the regulated market in question has acquired through merger, takeover, or any other form of transfer of the whole or part of the business of a regulated market which was previously operated by a market operator which had its registered office or head office in the host Member State.

2. The operations of an MTF or OTF in a host Member State shall be considered to be of substantial importance for the functioning of the securities markets and the protection of investors in that host Member State where at least one of the criteria laid down in paragraph 1 is met in regard to that MTF or OTF and at least one of the following additional criteria is met:

(a) before one of the situations set out in paragraph 1 occurred in regard to the MTF or OTF, the trading venue had a market share of at least 10 % of trading in terms of total turnover in monetary terms in on-venue trading and systematic internaliser trading in the host Member State in at least one asset class subject to the transparency obligations of Regulation (EU) No 600/2014;

(b) the MTF or OTF is registered as an SME growth market.

CHAPTER VIII

FINAL PROVISIONS

Article 91

Entry into force and application

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

It shall apply from the date that appears first in the second subparagraph of Article 93(1) of Directive 2014/65/EU.

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

Done at Brussels, 25 April 2016.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX I

Record-keeping

Minimum list of records to be kept by investment firms depending upon the nature of their activities

Nature of obligation	Type of record	Summary of content	Legislative reference
Client assessment			
	Information to clients	Content as provided for under Article 24(4) of Directive 2014/65/EU and Articles 39 to 45 of this Regulation	Article 24(4) MIFID II Articles 39 to 45 of this Regulation
	Client agreements	Records as provided for under Article 25(5) of Directive 2014/65/EU	Article 25(5) MIFID II Article 53 of this Regulation
	Assessment of suitability and appropriateness	Content as provided for under Article 25(2) and (3) of Directive 2014/65/EU and Article 50 of this Regulation	Article 25(2) and (3) of Directive 2014/65/EU Articles 35, 36 and 37 of this Regulation
Order handling			
	Client order-handling — Aggregated transactions	Records as provided for under Articles 63 to 66 of this Regulation	Articles 24(1) and 28(1) of Directive 2014/65/EU Articles 63 to 66 of this Regulation
	Aggregation and allocation of trans-actions for own account	Records as provided for under Article 65 of this Regulation	Articles 28(1) and 24(1) of Directive 2014/65/EU Article 65 of this Regulation
Client Orders and transactions			
	Record keeping of client orders or decision to deal	Records as provided for under Article 69 of this Regulation	Article 16(6) of Directive 2014/65/EU Article 69 of this Regulation
	Record keeping of trans-actions and order processing	Records as provided for under Article 70 of this Regulation	Article 16(6) of Directive 2014/65/EU Article 70 of this Regulation
Reporting to clients			
	Obligation in respect of services provided to clients	Contents as provided for under Articles 53 to 58 of this Regulation	Article 24(1) and (6) and Article 25(1) and (6) of Directive 2014/65/EU Articles 53 to 58 of this Regulation
Safeguarding of client assets			
	Client financial instruments held by an investment firm	Records as provided for under Article 16(8) of Directive 2014/65/EU and under Article 2 of Commission Delegated Directive (EU) 2017/593	Article 16(8) of Directive 2014/65/EU Article 2 of Delegated Directive (EU) 2017/593

Nature of obligation	Type of record	Summary of content	Legislative reference
	Client funds held by an investment firm	Records as provided for under Article 16(9) of Directive 2014/65/EU and under Article 2 of Delegated Directive (EU) 2017/593	Article 16(9) of Directive 2014/65/EU Article 2 of Delegated Directive (EU) 2017/593
	Use of client financial instruments	Records provided for under Article 5 of Delegated Directive (EU) 2017/593	Article 16(8) to (10) of Directive 2014/65/EU Article 5 of Delegated Directive (EU) 2017/593

Communication with clients

	Information about Costs and associated charges	Contents as provided for under Article 45 of this Regulation	Article 24(4)(c) of Directive 2014/65/EU Article 45 of this Regulation
	Information about the investment firm and its services, financial instruments and safe-guarding of client assets	Content as provided for under Articles 45 and 46 of this Regulation	Article 24(4) of Directive 2014/65/EU Articles 45 and 46 of this Regulation
	Information to clients	Records of communication	Article 24(3) of Directive 2014/65/EU Article 39 of this Regulation
	Marketing communications (except in oral form)	Each marketing communication issued by the investment firm (except in oral form) as provided under Articles 36 and 37 of this Regulation	Article 24(3) of Directive 2014/65/EU Articles 36 and 37 of this Regulation
	Investment advice to retail clients	(i) The fact, time and date that investment advice was rendered and (ii) the financial instrument that was recommended (iii) the suitability report provided to the client	Article 25(6) of Directive 2014/65/EU Article 54 of this Regulation
	Investment research	Each item of investment research issued by the investment firm in a durable medium	Article 24(3) of Directive 2014/65/EU Articles 36 and 37 of this Regulation

Organisational requirements

	The firm's business and internal organisation	Records as provided for under Article 21(1)(h) of this Regulation	Article 16(2) to (10) of Directive 2014/65/EU Article 21(1)(h) of this Regulation
	Compliance reports	Each compliance report to management body	Article 16(2) of Directive 2014/65/EU Article 22(2)(b) and Article 25(2) of this Regulation
	Conflict of Interest record	Records as provided for under Article 35 of this Regulation	Article 16(3) of Directive 2014/65/EU Article 35 of this Regulation

Nature of obligation	Type of record	Summary of content	Legislative reference
	Inducements	The information dis-closed to clients under Article 24(9) of Directive 2014/65/EU	Article 24(9) of Directive 2014/65/EU Article 11 of Delegated Directive (EU) 2017/593
	Risk management reports	Each risk management report to senior management	Article 16(5) of Directive 2014/65/EU Article 23(1)(b) and Article 25(2) of this Regulation
	Internal audit reports	Each internal audit report to senior management	Article 16(5) of Directive 2014/65/EU Article 24 and Article 25(2) of this Regulation
	Complaints-handling records	Each complaint and the complaint handling measures taken to address the complaint	Article 16(2) of Directive 2014/65/EU Article 26 of this Regulation
	Records of personal transactions	Records as provided for under Article 29(2)(c) of this Regulation	Article 16(2) of Directive 2014/65/EU Article 29(2)(c) of this Regulation

ANNEX II

Costs and charges

Identified costs that should form part of the costs to be disclosed to the clients [1]

Table 1 — All costs and associated charges charged for the investment service(s) and/or ancillary services provided to the client that should form part of the amount to be disclosed

Cost items to be disclosed		Examples:
One-off charges related to the provision of an investment service	All costs and charges paid to the investment firm at the beginning or at the end of the provided investment service(s).	Deposit fees, termination fees and switching costs [1].
Ongoing charges related to the provision of an investment service	All ongoing costs and charges paid to investment firms for their services provided to the client.	Management fees, advisory fees, custodian fees.
All costs related to transactions initiated in the course of the provision of an investment service	All costs and charges that are related to transactions performed by the investment firm or other parties.	Broker commissions [2], entry- and exit-charges paid to the fund manager, platform fees, mark ups (embedded in the transaction price), stamp duty, transactions tax and foreign exchange costs.
Any charges that are related to ancillary services	Any costs and charges that are related to ancillary services that are not included in the costs mentioned above.	Research costs. Custody costs.
Incidental costs		Performance fees

[1] Switching costs should be understood as costs (if any) that are incurred by investors by switching from one investment firm to another investment firm.
[2] Broker commissions should be understood as costs that are charged by investment firms for the execution of orders.

Table 2 — All costs and associated charges related to the financial instrument that should form part of the amount to be disclosed

Cost items to be disclosed		Examples:
One-off charges	All costs and charges (included in the price or in addition to the price of the financial instrument) paid to product suppliers at the beginning or at the end of the investment in the financial instrument.	Front-loaded management fee, structuring fee [1], distribution fee.
Ongoing charges	All ongoing costs and charges related to the management of the financial product that are deducted from the value of the financial instrument during the investment in the financial instrument.	Management fees, service costs, swap fees, securities lending costs and taxes, financing costs.

[1] It should be noted that certain cost items appear in both tables but are not duplicative since they respectively refer to costs of the product and costs of the service. Examples are the management fees (in table 1, this refers to management fees charged by an investment firm providing the service of portfolio management to its clients while in Table 2 it refers to management fees charged by an investment fund manager to its investor) and broker commissions (in Table 1, they refer to commissions incurred by the investment firm when trading on behalf of its clients while in Table 2 they refer to commissions paid by investment funds when trading on behalf of the fund).

Cost items to be disclosed		Examples:
All costs related to the transactions	All costs and charges that incurred as a result of the acquisition and disposal of investments.	Broker commissions, entry- and exit-charges paid by the fund, mark ups embedded in the transaction price, stamp duty, transactions tax and foreign exchange costs.
Incidental costs		Performance fees

(1) Structuring fees should be understood as fees charged by manufacturers of structured investment products for structuring the products. They may cover a broader range of services provided by the manufacturer.

ANNEX III

Requirement for operators of trading venues to immediately inform their national competent authority

SECTION A

Signals that may indicate significant infringements of the rules of a trading venue or disorderly trading conditions or system disruptions in relation to a financial instrument

Significant infringements of the rules of a trading venue

1. Market participants infringe rules of the trading venue which aim to protect the market integrity, the orderly functioning of the market or the significant interests of the other market participants; and

2. A trading venue considers that an infringement is of sufficient severity or impact to justify consideration of disciplinary action.

Disorderly trading conditions

3. The price discovery process is interfered with over a significant period of time;

4. The capacities of the trading systems are reached or exceeded;

5. Market makers/liquidity providers repeatedly claim mis-trades; or

6. Breakdown or failure of critical mechanisms under Article 48 of Directive 2014/65/EU and its implementing measures which are designed to protect the trading venue against the risks of algorithmic trading.

System disruptions

7. Any major malfunction or breakdown of the system for market access that results in participants losing their ability to enter, adjust or cancel their orders;

8. Any major malfunction or breakdown of the system for the matching of transactions, that results in participants losing certainty over the status of completed transactions or live orders as well as unavailability of information indispensable for trading (e.g., index value dissemination for trading certain derivatives on that index);

9. Any major malfunction or breakdown of the systems for the dissemination of pre- and post-trade transparency and other relevant data published by trading venues in accordance with their obligations under Directive 2014/65/EU and Regulation (EU) No 600/2014;

10. Any major malfunction or breakdown of the systems of the trading venue to monitor and control the trading activities of the market participants; and any major malfunction or breakdown in the sphere of other interrelated services providers, in particular CCPs and CSDs, that has repercussions on the trading system.

SECTION B

Signals that may indicate abusive behaviour under Regulation (EU) No 596/2014

Signals of possible insider dealing or market manipulation

1. Unusual concentration of transactions and/or orders to trade in a particular financial instrument with one member/participant or between certain members/participants.

2. Unusual repetition of a transaction among a small number of members/participants over a certain period of time.

Signals of possible insider dealing

3. Unusual and significant trading or submission of orders to trade in the financial instruments of a company by certain members/participants before the announcement of important corporate events or of price sensitive information relating to the company; orders to trade/transactions resulting in sudden and unusual changes in the volume of orders/transactions and/or prices before public announcements regarding the financial instrument in question.

4. Whether orders to trade are given or transactions are undertaken by a market member/participant before or immediately after that member/participant or persons publicly known as linked to that member/participant produce or disseminate research or investment recommendations that are made publicly available.

Signals of possible market manipulation

The signals described below in points 18 to 23 are particularly relevant in an automated trading environment.

5. Orders to trade given or transactions undertaken which represent a significant proportion of the daily volume of transactions in the relevant financial instrument on the trading venue concerned, in particular when these activities lead to a significant change in the price of the financial instruments.

6. Orders to trade given or transactions undertaken by a member/participant with a significant buying or selling interest in a financial instrument which lead to significant changes in the price of the financial instrument on a trading venue.

7. Orders to trade given or transactions undertaken which are concentrated within a short time span in the trading session and lead to a price change which is subsequently reversed.

8. Orders to trade given which change the representation of the best bid or offer prices in a financial instrument admitted to trading or traded on a trading venue, or more generally the representation of the order book available to market participants, and are removed before they are executed.

9. Transactions or orders to trade by a market/participant with no other apparent justification than to increase/decrease the price or value of, or to have a significant impact on the supply of or demand for a financial instrument, namely near the reference point during the trading day, e.g. at the opening or near the close.

10. Buying or selling of a financial instrument at the reference time of the trading session (e.g. opening, closing, settlement) in an effort to increase, to decrease or to maintain the reference price (e.g. opening price, closing price, settlement price) at a specific level (usually known as marking the close).

11. Transactions or orders to trade which have the effect of, or are likely to have the effect of increasing/decreasing the weighted average price of the day or of a period during the session.

12. Transactions or orders to trade which have the effect of, or are likely to have the effect of, setting a market price when the liquidity of the financial instrument or the depth of the order book is not sufficient to fix a price within the session.

13. Execution of a transaction, changing the bid-offer prices when this spread is a factor in the determination of the price of another transaction whether or not on the same trading venue.

14. Entering orders representing significant volumes in the central order book of the trading system a few minutes before the price determination phase of the auction and cancelling these orders a few seconds before the order book is frozen for computing the auction price so that the theoretical opening price might look higher or lower than it otherwise would do.

15. Engaging in a transaction or series of transactions which are shown on a public display facility to give the impression of activity or price movement in a financial instrument (usually known as painting the tape).

16. Transactions carried out as a result of the entering of buy and sell orders to trade at or nearly at the same time, with the very similar quantity and similar price by the same or different but colluding market members/participants (usually known as improper matched orders).

17. Transactions or orders to trade which have the effect of, or are likely to have the effect of bypassing the trading safeguards of the market (e.g. as regards volume limits; price limits; bid/offer spread parameters; etc.).

18. Entering of orders to trade or a series of orders to trade, executing transactions or series of transactions likely to start or exacerbate a trend and to encourage other participants to accelerate or extend the trend in order to create an opportunity to close out/open a position at a favourable price (usually know as momentum ignition).

19. Submitting multiple or large orders to trade often away from the touch on one side of the order book in order to execute a trade on the other side of the order book. Once that trade has taken place, the manipulative orders will be removed (usually known as layering and spoofing).

20. Entry of small orders to trade in order to ascertain the level of hidden orders and particularly used to assess what is resting on a dark platform (usually know as ping order).

21. Entry of large numbers of orders to trade and/or cancellations and/or updates to orders to trade so as to create uncertainty for other participants, slowing down their process and to camouflage their own strategy (usually known as quote stuffing).

22. Posting of orders to trade, to attract other market members/participants employing traditional trading techniques ('slow traders'), that are then rapidly revised onto less generous terms, hoping to execute profitably against the incoming flow of 'slow traders' orders to trade (usually known as smoking).

23. Executing orders to trade or a series of orders to trade, in order to uncover orders of other participants, and then entering an order to trade to take advantage of the information obtained (usually known as phishing).

24. The extent to which, to the best knowledge of the operator of a trading venue, orders to trade given or transactions undertaken show evidence of position reversals in a short period and represent a significant proportion of the daily volume of transactions in the relevant financial instrument on the trading venue concerned, and might be associated with significant changes in the price of a financial instrument admitted to trading or traded on the trading venue.

Signals for cross-product market manipulation, including across different trading venues

The signals described below should be particularly considered by the operator of a trading venue where both a financial instrument and related financial instruments are admitted to trading or traded or where the above mentioned instruments are traded on several trading venues operated by the same operator.

25. Transactions or orders to trade which have the effect of, or are likely to have the effect of increasing/decreasing/maintaining the price of a financial instrument during the days preceding the issue, optional redemption or expiry of a related derivative or convertible;

26. Transactions or orders to trade which have the effect of, or are likely to have the effect of maintaining the price of the underlying financial instrument below or above the strike price, or other element used to determine the pay-out (e.g. barrier), of a related derivative at expiration date;

27. Transactions which have the effect of, or are likely to have the effect of modifying the price of the underlying financial instrument so that it surpasses/not reaches the strike price, or other element used to determine the pay-out (e.g. barrier), of a related derivative at expiration date;

28. Transactions which have the effect of, or are likely to have the effect of modifying the settlement price of a financial instrument when this price is used as a reference/determinant, namely, in the calculation of margins requirements;

29. Orders to trade given or transactions undertaken by a member/participant with a significant buying or selling interest in a financial instrument which lead to significant changes in the price of the related derivative or underlying asset admitted to trading on a trading venue;

30. Undertaking trading or entering orders to trade in one trading venue or outside a trading venue (including entering indications of interest) with a view to improperly influencing the price of a related financial instrument in another or in the same trading venue or outside a trading venue (usually known as cross-product manipulation (trading on financial instrument to improperly position the price of a related financial instrument in another or in the same trading venue or outside a trading venue)).

31. Creating or enhancing arbitrage possibilities between a financial instrument and another related financial instrument by influencing reference prices of one of the financial instruments can be carried out with different financial instruments (like rights/shares, cash markets/derivatives markets, warrants/shares, …). In the context of rights issues, it could be achieved by influencing the (theoretical) opening or (theoretical) closing price of the rights.

ANNEX IV

SECTION 1

Record keeping of client orders and decision to deal

1. Name and designation of the client
2. Name and designation of any relevant person acting on behalf of the client
3. A designation to identify the trader (Trader ID) responsible within the investment firm for the investment decision
4. A designation to identify the algorithm (Algo ID) responsible within the investment firm for the investment decision;
5. B/S indicator;
6. Instrument identification
7. Unit price and price notation;
8. Price
9. Price multiplier
10. Currency 1
11. Currency 2
12. Initial quantity and quantity notation;
13. Validity period
14. Type of the order;
15. Any other details, conditions and particular instructions from the client;
16. The date and exact time of the receipt of the order or the date and exact time of when the decision to deal was made. The exact time must be measured according to the methodology prescribed under the standards on clock synchronisation under Article 50(2) of Directive 2014/65/EU.

SECTION 2

Record keeping of transactions and order processing

1. name and designation of the client;
2. name and designation of any relevant person acting on behalf of the client;
3. a designation to identify the trader (Trader ID) responsible within the investment firm for the investment decision;
4. a designation to identify the Algo (Ago ID) responsible within the investment firm for the investment decision
5. Transaction reference number
6. a designation to identify the order (Order ID)
7. the identification code of the order assigned by the trading venue upon receipt of the order;
8. a unique identification for each group of aggregated clients' orders (which will be subsequently placed as one block order on a given trading venue). This identification should indicated 'aggregated_X' with X representing the number of clients whose orders have been aggregated.
9. the segment MIC code of the trading venue to which the order has been submitted.

10. the name and other designation of the person to whom the order was transmitted

11. designation to identify the Seller & the Buyer

12. the trading capacity

13. a designation to identify the Trader (Trader ID) responsible for the execution

14. a designation to identify the Algo (Algo ID) responsible for the execution

15. B/S indicator;

16. instrument identification

17. ultimate underlying

18. Put/Call identifier

19. Strike price

20. Up-front payment

21. Delivery type

22. Option style

23. Maturity date

24. unit price and price notation;

25. price

26. price multiplier

27. Currency 1

28. Currency 2

29. remaining quantity

30. modified quantity

31. executed quantity

32. the date and exact time of submission of the order or decision to deal. The exact time must be measured according to the methodology prescribed under the standards on clock synchronisation under Article 50(2) of Directive 2014/65/EU

33. the date and exact time of any message that is transmitted to and received from the trading venue in relation to any events affecting an order. The exact time must be measured according to the methodology prescribed under Commission Delegated Regulation (EU) 2017/574 ([1])

34. the date and exact time any message that is transmitted to and received from another investment firm in relation to any events affecting an order. The exact time must be measured according to the methodology prescribed under the standards on clock synchronisation under Article 50(2) of Directive 2014/65/EU

35. Any message that is transmitted to and received from the trading venue in relation to orders placed by the investment firm;

36. Any other details and conditions that was submitted to and received from another investment firm in relation with the order;

([1]) Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks (see page 148 of this Official Journal).

37. Each placed order's sequences in order to reflect the chronology of every event affecting it, including but not limited to modifications, cancellations and execution;

38. Short selling flag

39. SSR exemption flag;

40. Waiver flag

COMMISSION DELEGATED REGULATION (EU) 2017/566

of 18 May 2016

supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards for the ratio of unexecuted orders to transactions in order to prevent disorderly trading conditions

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU [1], and in particular Article 48(12)(b) thereof,

Whereas:

(1) Trading venues should have a number of systems, procedures and arrangements in place to ensure that algorithmic trading systems cannot create or contribute to disorderly trading conditions including systems to monitor and, where appropriate, limit the ratio of unexecuted orders to transactions.

(2) Taking into account their nature, voice trading systems should be exempt from the scope of this Regulation which should only apply to trading venues operating electronic continuous auction order book or quote-driven or hybrid trading systems.

(3) Directive 2014/65/EU extends the requirements relating to the determination of the ratio of unexecuted orders to transactions to multilateral trading facilities and organised trading facilities. It is therefore important that those venues are also within the scope of this Regulation.

(4) Trading venues should calculate the ratio of unexecuted orders to transactions effectively incurred by their members or participants at the level of each financial instrument traded on them in order to ensure effectively that the ratio does not lead to excessive volatility in that instrument.

(5) In order to ensure sufficient harmonisation across the Union of the arrangements to prevent disorderly trading conditions through the limitation of the ratio between unexecuted orders and transactions, a clear methodology to calculate the ratio of unexecuted orders to transactions with respect to all market participants should be laid down.

(6) The meaning of certain essential parameters to be used for the calculation of the ratio of unexecuted orders to transactions should be clarified.

(7) The calculation of the ratio of unexecuted orders to transactions entered into the system by a member or participant should be supported by an adequate observation period. On that basis, the calculation period of the effective ratio of unexecuted orders to transactions should not be longer than a trading session. However, trading venues should be allowed to set out shorter observation periods in case such shorter observation periods would contribute more effectively to maintain orderly trading conditions.

(8) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the related national provisions transposing Directive 2014/65/EU apply from the same date.

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

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

(10) The European Securities and Markets Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council [1],

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

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

(a) 'order' includes all input messages, including messages on submission, modification and cancellation sent to the trading system of a trading venue, relating to an order or a quote, but excluding cancellation messages sent subsequent to:

  (i) uncrossing in an auction;

  (ii) a loss of venue connectivity;

  (iii) the use of a kill functionality;

(b) 'transaction' means a totally or partially executed order;

(c) 'volume' means the quantity of financial instruments traded expressed as any of the following:

  (i) the number of instruments for shares, depositary receipts, ETFs, certificates and other similar financial instruments;

  (ii) the nominal value for bonds and structured finance products;

  (iii) the number of lots size or contracts for derivatives;

  (iv) metric tonnes of carbon dioxide for emission allowances.

Article 2

Obligation to calculate the ratio of unexecuted orders to transactions

Trading venues shall calculate the ratio of unexecuted orders to transactions effectively entered into the system by each of their members and participants for every financial instrument traded under an electronic continuous auction order book or a quote-driven or a hybrid trading system.

Article 3

Methodology

1. Trading venues shall calculate the ratio of unexecuted orders to transactions for each of their members or participants at least at the end of every trading session in both of the following ways:

(a) in volume terms: (total volume of orders/total volume of transactions) − 1;

(b) in number terms: (total number of orders/total number of transactions) − 1.

2. The maximum ratio of unexecuted orders to transactions calculated by the trading venue shall be deemed to have been exceeded by a member or participant of the trading venue during a trading session if the trading activity of that member or participant in one specific instrument, taking into account all phases of the trading session, including the auctions, exceeds either or both of the two ratios set out in paragraph 1.

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

3. Trading venues shall calculate the number of orders received from each member or participant following the counting methodology per order type set out in the Annex.

4. Where a trading venue uses an order type which is not explicitly laid down in the Annex, it shall count the messages in accordance with the general system behind the counting methodology and on the basis of the most similar order type appearing in the Annex.

Article 4

Entry into force and application

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

It shall apply from the date that appears first in the second subparagraph of Article 93(1) of Directive 2014/65/EU.

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

Done at Brussels, 18 May 2016.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Counting methodology for orders set out for each type

Types of order	Number of orders received by the trading venue to be counted when calculating the ratio of unexecuted orders to transactions (each submission, modification, cancellation shall be counted as one single order)	Updates potentially sent by the trading venue not to be counted when calculating the ratio of unexecuted orders to transactions (excluding executions/cancellations by market operations)
Limit	1	0
Limit — add	1	0
Limit — delete	1	0
Limit — modify	2 (any modifications entails a cancellation and a new insertion)	0
Stop	1	1 (when triggered)
Immediate (Market)	1	0
Immediate (Fill-or-Kill, Immediate-or-Cancel)	1 (and if deleted/cancelled 2)	0
Iceberg/reserve	1	0
Market-to-limit	1	1 (when triggered)
Quote	2 (1 for the buy side and 1 for the sell side)	0
Quote — add	2	0
Quote — delete	2	0
Quote — modify	4 (any modifications entails a cancellation and a new insertion)	0
Peg Market peg: an order to the opposite side of the (European) Best Bid and Offer (BBO) Primary peg: an order to the same side of the (European) BBO Midpoint peg: an order to the midpoint of the (European) BBO Alternate peg to the less aggressive of the midpoint or 1 tick Midpoint inside the same side of the Protected BBO	1	potentially unlimited as the order tracks the BBO
One-cancels-the-other: two orders are linked so that if one of the two is executed, then, the other one is removed by market operations	2	1 (when one leg trades, the other is cancelled)

Types of order	Number of orders received by the trading venue to be counted when calculating the ratio of unexecuted orders to transactions (each submission, modification, cancellation shall be counted as one single order)	Updates potentially sent by the trading venue not to be counted when calculating the ratio of unexecuted orders to transactions (excluding executions/cancellations by market operations)
One-cancels-the-other — add	2	
One-cancels-the-other — delete	2	
One-cancels-the-other — modify	4	
Trailing stop: Stop order which stop price at which the order is triggered changes in function of the (European) BBO	1	potentially unlimited as the stop limit tracks the BBO
At best limit order where the limit price is equal to the opposite side of the (European) BBO at the time of entry	1	0
Spread limit order whose yield is calculated by adding a spread to a benchmark's yield (two parameters: spread and benchmark)	1	potentially unlimited as the limit is dependent on another asset's quote
Strike match: minimum price for buy orders and maximum price for sell orders	1	potentially unlimited but limited in time (the lasting of the auction)
Order-on-event: order that is inactive until it is triggered by a specific event (similar to a stop order, except that the order, once triggered, does not necessarily be in the same way as the trend of the underlying: a buy order can be triggered while the stop price was triggered due to a fall of the financial instrument)	1	1 (when triggered)
'At the open'/'At the close': Order that is inactive until it is triggered by the opening or the closing of a market.	1	1 (when triggered)
Book-or-cancel/Post: order that cannot match the other side of the order book at the time it enters into the order book		
Book-or-cancel/Post — add	1 (2 if deleted/cancelled)	0
Book-or-cancel/Post — delete	1 (2 if deleted/cancelled)	0
Book-or-cancel/Post — modify	2	0
Withheld: order entered in the order book that is ready to be transformed as a firm order	2 (submission of the order + confirmation)	0

Types of order	Number of orders received by the trading venue to be counted when calculating the ratio of unexecuted orders to transactions (each submission, modification, cancellation shall be counted as one single order)	Updates potentially sent by the trading venue not to be counted when calculating the ratio of unexecuted orders to transactions (excluding executions/cancellations by market operations)
Deal order	1	0
TOP, TOP+ either placed on the top of the book or rejected (+: check on the available volume): an order which has to be both passive and at the BBO, failing which it is rejected.	1	0
Imbalance Order (IOOP or IOOC): an order which is only valid for auctions and which aims at filling the quantity imbalance (between the surplus and deficit sides) without affecting the price equilibrium.	1	potentially unlimited but limited in time (the lasting of the auction)
Linked order: an order which corresponds to a number of single orders each of which being on a different financial instrument. When a trade takes place on one of these orders, the volume of the other ones will be immediately reduced proportionally. This order type is typically used on the bond market.	1	potentially equal to the quantity of underlying entered
Sweep: allows participants to access integrated order-books. Best price sweep: work through price levels from the combined order books, to the limit price Sequential lit sweep: execute to the limit order price on the book of entry before any quantity is sent to the other book	1	0
Named: non-anonymous order	1	0
If-touched: triggered when the last, bid or ask price touches a certain level	1	1 (when triggered)
Guaranteed stop: This guarantees the execution at the stop price	1	1 (when triggered)
Combined orders such as options' strategy, futures' roll, etc.)	1	potentially unlimited

COMMISSION DELEGATED REGULATION (EU) 2017/567

of 18 May 2016

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 [1], and in particular Articles 2(2), 13(2), 15(5), 17(3), Article 19(2) and (3), and Articles 31(4), 40(8), 41(8), 42(7) and 45(10) thereof,

Whereas:

(1) This Regulation further specifies the criteria for the determination of 'liquid market' in accordance with Article 2(1)(17)(b) of Regulation (EU) No 600/2014. For this purpose it is necessary to specify the criteria for free float, average daily number of transactions and average daily turnover specifically for shares, depositary receipts, exchange traded funds and certificates to take into account the specificities of each of these financial instruments. Rules specifying how liquidity calculations should be performed during the initial stage after the financial instrument is admitted to trading are required to ensure a consistent and uniform application across the Union.

(2) The provisions in this Regulation are closely linked, since they deal with definitions and specify requirements in relation to pre- and post-trade transparency by systematic internalisers and data publication by trading venues and systematic internalisers, on the one hand, and the European Securities Markets Authority (ESMA) product intervention and position management powers, on the other. To ensure coherence between those provisions which should enter into force at the same time, and in order to facilitate a comprehensive view for stakeholders and, in particular, those subject to the obligations, it is necessary to include these provisions in a single Regulation.

(3) In order to allow for a minimum of liquid equity instruments to exist in all parts of the Union, the competent authority of a Member State where fewer than five liquid financial instruments for each of shares, depositary receipts, exchange traded funds and certificates are traded, should be able to designate one or more additional liquid financial instruments, provided that the total number of financial instruments which are considered to have a liquid market does not exceed five in each of these categories of financial instruments.

(4) In order to ensure that market data is provided on a reasonable commercial basis in a uniform manner in the Union, this Regulation specifies the conditions that market operators and investment firms operating trading venues and systematic internalisers must fulfil. These conditions are based on the objective to ensure that the obligation to provide market data on a reasonable commercial basis is sufficiently clear to allow for an effective and uniform application whilst taking into account different operating models and costs structures of market operators and investment firms operating a trading venue and systematic internalisers.

(5) To ensure that fees for market data are set at a reasonable level, the fulfilment of the obligation to provide market data on a reasonable commercial basis requires that fees be based on a reasonable relationship to the cost of producing and disseminating that data. Therefore, without prejudice to the application of competition rules, data providers should determine their fees on the basis of their costs whilst being allowed to obtain a reasonable margin based on factors such as the operating profit margin, the return on costs, the return on operating assets and the return on capital. Where data providers incur joint costs for data provision and the provision of other

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

services, costs of market data provision may include an appropriate share of joint costs arising from any other relevant service provided. Since specifying exact costs is complex, cost allocation and cost apportionment methodologies should be specified instead, leaving the specification of those costs to the discretion of market data providers whilst having regard to the objective of ensuring that fees for market data are set at a reasonable level in the Union.

(6) Market data should be provided on a non-discriminatory basis, which requires that the same price and other terms and conditions should be offered to all customers who are in the same category according to published objective criteria.

(7) To allow data users to obtain market data without having to buy other services, market data should be offered unbundled from other services. To avoid data users being charged more than once for the same market data when buying data sets from trading venues and from other market data distributors, market data should be offered on a per user basis unless doing so would be disproportionate considering the cost of such way of offering that data in respect of the scale and the scope of the market data provided by the market operator or the investment firm operating a trading venue or the systematic internaliser.

(8) In order to allow for data users and competent authorities to effectively assess whether market data is provided on a reasonable commercial basis, it is necessary that the essential conditions for its provision are disclosed to the public. Data providers should therefore disclose information about their fees and the content of the market data, as well as the cost accounting methodologies used to determine their costs without having to disclose their actual costs.

(9) This Regulation further specifies the conditions which systematic internalisers must fulfil to comply with the obligation to make quotes public on a regular and continuous basis during normal trading hours and easily accessible to other market participants to ensure that market participants wishing to access the quotes may effectively access them.

(10) Where systematic internalisers publish quotes through more than one means of publication they should provide their quotes simultaneously through each arrangement to ensure that the quotes published are consistent and that market participants may access the information at the same time. Where systematic internalisers make quotes public through the arrangements of a regulated market or a Multilateral Trading Facility (MTF) or through a data reporting services provider they should disclose their identity in the quote in order to enable market participants to direct their orders to it.

(11) This Regulation further specifies various technical aspects of the scope of the transparency obligations of systematic internalisers in order to ensure a consistent and uniform application across the Union. It is necessary that the exception to systematic internalisers' obligation to make public their quotes on a regular and continuous basis be strictly limited to situations where the continued provision of firm prices to clients may be contrary to the prudent management of the risks the investment firm is exposed to in its capacity as systematic internalisers, having regard to other mechanisms which may provide additional safeguards against such risks.

(12) In order to ensure that the exception to systematic internalisers obligations to execute the orders at the quoted prices at the time of reception of the order in accordance with Article 15(2) of Regulation (EU) No 600/2014 is limited to transactions which by their nature do not contribute to price formation, this Regulation further specifies exhaustively the conditions for what constitutes transactions in several securities as part of one transaction and orders subject to conditions other than the current market prices.

(13) The criterion specifying that a price falls within a public range close to market conditions reflects the need to ensure that execution by systematic internalisers contribute to price formation whilst not impeding on the possibility for systematic internalisers to offer price improvement in justified cases.

(14) In order to ensure that customers have access to systematic internalisers quotes in a non-discriminatory way but at the same time ensuring a proper risk management which takes into account the nature, scale and complexity

of the activities of individual firms, it is necessary to specify that the number or volume of orders from the same client should be regarded as considerably exceeding the norm where a systematic internaliser cannot execute those orders without exposing itself to undue risk, something which should be defined in advance as a part of the firm's risk management policy and be based on objective factors and be stated in writing and made available to customers or potential customers.

(15) Since liquidity providers and systematic internalisers both trade on own account and incur comparable levels of risks, it is appropriate to determine the size specific to the instrument in a uniform way for these categories. Therefore, the size specific to the instrument for the purposes of Article 18(6) of Regulation (EU) No 600/2014 should be the size specific to the instrument determined in accordance with Article 9(5)(d) of Regulation (EU) No 600/2014 and as further specified in regulatory technical standards in accordance with this provision.

(16) In order to specify the elements of portfolio compression, so as to delineate it from trading and clearing services, it is necessary to identify the process whereby derivatives are wholly or partially terminated and replaced by a new derivative, in particular the steps of the process, the content of the agreement and the legal documentation supporting the portfolio compression.

(17) To ensure that suitable transparency of portfolio compression performed by counterparties is achieved, it is necessary to specify the information which should be made public.

(18) It is necessary to specify certain aspects of the intervention powers of both the relevant competent authorities and, in exceptional cases, ESMA established and exercising its powers in accordance with Regulation (EU) No 1095/2010 of the European Parliament and of the Council ([1]) and the European Banking Authority (EBA) established and exercising its powers in accordance with Regulation (EU) No 1093/2010 of the European Parliament and of the Council ([2]) as regards significant investor protection concern or 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 at least one Member State or respectively of the Union. The existence of a 'threat', one of the prerequisites of the intervention in the perspective of the orderly functioning and integrity of financial or commodity markets or stability of the financial system, would require the existence of a greater concern than a 'significant concern', which is the prerequisite of the intervention for investor protection.

(19) A list of criteria and factors to be taken into account by competent authorities, ESMA and EBA in determining when there is such a concern or threat should be established to ensure a consistent approach while permitting appropriate action to be taken where unforeseen adverse events or developments occur. The need to assess all criteria and factors that could be present in a specific factual situation should not prevent however the temporary intervention power from being used by competent authorities, ESMA and EBA where only one of the factors or criteria leads to such a concern or threat.

(20) It is necessary to specify the circumstances under which ESMA can use its position management powers in accordance with Regulation (EU) No 600/2014 in order to ensure a consistent approach while permitting appropriate action to be taken where unforeseen adverse events or developments occur.

(21) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions of this Regulation and the provisions laid down in Regulation (EU) No 600/2014 apply from the same date. However, to ensure that the new transparency regulatory regime can operate effectively, certain provisions of this Regulation should apply from the date of its entry into force,

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

([2]) Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

HAS ADOPTED THIS REGULATION:

CHAPTER I

DETERMINING LIQUID MARKETS FOR EQUITY INSTRUMENTS

Article 1

Determining liquid markets for shares

(Article 2(1)(17)(b) of Regulation (EU) No 600/2014)

1. For the purposes of Article 2(1)(17)(b) of Regulation (EU) No 600/2014, a share that is traded daily shall be considered to have a liquid market where all of the following conditions are satisfied:

(a) the free float of the share is:

(i) not less than EUR 100 million for shares admitted to trading on a regulated market;

(ii) not less than EUR 200 million for shares that are only traded on MTFs;

(b) the average daily number of transactions in the share is not less than 250;

(c) the average daily turnover for the share is not less than EUR 1 million.

2. For the purposes of paragraph 1(a), the free float of a share shall be calculated by multiplying the number of outstanding shares by the price per share, excluding individual holdings in that share that exceed 5 % of the total voting rights of the issuer, unless those holdings are held by a collective investment undertaking or a pension fund. Voting rights shall be calculated by reference to the total number of shares to which voting rights are attached, regardless of whether the exercise of the voting right is suspended.

3. For the purposes of paragraph 1(a)(ii), where no actual information is available in accordance with paragraph 2, the free float of a share that is only traded on MTFs shall be calculated by multiplying the number of outstanding shares by the price per share.

4. For the purposes of paragraph 1(c), the daily turnover of a share shall be calculated by aggregating the results of multiplying, for each transaction executed during a trading day, the number of shares exchanged between the buyer and the seller by the price per share.

5. During the six-week period commencing on the first trading day following the first admission of a share to trading on a regulated market or an MTF, that share shall be considered to have a liquid market for the purposes of Article 2(1)(17)(b) of Regulation (EU) No 600/2014 where the sum obtained by multiplying the number of outstanding shares by the price at which the share stands at the start of the first trading day is estimated to be not less than EUR 200 million, and, where, according to estimated data for that period, the conditions set out in paragraph 1(b) and (c) are fulfilled.

6. Where fewer than five shares traded on the trading venues of a Member State and first admitted to trading in that Member State are considered to have a liquid market in accordance with paragraph 1, the competent authority of that Member State may designate one or more share first admitted to trading on those trading venues as share considered to have a liquid market, provided that the total number of shares first admitted to trading in that Member State and considered to have a liquid market does not exceed five.

Article 2

Determining liquid markets for depositary receipts

(Article 2(1)(17)(b) of Regulation (EU) No 600/2014)

1. For the purposes of Article 2(1)(17)(b) of Regulation (EU) No 600/2014, a depositary receipt that is traded daily shall be considered to have a liquid market where all of the following conditions are satisfied:

(a) the free float is not less than EUR 100 million;

(b) the average daily number of transactions in the depositary receipt is not less than 250;

(c) the average daily turnover for the depositary receipt is not less than EUR 1 million.

2. For the purposes of paragraph 1(a), the free float of a depositary receipt shall be calculated by multiplying the number of outstanding units of the depositary receipt by the price per unit.

3. For the purposes of paragraph 1(c), the daily turnover of a depositary receipt shall be calculated by aggregating the results of multiplying, for each transaction executed during a trading day, the number of units of the depositary receipt exchanged between the buyer and the seller by the price per unit.

4. For the six-week period commencing on the first day of trading following the first admission of a depositary receipt to trading on a trading venue, that depositary receipt shall be considered to have a liquid market for the purposes of Article 2(1)(17)(b) of Regulation (EU) No 600/2014 where the estimated free float at the start of the first day of trading stands at not less than EUR 100 million and, where, according to estimated data for that period, the conditions set out in paragraph 1(b) and (c) are fulfilled.

5. Where fewer than five depositary receipts traded on the trading venues of a Member State and first admitted to trading in that Member State are considered to have a liquid market in accordance with paragraph 1, the competent authority of that Member State may designate one or more depositary receipt first admitted to trading on those trading venues as depositary receipt considered to have a liquid market, provided that the total number of depositary receipts first admitted to trading in that Member State and considered to have a liquid market does not exceed five.

Article 3

Determining liquid markets for exchange traded funds

(Article 2(1)(17)(b) of Regulation (EU) No 600/2014)

1. For the purposes of Article 2(1)(17)(b) of Regulation (EU) No 600/2014, an exchange traded fund that is traded daily shall be considered to have a liquid market where all of the following conditions are satisfied:

(a) the free float is not less than 100 units;

(b) the average daily number of transactions in the exchange traded fund is not less than 10;

(c) the average daily turnover for the exchange traded fund is not less than EUR 500 000.

2. For the purposes of paragraph 1(a), the free float of an exchange traded fund shall be the number of units issued for trading.

3. For the purposes of paragraph 1(c), the daily turnover for the exchange traded fund shall be calculated by aggregating the results of multiplying, for each transaction executed during a trading day, the number of units of the exchange traded fund exchanged between the buyer and the seller by the price per unit.

4. During the six-week period commencing on the first trading day following the first admission of an exchange traded fund to trading on a trading venue, that exchange traded fund shall be considered to have a liquid market for the purposes of Article 2(1)(17)(b) of Regulation (EU) No 600/2014 where the estimated free float at the start of the first trading day stands at not less than 100 units and, where, according to estimated data for that period, the conditions set out in paragraph 1(b) and (c) are fulfilled.

5. Where fewer than five exchange traded funds traded on the trading venues of a Member State and first admitted to trading in that Member State are considered to have a liquid market in accordance with paragraph 1, the competent authority of that Member State may designate one or more exchange traded fund first admitted to trading on those trading venues as exchange traded fund considered to have a liquid market, provided that the total number of exchange traded funds first admitted to trading in that Member State and considered to have a liquid market does not exceed five.

Article 4

Determining liquid markets for certificates

(Article 2(1)(17)(b) of Regulation (EU) No 600/2014)

1. For the purposes of Article 2(1)(17)(b) of Regulation (EU) No 600/2014, a certificate that is traded daily shall be considered to have a liquid market where all of the following conditions are satisfied:

(a) the free float is not less than EUR 1 million;

(b) the average daily number of transactions in the certificate is not less than 20;

(c) the average daily turnover for the certificate is not less than EUR 500 000.

2. For the purposes of paragraph 1(a), the free float of a certificate shall be the issuance size irrespective of the number of units issued.

3. For the purposes of paragraph 1(c), the daily turnover for the certificate shall be calculated by aggregating the results of multiplying, for each transaction executed during a trading day, the number of units of the certificate exchanged between the buyer and the seller by the price per unit.

4. During the six-week period commencing on the first trading day following the first admission of a certificate to trading on a trading venue, that certificate shall be considered to have a liquid market for the purposes of Article 2(1)(17)(b) of Regulation (EU) No 600/2014 where the estimated free float at the start of the first trading day stands at not less than EUR 1 million, and, where, according to estimated data for that period, the conditions set out in paragraph 1(b) and (c) are fulfilled.

5. Where fewer than five certificates traded on the trading venues of a Member State and first admitted to trading in that Member State are considered to have a liquid market in accordance with paragraph 1, the competent authority of that Member State may designate one or more certificate first admitted to trading on those trading venues as certificate considered to have a liquid market, provided that the total number of certificates first admitted to trading in that Member State and considered to have a liquid market does not exceed five.

Article 5

Assessment of liquidity of equity instruments by the competent authorities

(Article 2(1)(17)(b) of Regulation (EU) No 600/2014)

1. The competent authority of the most relevant market in terms of liquidity as specified in Article 16 of Commission Delegated Regulation (EU) 2017/590 ([1]) shall assess whether a share, depositary receipt, exchange traded fund or a certificate has a liquid market for the purposes of Article 2(1)(17)(b) of Regulation (EU) No 600/2014 in accordance with Articles 1 to 4 in each of the following scenarios:

(a) before the financial instrument is first traded on the trading venue, as specified in Articles 1(5), 2(4), 3(4) and 4(4);

(b) between the end of the first four weeks of trading and the end of the first six weeks of trading of the financial instrument. The assessment for this scenario shall be based on the free float as at the last trading day of the first four weeks of trading, the average daily number of transactions and the average daily turnover taking into consideration all transactions executed in the Union for that financial instrument during the first four weeks of trading;

([1]) Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities (see page 449 of this Official Journal).

(c) between the end of every calendar year and before 1 March of the following year for financial instruments traded on a trading venue before 1 December of the relevant calendar year. The assessment for this scenario shall be based on the free float as at the last trading day of the relevant calendar year, the average daily number of transactions and the average daily turnover taking into consideration all transactions executed in the Union for that financial instrument in that year;

(d) immediately after the moment where, following a corporate action, any previous assessment has changed.

Competent authorities shall ensure that the result of their assessment is published immediately upon completion of the assessment.

2. Competent authorities, market operators and investment firms including investment firms operating a trading venue shall use the information published in accordance with paragraph 1:

(a) for a period of six weeks commencing on the first day of trading of the financial instrument where the assessment is carried out pursuant to paragraph 1(a) of this Article;

(b) for a period commencing six weeks after the first day of trading of that financial instrument and ending on 31 March of the year of publication of the information in accordance with paragraph 1(c) of this Article where the assessment is carried out pursuant to paragraph 1(b) of this Article;

(c) for a period of one year commencing on 1 April following the date of publication where the assessment is carried out pursuant to paragraph 1(c) of this Article.

Where the information referred to in this paragraph is replaced by new information pursuant to paragraph 1(d) of this Article, competent authorities, market operators and investment firms including investment firms operating a trading venue shall use that new information for the purposes Article 2(1)(17)(b) of Regulation (EU) No 600/2014.

3. For the purposes of paragraph 1, trading venues shall submit to competent authorities the information set out in the Annex within the following timeframes:

(a) for financial instruments which are admitted to trading for the first time, before the day on which the financial instrument is first traded;

(b) for financial instruments already admitted to trading, in all the following timeframes:

(i) no later than three days after the end of the first four weeks of trading;

(ii) after the end of every calendar year but no later than 3 January of the following year;

(iii) immediately after the moment where, following a corporate action, the information previously submitted to the competent authority has changed.

CHAPTER II

DATA PROVISION OBLIGATIONS FOR TRADING VENUES AND SYSTEMATIC INTERNALISERS

Article 6

Obligation to provide market data on a reasonable commercial basis

(Article 13(1), 15(1) and 18(8) of Regulation (EU) No 600/2014)

1. For the purposes of making market data containing the information set out in Articles 3, 4, 6 to 11, 15 and 18 of Regulation (EU) No 600/2014 available to the public on a reasonable commercial basis, market operators and investment firms operating a trading venue and systematic internalisers shall, in accordance with Articles 13(1), 15(1) and 18(8) of Regulation (EU) No 600/2014, comply with the obligations set out in Articles 7 to 11 of this Regulation.

2. Articles 7, 8(2), 9, 10(2) and 11 shall not apply to market operators or investment firms operating trading venues or to systematic internalisers that make market data available to the public free of charge.

Article 7

Obligation to provide market data on the basis of cost

(Article 13(1), 15(1) and 18(8) of Regulation (EU) No 600/2014)

1. The price of market data shall be based on the cost of producing and disseminating such data and may include a reasonable margin.

2. The cost of producing and disseminating market data may include an appropriate share of joint costs for other services provided by market operators or investment firms operating a trading venue or by systematic internalisers.

Article 8

Obligation to provide market data on a non-discriminatory basis

(Article 13(1), 15(1) and 18(8) of Regulation (EU) No 600/2014)

1. Market operators and investment firms operating a trading venue and systematic internalisers shall make market data available at the same price and on the same terms and conditions to all customers falling within the same category in accordance with published objective criteria.

2. Any differentials in prices charged to different categories of customers shall be proportionate to the value which the market data represents to those customers, taking into account:

(a) the scope and scale of the market data including the number of financial instruments covered and their trading volume;

(b) the use made by the customer of the market data, including whether it is used for the customer's own trading activities, for resale or for data aggregation.

3. For the purposes of paragraph 1, market operators and investment firms operating a trading venue and systematic internalisers shall have scalable capacities in place to ensure that customers obtain timely access to market data at all times on a non-discriminatory basis.

Article 9

Obligations in relation to per user fees

(Article 13(1), 15(1) and 18(8) of Regulation (EU) No 600/2014)

1. Market operators and investment firms operating a trading venue and systematic internalisers shall charge for the use of market data according to the use made by the individual end-users of the market data ('per user basis'). Market operators and investment firms operating a trading venue and systematic internalisers shall put arrangements in place to ensure that each individual use of market data is charged only once.

2. By way of derogation from paragraph 1, market operators and investment firms operating a trading venue and systematic internalisers may decide not to make market data available on a per user basis where to charge on a per user basis is disproportionate to the cost of making that data available, having regard to the scale and scope of the data.

3. Market operators and investment firms operating a trading venue and systematic internalisers shall provide grounds for the refusal to make market data available on a per user basis and shall publish those grounds on their webpage.

Article 10

Obligation to keep data unbundled and to disaggregate market data

(Article 13(1), 15(1) and 18(8) of Regulation (EU) No 600/2014)

1. Market operators and investment firms operating a trading venue and systematic internalisers shall make market data available without being bundled with other services.

2. Prices for market data shall be charged on the basis of the level of market data disaggregation provided for in Article 12(1) of Regulation (EU) No 600/2014.

Article 11

Transparency obligation

(Article 13(1), 15(1) and 18(8) of Regulation (EU) No 600/2014)

1. Market operators and investment firms operating a trading venue and systematic internalisers shall disclose the price and other terms and conditions for the provision of the market data in a manner which is easily accessible to the public.

2. The disclosure shall include the following:

(a) current price lists, including:

- fees per display user;
- non-display fees;
- discount policies;
- fees associated with licence conditions;
- fees for pre-trade and for post-trade market data;
- fees for other subsets of information, including those required in accordance with Commission Delegated Regulation (EU) 2017/572 ([1]);
- other contractual terms and conditions regarding the current price list;

(b) advance disclosure with a minimum of 90 days' notice of future price changes;

(c) information on the content of the market data including:

(i) the number of instruments covered;

(ii) the total turnover of instruments covered;

(iii) pre-trade and post-trade market data ratio;

(iv) information on any data provided in addition to market data;

(v) the date of the last licence fee adaption for market data provided;

(d) revenue obtained from making market data available and the proportion of that revenue compared to the total revenue of the market operator and investment firm operating a trading venue or systematic internalisers;

(e) information on how the price was set, including the cost accounting methodologies used and the specific principles according to which direct and variable joint costs are allocated and fixed joint costs are apportioned, between the production and dissemination of market data and other services provided by market operators and investment firms operating a trading venue or systematic internalisers.

([1]) Commission Delegated Regulation (EU) 2017/572 of 2 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on the specification of the offering of pre-and post-trade data and the level of disaggregation of data (see page 142 of this Official Journal).

CHAPTER III

DATA PUBLICATION OBLIGATIONS FOR SYSTEMATIC INTERNALISERS

Article 12

Obligation for systematic internalisers to make quotes public on a regular and continuous basis during normal trading hours

(Article 15(1) of Regulation (EU) No 600/2014)

For the purposes of Article 15(1) of Regulation (EU) No 600/2014, a systematic internaliser shall be considered to make public its quotes on a regular and continuous basis during normal trading hours only where the systematic internaliser makes the quotes available at all times during the hours which the systematic internaliser has established and published in advance as its normal trading hours.

Article 13

Obligation for systematic internalisers to make quotes easily accessible

(Article 15(1) of Regulation (EU) No 600/2014)

1. Systematic internalisers shall specify and update on their website's homepage which of the publication arrangements set out in Article 17(3)(a) of Regulation (EU) No 600/2014 they use to make public their quotes.

2. Where systematic internalisers make their quotes public through the arrangements of a trading venue or an APA, the systematic internaliser shall disclose their identity in the quote.

3. Where systematic internalisers employ more than one arrangement to make public their quotes, publication of the quotes shall occur simultaneously.

4. Systematic internalisers shall make public their quotes in a machine-readable format. Quotes shall be considered to be published in a machine-readable format where the publication meets the criteria set out in Commission Delegated Regulation (EU) 2017/571 ([1]).

5. Where systematic internalisers make public their quotes through proprietary arrangements only, the quotes shall also be made public in a human-readable format. Quotes shall be considered to be published in a human-readable format where:

(a) the content of the quote is in a format which can be understood by the average reader;

(b) the quote is published on the systematic internaliser's website and the website's homepage contains clear instructions for accessing the quote.

6. Quotes shall be published using the standards and specifications set out in Commission Delegated Regulation (EU) 2017/587 ([2]).

Article 14

Execution of orders by systematic internalisers

(Article 15(1), 15(2) and 15(3) of Regulation (EU) No 600/2014)

1. For the purposes of Article 15(1) of Regulation (EU) No 600/2014, exceptional market conditions are considered to exist where to impose on a systematic internaliser an obligation to provide firm quotes to clients would be contrary to prudent risk management and, in particular, where:

(a) the trading venue where the financial instrument was first admitted to trading or the most relevant market in terms of liquidity halts trading for that financial instrument in accordance with Article 48(5) of Directive 2014/65/EU;

([1]) Commission Delegated Regulation (EU) 2017/571 of 2 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the authorization, organisational requirements and the publication of transactions for data reporting services providers (see page 126 of this Official Journal).

([2]) Commission Delegated Regulation (EU) 2017/587 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser (see page 387 of this Official Journal), Table 2 of Annex I.

(b) the trading venue where the financial instrument was first admitted to trading or the most relevant market in terms of liquidity allows market making obligations to be suspended;

(c) in the case of an exchange traded fund, a reliable market price is not available for a significant number of instruments underlying the ETF or the index;

(d) a competent authority prohibits short sales in that financial instrument according to Article 20 of Regulation (EU) No 236/2012 of the European Parliament and of the Council ([1]).

2. For the purposes of Article 15(1) of Regulation (EU) No 600/2014, a systematic internaliser may update its quotes at any time, provided at all times that the updated quotes are the consequence of, and consistent with, genuine intentions of the systematic internaliser to trade with its clients in a non-discriminatory manner.

3. For the purposes of Article 15(2) of Regulation (EU) No 600/2014, a price falls within a public range close to market conditions where the following conditions are fulfilled:

(a) the price is within the bid and offer quotes of the systematic internaliser;

(b) the quotes referred to in point (a) reflect prevailing market conditions for the relevant financial instrument in accordance with Article 14(7) of Regulation (EU) No 600/2014.

4. For the purposes of Article 15(3) of Regulation (EU) No 600/2014, execution in several securities shall be considered part of one transaction where the criteria laid down in Delegated Regulation (EU) 2017/587 are fulfilled.

5. For the purposes of Article 15(3) of Regulation (EU) No 600/2014, an order shall be considered subject to conditions other than the current market price where the criteria laid down in Delegated Regulation (EU) 2017/587 are fulfilled.

Article 15

Orders considerably exceeding the norm

(Article 17(2) of Regulation (EU) No 600/2014)

1. For the purposes of Article 17(2) of Regulation (EU) No 600/2014, the number or volume of orders shall be considered to considerably exceed the norm where a systematic internaliser cannot execute the number or volume of those orders without exposing itself to undue risk.

2. Investment firms acting as systematic internalisers shall determine in advance and in a manner that is objective and consistent with their risk management policy and procedures referred to in Article 23 of Commission Delegated Regulation (EU) 2017/565 ([2]), when the number or volume of orders sought by clients is considered to expose the firm to undue risk.

3. For the purposes of paragraph 2, a systematic internaliser shall establish, maintain and implement as part of its risk management policy and procedures, a policy for identifying the number or volume of orders that it can execute without being exposed to undue risk, taking into account both the capital that the firm has available to cover the risk for that type of trade and the prevailing conditions in the market.

4. In accordance with Article 17(2) of Regulation (EU) No 600/2014, the policy referred to in paragraph 3 shall be non-discriminatory to clients.

([1]) Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps (OJ L 86, 24.3.2012, p. 1).

([2]) Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (see page 1 of this Official Journal).

Article 16

Size specific to the instrument

(Article 18(6) of Regulation (EU) No 600/2014)

For the purposes of Article 18(6) of Regulation (EU) No 600/2014, the size specific to the instrument in respect of instruments traded on request for quote, voice, hybrid or other trading forms shall be as set out in Annex III to Commission Delegated Regulation (EU) 2017/583 ([1]).

CHAPTER IV

DERIVATIVES

Article 17

Elements of Portfolio compression

(Article 31(4) of Regulation (EU) No 600/2014)

1. For the purposes of Article 31(1) of Regulation (EU) No 600/2014, investment firms and market operators providing portfolio compression shall fulfil the conditions in paragraphs 2 to 6.

2. Investment firms and market operators shall conclude an agreement with the participants to the portfolio compression providing for the compression process and its legal effects, including identifying the point in time at which each portfolio compression becomes legally binding.

3. The agreement referred to in paragraph 2 shall include all relevant legal documentation describing how derivatives submitted for inclusion in the portfolio compression are terminated and how they are replaced by other derivatives.

4. Before each compression process is initiated, investment firms and market operators providing portfolio compression shall:

(a) require each participant to the portfolio compression to specify the participant's risk tolerance including specifying a limit for counterparty risk, a limit for market risk and a cash payment tolerance. Investment firms and market operators shall respect the risk tolerance specified by the participants in the portfolio compression;

(b) link the derivatives submitted for portfolio compression and submit to each participant a portfolio compression proposal that includes the following information:

  (i) the identification of the counterparties affected by the compression,

  (ii) the related change to the combined notional value of the derivatives,

  (iii) the variation of the combined notional amount compared to the risk tolerance specified.

5. In order to adjust the compression to the risk tolerance set by the participants to the portfolio compression and in order to maximise the efficiency of the portfolio compression, investment firms and market operators may grant participants additional time to add derivatives eligible for termination or reduction.

6. Investment firms and market operators shall only perform the portfolio compression once all participants to the portfolio compression have agreed to the portfolio compression proposal.

Article 18

Publication requirements for Portfolio compression

(Article 31(4) of Regulation (EU) No 600/2014)

1. For the purposes of Article 31(2) of Regulation (EU) No 600/2014 investment firms and market operators shall make the following information public through an APA for each portfolio compression cycle:

(a) a list of derivatives submitted for inclusion in the portfolio compression,

(b) a list of derivatives replacing the terminated derivatives,

([1]) Commission Delegated Regulation (EU) 2017/583 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives (see page 229 of this Official Journal).

(c) a list of derivatives changed or terminated as a result of the portfolio compression,

(d) the number of derivatives and their value expressed in terms of notional amount.

The information referred to in the first subparagraph shall be disaggregated per type of derivative and per currency.

2. Investment firms and market operators shall make public the information referred to in paragraph 1 as close to real-time as is technically possible and no later than the close of the following business day after a compression proposal becomes legally binding in accordance with the agreement referred to in Article 17(2).

CHAPTER V

SUPERVISORY MEASURES ON PRODUCT INTERVENTION AND POSITION MANAGEMENT

SECTION 1

Product intervention

Article 19

Criteria and factors for the purposes of ESMA temporary product intervention powers

(Article 40(2) of Regulation (EU) No 600/2014)

1. For the purposes of Article 40(2)(a) of Regulation (EU) No 600/2014, ESMA shall assess the relevance of all factors and criteria listed in paragraph 2, and take into consideration all relevant factors and criteria in determining when the marketing, distribution or sale of certain financial instruments or financial instruments with certain specified features or a type of financial activity or practice creates 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.

For the purposes of the first subparagraph, ESMA may determine the existence of 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 based on one or more of those factors and criteria.

2. The factors and criteria to be assessed by ESMA to determine whether 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 shall be the following:

(a) the degree of complexity of the financial instrument or type of financial activity or practice in relation to the type of clients, as assessed in accordance with point (c), involved in the financial activity or financial practice, or to whom the financial instrument is marketed or sold, taking into account, in particular:

— the type of the underlying or reference assets and the degree of transparency of the underlying or reference assets;

— the degree of transparency of costs and charges associated with the financial instrument, financial activity or financial practice and, in particular, the lack of transparency resulting from multiple layers of costs and charges;

— the complexity of the performance calculation, taking into account in particular whether the return is dependent on the performance of one or more underlying or reference assets which are in turn affected by other factors or whether the return depends not only on the values of the underlying or reference assets at the initial and maturity dates, but also on the values during the lifetime of the product;

— the nature and scale of any risks;

— whether the instrument or service is bundled with other products or services; or

— the complexity of any terms and conditions;

(b) the size of potential detrimental consequences, considering in particular:

— the notional value of the financial instrument;

— the number of clients, investors or market participants involved;

— the relative share of the product in investors' portfolios;

— the probability, scale and nature of any detriment, including the amount of loss potentially suffered;

— the anticipated duration of the detrimental consequences;

— the volume of the issuance;

— the number of intermediaries involved;

— the growth of the market or sales; or

— the average amount invested by each client in the financial instrument;

(c) the type of clients involved in a financial activity or financial practice or to whom a financial instrument is marketed or sold, taking into account, in particular:

— whether the client is a retail client, a professional client or an eligible counterparty;

— clients' skills and abilities, including the level of education, experience with similar financial instruments or selling practices;

— clients' economic situation, including their income and wealth;

— clients' core financial objectives, including pension saving and home ownership financing; or

— whether the instrument or service is being sold to clients outside the intended target market or whether the target market has not been adequately identified;

(d) the degree of transparency of the financial instrument or type of financial activity or practice, taking into account, in particular:

— the type and transparency of the underlying;

— any hidden costs and charges;

— the use of techniques drawing clients' attention but not necessarily reflecting the suitability or overall quality of the financial instrument, financial activity or financial practice;

— the nature of risks and transparency of risks; or

— the use of product names or terminology or other information that imply a greater level of security or return than those which are actually possible or likely, or which imply product features that do not exist;

(e) the particular features or components of the financial instrument, financial activity or financial practice, including any embedded leverage, taking into account, in particular:

— the leverage inherent in the product;

— the leverage due to financing;

— the features of securities financing transactions; or

— the fact that the value of any underlying is no longer available or reliable;

(f) the existence and degree of disparity between the expected return or profit for investors and the risk of loss in relation to the financial instrument, financial activity or financial practice, taking into account, in particular:

— the structuring costs of such financial instrument, activity or practice and other costs;

— the disparity in relation to the issuer's risk retained by the issuer; or

— the risk/return profile;

(g) the ease and cost with which investors are able to sell the relevant financial instrument or switch to another financial instrument, taking into account, in particular:

— the bid/ask spread;

— the frequency of trading availability;

— the issuance size and size of the secondary market;

— the presence or absence of liquidity providers or secondary market makers;

— the features of the trading system; or

— any other barriers to exit;

(h) the pricing and associated costs of the financial instrument, financial activity or financial practice, taking into account, in particular:

— the use of hidden or secondary charges; or

— charges that do not reflect the level of service provided;

(i) the degree of innovation of a financial instrument, a financial activity or a financial practice, taking into account, in particular:

— the degree of innovation related to the structure of the financial instrument, financial activity or financial practice, including embedding and triggering;

— the degree of innovation relating to the distribution model or length of the intermediation chain;

— the extent of innovation diffusion, including whether the financial instrument, financial activity or financial practice is innovative for particular categories of clients;

— innovation involving leverage;

— the lack of transparency of the underlying; or

— the past experience of the market with similar financial instruments or selling practices;

(j) the selling practices associated with the financial instrument, taking into account, in particular:

— the communication and distribution channels used;

— the information, marketing or other promotional material associated with the investment;

— the assumed investment purposes; or

— whether the decision to buy is secondary or tertiary following an earlier purchase;

(k) the financial and business situation of the issuer of a financial instrument, taking into account, in particular:

— the financial situation of the issuer or any guarantor; or

— the transparency of business situation of the issuer or guarantor;

(l) whether there is insufficient, or unreliable, information about a financial instrument, provided either by the manufacturer or the distributors, to enable market participants at whom it is targeted to make an informed decision, taking into account the nature and type of the financial instrument;

(m) whether the financial instrument, financial activity or financial practice poses a high risk to the performance of transactions entered into by participants or investors in the relevant market;

(n) whether the financial activity or financial practice would significantly compromise the integrity of the price formation process in the market concerned, such that the price or value of the financial instrument in question is no longer determined according to legitimate market forces of supply and demand, or such that market participants are no longer able to rely on the prices formed in that market or in the volumes of trading as a basis for their investment decisions;

(o) whether the characteristics of a financial instrument make it particularly susceptible to being used for the purposes of financial crime and, in particular whether those characteristics could potentially encourage the use of the financial instrument for:

— any fraud or dishonesty;

— misconduct in, or misuse of information in relation to a financial market;

— handling the proceeds of crime;

— the financing of terrorism; or

— facilitating money laundering;

(p) whether the financial activity or financial practice poses a particularly high risk to the resilience or smooth operation of markets and their infrastructure;

(q) whether a financial instrument, financial activity or financial practice could lead to a significant and artificial disparity between prices of a derivative and those in the underlying market;

(r) whether the financial instrument, financial activity or financial practice poses a high risk of disruption to financial institutions deemed to be important to the financial system of the Union;

(s) the relevance of the distribution of the financial instrument as a funding source for the issuer;

(t) whether a financial instrument, financial activity or financial practice poses particular risks to the market or payment systems infrastructure, including trading, clearing and settlement systems; or

(u) whether a financial instrument, financial activity or financial practice may threaten investors' confidence in the financial system.

Article 20

Criteria and factors for the purposes of EBA temporary product intervention powers

(Article 41(2) of Regulation (EU) No 600/2014)

1. For the purposes of Article 41(2)(a) of Regulation (EU) No 600/2014, EBA shall assess the relevance of all factors and criteria listed in paragraph 2, and take into consideration all relevant factors and criteria in determining when the marketing, distribution or sale of certain structured deposits or structured deposits with certain specified features or a type of financial activity or practice creates 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.

For the purposes of the first subparagraph, EBA may determine the existence of 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 of the Union based on one or more of those factors and criteria.

2. The factors and criteria to be assessed by EBA to determine whether there is 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 shall be the following:

(a) the degree of complexity of a structured deposit or type of financial activity or practice in relation to the type of clients, as assessed in accordance with point (c), involved in the financial activity, or financial practice, taking into account, in particular:

— the type of the underlying or reference assets and the degree of transparency of the underlying or reference assets;

— the degree of transparency of costs and charges associated with the structured deposit, financial activity or financial practice and, in particular, the lack of transparency resulting from multiple layers of costs and charges;

— the complexity of the performance calculation, taking into account in particular whether the return is dependent on the performance of one or more underlying or reference assets which are in turn affected by other factors or whether the return depends not only on the values of the underlying or reference assets at the initial and maturity or interest payment dates, but also on the values during the lifetime of the product;

— the nature and scale of any risks;

— whether the structured deposit or service is bundled with other products or services; or

— the complexity of any terms and conditions;

(b) the size of potential detrimental consequences, considering, in particular:

— the notional value of an issuance of structured deposits;

— the number of clients, investors or market participants involved;

— the relative share of the product in investors' portfolios;

— the probability, scale and nature of any detriment, including the amount of loss potentially suffered;

— the anticipated duration of the detrimental consequences;

— the volume of the issuance;

— the number of institutions involved;

— the growth of the market or sales;

— the average amount invested by each client in the structured deposit; or

— the coverage level defined in Directive 2014/49/EU of the European Parliament and of the Council ([1]);

(c) the type of clients involved in a financial activity or financial practice or to whom a structured deposit is marketed or sold, taking into account, in particular:

— whether the client is a retail client, a professional client or an eligible counterparty;

— clients' skills and abilities, including level of education, experience with similar financial products or selling practices;

— clients' economic situation, including income, wealth;

— clients' core financial objectives, including pension saving, home ownership financing;

— whether the product or service is being sold to clients outside the intended target market or where the target market has not been adequately identified; or

— the eligibility for coverage by a deposit guarantee scheme;

(d) the degree of transparency of the structured deposit or type of financial activity or financial practice, taking into account, in particular:

— the type and transparency of the underlying;

— any hidden costs and charges;

— the use of techniques drawing clients' attention but not necessarily reflecting the suitability or overall quality of the product or service;

— the type and transparency of risks;

— the use of product names or of terminology or other information that is misleading by implying product features that do not exist; or

— whether the identity of deposit takers which might be responsible for the client's deposit, is disclosed;

(e) the particular features or components of the structured deposit or financial activity or financial practice, including any embedded leverage, taking into account, in particular:

— the leverage inherent in the product;

— the leverage due to financing; or

— the fact that the value of any underlying is no longer available or reliable;

(f) the existence and degree of disparity between the expected return or profit for investors and the risk of loss in relation to the structured deposit, financial activity or financial practice, taking into account, in particular:

— the structuring costs of such structured deposits, activity or practice and other costs;

— the disparity in relation to the issuer's risk retained by the issuer; or

— the risk-return profile;

([1]) Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173, 12.6.2014, p. 149).

(g) the costs of and ease with which investors are able to exit a structured deposit, in particular considering:

— the fact that early withdrawal is not allowed; or

— any other barriers to exit;

(h) the pricing and associated costs of the structured deposit, financial activity or financial practice, taking into account, in particular:

— the use of hidden or secondary charges; or

— charges that do not reflect the level of service provided;

(i) the degree of innovation of a structured deposit, a financial activity or a financial practice, taking into account, in particular:

— the degree of innovation related to the structure of the structured deposit, financial activity or financial practice, including embedding and triggering;

— the degree of innovation relating to the distribution model or length of the intermediation chain;

— the extent of innovation diffusion, including whether the structured deposit, financial activity or financial practice is innovative for particular categories of clients;

— innovation involving leverage;

— the lack of transparency of the underlying; or

— the past experience of the market with similar structured deposits or selling practices;

(j) the selling practices associated with the structured deposit, taking into account, in particular:

— the communication and distribution channels used;

— the information, marketing or other promotional material associated with the investment;

— the assumed investment purposes; or

— whether the decision to buy is a secondary or tertiary following an earlier purchase;

(k) the financial and business situation of the issuer of a structured deposit, taking into account, in particular:

— the financial situation of the issuer or any guarantor; or

— the transparency of the business situation of the issuer or guarantor;

(l) whether there is insufficient or unreliable information about a structured deposit, provided either by the manufacturer or the distributors, to enable market participants at whom it is targeted to make an informed decision, taking into account the nature and type of the structured deposit;

(m) whether the structured deposit, the financial activity or the financial practice poses a high risk to the performance of transactions entered into by participants or investors in the relevant market;

(n) whether the structured deposit, the financial activity or the financial practice would leave the Union economy vulnerable to risks;

(o) whether the characteristics of a structured deposit make it particularly susceptible to being used for the purposes of financial crime and, in particular whether those characteristics could potentially encourage the use of structured deposits for:

— any fraud or dishonesty;

— misconduct in, or misuse of information, in relation to a financial market;

— handling the proceeds of crime;

— the financing of terrorism; or

— facilitating money laundering;

(p) whether the financial activity or financial practice poses a particularly high risk to the resilience or smooth operation of markets and their infrastructure;

(q) whether a structured deposit, a financial activity or a financial practice could lead to a significant and artificial disparity between prices of a derivative and those in the underlying market;

(r) whether the structured deposit, a financial activity or a financial practice poses a high risk of disruption to financial institutions deemed to be important to the financial system of the Union, in particular considering the hedging strategy pursued by financial institutions in relation to the issuance of the structured deposit, including the mispricing of the capital guarantee at maturity or the reputational risks posed by the structured deposit or practice or activity to the financial institutions;

(s) the relevance of the distribution of structured deposit as a funding source for the financial institution;

(t) whether a structured deposit, financial practice or financial activity poses particular risks to the market or payment systems infrastructure; or

(u) whether a structured deposit or financial practice or financial activity could threaten investors' confidence in the financial system.

Article 21

Criteria and factors to be taken into account by competent authorities for the purposes of product intervention powers

(Article 42(2) of Regulation (EU) No 600/2014)

1. For the purposes of Article 42(2)(a) of Regulation (EU) No 600/2014, competent authorities shall assess the relevance of all factors and criteria listed in paragraph 2, and take into consideration all relevant factors and criteria in determining when the marketing, distribution or sale of certain financial instruments or structured deposits or financial instruments or structured deposits with certain specified features or a type of financial activity or practice creates 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 within at least one Member State.

For the purposes of the first subparagraph, competent authorities may determine the existence of 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 within at least one Member State based on one or more of those factors and criteria.

2. The factors and criteria to be assessed by competent authorities to determine whether 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 within at least one Member State shall include the following:

(a) the degree of complexity of the financial instrument or type of financial activity or practice in relation to the type of clients, as assessed in accordance with point (c), involved in the financial activity or financial practice, or to whom the financial instrument or structured deposit is marketed or sold, taking into account, in particular:

— the type of the underlying or reference assets and the degree of transparency of the underlying or reference assets;

— the degree of transparency of costs and charges associated with the financial instrument, structured deposit, financial activity or financial practice, and, in particular, the lack of transparency resulting from multiple layers of costs and charges;

— the complexity of the performance calculation, taking into account whether the return is dependent on the performance of one or more underlying or reference assets which are in turn affected by other factors or whether the return depends not only on the values of the underlying or reference assets at the initial and maturity dates, but also on the values during the lifetime of the product;

— the nature and scale of any risks;

— whether the product or service is bundled with other products or services;

— the complexity of any terms and conditions;

(b) the size of potential detrimental consequences, considering in particular:

— the notional value of the financial instrument or of an issuance of structured deposits;

— the number of clients, investors or market participants involved;

— the relative share of the product in investors' portfolios;

— the probability, scale and nature of any detriment, including the amount of loss potentially suffered;

— the anticipated duration of the detrimental consequences;

— the volume of the issuance;

— the number of intermediaries involved;

— the growth of the market or sales;

— the average amount invested by each client in the financial instrument or structured deposit; or

— the coverage level defined in Directive 2014/49/EU, in the case of structured deposits;

(c) the type of clients involved in a financial activity or financial practice or to whom a financial instrument or structured deposit is marketed or sold, taking into account, in particular:

— whether the client is a retail client, a professional client or an eligible counterparty;

— clients' skills and abilities, including the level of education, experience with similar financial instruments or structured deposits or selling practices;

— clients' economic situation, including their income, and wealth;

— clients' core financial objectives, including pension saving and home ownership financing;

— whether the product or service is being sold to clients outside the intended target market or where the target market has not been adequately identified; or

— the eligibility for coverage by a deposit guarantee scheme, in the case of structured deposits;

(d) the degree of transparency of the financial instrument, structured deposit or type of financial activity or practice, taking into account, in particular:

— the type and transparency of the underlying;

— any hidden costs and charges;

— the use of techniques drawing clients' attention but not necessarily reflecting the suitability or overall quality of the product, the financial activity or the financial practice;

— the nature of risks and transparency of risks;

— the use of product names or terminology or other information that is misleading by implying a greater level of security or return than those which are actually possible or likely, or which imply product features that do not exist; or

— in case of structured deposits, whether the identity of deposit takers which might be responsible for the client's deposit, is disclosed;

(e) the particular features or components of the structured deposit, financial instrument, financial activity or financial practice, including any embedded leverage, taking into account, in particular:

— the leverage inherent in the product;

— the leverage due to financing;

— the features of securities financing transactions; or

— the fact that the value of any underlying is no longer available or reliable;

(f) the existence and degree of disparity between the expected return or profit for investors and the risk of loss in relation to the financial instrument, structured deposit, financial activity or financial practice, taking into account, in particular:

— the structuring costs of such financial instrument, structured deposit, financial activity or financial practice and other costs;

— the disparity in relation to the issuer's risk retained by the issuer; or

— the risk-return profile;

(g) the costs and ease with which investors are able to sell the relevant financial instrument or switch to another financial instrument, or exit a structured deposit, taking into account, in particular, where applicable depending on whether the product is a financial instrument or structured deposit:

— the bid-ask spread;

— the frequency of trading availability;

— the issuance size and size of the secondary market;

— the presence or absence of liquidity providers or secondary market makers;

— the features of the trading system; or

— any other barriers to exit or the fact that early withdrawal is not allowed;

(h) the pricing and associated costs of the structured deposit, financial instrument, financial activity or financial practice, taking into account, in particular:

— the use of hidden or secondary charges; or

— charges that do not reflect the level of service provided;

(i) the degree of innovation of a financial instrument or structured deposit, a financial activity or financial practice, taking into account, in particular:

— the degree of innovation related to the structure of the financial instrument, structured deposit, financial activity or financial practice, including embedding and triggering;

— the degree of innovation relating to the distribution model or length of the intermediation chain;

— the extent of innovation diffusion, including whether the financial instrument, structured deposit, financial activity or financial practice is innovative for particular categories of clients;

— innovation involving leverage;

— the lack of transparency of the underlying; or

— the past experience of the market with similar financial instruments, structured deposits or selling practices;

(j) the selling practices associated with the financial instrument or structured deposit, taking into account, in particular:

— the communication and distribution channels used;

— the information, marketing or other promotional material associated with the investment;

— the assumed investment purposes; or

— whether the decision to buy is secondary or tertiary decision following an earlier purchase;

(k) the financial and business situation of the issuer of a financial instrument or structured deposit, taking into account, in particular:

— the financial situation of the issuer or any guarantor; or

— the transparency of the business situation of the issuer or guarantor;

(l) whether there is insufficient, or unreliable, information about a financial instrument or structured deposit, provided either by the manufacturer or the distributors, to enable market participants at whom it is targeted to make an informed decision, taking into account the nature and type of the financial instrument or the structured deposit;

(m) whether the financial instrument, structured deposit, financial activity or financial practice poses a high risk to the performance of transactions entered into by participants or investors in the relevant market;

(n) whether the financial activity or financial practice would significantly compromise the integrity of the price formation process in the market concerned such that the price or value of the financial instrument or structured deposit in question is no longer determined according to legitimate market forces of supply and demand, or such that market participants are no longer able to rely on the prices formed in that market or in the volumes of trading as a basis for their investment decisions;

(o) whether a financial instrument, structured deposit, financial activity or practice would leave the national economy vulnerable to risks;

(p) whether the characteristics of a financial instrument or structured deposit make it particularly susceptible to being used for the purposes of financial crime and, in particular whether the characteristics could potentially encourage the use of the financial instrument or structured deposit for:

— any fraud or dishonesty;

— misconduct in, or misuse of information, in relation to a financial market;

— handling the proceeds of crime;

— the financing of terrorism; or

— facilitating money laundering;

(q) whether a financial activity or a financial practice poses a particularly high risk to the resilience or smooth operation of markets and their infrastructure;

(r) whether a financial instrument, structured deposit, financial activity or financial practice could lead to a significant and artificial disparity between prices of a derivative and those in the underlying market;

(s) whether the financial instrument, structured deposit, financial activity or financial practice poses a high risk of disruption to financial institutions deemed to be important to the financial system of the Member State of the relevant competent authority, in particular considering the hedging strategy pursued by financial institutions in relation to the issuance of the structured deposit, including the mispricing of the capital guarantee at maturity or the reputational risks posed by the structured deposit or practice or activity to the financial institutions;

(t) the relevance of the distribution of the financial instrument or structured deposit as a funding source for the issuer or financial institutions;

(u) whether a financial instrument, structured deposit, financial activity or financial practice poses particular risks to the market or payment systems infrastructure, including trading, clearing and settlement systems; or

(v) whether a financial instrument, structured deposit, financial activity or financial practice would threaten investors' confidence in the financial system.

SECTION 2

Position management powers

Article 22

Position management powers of ESMA

(Article 45 of Regulation (EU) No 600/2014)

1. For the purposes of Article 45(2)(a) of Regulation (EU) No 600/2014, the criteria and factors determining 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 in relation to delivery arrangements for physical commodities, or to the stability of the whole or part of the financial system in the Union shall be the following:

(a) the existence of serious financial, monetary or budgetary problems which could lead to the financial instability of a Member State or a financial institution deemed important to the global financial system, including credit institutions, insurance companies, market infrastructure providers and asset management companies operating within the Union, provided that these problems could threaten the orderly functioning and integrity of financial markets or the stability of the financial system within the Union;

(b) a rating action or a default by a Member State or a credit institution or other financial institution deemed important to the global financial system, such as insurance companies, market infrastructure providers and asset management companies operating within the Union, that causes or may reasonably be expected to cause severe uncertainty about their solvency;

(c) substantial selling pressures or unusual volatility causing significant downward spirals in any financial instrument related to any credit institution or other financial institutions deemed important to the global financial system, such as insurance companies, market infrastructure providers and asset management companies operating within the Union and sovereign issuers;

(d) any damage to the physical structures of important financial issuers, market infrastructures, clearing and settlement systems or competent authorities which may adversely and significantly affect markets in particular where such damage results from a natural disaster or a terrorist attack;

(e) a disruption in any payment system or settlement process, in particular where it is related to interbank operations, which causes or may cause significant payments or settlement failures or delays within the Union payment systems, especially when these may lead to the propagation of financial or economic stress in a credit institution or other financial institutions deemed important to the global financial system, such as insurance companies, market infrastructure providers and asset management companies or in a Member State;

(f) a significant and abrupt decrease in the supply of a commodity or an increase in the demand of a commodity, which disrupts the supply and demand balance;

(g) a significant position in a certain commodity held by one person, or by several persons acting in concert, in one or several trading venues, through one or several market members;

(h) an inability of a trading venue to exercise its own position management powers due to a business continuity event.

2. For the purposes of Article 45(1)(b) of Regulation (EU) No 600/2014 the criteria and factors determining the appropriate reduction of a position or exposure shall be the following:

(a) the nature of the holder of the position, including producers, consumers or financial institution;

(b) the maturity of the financial instrument;

(c) the size of the position relative to the size of the relevant commodity derivative market;

(d) the size of the position relative to the size of the market for the underlying commodity;

(e) the direction of the position (short or long) and delta or ranges of delta;

(f) the purpose of the position, in particular whether the position serves hedging purposes or whether it is held for financial exposure;

(g) the experience of a position holder in holding positions of a given size, or in making or taking delivery of a given commodity;

(h) the other positions held by the person in the underlying market or in different maturities of the same derivative;

(i) the liquidity of the market and the impact of the measure on other market participants;

(j) the method of delivery.

3. For the purposes of Article 45(3)(b) of Regulation (EU) No 600/2014, the criteria specifying the situations where a risk of regulatory arbitrage may arise shall be the following:

(a) whether the same contract is traded in a different trading venue or OTC;

(b) whether a substantially equivalent contract is traded on a different venue or OTC (similar and interrelated, but not considered part of the same fungible open interest);

(c) the effects of the decision on the market of the underlying commodity;

(d) the effects of the decision on markets and participants not subject to ESMA's position management powers; and

(e) the likely effect on the orderly functioning and integrity of the markets absent ESMA action.

4. For the purposes of Article 45(2)(b) of Regulation (EU) No 600/2014, ESMA shall apply the criteria and factors set out in paragraph 1 of this Article taking into account whether the envisaged measure responds to a failure to act by a competent authority or to 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.

For the purposes of the first subparagraph, a competent authority shall be considered as failing to act where, based on the powers conferred to it, it has at its disposal sufficient regulatory powers to fully address the threat at the time of the event without the assistance of any other competent authority, but fails to take such action.

A competent authority shall be considered as being unable to sufficiently address a threat where one or more of the factors referred to in Article 45(10)(a) of Regulation (EU) No 600/2014 occur within the jurisdiction of a competent authority and in one or more additional jurisdictions.

CHAPTER VI

FINAL PROVISIONS

Article 23

Transitional provisions

1. By way of derogation from Article 5(1), from the date of entry into force of this Regulation until the date of application thereof, competent authorities shall carry out liquidity assessments and shall publish the result of those assessments immediately upon their completion in accordance with the following timeframe:

(a) where the date on which financial instruments are traded for the first time on a trading venue within the Union is a date not less than 10 weeks prior to the date of application of Regulation (EU) No 600/2014, competent authorities shall publish the result of the assessments no later than four weeks prior to the date of application of Regulation (EU) No 600/2014;

(b) where the date on which financial instruments are traded for the first time on a trading venue within the Union is a date falling within the period commencing 10 weeks prior to the date of application of Regulation (EU) No 600/2014 and ending on the day preceding the date of application of Regulation (EU) No 600/2014, competent authorities shall publish the result of the assessments no later than the date of application of Regulation (EU) No 600/2014.

2. The assessments referred to in paragraph 1 shall be carried out as follows:

(a) where the date on which financial instruments are traded for the first time on a trading venue within the Union is a date not less than sixteen weeks prior to the date of application of Regulation (EU) No 600/2014, the assessments shall be based on data available for a forty-week reference period commencing fifty-two weeks prior to the date of application of Regulation (EU) No 600/2014;

(b) where the date on which financial instruments are traded for the first time on a trading venue within the Union is a date within the period commencing sixteen weeks prior to the date of application of Regulation (EU) No 600/2014 and ending 10 weeks prior to the date of application of Regulation (EU) No 600/2014, the assessments shall be based on data available for the first four week trading period of the financial instrument.

(c) where the date on which financial instruments are traded for the first time on a trading venue within the Union is a date falling within the period commencing 10 weeks prior to the date of application of Regulation (EU) No 600/2014 and ending on the day preceding the date of application of Regulation (EU) No 600/2014, the assessments shall be based on the trading history of the financial instruments or other financial instruments considered to have similar characteristics to those financial instruments.

3. Competent authorities, market operators and investment firms including investment firms operating a trading venue shall use the information published in accordance with paragraph 1 for the purposes of Article 2(1)(17)(b) of Regulation (EU) No 600/2014 until 1 April of the year following the date of application of that Regulation.

4. During the period referred to in paragraph 3, competent authorities shall ensure the following with regard to the financial instruments referred to in points (b) and (c) of paragraph 2:

(a) that the information published in accordance with paragraph 1 remains appropriate for the purposes of Article 2(1)(17)(b) of Regulation (EU) No 600/2014;

(b) that the information published in accordance with paragraph 1 is updated on the basis of a longer trading period and a more comprehensive trading history, where necessary.

Article 24

Entry into Force

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

It shall apply from 3 January 2018.

However, Article 23 shall apply from the date of entry into force of this Regulation.

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

Done at Brussels, 18 May 2016.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Data to be provided for the purpose of determining a liquid market for shares, depositary receipts, exchange-traded funds and certificates

Table 1

Symbol table

Symbol	Data Type	Definition
{ALPHANUM-n}	Up to n alphanumerical characters	Free text field.
{ISIN}	12 alphanumerical characters	ISIN code, as defined in ISO 6166
{MIC}	4 alphanumerical characters	Market identifier as defined in ISO 10383
{DATEFORMAT}	ISO 8601 date format	Dates should be formatted by the following format: YYYY-MM-DD.
{DECIMAL-n/m}	Decimal number of up to n digits in total of which up to m digits can be fraction digits	Numerical field for both positive and negative values. — decimal separator is '.' (full stop); — negative numbers are prefixed with '–' (minus); — values are rounded and not truncated.

Table 2

Details of the data to be provided for the purpose of determining a liquid market for shares, depositary receipts, exchange-traded funds and certificates

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

#	Field	Details to be reported	Format and standards for reporting
5	Reporting day	Date for which the data is provided Data has to be provided at least for the following dates: — case 1: the day corresponding to the 'Date of admission to trading or first trading date' as per Article 5(3)(a); — case 2: the last day of the 4 weeks period starting on the 'Date of admission to trading or first trading date' as per Article 5(3)(b)(i); — case 3: the last trading day of each calendar year as per Article 5(3)(b)(ii); — case 4: the day on which a corporate action is effective as per Article 5(3)(b)(iii). For case 1, estimates are to be provided for the fields 6 to 12 as applicable.	{DATEFORMAT}
6	Number of outstanding instruments	*For shares and depositary receipts* The total number of outstanding instruments. *For ETFs* Number of units issued for trading.	{DECIMAL-18/5}
7	Holdings exceeding 5 % of total voting rights	*For shares only* The total number of shares corresponding to holdings exceeding 5 % of total voting rights of the issuer unless such a holding is held by a collective investment undertaking or a pension fund. This field is to be populated only when actual information is available.	{DECIMAL-18/5}
8	Price of the instrument	*For shares and depositary receipts only* The price of the instrument at the end of the reporting day. The price should be expressed in euros.	{DECIMAL-18//13}
9	Issuance size	*For certificates only* The issuance size of the certificate expressed in euros.	{DECIMAL-18/5}
10	Number of trading days in the period	The total number of trading days for which the data is provided	{DECIMAL-18/5}
11	Total turnover	The total turnover for the period	{DECIMAL-18/5}
12	Total number of transactions	The total number of transactions for the period	{DECIMAL-18/5}

COMMISSION DELEGATED REGULATION (EU) 2017/568

of 24 May 2016

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the admission of financial instruments to trading on regulated markets

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ([1]), and in particular the third subparagraph of Article 51(6) thereof,

Whereas:

(1) Transferable securities should only be considered freely negotiable if before admission to trading no restrictions exist which prevent the transfer of those securities in a way that would disturb creating a fair, orderly and efficient market.

(2) For the admission to trading on a regulated market of a transferable security as defined in Directive 2014/65/EU, in the case of a security within the meaning of Directive 2003/71/EC of the European Parliament and of the Council ([2]), there needs to be sufficient information publicly available so as to enable to value that financial instrument for it to be traded in a fair, orderly and efficient manner. In addition, in the case of shares an adequate number should be available for distribution to the public, and for securitised derivatives suitable settlement and delivery arrangements should be in place.

(3) Transferable securities which fulfil the requirements for admission to an official list in accordance with Directive 2001/34/EC of the European Parliament and of the Council ([3]) should be considered freely negotiable and capable of being traded in a fair, orderly and efficient manner.

(4) The admission to trading on a regulated market of units issued by undertakings for collective investment in transferable securities or alternative investment funds should not allow the avoidance of the relevant provisions of Directive 2009/65/EC of the European Parliament and of the Council ([4]) or of Directive 2011/61/EU of the European Parliament and of the Council ([5]). Therefore, it is necessary for an operator of a regulated market to verify that the units it admits to trading stem from a collective investment scheme that complies with the relevant sectoral legislation. In the case of exchange-traded funds, it is necessary for the operator of a regulated market to ensure that adequate redemption arrangements for investors are in place at all times.

(5) The admission to trading on a regulated market of derivative instruments referred to in points 4 to 10 of Section C of Annex I to Directive 2014/65/EU should take into account whether there is sufficient information available for the valuation of the derivative as well as the underlying, and in the case of physically settled contracts, the existence of appropriate settlement and delivery procedures.

(6) Directive 2003/87/EC of the European Parliament and of the Council ([6]) imposes certain conditions for emission allowances in order to ensure that they are freely negotiable and traded in a fair, orderly and efficient manner.

([1]) OJ L 173, 12.6.2014, p. 349.
([2]) Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ L 345, 31.12.2003, p. 64).
([3]) Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities (OJ L 184, 6.7.2001, p. 1).
([4]) Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (OJ L 302, 17.11.2009, p. 32).
([5]) Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).
([6]) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

Any emission allowance within the meaning of point 11 of Section C of Annex I to Directive 2014/65/EU recognised for compliance with the requirements of Directive 2003/87/EC should therefore be eligible for admission to trading on a regulated market and no further requirements should be imposed in this Regulation

(7) Arrangements by regulated markets in relation to verifying the compliance of issuers with obligations under Union law and in relation to facilitating access to information which has been made public under Union law should cover the obligations laid down in Regulation (EU) No 596/2014 of the European Parliament and of the Council ([1]), Directive 2003/71/EC and Directive 2004/109/EC of the European Parliament and of the Council ([2]) as those legislative acts contain the core and most important obligations for issuers after the initial admission to trading on a regulated market.

(8) Regulated markets should establish procedures for verifying the compliance of issuers of transferable securities with obligations under Union law which should be accessible for issuers and the public. The policy should ensure that compliance checks are efficient and issuers should be made aware of their obligations by the regulated market.

(9) Regulated markets should facilitate access to information published under the conditions established by Union law available to members and participants via arrangements that provide for easy, fair and non-discriminatory access for all members and participants. The relevant Union law for these purposes includes Directive 2003/71/EC, Directive 2004/109/EC, Regulation (EU) No 596/2014 as well as Regulation (EU) No 600/2014 of the European Parliament and of the Council ([3]). The access arrangements should ensure that members and participants have access on equal terms to the relevant information that may have an influence on the valuation of a financial instrument.

(10) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the related national provisions transposing Directive 2014/65/EU apply from the same date.

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

(12) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council ([4]),

HAS ADOPTED THIS REGULATION:

Article 1

Transferable securities — freely negotiable

1. Transferable securities shall be considered freely negotiable if they can be traded between the parties to a transaction, and subsequently transferred without restriction and if all securities within the same class as the security in question are fungible.

2. Transferable securities which are subject to a restriction on transfer shall not be considered as freely negotiable in accordance with paragraph 1 unless that restriction is not likely to disturb the market. Transferable securities that are

([1]) Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

([2]) Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).

([3]) Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

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

not fully paid may be considered as freely negotiable if arrangements have been made to ensure that the negotiability of such securities is not restricted and that adequate information concerning the fact that the securities are not fully paid, and the implications of that fact for shareholders, is publicly available.

Article 2

Transferable securities — fair, orderly and efficient trading

1. When assessing whether a transferable security is capable of being traded in a fair, orderly and efficient manner, a regulated market shall take into account the information required to be prepared under Directive 2003/71/EC or information that is otherwise publicly available such as:

(a) historical financial information;

(b) information about the issuer;

(c) information providing a business overview.

2. In addition to paragraph 1, when assessing whether a share is capable of being traded in a fair, orderly and efficient manner a regulated market shall take into account the distribution of those shares to the public.

3. When assessing whether a transferable security referred to in point (c) of Article 4(1)(44) of Directive 2014/65/EU is capable of being traded in a fair, orderly and efficient manner, the regulated market shall take into account, depending on the nature of the security being admitted, whether the following criteria are satisfied:

(a) the terms of the security are clear and unambiguous and allow for a correlation between the price of the security and the price or other value measure of the underlying;

(b) the price or other value measure of the underlying is reliable and publicly available;

(c) there is sufficient information publicly available of a kind needed to value the security;

(d) the arrangements for determining the settlement price of the security ensure that this price properly reflects the price or other value measures of the underlying;

(e) where the settlement of the security requires or provides for the possibility of the delivery of an underlying security or asset rather than cash settlement, there are adequate settlement and delivery procedures for that underlying as well as adequate arrangements to obtain relevant information about it.

Article 3

Transferable securities — official listing

A transferable security that is officially listed in accordance with Directive 2001/34/EC, and the listing of which is not suspended, shall be deemed to be freely negotiable and capable of being traded in a fair, orderly and efficient manner.

Article 4

Units and shares in collective investment undertakings

1. A regulated market shall, when admitting units or shares of a collective investment undertaking to trading, ensure that those units or shares are permitted to be marketed in the Member State of the regulated market.

2. When assessing whether units or shares in an open-ended collective investment undertaking are capable of being traded in a fair, orderly and efficient manner, a regulated market shall take into account the following:

(a) the distribution of those units or shares to the public;

(b) whether there are appropriate market-making arrangements, or whether the management company of the scheme provides appropriate alternative arrangements for investors to redeem the units or shares;

(c) in the case of exchange-traded funds, whether in addition to market making arrangements appropriate alternative arrangements for investors to redeem units or shares are provided, at least in cases where the value of the units or shares significantly varies from the net asset value;

(d) whether the value of the units or shares is made sufficiently transparent to investors by means of the periodic publication of the net asset value.

3. When assessing whether units or shares in a closed-end collective investment undertaking are capable of being traded in a fair, orderly and efficient manner, a regulated market shall take into account the following:

(a) the distribution of those units or shares to the public;

(b) whether the value of the units or shares is made sufficiently transparent to investors, either by publication of information on the fund's investment strategy or by the periodic publication of the net asset value.

Article 5

Derivatives

1. When assessing whether a financial instrument referred to in points 4 to 10 of Section C of Annex I to Directive 2014/65/EU are capable of being traded in a fair, orderly and efficient manner, a regulated market shall verify that the following conditions are satisfied:

(a) the terms of the contract establishing the financial instrument are clear and unambiguous, and enable a correlation between the price of the financial instrument and the price or other value measure of the underlying;

(b) the price or other value measure of the underlying is reliable and publicly available;

(c) sufficient information of a kind needed to value the derivative is publicly available;

(d) the arrangements for determining the settlement price of the contract is such that the price properly reflects the price or other value measures of the underlying;

(e) where the settlement of the derivative requires or provides for the possibility of the delivery of an underlying security or asset rather than cash settlement, there are adequate arrangements to enable market participants to obtain relevant information about that underlying as well as adequate settlement and delivery procedures for the underlying.

2. Point (b) of paragraph 1 of this Article shall not apply to financial instruments referred to in points 5, 6, 7 and 10 of Section C of Annex I to Directive 2014/65/EU, where the following conditions are fulfilled:

(a) the contract establishing that instrument is likely to provide a means of disclosing to the market, or enabling the market to assess, the price or other value measure of the underlying, where the price or value measure is not otherwise publicly available;

(b) the regulated market ensures that appropriate supervisory arrangements are in place to monitor trading and settlement in such financial instruments;

(c) the regulated market ensures that settlement and delivery, whether physical delivery or by cash settlement, can be effected in accordance with the contract terms and conditions of those financial instruments.

Article 6

Emission allowances

Any emission allowance referred to in point 11 of Section C of Annex I to Directive 2014/65/EU recognised for compliance with the requirements of Directive 2003/87/EC, is eligible for admission to trading on a regulated market with no further requirements.

Article 7

Verification of issuer obligations

1. Regulated markets shall adopt and publish on their website procedures for verifying compliance by an issuer of a transferable security with its obligations under Union law

2. Regulated markets shall ensure that compliance with the obligations referred to in paragraph 1 is checked effectively in accordance with the nature of the obligation under review taking into account the supervisory tasks performed by relevant competent authorities.

3. Regulated markets shall ensure that the procedures referred to in paragraph 1 describe:

(a) the processes the regulated markets employ to achieve the outcome specified in paragraph 1;

(b) how an issuer may best demonstrate compliance with the obligations referred to in paragraph 1 to the regulated market.

4. Regulated markets shall ensure that an issuer is made aware of the obligations referred to in paragraph 1 upon admission to trading of that issuer's transferable security and at the issuer's request.

Article 8

Facilitation of access to information

Regulated markets shall have arrangements which are easily accessible, free of charge and published on their website to facilitate access of their members or participants to information which has been made public in accordance with Union law.

Article 9

Entry into force and application

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

It shall apply from the date that appears in the second subparagraph of Article 93(1) of Directive 2014/65/EU.

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

Done at Brussels, 24 May 2016.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION DELEGATED REGULATION (EU) 2017/569

of 24 May 2016

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the suspension and removal of financial instruments from trading

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU [1], and in particular the 10th subparagraph of Article 32(2) and the 10th subparagraph of Article 52(2) thereof,

Whereas:

(1) The objective of a suspension or removal from trading of a financial instrument will in some cases not be achieved unless a derivative of a type referred to in points 4 to 10 of Section C of Annex I to Directive 2014/65/EU relating or referenced to that financial instrument is also suspended or removed from trading.

(2) In determining cases where the connection is such that it is necessary to suspend or remove related derivatives, the strength of the connection between the derivative and the financial instrument that is suspended or removed from trading should be considered. In this respect, a distinction should be made between a derivative for which the formation of its price or value is dependent on the price or value of a sole underlying financial instrument, and derivatives for which the price or value is dependent on multiple price inputs, for instance, derivatives related to an index or a basket of financial instruments.

(3) The inability to correctly price related derivatives, leading to a disorderly market, should be considered the strongest for the cases where the derivative is related or referenced to only one financial instrument. When the derivative is related or referenced to a basket of financial instruments or an index of which the suspended financial instrument is only one part, the ability of market participants to determine the correct price would be less affected. Thus the characteristics of the connection between the derivative and the underlying should be taken into account in considering the overall objective of the suspension or removal.

(4) It should be taken into account that a market operator has to ensure fair, orderly and efficient trading in its market. Outside the scope of this Regulation, a market operator will need to make an assessment of whether the suspension or removal from trading of the underlying financial instrument endangers the fair and orderly trading of the derivative in its trading venue, including taking appropriate action such as the suspension or removal of related derivatives on its own initiative.

(5) Article 32(2) and Article 52(2) of Directive 2014/65/EU should be applied consistently to different types of trading venues. They are closely linked, since they deal with specifying the suspensions and removals on different types of trading venues. To ensure consistent application of these provisions which should enter into force at the same time, and to facilitate a comprehensive view for stakeholders and, in particular, those subject to the obligations, it is necessary to consolidate the regulatory technical standards developed under Article 32(2) and Article 52(2) of Directive 2014/65/EU in a single Regulation.

(6) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the related national provisions transposing Directive 2014/65/EU apply from the same date.

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

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

(8) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council [1],

HAS ADOPTED THIS REGULATION:

Article 1

Connection between a derivative related or referenced to a financial instrument suspended or removed from trading and the original financial instrument

A market operator of a regulated market and an investment firm or market operator operating a multilateral trading facility (MTF) or an organised trading facility (OTF shall suspend or remove a derivative referred to in points 4 to 10 of Section C of Annex I to Directive 2014/65/EU from trading where that derivative is related or referenced to only one financial instrument, and that financial instrument has been suspended or removed from trading.

Article 2

Entry into force and application

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

It shall apply from 3 January 2018.

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

Done at Brussels, 24 May 2016.

For the Commission
The President
Jean-Claude JUNCKER

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

COMMISSION DELEGATED REGULATION (EU) 2017/570

of 26 May 2016

supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards for the determination of a material market in terms of liquidity in relation to notifications of a temporary halt in trading

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU [1], and in particular Article 48(12)(e) thereof,

Whereas:

(1) It is necessary to clarify which regulated markets should be considered material in terms of liquidity for each type of financial instrument so that those markets have in place appropriate systems and procedures for notifying competent authorities of temporary halts in trading.

(2) Directive 2014/65/EU extends the requirements relating to trading halts to multilateral trading facilities and organised trading facilities and it is therefore important to ensure that financial instruments traded on those venues are also within the scope of these regulatory technical standards.

(3) It is important to ensure a proportionate application of the notification requirement. After being notified of a temporary halt in trading, the competent authority is obliged to assess whether that notification is to be disseminated to the rest of the market and to coordinate, where necessary, a market-wide response. In order to limit the administrative burden for trading venues, only the trading venues with the greatest potential for market wide impact when trading is halted should be subject to the notification obligation.

(4) For equity and equity-like financial instruments, the material market in terms of liquidity should be the trading venue that has the highest turnover in the financial instrument concerned within the Union, since that trading venue has the greatest potential for having a market wide impact when trading is halted.

(5) For non-equity financial instruments, the material market in terms of liquidity should be the regulated market where the financial instrument concerned was first admitted to trading. If the non-equity financial instrument is not admitted to trading on a regulated market, the material market in terms of liquidity should be the trading venue where it was first traded. This should ensure certainty for a range of complex financial instruments by establishing a simple reference point to the trading venue on which events have important liquidity impacts on other markets trading the same financial instrument, typically due to the significant share in terms of the volumes executed in that instrument on that trading venue.

(6) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the related national provisions transposing Directive 2014/65/EU apply from the same date. This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority to the Commission.

(7) The European Securities and Markets Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council [2],

---

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

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

HAS ADOPTED THIS REGULATION:

Article 1

Material market in terms of liquidity

For the purposes of the second subparagraph of Article 48(5) of Directive 2014/65/EU, the material market in terms of liquidity shall be considered to be:

(a) in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments, the trading venue which is the most relevant market in terms of liquidity for the instrument as set out in Article 4 of Commission Delegated Regulation (EU) 2017/587 ([1]),

(b) in respect of financial instruments other than those set out in point (a) which are admitted to trading on a regulated market, the regulated market where the financial instrument was first admitted to trading;

(c) in respect of financial instruments other than those set out in point (a) which are not admitted to trading on a regulated market, the trading venue where the financial instrument was first traded.

Article 2

Entry into force and application

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

This Regulation shall apply from the date that appears first in the second subparagraph of Article 93(1) of Directive 2014/65/EU.

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

Done at Brussels, 26 May 2016.

For the Commission
The President
Jean-Claude JUNCKER

([1]) Commission Delegated Regulation (EU) 2017/587 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser (see page 387 of this Official Journal).

COMMISSION DELEGATED REGULATION (EU) 2017/571

of 2 June 2016

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services providers

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of 15 May 2014 of the European Parliament and of the Council on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU [1], and in particular Article 61(4), Article 64(6) and (8), Article 65(6) and (8), and Article 66(5) thereof,

Whereas:

(1) In accordance with Directive 2014/65/EU data reporting services providers cover three different types of entities: approved reporting mechanisms (ARMs), approved publication arrangements (APAs) and consolidated tape providers (CTPs). Although those types of entities are engaged in different activities, Directive 2014/65/EU provides for a similar authorisation process for all of those entities.

(2) An applicant seeking authorisation as a data reporting services provider should provide in its application for authorisation a programme of operations and an organisational chart. The organisational chart should identify who is responsible for the different activities to enable the competent authority to assess whether the data reporting services provider has sufficient human resources and oversight over its business. The organisational chart should not only cover the scope of the data reporting services, but should also include any other services that the entity provides as this may highlight areas which may affect the independence of the data reporting services provider and give rise to a conflict of interest. An applicant seeking authorisation as a data reporting services provider should also provide information on the composition, functioning and independence of its governing bodies in order for competent authorities to be able to assess whether the policies, procedures and corporate governance structure ensure the independence of the data reporting services provider and the avoidance of conflicts of interest.

(3) Conflicts of interest can arise between the data reporting services provider and clients using its services to meet their regulatory obligations and other entities purchasing data from data reporting services providers. In particular, those conflicts may arise where the data reporting services provider is engaged in other activities such as acting as a market operator, investment firm or trade repository. If conflicts are left unaddressed, this could lead to a situation where the data reporting services provider has an incentive to delay publication or submission of data or to trade on the basis of the confidential information it has received. The data reporting services provider should therefore adopt a comprehensive approach to identifying, preventing and managing existing and potential conflicts of interest, including preparing an inventory of conflicts of interest and implementing appropriate policies and procedures to manage those conflicts and, where necessary, separate business functions and personnel to limit the flow of sensitive information between different business areas of the data reporting services provider.

(4) All members of the management body of a data reporting services provider should be persons who are of sufficiently good repute and possess sufficient knowledge, skills and experience, as those persons play a key role in ensuring that the data reporting services provider meets its regulatory obligations and contribute to the business strategy of the data reporting services provider. It is therefore important for the data reporting services provider to demonstrate that it has a robust process for appointing and evaluating the performance of members of the management body and that clear reporting lines and regular reporting to the management body are in place.

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

(5) The outsourcing of activities, in particular of critical functions, is capable of constituting a material change of the conditions for the authorisation of a data reporting services provider. To ensure that the outsourcing of activities does not impair the data reporting services provider's ability to meet its obligations under Directive 2014/65/EU or lead to conflicts of interest, the data reporting services provider should be able to demonstrate sufficient oversight and control over those activities.

(6) The IT systems used by a data reporting services provider should be well adapted to the different types of activities those entities may perform, that is to publish trade reports, submit transaction reports or provide a consolidated tape, and robust enough to ensure continuity and regularity in the provision of those services. This includes ensuring that the data reporting services provider's IT systems are able to handle fluctuations in the amount of data which it must handle. Such fluctuations, particularly unexpected increases in data flow, may adversely impact the effectiveness of the data reporting services provider's systems and as a result, its ability to publish or report complete and accurate information within the required timeframes. In order to handle this, a data reporting services provider should periodically test its systems to ensure that they are robust enough to handle changes in operating conditions and sufficiently scalable.

(7) The backup facilities and arrangements established by a data reporting services provider should be sufficient to enable the data reporting services provider to deliver its services, even in the event of a disruptive incident. A data reporting services provider should establish maximum acceptable recovery times for critical functions that would apply in the event of a disruptive incident, which should allow compliance with the deadlines for reporting and disclosing the information.

(8) To ensure that the data reporting services provider can provide its services, it should undertake an analysis of which tasks and activities are critical to the delivery of its services and of possible scenarios that may give rise to a disruptive incident, including taking steps to prevent and mitigate those situations.

(9) Where a service disruption occurs, a data reporting services provider should notify the competent authority of its home Member State, any other relevant competent authorities, clients and the public as the disruption could also mean that those parties would not be able to fulfil their own regulatory obligations such as the duty to forward transaction reports to other competent authorities or to make public the details of executed transactions. The notification should allow those parties to make alternative arrangements for meeting their obligations.

(10) The deployment of any IT systems' updates may potentially impact the effectiveness and robustness of the systems used for data service provision. To prevent that the operation of its IT system is at any time incompatible with its regulatory obligations, in particular that of having a sound security mechanism in place designed to guarantee the security of the means of transfer of information, minimise the risk of data corruption and to prevent information leakage before publication, a data reporting services provider should make use of clearly delineated development and testing methodologies to ensure that compliance and risk management controls embedded in the systems work as intended and that the system can continue to work effectively in all conditions. Where a data reporting services provider undertakes a significant system change, it should notify the competent authority of its home Member State and other competent authorities, where relevant, so they can assess whether the update will impact their own systems and whether the conditions for authorisation continue to be met.

(11) Premature public disclosure, in the case of trade reports, or unauthorised disclosure in the case of transaction reports could provide an indication of trading strategy or reveal sensitive information such as the identity of the data reporting services provider's clients. Therefore, physical controls, such as locked facilities, and electronic controls including firewalls and passwords should be put in place by the data reporting services provider to ensure that only authorised personnel have access to the data.

(12) Breaches in the physical or electronic security of a data reporting services provider pose a threat to the confidentiality of client data. Consequently, where such a breach occurs, a data reporting services provider should promptly notify the relevant competent authority as well as any clients which have been affected by the breach.

Notification to the competent authority of the home Member State is necessary to enable that competent authority to carry out its ongoing supervisory responsibilities with respect to whether the data reporting services provider is properly maintaining sound security mechanisms to guarantee the security of the information and to minimise the risk of data corruption and unauthorised access. Other competent authorities which have a technical interface with the data reporting services provider should also be notified as they may be adversely affected, particularly where the breach relates to the means of transferring information between the data reporting services provider and the competent authority.

(13) An investment firm which has transaction reporting obligations, known as a 'reporting firm', may choose to use a third party to submit transaction reports on its behalf to an ARM, that is a 'submitting firm'. By virtue of its role the submitting firm will have access to the confidential information that it is submitting. However, the submitting firm should not be entitled to access any other data about the reporting firm or the reporting firm's transactions which are held at the ARM. Such data may relate to transaction reports which the reporting firm has submitted itself to the ARM or which it has sent to another submitting firm to send to the ARM. This data should not be accessible to the submitting firm as it may contain confidential information such as the identity of the reporting firm's clients.

(14) A data reporting services provider should monitor that the data it is publishing or submitting is accurate and complete and should ensure that it has mechanisms for detecting errors or omissions caused by the client or itself. In the case of an ARM, this can include reconciliations of a sample population of data submitted to the ARM by an investment firm or generated by the ARM on the investment firm's behalf with the corresponding data provided by the competent authority. The frequency and extent of such reconciliations should be proportionate to the volume of data handled by the ARM and the extent to which it is generating transaction reports from clients' data or passing on transaction reports completed by clients. In order to ensure timely reporting that is free of errors and omissions an ARM should continuously monitor the performance of its systems.

(15) Where an ARM itself causes an error or omission, it should correct this information without delay as well as notify the competent authority of its home Member State and any competent authority to which it submits reports of the error or omission as those competent authorities have an interest in the quality of the data being submitted to them. The ARM should also notify its client of the error or omission and provide updated information to the client so that the client's internal records may be aligned with the information which the ARM has submitted to the competent authority on the client's behalf.

(16) APAs and CTPs should be able to delete and amend the information which they receive from an entity providing them with information to deal with situations where in exceptional circumstances the reporting entity is experiencing technical difficulties and cannot delete or amend the information itself. However, APAs and CTPs should not otherwise be responsible for correcting information contained in published reports where the error or omission was attributable to the entity providing the information. This is due to the fact that APAs and CTPs cannot know with certainty whether a perceived error or omission is indeed incorrect since they were not party to the executed trade.

(17) To facilitate reliable communication between an APA and the investment firm reporting a trade, particularly in relation to cancellations and amendments of specific transactions, an APA should include in the confirmation messages to reporting investment firms the transaction identification code that has been assigned by the APA when making the information public.

(18) To comply with its reporting obligation under Regulation (EU) No 600/2014 of the European Parliament and of the Council ([1]), an ARM should ensure the smooth flow of information to and from a competent authority, including the ability to transfer reports and deal with rejected reports. The ARM should therefore be able to demonstrate that it can comply with the technical specifications set out by the competent authority regarding the interface between the ARM and the competent authority.

([1]) Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

(19) A data reporting services provider should also ensure that it stores the transaction and trade reporting information which it handles for a sufficiently long period of time in order to facilitate the retrieval of historical information by competent authorities. In the specific case of APAs and CTPs, they should ensure that they establish the necessary organisational arrangements to maintain the data for at least the period specified in Regulation (EU) No 600/2014 and are able to respond to any request to provide services regulated by this Regulation.

(20) This Regulation sets out a number of additional services a CTP could perform which increase the efficiency of the market. In view of possible market developments, it is not appropriate to provide an exhaustive list of additional services which a CTP could perform. A CTP should therefore be able to provide further services going beyond the additional services specifically listed in this Regulation provided however that those other services do not pose any risk to the independence of the CTP or the quality of the consolidated tape.

(21) In order to ensure efficient dissemination of information made public by APAs and CTPs and an easy access and use of such information by market participants, the information should be published in a machine readable format through robust channels allowing for automatic access to the data. While websites may not always offer an architecture that is robust and scalable enough and that allows for easy automatic access to data, these technological constraints may be overcome in the future. A particular technology should therefore not be prescribed, but criteria should be set out that need to be met by the technology which is to be used.

(22) With respect to equity and equity-like instruments, Regulation (EU) No 600/2014 does not exclude that investment firms make public their transactions through more than one APA. However, a specific arrangement should be in place to enable interested parties consolidating the trade information from various APAs, in particular CTPs, to identify such potential duplicate trades as otherwise the same trade might be consolidated several times, and published repeatedly by the CTPs. This would undermine the quality and usefulness of the consolidated tape.

(23) When publishing a transaction, APAs should therefore publish transactions reported by investment firms by including a 'reprint' field indicating whether a report is a duplicate. In order to allow for an approach that is neutral in terms of the technology used it is necessary to provide for different possible ways in which an APA can identify duplicates.

(24) In order to ensure that each transaction is only included once in the consolidated tape and therefore to strengthen the reliability of the provided information, CTPs should not publish information in relation to a transaction published by an APA which is identified as duplicative.

(25) APAs should publish information on transactions, including the relevant time stamps, such as the time when transactions were executed and the time transactions were reported. Furthermore, the granularity of the time stamps should reflect the nature of the trading system on which the transaction was executed. A greater granularity should be provided when publishing information on transactions executed in electronic systems than on transactions executed in non-electronic systems.

(26) CTPs may publish information on equity and non-equity instruments. Given the different requirements for the operation of those tapes, and in particular the significantly broader scope of financial instruments covered for non-equity instruments and the deferred application of the provisions of Directive 2014/65/EU for the non-equity consolidated tape, this Regulation only specifies the scope of the CTP consolidating information on equity-instruments.

(27) The provisions in this Regulation are closely linked, since they deal with the authorisation, organisational requirements and the publication of transactions for data reporting services providers. To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view by stakeholders and, in particular those subject to the obligations, it is necessary to include these regulatory technical standards in a single Regulation.

(28) This Regulation specifies the data publication requirements applicable to APAs and CTPs. In order to ensure consistent practices for publishing trade information across trading venues, APAs and CTPs and to facilitate the consolidation of data by CTPs, this Regulation should apply in conjunction with Commission Delegated Regulations (EU) 2017/587 ([1]) and (EU) 2017/583 ([2]) where detailed requirements applicable to the publication of trade information are set out.

(29) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the related national provisions transposing Directive 2014/65/EU apply from the same date. As Article 65(2) of Directive 2014/65/EU applies from 3 September of the year after the year of entry into application of this Regulation, certain provisions of this Regulation should apply from that later date.

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

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

HAS ADOPTED THIS REGULATION:

CHAPTER I

AUTHORISATION

(Article 61(2) of Directive 2014/65/EU)

Article 1

Information to competent authorities

1. An applicant seeking authorisation to provide data reporting services shall submit to the competent authority the information set out in Articles 2, 3 and 4 and the information regarding all the organisational requirements set out in Chapters II and III.

2. A data reporting services provider shall promptly inform the competent authority of its home Member State of any material change to the information provided at the time of the authorisation and thereafter.

Article 2

Information on the organisation

1. An applicant seeking authorisation to provide data reporting services shall include in its application for authorisation a programme of operations referred to in Article 61(2) of Directive 2014/65/EU. The programme of operations shall include the following information:

(a) information on the organisational structure of the applicant, including an organisational chart and a description of the human, technical and legal resources allocated to its business activities;

([1]) Commission Delegated Regulation (EU) 2017/587 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser (see page 387 of this Official Journal).

([2]) Commission Delegated Regulation (EU) 2017/583 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives (see page 229 of this Official Journal).

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

(b) information on the compliance policies and procedures of the data reporting services provider, including:

(i) the name of the person or persons responsible for the approval and maintenance of those policies;

(ii) the arrangements to monitor and enforce the compliance policies and procedures;

(iii) the measures to be undertaken in the event of a breach which may result in a failure to meet the conditions for initial authorisation;

(iv) a description of the procedure for reporting to the competent authority any breach which may result in a failure to meet the conditions for initial authorisation;

(c) a list of all outsourced functions and resources allocated to the control of the outsourced functions;

2. A data reporting services provider offering services other than data reporting services shall describe those services in the organisational chart.

Article 3

Corporate governance

1. An applicant seeking authorisation to provide data reporting services shall include in its application for authorisation information on the internal corporate governance policies and the procedures which govern its management body, senior management, and, where established, committees.

2. The information set out in paragraph 1 shall include:

(a) a description of the processes for selection, appointment, performance evaluation and removal of senior management and members of the management body;

(b) a description of the reporting lines and the frequency of reporting to the senior management and the management body;

(c) a description of the policies and procedures on access to documents by members of the management body.

Article 4

Information on the members of the management body

1. An applicant seeking authorisation to provide data reporting services shall include in its application for authorisation the following information in respect of each member of the management body:

(a) name, date and place of birth, personal national identification number or an equivalent thereof, address and contact details;

(b) the position for which the person is or will be appointed;

(c) a curriculum vitae evidencing sufficient experience and knowledge to adequately perform the responsibilities;

(d) criminal records, notably through an official certificate, or, where such a document is not available in the relevant Member State, a self-declaration of good repute and the authorisation to the competent authority to inquire whether the member has been convicted of any criminal offence in connection with the provision of financial or data services or in relation to acts of fraud or embezzlement;

(e) a self-declaration of good repute and the authorisation to the competent authority to inquire whether the member:

(i) has been subject to an adverse decision in any proceedings of a disciplinary nature brought by a regulatory authority or government body or is the subject of any such proceedings which are not concluded;

(ii) has been subject to an adverse judicial finding in civil proceedings before a court in connection with the provision of financial or data services, or for misconduct or fraud in the management of a business;

(iii) has been part of the management body of an undertaking which was subject to an adverse decision or penalty by a regulatory authority or whose registration or authorisation was withdrawn by a regulatory authority;

(iv) has been refused the right to carry on activities which require registration or authorisation by a regulatory authority;

(v) has been part of the management body of an undertaking which has gone into insolvency or liquidation while the person held such position or within a year after which the person ceased to hold such position;

(vi) has been otherwise fined, suspended, disqualified, or been subject to any other sanction in relation to fraud, embezzlement or in connection with the provision of financial or data services, by a professional body;

(vii) has been disqualified from acting as a director, disqualified from acting in any managerial capacity, dismissed from employment or other appointment in an undertaking as a consequence of misconduct or malpractice;

(f) An indication of the minimum time that is to be devoted to the performance of the person's functions within the data reporting services provider;

(g) a declaration of any potential conflicts of interest that may exist or arise in performing the duties and how those conflicts are managed.

CHAPTER II

ORGANISATIONAL REQUIREMENTS

(Article 64(3), (4) and (5), Article 65(4), (5) and (6), and Article 66(2), (3) and (4) of Directive 2014/65/EU)

Article 5

Conflicts of interest

1. A data reporting services provider shall operate and maintain effective administrative arrangements, designed to prevent conflicts of interest with clients using its services to meet their regulatory obligations and other entities purchasing data from data reporting services providers. Such arrangements shall include policies and procedures for identifying, managing and disclosing existing and potential conflicts of interest and shall contain:

(a) an inventory of existing and potential conflicts of interest, setting out their description, identification, prevention, management and disclosure;

(b) the separation of duties and business functions within the data reporting services provider including:

(i) measures to prevent or control the exchange of information where a risk of conflicts of interest may arise;

(ii) the separate supervision of relevant persons whose main functions involve interests that are potentially in conflict with those of a client;

(c) a description of the fee policy for determining fees charged by the data reporting services provider and undertakings to which the data reporting services provider has close links;

(d) a description of the remuneration policy for the members of the management body and senior management;

(e) the rules regarding the acceptance of money, gifts or favours by staff of the data reporting services provider and its management body.

2. The inventory of conflicts of interest as referred to in paragraph 1(a) shall include conflicts of interest arising from situations where the data reporting services provider:

(a) may realise a financial gain or avoid a financial loss, to the detriment of a client;

(b) may have an interest in the outcome of a service provided to a client, which is distinct from the client's interest in that outcome;

(c) may have an incentive to prioritise its own interests or the interest of another client or group of clients rather than the interests of a client to whom the service is provided;

(d) receive or may receive from any person other than a client, in relation to the service provided to a client, an incentive in the form of money, goods or services, other than commission or fees received for the service.

Article 6

Organisational requirements regarding outsourcing

1. Where a data reporting services provider arranges for activities to be performed on its behalf by third parties, including undertakings with which it has close links, it shall ensure that the third party service provider has the ability and the capacity, to perform the activities reliably and professionally.

2. A data reporting services provider shall specify which of the activities are to be outsourced, including a specification of the level of human and technical resources needed to carry out each of those activities.

3. A data reporting services provider that outsources activities shall ensure that the outsourcing does not reduce its ability or power to perform senior management or management body functions.

4. A data reporting services provider shall remain responsible for any outsourced activity and shall adopt organisational measures to ensure:

(a) that it assesses whether the third party service provider is carrying out outsourced activities effectively and in compliance with applicable laws and regulatory requirements and adequately addresses identified failures;

(b) the identification of the risks in relation to outsourced activities and adequate periodic monitoring;

(c) adequate control procedures with respect to outsourced activities, including effectively supervising the activities and their risks within the data reporting services provider;

(d) adequate business continuity of outsourced activities;

For the purposes of point (d), the data reporting services provider shall obtain information on the business continuity arrangements of the third party service provider, assess its quality and, where needed, request improvements.

5. A data reporting services provider shall ensure that the third party service provider cooperates with the competent authority of the data reporting services provider in connection with outsourced activities.

6. Where a data reporting services provider outsources any critical function, it shall provide the competent authority of its home Member State with:

(a) the identification of the third party service provider;

(b) the organisational measures and policies with respect to outsourcing and the risks posed by it as specified in paragraph 4;

(c) internal or external reports on the outsourced activities.

For the purpose of the first sub paragraph 6, a function shall be regarded as critical if a defect or failure in its performance would materially impair the continuing compliance of the data reporting services provider with the conditions and obligations of its authorisation or its other obligations under Directive 2014/65/EU.

Article 7

Business continuity and back-up facilities

1. A data reporting services provider shall use systems and facilities that are appropriate and robust enough to ensure continuity and regularity in the performance of the services provided referred to in Directive 2014/65/EU.

2. A data reporting services provider shall conduct periodic reviews, at least annually, evaluating its technical infrastructures and associated policies and procedures, including business continuity arrangements. A data reporting services provider shall remedy any deficiencies identified during the review.

3. A data reporting services provider shall have effective business continuity arrangements in place to address disruptive incidents, including:

(a) the processes which are critical to ensuring the services of the data reporting services provider, including escalation procedures, relevant outsourced activities or dependencies on external providers;

(b) specific continuity arrangements, covering an adequate range of possible scenarios, in the short and medium term, including system failures, natural disasters, communication disruptions, loss of key staff and inability to use the premises regularly used;

(c) duplication of hardware components, allowing for failover to a back-up infrastructure, including network connectivity and communication channels;

(d) back-up of business-critical data and up-to-date information of the necessary contacts, ensuring communication within the data reporting services provider and with clients;

(e) the procedures for moving to and operating data reporting services from a back-up site;

(f) the target maximum recovery time for critical functions, which shall be as short as possible and in any case no longer than six hours in the case of approved publication arrangements (APAs) and consolidated tape providers (CTPs) and until the close of business of the next working day in the case of approved reporting mechanisms (ARMs);

(g) staff training on the operation of the business continuity arrangements, individuals' roles including specific security operations personnel ready to react immediately to a disruption of services;

4. A data reporting services provider shall set up a programme for periodically testing, reviewing and, where needed, modifying the business continuity arrangements.

5. A data reporting services provider shall publish on its website and promptly inform the competent authority of its home Member State and its clients of any service interruptions or connection disruptions as well as the time estimated to resume a regular service.

6. In the case of ARMs, the notifications referred to in paragraph 5 shall also be made to any competent authority to whom the ARM submits transaction reports.

Article 8

Testing and capacity

1. A data reporting services provider shall implement clearly delineated development and testing methodologies, ensuring that:

(a) the operation of the IT systems satisfies the data reporting services provider's regulatory obligations;

(b) compliance and risk management controls embedded in IT systems work as intended;

(c) the IT systems can continue to work effectively at all times.

2. A data reporting services provider shall also use the methodologies referred to in paragraph 1 prior to and following the deployment of any updates of the IT systems.

3. A data reporting services provider shall promptly notify the competent authority of its home Member State of any planned significant changes to the IT system prior to their implementation.

4. In the case of ARMs, the notifications referred to in paragraph 3 shall also be made to any competent authority to whom the ARM submits transaction reports.

5. A data reporting services provider shall set up an on-going programme for periodically reviewing and, where needed, modifying the development and testing methodologies.

6. A data reporting services provider shall run stress tests periodically at least on an annual basis. A data reporting services provider shall include in the adverse scenarios of the stress test unexpected behaviour of critical constituent elements of its systems and communication lines. The stress testing shall identify how hardware, software and communications respond to potential threats, specifying systems unable to cope with the adverse scenarios. A data reporting services provider shall take measures to address identified shortcomings in those systems.

7. A data reporting services provider shall:

(a) have sufficient capacity to perform its functions without outages or failures, including missing or incorrect data;

(b) have sufficient scalability to accommodate without undue delay any increase in the amount of information to be processed and in the number of access requests from its clients.

Article 9

Security

1. A data reporting services provider shall set up and maintain procedures and arrangements for physical and electronic security designed to:

(a) protect its IT systems from misuse or unauthorised access;

(b) minimise the risks of attacks against the information systems as defined in Article 2(a) of Directive 2013/40/EU of the European Parliament and of the Council [1];

(c) prevent unauthorised disclosure of confidential information;

(d) ensure the security and integrity of the data.

2. Where an investment firm ('reporting firm') uses a third party ('submitting firm') to submit information to an ARM on its behalf, an ARM shall have procedures and arrangements in place to ensure that the submitting firm does not have access to any other information about or submitted by the reporting firm to the ARM which may have been sent by the reporting firm directly to the ARM or via another submitting firm.

3. A data reporting services provider shall set up and maintain measures and arrangements to promptly identify and manage the risks identified in paragraph 1.

4. In respect of breaches in the physical and electronic security measures referred to in paragraphs 1, 2 and 3, a data reporting services provider shall promptly notify:

(a) the competent authority of its home Member State and provide an incident report, indicating the nature of the incident, the measures adopted to cope with the incident and the initiatives taken to prevent similar incidents;

(b) its clients that have been affected by the security breach.

[1] Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA (OJ L 218, 14.8.2013, p. 8).

5. In the case of ARMs, the notification referred to in paragraph 4(a) shall also be made to any other competent authorities to whom the ARM submits transaction reports.

Article 10

Management of incomplete or potentially erroneous information by APAs and CTPs

1. APAs and CTPs shall set up and maintain appropriate arrangements to ensure that they accurately publish the trade reports received from investment firms and, in the case of CTPs, from trading venues and APAs, without themselves introducing any errors or omitting information and shall correct information where they have themselves caused the error or omission.

2. APAs and CTPs shall continuously monitor in real-time the performance of their IT systems ensuring that the trade reports they have received have been successfully published.

3. APAs and CTPs shall perform periodic reconciliations between the trade reports they receive and the trade reports that they publish, verifying the correct publication of the information.

4. An APA shall confirm the receipt of a trade report to the reporting investment firm, including the transaction identification code assigned by the APA. An APA shall refer to the transaction identification code in any subsequent communication with the reporting firm in relation to a specific trade report.

5. An APA shall set up and maintain appropriate arrangements to identify on receipt trade reports that are incomplete or contain information that is likely to be erroneous. These arrangements shall include automated price and volume alerts, taking into account:

(a) the sector and the segment in which the financial instrument is traded;

(b) liquidity levels, including historical trading levels;

(c) appropriate price and volume benchmarks;

(d) if needed, other parameters according to the characteristics of the financial instrument.

6. Where an APA determines that a trade report it receives is incomplete or contains information that is likely to be erroneous, it shall not publish that trade report and shall promptly alert the investment firm submitting the trade report.

7. In exceptional circumstances APAs and CTPs shall delete and amend information in a trade report upon request from the entity providing the information when that entity cannot delete or amend its own information for technical reasons.

8. APAs shall publish non-discretionary policies on information cancellation and amendments in trade reports which set out the penalties that APAs may impose on investment firms providing trade reports where the incomplete or erroneous information has led to the cancellation or amendment of trade reports.

Article 11

Management of incomplete or potentially erroneous information by ARMs

1. An ARM shall set up and maintain appropriate arrangements to identify transaction reports that are incomplete or contain obvious errors caused by clients. An ARM shall perform validation of the transaction reports against the requirements established under Article 26 of Regulation (EU) No 600/2014 for field, format and content of fields in accordance with Table 1 of Annex I to Commission Delegated Regulation (EU) 2017/590 ([1]).

([1]) Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities (see page 449 of this Official Journal).

2. An ARM shall set up and maintain appropriate arrangements to identify transaction reports which contain errors or omissions caused by that ARM itself and to correct, including deleting or amending, such errors or omissions. An ARM shall perform validation for field, format and content of fields in accordance with Table 1 of Annex I to Delegated Regulation (EU) 2017/590.

3. An ARM shall continuously monitor in real-time the performance of its systems ensuring that a transaction report it has received has been successfully reported to the competent authority in accordance with Article 26 of Regulation (EU) No 600/2014.

4. An ARM shall perform periodic reconciliations at the request of the competent authority of its home Member State or the competent authority to whom the ARM submits transaction reports between the information that the ARM receives from its client or generates on the client's behalf for transaction reporting purposes and data samples of the information provided by the competent authority.

5. Any corrections, including cancellations or amendments of transaction reports, that are not correcting errors or omissions caused by an ARM, shall only be made at the request of a client and per transaction report. Where an ARM cancels or amends a transaction report at the request of a client, it shall provide this updated transaction report to the client.

6. Where an ARM, before submitting the transaction report, identifies an error or omission caused by a client, it shall not submit that transaction report and shall promptly notify the investment firm of the details of the error or omission to enable the client to submit a corrected set of information.

7. Where an ARM becomes aware of errors or omissions caused by the ARM itself, it shall promptly submit a correct and complete report.

8. An ARM shall promptly notify the client of the details of the error or omission and provide an updated transaction report to the client. An ARM shall also promptly notify the competent authority of its home Member State and the competent authority to whom the ARM reported the transaction report about the error or omission.

9. The requirement to correct or cancel erroneous transaction reports or report omitted transactions shall not extend to errors or omissions which occurred more than five years before the date that the ARM became aware of such errors or omissions.

Article 12

Connectivity of ARMs

1. An ARM shall have in place policies, arrangements and technical capabilities to comply with the technical specification for the submission of transaction reports required by the competent authority of its home Member State and by other competent authorities to whom the ARM sends transaction reports.

2. An ARM shall have in place adequate policies, arrangements and technical capabilities to receive transaction reports from clients and to transmit information back to clients. The ARM shall provide the client with a copy of the transaction report which the ARM submitted to the competent authority on the client's behalf.

Article 13

Other services provided by CTPs

1. A CTP may provide the following additional services:

(a) provision of pre-trade transparency data;

(b) provision of historical data;

(c) provision of reference data;

(d) provision of research;

(e) processing, distribution and marketing of data and statistics on financial instruments, trading venues, and other market-related data;

(f) design, management, maintenance and marketing of software, hardware and networks in relation to the transmission of data and information.

2. A CTP may perform services other than those specified under paragraph 1 which increase the efficiency of the market, provided that such services do not create any risk affecting the quality of the consolidated tape or the independence of the CTP that cannot be adequately prevented or mitigated.

CHAPTER III

PUBLICATION ARRANGEMENTS

(Article 64(1) and (2) and Article 65(1) of Directive 2014/65/EU)

Article 14

Machine readability

1. APAs and CTPs shall publish the information which has to be made public in accordance with Articles 64(1) and 65(1) of Directive 2014/65/EU in a machine readable way.

2. CTPs shall publish the information which has to be made in accordance with Article 65(2) of Directive 2014/65/EU in a machine readable way.

3. Information shall only be considered published in a machine readable way where all of the following conditions are met:

(a) it is in an electronic format designed to be directly and automatically read by a computer;

(b) it is stored in an appropriate IT architecture in accordance with Article 8(7) that enables automatic access;

(c) it is robust enough to ensure continuity and regularity in the performance of the services provided and ensures adequate access in terms of speed;

(d) it can be accessed, read, used and copied by computer software that is free of charge and publicly available.

For the purposes of point (a) of the first subparagraph, the electronic format shall be specified by free, non-proprietary and open standards.

4. For the purposes of paragraph 3(a), electronic format shall include the type of files or messages, the rules to identify them, and the name and data type of the fields they contain.

5. APAs and CTPs shall:

(a) make instructions available to the public, explaining how and where to easily access and use the data, including identification of the electronic format;

(b) make public any changes to the instructions referred to in point (a) at least three months before they come into effect, unless there is an urgent and duly justified need for changes in instructions to take effect more quickly;

(c) include a link to the instructions referred to in point (a) on the homepage of their website.

Article 15

Scope of the consolidated tape for shares, depositary receipts, ETFs, certificates and other similar financial instruments

1. A CTP shall include in its electronic data stream data made public pursuant to Articles 6 and 20 of Regulation (EU) No 600/2014 relating to all financial instruments referred to in those Articles.

2. When a new APA or a new trading venue starts operating, a CTP shall include the data made public by that APA or trading venue in the electronic data stream of its consolidated tape as soon as possible, and in any case no later than six months after the start of the APA's or trading venue's operations.

Article 16

Identification of original and duplicative trade reports in shares, depositary receipts, ETFs, certificates and other similar financial instruments

1. Where an APA publishes a trade report which is a duplicate, it shall insert the code 'DUPL' in a reprint field to enable recipients of the data to differentiate between the original trade report and any duplicates of that report.

2. For the purposes of paragraph 1, an APA shall require each investment firm to comply with one of the following conditions:

(a) to certify that it only reports transactions in a particular financial instrument through that APA;

(b) to use an identification mechanism which flags one report as the original one ('ORGN'), and all other reports of the same transaction as duplicates ('DUPL').

Article 17

Publication of original reports in shares, depositary receipts, ETFs, certificates and other similar financial instruments

A CTP shall not consolidate trade reports with the code 'DUPL' in the reprint field.

Article 18

Details to be published by the APA

1. An APA shall make public:

(a) for transactions executed in respect of shares, depositary receipts, exchange-traded funds (ETFs), certificates and other similar financial instruments, the details of a transaction specified in Table 2 of Annex I to Delegated Regulation (EU) 2017/587 and, use the appropriate flags listed in Table 3 of Annex I to Delegated Regulation (EU) 2017/587;

(b) for transactions executed in respect of bonds, structured finance products, emission allowances and derivatives the details of a transaction specified in Table 1 of Annex II to Delegated Regulation (EU) 2017/583 and use the appropriate flags listed in Table 2 of Annex II to Delegated Regulation (EU) 2017/583.

2. Where publishing information on when the transaction was reported, an APA shall include the date and time, up to the second, it publishes the transaction.

3. By way of derogation from paragraph 2, an APA that publishes information regarding a transaction executed on an electronic system shall include the date and time, up to the millisecond, of the publication of that transaction in its trade report.

4. For the purposes of paragraph 3, an 'electronic system' shall mean a system where orders are electronically tradable or where orders are tradable outside the system provided that they are advertised through the given system.

5. Timestamps referred to in paragraphs 2 and 3 shall, respectively, not diverge by more than one second or millisecond from the Coordinated Universal Time (UTC) issued and maintained by one of the timing centres listed in the latest Bureau International des Poids et Mesures (BIPM) Annual Report on Time Activities.

Article 19

Non-discrimination

APA and CTPs shall ensure that the information which has to be made public is sent through all distribution channels at the same time, including when the information is made public as close to real time as technically possible or 15 minutes after the first publication.

Article 20

Details to be published by the CTP

A CTP shall make public:

(a) for transactions executed in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments, the details of a transaction specified in Table 2 of Annex I to Delegated Regulation (EU) 2017/587 and use the appropriate flags listed in Table 3 of Annex I to Delegated Regulation (EU) 2017/587;

(b) for transactions executed in respect of bonds, structured finance products, emission allowances and derivatives the details of a transaction specified in Table 1 of Annex II to Delegated Regulation (EU) 2017/583 and use the appropriate flags listed in Table 2 of Annex II to Delegated Regulation (EU) 2017/583.

Article 21

Entry into force and application

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

It shall apply from the date that appears first in the second subparagraph of Article 93(1) of Directive 2014/65/EU.

However, Articles 14(2) and 20(b) shall apply from the first day of the ninth month following the date of application of Directive 2014/65/EU.

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

Done at Brussels, 2 June 2016.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION DELEGATED REGULATION (EU) 2017/572

of 2 June 2016

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on the specification of the offering of pre-and post-trade data and the level of disaggregation of data

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 ([1]) and in particular the third subparagraph of Article 12(2) thereof,

Whereas:

(1) In order to reduce costs for market participants when purchasing data, Regulation (EU) No 600/2014 provides for pre-trade and post-trade transparency data to be made available to the public in an 'unbundled' fashion for separate data items. It is necessary to specify the level of disaggregation by which venues should offer data. Taking into account the evidence of demand for such data from other stakeholders, market operators and investment firms operating a trading venue should disaggregate data by asset class, by country of issue, by the currency in which a financial instrument is traded, and according to whether data comes from scheduled daily auctions or from continuous trading.

(2) To ensure that pre-trade and post-trade data offered appropriately matches the demand from market participants, market operators and investment firms operating a trading venue should offer any combination of the disaggregation criteria on a reasonable commercial basis.

(3) For some financial instruments such as for derivatives it may not always be possible to determine unambiguously the particular asset class to which that instrument belongs since the determination of an asset class depends on which characteristics of the financial instruments are considered to be the decisive ones. Similarly, it may not always be possible to unambiguously determine which other criteria a type of data meets. To ensure that market participants purchasing data from a particular trading venue receive a consistent data set, it is necessary to require market operators or investment firms operating a trading venue to determine in those cases where the disaggregation criteria cannot be applied in an unambiguous manner which criteria a financial instrument or type of data should be deemed to meet.

(4) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the provisions laid down in Regulation (EU) No 600/2014 apply from the same date.

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

(6) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council ([2]),

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

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

HAS ADOPTED THIS REGULATION:

Article 1

Offering of pre-trade and post-trade transparency data

1. A market operator or investment firm operating a trading venue shall upon request make the information published in accordance with Articles 3, 4 and 6 to 11 of Regulation (EU) No 600/2014 available to the public by offering pre-trade and post-trade data disaggregated, in accordance with the following criteria:

(a) the nature of the asset class:

(i) shares;

(ii) depositary receipts, ETFs, certificates and other similar financial instruments referred to in Article 3 of Regulation (EU) No 600/2014;

(iii) bonds and structured finance products;

(iv) emission allowances;

(v) derivatives;

(b) the country of issue for shares and sovereign debt;

(c) the currency in which the financial instrument is traded;

(d) scheduled daily auctions as opposed to continuous trading.

2. Derivatives referred to in point (a)(v) shall be disaggregated in accordance with the following criteria:

(a) equity derivatives;

(b) interest rate derivatives;

(c) credit derivatives;

(d) foreign exchange derivatives;

(e) commodity and emission allowance derivatives;

(f) other derivatives.

3. The market operator or investment firm operating a trading venue shall determine which criteria a financial instrument or type of data meets where the disaggregation criteria in paragraphs 1 or 2 cannot be applied in an unambiguous manner.

4. The market operator or investment firm operating a trading venue shall apply the criteria referred to in paragraphs 1 and 2 in any combination upon request.

5. In addition to offering the data in accordance with paragraph 1 and 2, a market operator or investment firm operating a trading venue may offer bundles of data.

Article 2

Entry into force and application

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

It shall apply from the date referred to in the second paragraph of Article 55 of Regulation (EU) No 600/2014.

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

Done at Brussels, 2 June 2016.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION DELEGATED REGULATION (EU) 2017/573

of 6 June 2016

supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on requirements to ensure fair and non-discriminatory co-location services and fee structures

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU [1], and in particular Article 48(12)(d),

Whereas:

(1) It is important to adopt detailed regulatory technical standards to clearly identify conditions when co-location and fee structures used by trading venues may be considered fair and non-discriminatory.

(2) Directive 2014/65/EU extends the requirements relating to co-location and fee structures to multilateral trading facilities and organised trading facilities. It is therefore important to ensure that those venues are also within the scope of this Regulation.

(3) In order to ensure harmonised conditions, common requirements should apply to all types of co-location services and to trading venues that organise their own data centres or that use data centres owned or managed by third parties.

(4) Trading venues should have the ability to determine their commercial policy as regards co-location and determine which types of market participants they want to grant access to those services provided that their commercial policy is based on objective, transparent and non-discriminatory criteria. Trading venues should not be required to extend their co-location capacities beyond the limits of the space, power, cooling or similar facilities available and should have discretion to decide whether they expand their co-location space or not.

(5) Fair and non-discriminatory co-location services and fee structures require a sufficient degree of transparency to ensure that the obligations laid down in Directive 2014/65/EU are not circumvented. Trading venues should therefore use objective criteria when determining rebates, incentives and disincentives.

(6) Fee structures that contribute to conditions leading to disorderly trading conditions through encouraging intensive trading and that may lead to a stress of market infrastructures should be prohibited. Therefore, volume discounts should be allowed, provided that, as price differentiation schemes, they are based on the total trading volume, the total number of trades or the cumulated trading fees generated by one member whereby only the marginal trade executed subsequently to reaching the threshold is executed at a reduced price.

(7) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the related national provisions transposing Directive 2014/65/EU apply from the same date.

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

(9) The European Securities and Markets Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council [2],

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

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

HAS ADOPTED THIS REGULATION:

Article 1

Fair and non-discriminatory co-location services

1. Trading venues providing co-location services shall, within the limits of the space, power, cooling and similar facilities available, ensure that such services are provided in a fair and non-discriminatory manner as laid down in paragraphs 2, 3 and 4 in relation to the following:

(a) data centres they own and manage;

(b) data centres they own which are managed by a third party selected by them;

(c) data centres that are owned and managed by a third party with which the trading venue has an outsourcing arrangement for the organisation of the execution infrastructure of the trading venue as well as of the proximity access to it;

(d) proximity hosting services owned and managed by a third party with a contractual arrangement with a trading venue.

2. Trading venues shall provide all users which have subscribed to the same co-location services access to their network under the same conditions, including as regards space, power, cooling, cable length, access to data, market connectivity, technology, technical support and messaging types.

3. Trading venues shall take all reasonable steps to monitor all connections and latency measurements to ensure the non-discriminatory treatment of all users of co-location services that have the same type of latency access.

4. Trading venues shall make available individual co-location services, without any requirement to purchase bundled services.

Article 2

Transparency when providing co-location services

Trading venues shall publish the following information on their co-location services on their websites:

(a) a list of services provided providing information about space, power, cooling, cable length, access to data, market connectivity, technology, technical support, message types, telecommunications and related products and services;

(b) the fee structure for each service as set out in Article 3(2);

(c) the conditions for accessing the service, including IT requirements and operational arrangements;

(d) the different types of latency of access available;

(e) the procedure to allocate co-location space;

(f) the requirements on third party providers of co-location services, where applicable.

Article 3

Fair and non-discriminatory fees

1. Trading venues shall charge the same fee and provide the same conditions to all users of the same type of services based on objective criteria. Trading venues shall only establish different fee structures for the same type of services where those fee structures are based on non-discriminatory, measurable and objective criteria relating to:

(a) the total volume traded, the numbers of trades or cumulated trading fees;

(b) the services or packages of services provided by the trading venue;

(c) the scope or field of use demanded;

(d) the provision of liquidity in accordance with Article 48(2) of Directive 2014/65/EU or in a capacity of being a market maker as defined in Article 4(1)(7) of Directive 2014/65/EU;

2. Trading venues shall ensure that their fee structure is sufficiently granular to allow users to predict the payable fees on the basis of at least the following elements:

(a) chargeable services, including the activity which will triggers the fee;

(b) the fee for each service, stating whether the fee is fixed or variable;

(c) rebates, incentives or disincentives.

3. Trading venues shall make individual services available without being bundled with other services.

Article 4

Transparency of fee structures

Trading venues shall publish the objective criteria for the establishment of their fees and fee structures and other conditions provided for in Article 3, together with execution fees, ancillary fees, rebates, incentives and disincentives in one comprehensive and publicly accessible document on their website.

Article 5

Prohibited fee structures

Trading venues shall not offer their members, participants or clients a fee structure whereby, once their trades exceed a given threshold, all of their trades benefit from a lower fee for a set period, including those trades that were executed prior to reaching that threshold.

Article 6

Entry into force

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

It shall apply fom 3 January 2018.

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

Done at Brussels, 6 June 2016.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION DELEGATED REGULATION (EU) 2017/574

of 7 June 2016

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ([1]), and in particular the third subparagraph of Article 50(2) thereof,

Whereas:

(1) Clock synchronisation has a direct impact in many areas. In particular it contributes to ensuring that post-trade transparency data can readily be part of a reliable consolidated tape. It is also essential for conducting cross-venue monitoring of orders and detecting instances of market abuse and allows for a clearer comparison between the transaction and the market conditions prevailing at the time of their execution.

(2) The number of orders received every second by a trading venue can be very high, much higher than that of executed transactions. This may extend to several thousands of orders per second depending on the trading venue, the type of members or participants or clients of a given trading venue, and the financial instruments' volatility and liquidity. As a result, a time granularity of one second would not be sufficient for the purposes of effective market manipulation surveillance of certain types of trading activities. Therefore, it is necessary to establish minimum granularity requirements for recording the date and time of reportable events by operators of trading venues and their members or participants.

(3) Competent authorities need to be able to reconstruct all events relating to an order throughout the lifetime of each order in an accurate time sequence. Competent authorities need to be able to reconstruct these events over multiple trading venues on a consolidated level to be able to conduct effective cross-venue monitoring on market abuse. It is therefore necessary to establish a common reference time and rules on maximum divergence from the common reference time to ensure that all operators of trading venues and their members or participants are recording the date and time based on the same time source and in accordance with consistent standards. It is also necessary to provide for accurate time stamping to allow competent authorities to distinguish between different reportable events which may otherwise appear to have taken place at the same time.

(4) There are however, trading models for which increased accuracy might not be relevant or feasible. Voice trading systems or request for quote systems where the response requires human intervention or does not allow algorithmic trading, or systems which are used for concluding negotiated transactions should be subject to different accuracy standards. Trading venues operating those trading systems are not typically susceptible to the high volume of events that can happen within the same second, meaning that it is not necessary to impose a finer granularity to time stamping of those events since it is less likely that there would be multiple events occurring at the same time. In addition, trades on those trading venues may be agreed using manual methods which can take time to agree. In those trading venues there is also an inherent delay between the moment when the trade is executed and the moment when the trade is recorded in the trading system, meaning that applying more stringent accuracy requirements would not necessarily lead to more meaningful and accurate record keeping by the operator of the trading venue, its members or participants.

(5) Competent authorities need to understand how trading venues and their members or participants are ensuring their traceability to Coordinated Universal Time (UTC). This is because of the complexity of the different systems and the number of alternative methods that can be used to synchronise to UTC. Given that clock drift can be affected by many different elements, it is also appropriate to determine an acceptance level for the maximum divergence from UTC.

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

(6) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the related national provisions transposing Directive 2014/65/EU apply from the same date.

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

(8) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council ([1]),

HAS ADOPTED THIS REGULATION:

Article 1

Reference time

Operators of trading venues and their members or participants shall synchronise the business clocks they use to record the date and time of any reportable event with the Coordinated Universal Time (UTC) issued and maintained by the timing centres listed in the latest Bureau international des poids et mesures Annual Report on Time Activities. Operators of trading venues and their members or participants may also synchronise the business clocks they use to record the date and time of any reportable event with UTC disseminated by a satellite system, provided that any offset from UTC is accounted for and removed from the timestamp.

Article 2

Level of accuracy for operators of trading venues

1. Operators of trading venues shall ensure that their business clocks adhere to the levels of accuracy specified in Table 1 of the Annex according to the gateway to gateway latency of each of their trading systems.

Gateway to gateway latency shall be the time measured from the moment a message is received by an outer gateway of the trading venue's system, sent through the order submission protocol, processed by the matching engine, and then sent back until an acknowledgement is sent from the gateway.

2. By derogation from paragraph 1, operators of trading venues that operate a voice trading system, request for quote system where the response requires human intervention or does not allow algorithmic trading, or a system that formalises negotiated transactions in accordance with Article 4(1)(b) of Regulation (EU) No 600/2014 of the European Parliament and of the Council ([2]) shall ensure that their business clocks do not diverge by more than one second from UTC referred to in Article 1 of this Regulation. The operator of the trading venue shall ensure that times are recorded to at least a one second granularity.

3. Operators of trading venues that operate multiple types of trading systems shall ensure that each system adheres to the level of accuracy applicable to that system in accordance with paragraphs 1 and 2.

Article 3

Level of accuracy for members or participants of a trading venue

1. Members or participants of trading venues shall ensure that their business clocks used to record the time of reportable events adhere to the level of accuracy specified in Table 2 of the Annex.

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

([2]) Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

2. Members or participants of trading venues that engage in multiple types of trading activities shall ensure that the systems that they use to record reportable events adhere to the level of accuracy applicable to each of these trading activities in accordance with the requirements set out in Table 2 of the Annex.

Article 4

Compliance with the maximum divergence requirements

Operators of trading venues and their members or participants shall establish a system of traceability to UTC. They shall be able to demonstrate traceability to UTC by documenting the system design, functioning and specifications. They shall be able to identify the exact point at which a timestamp is applied and demonstrate that the point within the system where the timestamp is applied remains consistent. They shall conduct a review of the compliance of the traceability system with this Regulation at least once a year.

Article 5

Entry into force and application

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

It shall apply from 3 January 2018.

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

Done at Brussels, 7 June 2016.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Table 1

Level of accuracy for operators of trading venues

Gateway-to-gateway latency time of the trading system	Maximum divergence from UTC	Granularity of the timestamp
> 1 millisecond	1 millisecond	1 millisecond or better
≤ 1 millisecond	100 microseconds	1 microsecond or better

Table 2

Level of accuracy for members or participants of a trading venue

Type of trading activity	Description	Maximum divergence from UTC	Granularity of the timestamp
Activity using high frequency algorithmic trading technique	High frequency algorithmic trading technique.	100 microseconds	1 microsecond or better
Activity on voice trading systems	Voice trading systems as defined in Article 5(5) of Commission Delegated Regulation (EU) 2017/583 [1]	1 second	1 second or better
Activity on request for quote systems where the response requires human intervention or where the system does not allow algorithmic trading	Request for quotes systems as defined in Article 5(4) of Delegated Regulation (EU) 2017/583	1 second	1 second or better
Activity of concluding negotiated transactions	Negotiated transaction as set out in Article 4(1)(b) of Regulation (EU) No 600/2014.	1 second	1 second or better
Any other trading activity	All other trading activity not covered by this table.	1 millisecond	1 millisecond or better

[1] Commission Delegated Regulation (EU) 2017/583 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives (see page 229 of this Official Journal).

COMMISSION DELEGATED REGULATION (EU) 2017/575

of 8 June 2016

supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards concerning the data to be published by execution venues on the quality of execution of transactions

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ([1]), and in particular point (a) of the first subparagraph of Article 27(10) thereof,

Whereas:

(1) With a view to providing both the public and investment firms with relevant data on execution quality to help them determine the best way to execute client orders, it is important to set out the specific content, format and the periodicity of data relating to the quality of execution of financial instruments subject to the trading obligation in Articles 23 and 28 of Regulation (EU) No 600/2014 of the European Parliament and of the Council ([2]) to be published by trading venues and systematic internalisers It is also important to set out the specific content, format and the periodicity of data relating to the quality of execution of other financial instruments which are not subject to the trading obligation and which execution venues are required to publish. In this respect, due regard should be given to the type of execution venue and the type of financial instrument concerned.

(2) In order to fully assess the extent of the quality of execution of transactions that take place in the Union, it is appropriate that execution venues which may be selected by investment firms to execute client orders comply with requirements on data to be provided by execution venues in accordance with this Regulation. To this effect, these execution venues should include regulated markets, multilateral trading facilities, organised trading facilities, systematic internalisers, market makers and other liquidity providers.

(3) Differences in the type of execution venue and financial instruments require that the content of reporting should vary depending on several factors. It is appropriate to differentiate the amount and nature of reported data according to trading systems, trading modes and trading platforms to provide a proper context for the quality of execution obtained.

(4) To avoid inappropriate comparison between execution venues and ensure the relevance of collected data, execution venues should submit separate reports corresponding to segments that operate different order books or that are regulated differently or use different market segment identifiers.

(5) To ensure an accurate picture of the quality of execution that effectively occurred, trading venues should not publish among executed orders those traded over the counter and reported onto the trading venue.

(6) When market makers and other liquidity providers are reporting as execution venues for financial instruments which are not subject to the trading obligation, they should only publish information on the orders executed or the price quoted for their clients when the orders are either quoted or executed over the counter, or executed pursuant to Articles 4 and 9 of Regulation (EU) No 600/2014, excluding orders which are held in an order management facility of a trading venue pending disclosure.

(7) It is appropriate to consider that other liquidity providers should include firms that hold themselves out as being willing to deal on own account, and which provide liquidity as part of their normal business activity, whether or not they have formal agreements in place or commit to providing liquidity on a continuous basis.

([1]) OJ L 173, 12.6.2014, p. 349.
([2]) Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

(8) In order to have complete transparency on the quality of execution for transactions in relation to price, it is appropriate that the information provided in relation to price should exclude all commissions or accrued interest, where relevant.

(9) In determining appropriate information for assessing price quality, both daily average levels and point-in-time information should be required. This will provide participants with an appropriate context and a more complete picture when analysing the quality of execution obtained. In order to allow for price comparisons between financial instruments it is also necessary to specify the currency code of any reported transaction.

(10) To ensure regulatory consistency, it is not appropriate to require trading venues to provide details of transactions that remain, at the time of publication, subject to a deferral of publication in compliance with requirements on post trade transparency. It is appropriate that systematic internalisers, market makers and other liquidity providers be exempt from publishing point-in-time transaction data for any transactions above standard market size or above size specific to the financial instrument in order to avoid those venues becoming subject to undue risk of disclosing commercially sensitive information that might hinder their ability to hedge exposures and provide liquidity. For shares, exchange-traded funds and certificates deemed to be illiquid under Regulation (EU) No 600/2014, the standard market size threshold to be used is the minimum available standard market size for that type of financial instrument. To avoid uncertainty, it is appropriate to clarify that reference to large in scale and size specific to the financial instrument have the same meaning as set out in the post trade transparency requirements.

(11) It is essential to have full transparency on all costs charged when executing an order through a given venue. It is necessary to specify all costs in the execution of a client order relevant to the use of a specific venue and for which the client pays directly or indirectly. Those costs should include execution fees, including fees for the submission, modification or cancellation of orders or quotes withdrawals, as well as any fees related to market data access or use of terminals. The relevant costs may also include clearing or settlement fees or any other fees paid to third parties involved in the execution of the order when they are part of the services provided by the execution venue. Information on costs should also include taxes or levies directly invoiced to or incurred by the venue on behalf of the members or users of the execution venue or the client to whom the order refers.

(12) Likelihood of execution indicates the probability of execution of a particular type of order and is supported by details on trading volumes in a particular instrument or other characteristics of orders and transactions. Information on likelihood of execution should allow for the calculation of metrics such as the relative market size of a venue in a particular financial instrument or a class of financial instruments. Likelihood of execution should also be assessed with data on failed transactions or cancelled or modified orders.

(13) Speed of execution may have different meanings for the different types of execution venues as the measurement of speed varies by both trading systems and trading platform. For continuous auction order books, speed of execution should be expressed in milliseconds while for other trading systems it is appropriate to use larger units of time. It is also appropriate to exclude the latency of a particular participant's connection to the execution venue, as this is outside of the control of the execution venue itself.

(14) In order to compare the quality of execution for orders of different size, execution venues should be required to report on transactions within several size ranges. The thresholds for these ranges should be dependent on the type of financial instrument and its liquidity to ensure that they provide an adequate sample of executions in a size that is typical in that instrument.

(15) It is important that execution venues collect data throughout the normal hours of their operation. Reporting should therefore be made without charge in a machine readable electronic format via an internet website to enable the public to download, search, sort and analyse all the provided data.

(16) The reports by execution venues should be complemented by the output of a consolidated tape provider established by Directive 2014/65/EU thus allowing for the development of enhanced measures of execution quality.

(17) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the provisions laid down in Directive 2014/65/EU and Regulation (EU) No 600/2014 apply from the same date.

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

(19) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council [1],

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down the specific content, the format and the periodicity of the data to be published by execution venues relating to the quality of execution of transactions. It shall apply to trading venues, systematic internalisers, market makers, or other liquidity providers.

Article 2

Definitions

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

(a) trading system means the way in which an execution venue executes orders as continuous auction order book, continuous quote driven, request for quote, periodic auction or any hybrid system falling into two or more of these categories or into a system where the price determination process is of a different nature than that applicable to the types of system set out above;

(b) 'Size Specific to the financial instrument' means size specific to a bond, structured finance product, emission allowance or derivative traded on a trading venue, for which there is not a liquid market and where the transaction in those instruments is subject to deferred publication in accordance with Article 11 of Regulation (EU) No 600/2014;

(c) Large in Scale means an order large in scale in accordance with Article 7 and 11 of Regulation (EU) No 600/2014;

(d) failed transaction means a transaction that was voided by the execution venue;

(e) price multiplier means the number of units of the underlying instrument represented by a single derivative contract;

(f) price notation means an indication as to whether the price of the transaction is expressed in monetary value, in percentage or in yield;

(g) quantity notation means an indication as to whether the quantity of the transaction is expressed in number of units or in nominal value or in monetary value;

(h) delivery type means an indication as to whether the financial instrument is settled physically or in cash including instances when the counterparty may choose or when it is determined by a third party;

(i) trading mode means scheduled opening, closing or intra-day auction, unscheduled auction, trading at close, trading out of main session, or trade reporting;

(j) trading platform means the type of platform the execution venue operates: electronic, voice or outcry;

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

(k) book depth means the total available liquidity expressed as the product of price and volume of all bids and offers for a specified number of price increments from the mid-point of the best bid and offer;

(l) average effective spread means the average of twice the difference between the actual execution price compared with mid-point of best bid and offer at time of receipt, for market orders or marketable limit orders;

(m) average speed of execution for unmodified passive orders at best bid and offer means the average time elapsed between a limit order that matches the best bid and offer being received by the execution venue, and the subsequent execution of this order;

(n) aggressive order means an order entered into the order book that took liquidity;

(o) 'passive order' means an order entered into the order book that provided liquidity;

(p) immediate or cancel order means an order which is executed upon its entering into the order book and which does not remain in the order book for any remaining quantity that has not been executed;

(q) fill or kill order means an order which is executed upon its entering into the order book provided that it can be fully filled. In the event the order can only be partially executed, then it is automatically rejected and is not executed.

Article 3

Publication of information on execution venue and financial instrument

1. Trading venues and systematic internalisers shall publish for each market segment they operate and each financial instrument subject to the trading obligation in Article 23 and 28 of Regulation (EU) No 600/2014 information on the type of execution venue in accordance with the third subparagraph.

Execution venues shall publish for each market segment they operate and each financial instrument not subject to the trading obligation in Article 23 and 28 of Regulation (EU) No 600/2014 information on the type of execution venue in accordance with the third subparagraph.

The following information shall be published in the format set out in Table 1 of the Annex:

i) name and venue identifier of the execution venue;

ii) country of location of the competent authority;

iii) name of the market segment and market segment identifier;

iv) date of the trading day;

v) nature, number and average duration of any outage, within the venue's normal trading period, that interrupted trading across all instruments available to trade at the venue on the date of the trading day;

vi) nature, number, and average duration of any scheduled auctions within the venue's normal trading period on the date of the trading day;

vii) number of failed transactions on the date of the trading day;

viii) value of failed transactions expressed as a percentage of total value of transactions that were executed on the date of the trading day.

2. Trading venues and systematic internalisers shall publish for each market segment they operate and each financial instrument subject to the trading obligation in Article 23 and 28 of Regulation (EU) No 600/2014, information on the type of financial instrument in accordance with the third subparagraph.

Execution venues shall publish for each market segment they operate and each financial instrument not subject to the trading obligation in Articles 23 and 28 of Regulation (EU) No 600/2014 information on the type of financial instrument in accordance with the third subparagraph of this paragraph.

The following information shall be published in the format set out in Table 2 of the Annex:

(a) for financial instruments that have identifiers as set out in Table 2 of the Annex:

(i) name and financial instrument identifier;

(ii) instrument classification;

(iii) currency;

(b) for financial instruments that do not have identifiers as set out in Table 2 of the Annex:

(i) the name and a written description of the instrument, including the currency of the underlying instrument, price multiplier, price notation, quantity notation and delivery type;

(ii) instrument classification;

(iii) currency.

Article 4

Price

Trading venues and systematic internalisers shall publish for each market segment they operate and each financial instrument subject to the trading obligation in Articles 23 and 28 of Regulation (EU) No 600/2014 information as regards price for each trading day orders were executed on the financial instrument in accordance with the third and fourth paragraphs of this Article.

Execution venues shall publish for each market segment they operate and each financial instrument not subject to the trading obligation in Articles 23 and 28 of Regulation (EU) No 600/2014 information as regards price for each trading day orders were executed on the financial instrument in accordance with the third and fourth paragraphs of this Article.

The following information shall be published:

(a) intra-day information

(i) for trading venues: the simple average price of all transactions that were executed in the two minutes starting at each of the reference times 9.30.00, 11.30.00, 13.30.00 and 15.30.00 UTC on that date and for each size range as set out in Article 9;

(ii) for systematic internalisers, market makers and other liquidity providers: the simple average price of all transactions that were executed in the two minutes starting at each of the reference times 9.30.00, 11.30.00, 13.30.00 and 15.30.00 UTC on that date within size range 1 as set out in Article 9;

(iii) total value of trades executed during the two minute period referred to in points (i) and (ii);

(iv) for trading venues: if no transactions occurred during the first two minutes of the relevant time periods referred to in point (i), the price of the first transaction executed within each size range as set out in Article 9, if any, after each of the reference times set out in point (i) on that date;

(v) for systematic internalisers, market makers and other liquidity providers: if no transactions occurred during the first two minutes of the relevant time periods referred to in point (ii), the price of the first transaction executed within size range 1 as set out in Article 9, if any, after each of the reference times set out in point (ii) on that date;

(vi) execution time for each transaction referred to in points (iv) and (v);

(vii) transaction size in terms of value for each executed transaction referred to in points (iv) and (v);

(viii) trading system and trading mode under which the transactions referred to in points (iv) and (v) were executed;

(ix) trading platform on which the transactions referred to in (iv) and (v) were executed;

(x) best bid and offer or the suitable reference price at the time of execution for each executed transaction referred to in points (iv) and (v);

Intra-day information shall be published in the format set out in Table 3 of the Annex.

(b) daily information:

(i) simple average and volume-weighted average transaction price, if more than one transaction occurred;

(ii) highest executed price, if more than two transactions occurred;

(iii) lowest executed price, if more than two transactions occurred.

Daily information shall be published in the format set out in Table 4 of the Annex.

Article 5

Costs

Trading venues and systematic internalisers shall publish for each market segment they operate and each financial instrument subject to the trading obligation in Article 23 and 28 of Regulation (EU) No 600/2014 information as regards costs applied by the trading venue to any members or users of the venue in accordance with the third paragraph of this Article.

Execution venues shall publish for each market segment they operate and each financial instrument not subject to the trading obligation in Articles 23 and 28 of Regulation (EU) No 600/2014 information as regards costs applied by the execution venues to any members or users of the venue in accordance with the third paragraph of this Article.

The following information shall be published in the format set out in Table 5 of the Annex:

(a) a description of the nature and level of all components of costs applied by the execution venue, before any rebates or discounts are applied, and information on how those costs differ according to the user or financial instrument involved and the relevant amounts by which they differ. The components of costs shall include:

(i) execution fees;

(ii) fees for the submission, modification or cancellation of orders or quotes withdrawals;

(iii) fees related to market data access and use of terminals;

(iv) any clearing and settlement fees and any other fees paid to third parties involved in the execution of the order;

(b) a description of the nature and level of any rebates, discounts or other payments offered to users of the execution venue including information on how those rebates, discounts or other payments differ according to the user or financial instrument involved and the amounts by which they differ;

(c) a description of the nature and amount of any non-monetary benefits offered to users of the execution venue, including information on how those non-monetary benefits differ according to the user or financial instrument involved and the value by which they differ

(d) a description of the nature and level of any taxes or levies invoiced to, or incurred by the execution venue on behalf of the members or users of the venue;

(e) a link to the website of the venue or to another source where further information on costs is available;

(f) the total value of all rebates, discounts, non-monetary benefits or other payments as set out under points (b) and (c), expressed as a percentage of the total traded value during the reporting period;

(g) the total value of all costs as set out in point (a), excluding the total value of rebates and discounts, non-monetary benefits or other payment as set out in points (b) and (c), expressed as a percentage of the total traded value during the reporting period.

Article 6

Likelihood of execution

Trading venues and systematic internalisers shall publish for each market segment they operate and each financial instrument subject to the trading obligation in Article 23 and 28 of Regulation (EU) No 600/2014 information as regards likelihood of execution for each trading day in accordance with the third paragraph of this Article.

Execution venues shall publish for each market segment they operate and each financial instrument not subject to the trading obligation in Articles 23 and 28 of Regulation (EU) No 600/2014 information as regards as regards likelihood of execution for each trading day in accordance with the third paragraph of this Article.

The following information shall be published in the format set out in Table 6 of the Annex:

(a) number of orders or requests for quotes that were received;

(b) number and value of transactions that were executed, if more than one;

(c) number of orders or request for quotes received that were cancelled or withdrawn excluding passive orders with instructions to expire or to be cancelled at the end of the day;

(d) number of orders or request for quotes received, that were modified on that date;

(e) median transaction size on that date if more than one transaction occurred;

(f) median size of all orders or requests for quote on that date if more than one order or request for quote was received;

(g) number of designated market makers.

Article 7

Additional information for continuous auction order book and continuous quote driven execution venues

1. Trading venues and systematic internalisers operating under a continuous auction order book, continuous quote driven trading system or other type of trading system for which that information is available shall publish for each market segment they operate and each financial instrument subject to the trading obligation in Articles 23 and 28 of Regulation (EU) No 600/2014 additional information at the reference times specified in points (i) and (ii) of Article 4(a) for each trading day in accordance with the third subparagraph of this paragraph.

Execution venues operating under a continuous auction order book, continuous quote driven trading system or other type of trading system for which that information is available shall publish for each market segment they operate and each financial instrument not subject to the trading obligation in Articles 23 and 28 of Regulation (EU) No 600/2014 additional information at the reference times specified in points (i) and (ii) of Article 4(a) for each trading day in accordance with the third subparagraph of this paragraph.

The following information shall be published in the format set out in Table 7 of the Annex:

(i) best bid and offer price and corresponding volumes;

(ii) book depth for three price increments.

2. Trading venues and systematic internalisers operating under a continuous auction order book, continuous quote driven trading system or other type of trading system for which that information is available, shall publish for each market segment they operate and for each financial instrument subject to the trading obligation in Articles 23 and 28 of Regulation (EU) No 600/2014 additional information for each trading day, in accordance with the third subparagraph of this paragraph.

Execution venues operating under a continuous auction order book, continuous quote driven trading system or other type of trading system for which that information is available shall publish for each market segment they operate and each financial instrument not subject to the trading obligation in Articles 23 and 28 of Regulation (EU) No 600/2014 additional information for each trading day, in accordance with the third subparagraph of this paragraph.

The following information shall be published in the format set out in Table 8 of the Annex:

(a) average effective spread;

(b) average volume at best bid and offer;

(c) average spread at best bid and offer;

(d) number of cancellations at best bid and offer;

(e) number of modifications at best bid and offer;

(f) average book depth for 3 price increments;

(g) mean and median time elapsed between an aggressive order or quote acceptance being received by the execution venue and the subsequent total or partial execution;

(h) average speed of execution for unmodified passive orders at best bid and offer;

(i) number of Fill or Kill orders that failed;

(j) number of Immediate or Cancel orders that got zero fill;

(k) number and value of transactions that were executed on the trading venue that are Large in Scale pursuant to Article 4 or 9 of Regulation (EU) No 600/2014;

(l) number and value of transactions that were executed on the trading venue pursuant to Article 4 or Article 9 of Regulation (EU) No 600/2014, but excluding orders that are held in an order management facility of the trading venue pending disclosure and not included under point (k);

(m) number and average duration of trading interruptions as the result of any volatility auction or circuit breaker which occurred within the venue's normal trading period;

(n) nature, number and average duration of any trading suspension that occurred as a result of a decision by the venue within the venue's normal trading period, outside of any that were reported under Article 3(1)(v).

3. Trading venues and systematic internalisers operating under, in whole or in part, a continuous quote driven trading system, shall publish for each market segment they operate and financial instrument subject to the trading obligation in Articles 23 and 28 of Regulation (EU) No 600/2014 additional information in accordance with the third subparagraph of this paragraph.

Execution venues operating under, in whole or in part, a continuous quote driven trading system shall publish for each market segment they operate and each financial instrument not subject to the trading obligation in Articles 23 and 28 of Regulation (EU) No 600/2014 additional information in accordance with the third subparagraph of this paragraph.

The following information shall be published in the format set out in Table 8 of Annex:

(a) the number and average duration, during the venue's normal trading hours, of any periods lasting more than 15 minutes during which no bid or offers were provided for each trading day;

(b) average quote presence expressed in percentage of the venue's normal trading period on that date.

Article 8

Additional information for request for quote execution venues

Trading venues and systematic internalisers operating under a request for quote trading system or any other type of trading system for which that information is available shall publish for each market segment they operate and each financial instrument subject to the trading obligation in Articles 23 and 28 of Regulation (EU) No 600/2014 additional information for each trading day in accordance with the third paragraph of this Article.

Execution venues operating under a request for quote trading system, or any other type of trading system for which that information is available shall publish for each market segment they operate and each financial instrument not subject to the trading obligation in Articles 23 and 28 of Regulation (EU) No 600/2014 additional information for each trading day in accordance with the third paragraph of this Article.

The following information shall be published in the format set out in Table 9 of Annex:

(a) the mean amount of time and median amount of time elapsed between the acceptance of a quote and execution, for all transactions in that financial instrument, and;

(b) the mean amount of time and median amount of time elapsed between a request for a quote and provision of any corresponding quotes, for all quotes in that financial instrument.

Article 9

Determination of reporting ranges

Execution venues shall report the executed transactions specified in Article 4 for the following ranges:

(a) for all financial instruments other than money market instruments:

(i) range 1: greater than EUR 0 and less than or equal to the Standard Market Size or the Size Specific to the financial instrument;

(ii) range 2: greater than the Standard Market Size or the Size Specific to the financial instrument and less than or equal to Large in Scale;

(iii) range 3: greater than Large in Scale.

(b) for illiquid shares, exchange traded funds or certificates:

(i) range 1: greater than EUR 0 and less than or equal to the smallest available Standard Market Size in that type of instrument;

(ii) range 2: greater than the smallest available Standard Market Size in that type of instrument and less than or equal to Large in Scale;

(iii) range 3: greater than Large in Scale.

(c) for money market instruments:

(i) range 1: greater than EUR 0 and less than or equal to EUR 10 million;

(ii) range 2: greater than EUR 10 million and less than or equal to EUR 50 million;

(iii) range 3: greater than EUR 50 million.

Article 10

Format for publication

Execution venues shall publish, for each trading day, the information in accordance with the templates set out in the Annex, in a machine-readable electronic format, available for downloading by the public.

Article 11

Periodicity of the information to be published

Execution venues shall publish the information quarterly and no later than three months after the end of each quarter, as follows:

(a) by 30 June, information regarding the time period 1 January to 31 March;

(b) by 30 September, information regarding the time period 1 April to 30 June;

(c) by 31 December, information regarding the time period 1 July to 30 September;

(d) by 31 March, information regarding the time period 1 October to 31 December.

Article 12

Entry into force and application

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

It shall apply from 3 January 2018.

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

Done at Brussels, 8 June 2016

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Table 1 — identification information to be published as referred to in Article 3(1) — type of execution venue

Venue	Name	Identifier (ISO 10383 Market Identifier Code (MIC) or the Legal Entity Identifier (LEI)	
Country of Competent Authority	Name		
Market Segment	Name	Identifier (ISO 10383 market segment MIC)	
Date of the trading day	ISO 8601		
Outages	Nature	Number	Average duration
Scheduled Auction	Nature	Number	Average duration
Failed Transactions		Number	Value (as % of total value of transactions executed on that day)

Table 2 — identification information to be published as referred to in Article 3(2) — type of financial instrument

Financial Instrument	Name	Identifier(ISO 6166)
Written description of financial instrument, if no identifier available (including the currency of the underlying instrument, price multiplier, price notation, quantity notation and delivery type)		
Instrument classification	(ISO 10962 CFI code)	
Currency	(ISO 4217)	

Table 3 — price information to be published as referred to in Article 4 point (a)

	Size Range	All trades executed within first two minutes after time T		First transaction after time T (if no transactions within first two minutes after time T)						
Time (T)		Simple average executed price (excluding commissions and accrued interest)	Total value executed	Price	Time of execution	Transaction size	Trading System	Trading Mode	Trading platform	best bid and offer or suitable reference price at time of execution
09.30.00	1									
	2									
	3									
11.30.00	1									
	2									
	3									

	Size Range	All trades executed within first two minutes after time T		First transaction after time T (if no transactions within first two minutes after time T)						
Time (T)		Simple average executed price (excluding commissions and accrued interest)	Total value executed	Price	Time of execution	Transaction size	Trading System	Trading Mode	Trading platform	best bid and offer or suitable reference price at time of execution
13.30.00	1									
	2									
	3									
15.30.00	1									
	2									
	3									

Table 4 — price information to be published as referred to in Article 4 point (b)

simple average transaction price	
volume-weighted transaction price	
highest executed price	
lowest executed price	

Table 5 — costs information to be published as referred to in Article 5

Information required under Article 5(a) to (d)	(Description)
Link to a website or other source where further information on costs is available	
Total value of all rebates, discounts, or other payments offered (as % of total traded value during the reporting period)	%
Total value of all costs (as a % of total traded value during the reporting period volume)	%

Table 6 — likelihood of execution information to be published as referred to in Article 6

Number of orders or request for quotes received	
Number of transactions executed	
Total value of transactions executed	
Number of orders or request for quotes received cancelled or withdrawn	

Number of orders or request for quotes received modified	
Median transaction size	
Median size of all orders or requests for quote	
Number of designated market makers	

Table 7 — likelihood of execution information to be published as referred to in Article 7(1)

Time	Best Bid Price	Best Offer Price	Bid Size	Offer Size	Book depth within 3 price increments
9.30.00					
11.30.00					
13.30.00					
15.30.00					

Table 8 — information to be published as referred to in Article 7(2) and 7(3)

Average effective spread	
Average volume at best bid and offer	
Average spread at best bid and offer	
Number of cancellations at best bid and offer	
Number of modifications at best bid and offer	
Average book depth at 3 price increments	
Mean time elapsed (to the millisecond) between an aggressive order or quote acceptance being received by the execution venue and the subsequent total or partial execution	
Median time elapsed (to the millisecond) between a market order being received by the execution venue and the subsequent total or partial execution	
Average speed of execution for unmodified passive orders at best bid and offer	
Number of Fill or Kill orders that failed	
Number of Immediate or Cancel orders that got zero fill	
Number of transactions executed on the trading venue that are Large in Scale pursuant to Article 4 or 9 of Regulation (EU) No 600/2014	
Value of transactions executed on the trading venue that are Large in Scale pursuant to Article 4 or 9 of Regulation (EU) No 600/2014	

Number of transactions that were executed on the trading venue pursuant to Article 4 or 9 of MiFIR, except for orders that are held in an order management facility of the trading venue pending disclosure and not Large in Scale	
Value of transactions that were executed on the trading venue pursuant to Article 4 or 9 of MiFIR, except for orders that are held in an order management facility of the trading venue pending disclosure and not Large in Scale	
Number of trading interruptions	
Average duration of trading interruptions	
Number of suspensions	
Nature of suspensions	
Average duration of suspensions	
For continuous quote venues, number of periods during which no quotes were provided	
For continuous quote venues, average duration of periods during which no quotes were provided	
Average quote presence	

Table 9 — information to be published as referred to in Article 8

Mean time elapsed between acceptance and execution	
Median time elapsed between acceptance and execution	
Mean time elapsed between request and provision of any corresponding quotes	
Median time elapsed between request and provision of any corresponding quotes	

COMMISSION DELEGATED REGULATION (EU) 2017/576

of 8 June 2016

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU [1], and in particular point (b) of the first subparagraph of Article 27(10),

Whereas:

(1) It is essential to enable the public and investors to evaluate the quality of an investment firm's execution practices and to identify the top five execution venues in terms of trading volumes where investment firms executed client orders in the preceding year. In order to make meaningful comparisons and analyse the choice of top five execution venues it is necessary that information is published by investment firms specifically in respect of each class of financial instruments. In order to be able to fully evaluate the order flow of client orders to execution venues, investors and the public should be able to clearly identify if the investment firm itself was one of the top five execution venues for each class of financial instrument.

(2) In order to fully assess the extent of the quality of execution being obtained on execution venues used by investment firms to execute client orders, including execution venues in third countries, it is appropriate that investment firms publish information required under this Regulation in relation to trading venues, market makers or other liquidity providers or any entity that performs a similar function in a third country to the functions performed by any of the foregoing.

(3) In order to provide precise and comparable information, it is necessary to set out classes of financial instruments based on their characteristics relevant for publication purposes. A class of financial instruments should be narrow enough to reveal differences in order execution behaviour between classes but at the same time broad enough to ensure that the reporting obligation on investment firms is proportionate. Given the breadth of the equity class of financial instruments, it is appropriate to divide this class into subclasses based on liquidity. As liquidity is an essential factor governing execution behaviours and as execution venues are often competing to attract flows of the most frequently traded stocks, it is appropriate that equity instruments are classified according to their liquidity as determined under the tick size regime as set out in Directive 2014/65/EU.

(4) When publishing the identity of the top five execution venues on which they execute client orders it is appropriate for investment firms to publish information on the volume and number of orders executed on each execution venue, so that investors may be able to form an opinion as to the flow of client orders from the firm to execution venue. Where, for one or several classes of financial instruments, an investment firm only executes a very small number of orders, information on the top five execution venues would not be very meaningful nor representative of order execution arrangements. It is therefore appropriate to require investment firms to clearly indicate the classes of financial instruments for which they execute a very small number of orders.

(5) To prevent potentially market sensitive disclosures on the volume of business being conducted by the investment firm, the volume of execution and the number of executed orders should be expressed as a percentage of the investment firm's total execution volumes and total number of executed orders in that class of financial instrument, respectively, rather than as absolute values.

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

(6) It is appropriate to require investment firms to publish information which is relevant to their order execution behaviour. To ensure that investment firms are not held accountable for order execution decisions for which they are not responsible, it is appropriate for investment firms to disclose the percentage of orders executed on each of the top five execution venues where the choice of execution venue has been specified by clients.

(7) There are several factors which may potentially influence the order execution behaviour of investment firms such as close links between investment firms and execution venues. Given the potential materiality of these factors it is appropriate to require analysis of such factors in assessing the quality of execution obtained on all execution venues.

(8) The different order types can be an important factor in explaining how and why investment firms execute orders on a given execution venue. It may also impact the way an investment firm will set its execution strategies, including programming of smart order routers to meet the specific objectives of those orders. It is therefore appropriate that a distinction between the different categories of order types be clearly marked in the report.

(9) In order to properly analyse information it is important that users are in a position to differentiate between execution venues used for professional client orders and execution venues used for retail client orders, given the notable differences in how investment firms obtain the best possible result for retail clients as compared to professional clients, namely that investment firms must predominantly assess the factors of price and cost when executing orders from retail clients. Therefore it is appropriate that information on the top five execution venues be provided separately for retail clients and for professional clients respectively, permitting a qualitative assessment to be made of the order flow to such venues.

(10) In order to comply with the legal obligation of best execution, investment firms, when applying the criteria for best execution for professional clients, will typically not use the same execution venues for securities financing transactions (SFTs) and other transactions. This is because the SFTs are used as a source of funding subject to a commitment that the borrower will return equivalent securities on a future date and the terms of SFTs are typically defined bilaterally between the counterparties ahead of the execution. Therefore, the choice of execution venues for SFTs is more limited than in the case of other transactions, given that it depends on the particular terms defined in advance between the counterparties and on whether there is a specific demand on those execution venues for the financial instruments involved. It is therefore appropriate that investment firms summarise and make public the top five execution venues in terms of trading volumes where they executed SFTs in a separate report so that that a qualitative assessment can be made of the order flow to such venues. Due to the specific nature of SFTs, and given that their large size would likely distort the more representative set of client transactions (namely, those not involving SFTs), it is also necessary to exclude them from the tables concerning the top five execution venues on which investment firms execute other client orders

(11) It is appropriate that investment firms should publish an assessment of quality of execution obtained on all venues used by the firm. This information will provide a clear picture of the execution strategies and tools used to assess the quality of execution obtained on those venues. This information will also allow investors to assess the effectiveness of the monitoring carried out by investment firms in relation to those execution venues.

(12) In specifically assessing the quality of execution obtained on all execution venues in relation to cost, it is appropriate that an investment firm also performs an analysis of the arrangements it has with these venues in relation to payments made or received and to discounts, rebates or non-monetary benefits received. Such an assessment should also allow the public to consider how such arrangements impact the costs faced by the investor and how they comply with Article 27(2) of Directive 2014/65/EU.

(13) It is also appropriate to determine the scope of such publication and its essential features, including the use that investment firms make of the data on execution quality available from execution venues under Commission Delegated Regulation (EU) 2017/575 ([1]).

([1]) Commission Delegated Regulation (EU) 2017/575 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards concerning the data to be published by execution venues on the quality of execution of transactions (see page 152 of this Official Journal).

(14) Information on identity of execution venues and on the quality of execution should be published annually and should refer to order execution behaviour for each class of financial instruments in order to capture relevant changes within the preceding calendar year.

(15) Investment firms should not be prevented from adopting an additional level of reporting which is more granular, provided that in such case the additional report complements and does not replace what is required under this Regulation.

(16) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the related national provisions transposing Directive 2014/65/EU apply from the same date.

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

(18) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council [1],

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down rules on the content and the format of information to be published by investment firms on an annual basis in relation to client orders executed on trading venues, systematic internalisers, market makers or other liquidity providers or entities that perform a similar function to those performed by any of the foregoing in a third country.

Article 2

Definitions

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

(a) 'passive order' means an order entered into the order book that provided liquidity;

(b) 'aggressive order' means an order entered into the order book that took liquidity;

(c) 'directed order' means an order where a specific execution venue was specified by the client prior to the execution of the order.

Article 3

Information on the top five execution venues and quality of execution obtained

1. Investment firms shall publish the top five execution venues in terms of trading volumes for all executed client orders per class of financial instruments referred to in Annex I. Information regarding retail clients shall be published in the format set out in Table 1 of Annex II and information regarding professional clients shall be published in the format set out in Table 2 of Annex II. The publication shall exclude orders in Securities Financing Transactions (SFTs) and shall contain the following information:

(a) class of financial instruments;

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

(b) venue name and identifier;

(c) volume of client orders executed on that execution venue expressed as a percentage of total executed volume;

(d) number of client orders executed on that execution venue expressed as a percentage of total executed orders;

(e) percentage of the executed orders referred to in point (d) that were passive and aggressive orders;

(f) percentage of orders referred to in point (d) that were directed orders;

(g) confirmation of whether it has executed an average of less than one trade per business day in the previous year in that class of financial instruments.

2. Investment firms shall publish the top five execution venues in terms of trading volumes for all executed client orders in SFTs for class of financial instruments referred to in Annex I in the format set out in Table 3 of Annex II. The publication shall contain the following information:

(a) volume of client orders executed on that execution venue expressed as a percentage of total executed volume;

(b) number of client orders executed on that execution venue expressed as a percentage of total executed orders;

(c) confirmation of whether the investment firm has executed an average of less than one trade per business day in the previous year in that class of financial instruments.

3. Investment firms shall publish for each class of financial instruments, a summary of the analysis and conclusions they draw from their detailed monitoring of the quality of execution obtained on the execution venues where they executed all client orders in the previous year. The information shall include:

(a) an explanation of the relative importance the firm gave to the execution factors of price, costs, speed, likelihood of execution or any other consideration including qualitative factors when assessing the quality of execution;

(b) a description of any close links, conflicts of interests, and common ownerships with respect to any execution venues used to execute orders;

(c) a description of any specific arrangements with any execution venues regarding payments made or received, discounts, rebates or non-monetary benefits received;

(d) an explanation of the factors that led to a change in the list of execution venues listed in the firm's execution policy, if such a change occurred;

(e) an explanation of how order execution differs according to client categorisation, where the firm treats categories of clients differently and where it may affect the order execution arrangements;

(f) an explanation of whether other criteria were given precedence over immediate price and cost when executing retail client orders and how these other criteria were instrumental in delivering the best possible result in terms of the total consideration to the client;

(g) an explanation of how the investment firm has used any data or tools relating to the quality of execution, including any data published under Delegated Regulation (EU) 2017/575;

(h) where applicable, an explanation of how the investment firm has used output of a consolidated tape provider established under Article 65 of Directive 2014/65/EU.

Article 4

Format

Investment firms shall publish the information required in accordance with Article 3(1) and 3(2) on their websites, by filling in the templates set out in Annex II, in a machine-readable electronic format, available for downloading by the public and the information required in accordance with Article 3(3) shall be published on their websites in an electronic format available for downloading by the public.

Article 5

Entry into force and application

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

It shall apply from 3 January 2018.

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

Done at Brussels, 8 June 2016.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX I

Classes of financial instruments

(a) Equities — Shares & Depositary Receipts

  (i) Tick size liquidity bands 5 and 6 (from 2 000 trades per day)

  (ii) Tick size liquidity bands 3 and 4 (from 80 to 1 999 trades per day)

  (iii) Tick size liquidity band 1 and 2 (from 0 to 79 trades per day)

(b) Debt instruments

  (i) Bonds

  (ii) Money markets instruments

(c) Interest rates derivatives

  (i) Futures and options admitted to trading on a trading venue

  (ii) Swaps, forwards, and other interest rates derivatives

(d) credit derivatives

  (i) Futures and options admitted to trading on a trading venue

  (ii) Other credit derivatives

(e) currency derivatives

  (i) Futures and options admitted to trading on a trading venue

  (ii) Swaps, forwards, and other currency derivatives

(f) Structured finance instruments

(g) Equity Derivatives

  (i) Options and Futures admitted to trading on a trading venue

  (ii) Swaps and other equity derivatives

(h) Securitized Derivatives

  (i) Warrants and Certificate Derivatives

  (ii) Other securitized derivatives

(i) Commodities derivatives and emission allowances Derivatives

  (i) Options and Futures admitted to trading on a trading venue

  (ii) Other commodities derivatives and emission allowances derivatives

(j) Contracts for difference

(k) Exchange traded products (Exchange traded funds, exchange traded notes and exchange traded commodities)

(l) Emission allowances

(m) Other instruments

ANNEX II

Table 1

Class of Instrument					
Notification if < 1 average trade per business day in the previous year	Y/N				
Top five execution venues ranked in terms of trading volumes (descending order)	Proportion of volume traded as a percentage of total in that class	Proportion of orders executed as percentage of total in that class	Percentage of passive orders	Percentage of aggressive orders	Percentage of directed orders
Name and Venue Identifier (MIC or LEI)					
Name and Venue identifier (MIC or LEI)					
Name and venue identifier (MIC or LEI)					
Name and venue identifier (MIC or LEI)					
Name and venue identifier (MIC or LEI)					

Table 2

Class of Instrument					
Notification if < 1 average trade per business day in the previous year	Y/N				
Top five execution venues ranked in terms of trading volumes (descending order)	Proportion of volume traded as a percentage of total in that class	Proportion of orders executed as percentage of total in that class	Percentage of passive orders	Percentage of aggressive orders	Percentage of directed orders
Name and Venue Identifier(MIC or LEI)					
Name and Venue identifier(MIC or LEI)					
Name and venue identifier(MIC or LEI)					
Name and venue identifier(MIC or LEI)					
Name and venue identifier(MIC or LEI)					

Table 3

Class of Instrument		
Notification if < 1 average trade per business day in the previous year	Y/N	
Top 5 Venues ranked in terms of volume (descending order)	Proportion of volume executed as a percentage of total in that class	Proportion of orders executed as percentage of total in that class
Name and Venue Identifier(MIC or LEI)		
Name and Venue identifier(MIC or LEI)		
Name and venue identifier(MIC or LEI)		
Name and venue identifier(MIC or LEI)		
Name and venue identifier(MIC or LEI)		

COMMISSION DELEGATED REGULATION (EU) 2017/577

of 13 June 2016

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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

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

Whereas:

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

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

(3) Provisions should be laid down specifying, in general terms, the common elements with regard to the content and format of data to be submitted by trading venues, approved publication arrangements (APAs) and consolidated tape providers (CTPs) for the purposes of transparency and other calculations. Those provisions should be read in conjunction with Commission Delegated Regulations (EU) 2017/587 ([3]), (EU) 2017/583 ([4]), (EU) 2017/567 ([5]), (EU) 2017/565 ([6]) and (EU) 2016/2020 ([7]) which describe the methodology and data necessary to perform the relevant calculations and specify the content and scope of the data necessary to perform

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

([2]) 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).

([3]) Commission Delegated Regulation (EU) 2017/587 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depository receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or a systematic internaliser (see page 387 of this Official Journal).

([4]) Commission Delegated Regulation (EU) 2017/583 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bond, structured finance products, emission allowances and derivatives (see page 229 of this Official Journal).

([5]) Commission Delegated Regulation (EU) 2017/567 of 18 May 2016 supplementing Regulation (EU) No 600/2016 of the European Parliament and of the Council with regard to definitions, transparency, derivatives, portfolio compression and supervisory measures on product intervention and positions (see page 90 of this Official Journal).

([6]) Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (see page 1 of this Official Journal).

([7]) Commission Delegated Regulation (EU) 2016/2020 of 26 May 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on criteria for determining whether derivatives subject to the clearing obligation should be subject to the trading obligation (OJ L 313, 19.11.2016, p. 2).

the transparency calculations. Therefore, the content, format and quality of the data submitted with regard to trading venues, APAs and CTPs should be consistent with the applicable methodology prescribed in the relevant implementing acts of Directive 2014/65/EU and Regulation (EU) No 600/2014 when performing such calculations.

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

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

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

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

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

(9) For the purpose of the volume cap mechanism, trading venues should be required to report the volumes of trading executed under the reference price waiver and, for liquid instruments, the negotiated trade waiver. Given that the waivers apply to orders and not to transactions, it is important to clarify that the volumes to be reported should include all transactions flagged with 'RFPT' or 'NLIQ' for the purpose of the post-trade publication of transactions and as specified in Delegated Regulation (EU) 2017/587. Where a transaction was executed on the basis of two orders benefitting from the large in scale waiver, this transaction should not count towards the volumes calculated under the reference price waiver and the negotiated trade waiver.

(10) For the purpose of the volume cap mechanism, trading venues and CTPs should ensure that the trading venue on which the transaction was executed is identified with sufficient granularity to allow ESMA to perform all

calculations referred to in Regulation (EU) No 600/2014. In particular, the trading venue identifier used should be unique for that trading venue and not shared with any other trading venue operated by the same market operator. Trading venue identifiers should allow ESMA to distinguish in an unequivocal manner all trading venues for which the market operator has received a specific authorisation under Directive 2014/65/EU.

(11) For the purpose of the volume cap mechanism, it is necessary to require trading venues to submit a first report on the day of entry into application of Directive 2014/65/EU and Regulation (EU) No 600/2014 with trading volumes under the reference price waiver and, for liquid financial instruments, negotiated transaction waiver for the preceding calendar year. To ensure a proportionate application of this requirement, trading venues should, for that purpose, base their report on the adjusted volumes of trading executed under equivalent waivers existing under Directive 2004/39/EC of the European Parliament and of the Council ([1]) and Commission Regulation (EC) No 1287/2006 ([2]).

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

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

(14) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the provisions laid down in Regulation (EU) No 600/2014 apply from the same date.

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

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

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

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

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

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

([1]) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

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

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

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

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

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

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

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

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

Article 2

Content of the data requests and information to be reported

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

(a) Delegated Regulation (EU) 2017/587;

(b) Delegated Regulation (EU) 2017/583;

(c) Delegated Regulation (EU) 2017/567;

(d) Delegated Regulation (EU) 2017/565.

2. Competent authorities may request, where necessary, additional information for the purpose of monitoring and adjusting the thresholds and parameters referred to in points (a) to (f) and (h) of Article 1 from trading venues, APAs and CTPs.

3. Competent authorities may request all the data ESMA is required to take into consideration in accordance with Delegated Regulation (EU) 2016/2020 for non-equity financial instruments, including data on the following:

(a) the average frequency of trades;

(b) the average size and distribution of trades;

(c) the number and type of market participants;

(d) the average size of spreads.

Article 3

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

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

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

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

Article 4

Format of the data requests

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

Article 5

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

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

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

Article 6

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

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

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

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

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

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

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

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

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

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

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

(c) the trading volumes set out in paragraph 1(b) and paragraph 2(b) shall be determined by aggregating the volumes of individual and single-counted transactions for that financial instrument reported under the flags 'reference price' and 'negotiated transactions in liquid financial instruments' in accordance with Table 4 of Annex I of Delegated Regulation (EU) 2017/587.

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

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

7. Trading venues shall submit to the competent authority the total volumes of trading determined in accordance with paragraphs 1 to 5 in respect of the following time periods:

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

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

8. By way of derogation from paragraphs 6 and 7, trading venues shall submit the first report per financial instrument on the day of entry into application of Directive 2014/65/EU and Regulation (EU) No 600/2014 by 13:00 CET and shall include the trading volumes referred to in paragraph 1 for the preceding calendar year. For this purpose, trading venues shall report separately, for each calendar month, the following:

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

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

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

Article 7

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

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

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

Article 8

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

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

2. The publication referred to in paragraph 1 shall be free of charge and in a machine-readable and human-readable format as defined in Article 14 of Commission Delegated Regulation (EU) 2017/571 [1] and in paragraphs 4 and 5 of Article 13 of Delegated Regulation (EU) 2017/567.

[1] Commission Delegated Regulation (EU) 2017/571 of 2 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the authorization, organisational requirements and the publication of transactions for data reporting services providers (see page 126 of this Official Journal).

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

Article 9

Entry into force and application

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

It shall apply from 3 January 2018.

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

Done at Brussels, 13 June 2016.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Table 1

Symbol table for Table 2

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

Table 2

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

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

Data field name	Format
Total volume of trading under Reference Price waiver as defined under Article 4(1)(a) of MiFIR (per currency)	{DECIMAL-18/5}
Total volume of trading under Negotiated Transactions waiver as defined under Article 4(1)(b)(i) of MiFIR (per currency)	{DECIMAL-18/5}

COMMISSION DELEGATED REGULATION (EU) 2017/578

of 13 June 2016

supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards specifying the requirements on market making agreements and schemes

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ([1]), and in particular Article 17(7)(a), (b) and (c) and Article 48(12)(a) and (f) thereof,

Whereas:

(1) Two main goals should be attained in specifying the market making obligations of algorithmic traders pursuing market making strategies and the related obligations of trading venues. First, an element of predictability to the apparent liquidity in the order book should be introduced by establishing contractual obligations for investment firms pursuing market making strategies. Second, the presence of those firms in the market should be incentivised, particularly during stressed market conditions.

(2) The provisions in this Regulation are closely linked, since they deal with a set of related obligations for investment firms engaged in algorithmic trading pursuing market making strategies and for trading venues where those market making strategies may take place. To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view of and a compact access to them by persons subject to those obligations, including investors that are non-Union residents, it is desirable to include those provisions in a single Regulation.

(3) This regulation should apply not only to regulated markets but also to multilateral trading facilities and organised trading facilities as required by Article 18(5) of Directive 2014/65/EU.

(4) Market making strategies may relate to one or more financial instruments and one or more trading venues. However, in certain cases, it may not be possible for a trading venue to monitor strategies involving more than one trading venue or instrument. In those cases, trading venues should be able, in accordance with the nature, scale and complexity of their business, to monitor market making strategies pursued on their own venue, and therefore should restrict corresponding market making agreements and schemes to those situations only.

(5) All members or participants engaged in algorithmic trading pursuing a market making strategy on a trading venue which allows for or enables algorithmic trading should enter into a market making agreement with the operator of that trading venue. Incentives under a market making scheme should, however, only be required for certain instruments traded under a continuous auction order book trading system. Nothing should prevent trading venues from establishing any other type of incentives at their own initiative for other financial instruments or trading systems.

(6) Cases where there is no mandatory requirement for trading venues to set out a market making scheme taking into account the nature and scale of the trading on those trading venues should be clearly identified. To this end, it is appropriate to identify financial instruments and trading systems that increase the risk of high volatility and for which it is crucial that the provision of liquidity is incentivised, in order to ensure orderly and efficient functioning of markets. In this respect, this Regulation should take into account that when certain liquid instruments are algorithmically traded in continuous auction order book trading systems there is a greater risk of overreaction to external events which can exacerbate market volatility.

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

(7) Trading venues for which it is considered appropriate to have market making schemes in place in accordance with this Regulation should be required to review their existing agreements to ensure that the provisions of those agreements concerning algorithmic traders pursuing a market making strategy comply with this Regulation.

(8) The market making scheme may incentivise investment firms having signed a market making agreement to perform their obligations under normal trading conditions, but should provide incentives for firms effectively contributing to liquidity provision under stressed market conditions. Therefore, there should be a scheme of incentives to limit a sudden and large-scale withdrawal of liquidity under stressed market conditions. In order to avoid divergent application of this obligation, it is important that trading venues communicate the existence of stressed market conditions to all parties to the market making scheme. Exceptional circumstances should be determined exhaustively and therefore do not include any regular or pre-planned information events that may affect the fair value of a financial instrument due to changes in the perception of market risk, whether occurring during or outside trading hours.

(9) Members, participants or clients having signed a market making agreement have to meet a minimum set of requirements in terms of presence, size and spread in all cases. However, the members, participants or clients meeting those minimum requirements only under normal trading conditions may not necessarily access any type of incentive. Trading venues may establish market making schemes which only reward members, participants or clients meeting more stringent parameters in terms of presence, size and spread. The market making schemes put in place by trading venues should therefore clearly indicate the conditions for accessing incentives and should take into account the effective contribution to the liquidity in the trading venue measured in terms of presence, size and spread by the participants in the schemes.

(10) In order to prevent divergent application of this Regulation and to ensure fair and non-discriminatory implementation of market making schemes, it is crucial that all members of, participants in and clients of a trading venue are informed in a coordinated manner of the occurrence of exceptional circumstances. It is therefore necessary to specify the communication obligations of the trading venues in such exceptional circumstances.

(11) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the related national provisions transposing Directive 2014/65/EU apply from the same date.

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

(13) The European Securities and Markets Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council [1],

HAS ADOPTED THIS REGULATION:

Article 1

Obligation for investment firms to enter into a market making agreement

1. Investment firms shall enter into a market making agreement regarding the financial instrument or instruments in which they pursue a market making strategy with the trading venue or venues at which this strategy takes place where, during half of the trading days over a one month period, in execution of the market making strategy, they:

(a) post firm, simultaneous two-way quotes of comparable size and competitive prices

(b) deal on their own account in at least one financial instrument on one trading venue for at least 50 % of the daily trading hours of continuous trading at the respective trading venue, excluding opening and closing auctions.

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

2. For the purposes of paragraph 1:

(a) a quote shall be deemed to be a firm quote where it includes orders and quotes that under the rules of a trading venue can be matched against an opposite order or quote;

(b) quotes shall be deemed simultaneous two-way quotes if they are posted in such a way that both the bid and the ask-price are present in the order book at the same time;

(c) two quotes shall be deemed of comparable size when their sizes do not diverge by more than 50 % from each other;

(d) quotes shall be deemed to have competitive prices where they are posted at or within the maximum bid-ask range set by the trading venue and imposed upon every investment firm that has signed a market making agreement with that trading venue.

Article 2

Content of market making agreements

1. The content of a binding written agreement referred to in Article 17(3)(b) and Article 48(2) of Directive 2014/65/EU shall include at least:

(a) the financial instrument or instruments covered by the agreement;

(b) the minimum obligations to be met by the investment firm in terms of presence, size and spread that shall require at least posting firm, simultaneous two-way quotes of comparable size and competitive prices in at least one financial instrument on the trading venue for at least 50 % of daily trading hours of during which continuous trading takes place excluding opening and closing auctions and calculated for each trading day;

(c) where appropriate, the terms of the applicable market making scheme;

(d) the obligations of the investment firm in relation to the resumption of trading after volatility interruptions;

(e) the surveillance, compliance and audit obligations of the investment firm enabling it to monitor its market making activity;

(f) the obligation to flag firm quotes submitted to the trading venue under the market making agreement in order to distinguish those quotes from other order flows;

(g) the obligation to maintain records of firm quotes and transactions relating to the market making activities of the investment firm, which are clearly distinguished from other trading activities and to make those records available to the trading venue and the competent authority upon request.

2. Trading venues shall continuously monitor the effective compliance of the relevant investment firms with the market making agreements.

Article 3

Exceptional circumstances

The obligation for investment firms to provide liquidity on a regular and predictable basis laid down in Article 17(3)(a) of Directive 2014/65/EU shall not apply in any of the following exceptional circumstances:

(a) a situation of extreme volatility triggering volatility mechanisms for the majority of financial instruments or underlyings of financial instruments traded on a trading segment within the trading venue in relation to which the obligation to sign a market making agreement applies;

(b) war, industrial action, civil unrest or cyber sabotage;

(c) disorderly trading conditions where the maintenance of fair, orderly and transparent execution of trades is compromised, and evidence of any of the following is provided:

(i) the performance of the trading venue's system being significantly affected by delays and interruptions;

(ii) multiple erroneous orders or transactions;

(iii) the capacity of a trading venue to provide services becoming insufficient;

(d) where the investment firm's ability to maintain prudent risk management practices is prevented by any of the following:

(i) technological issues, including problems with a data feed or other system that is essential to carry out a market making strategy;

(ii) risk management issues in relation to regulatory capital, margining and access to clearing,

(iii) the inability to hedge a position due to a short selling ban;

(e) for non-equity instruments, during the suspension period referred to in Article 9(4) of Regulation (EU) No 600/2014 of the European Parliament and of the Council [1].

Article 4

Identification of exceptional circumstances

1. Trading venues shall make public the occurrence of the exceptional circumstances referred to in points (a), (b), (c) and (e) of Article 3 and, as soon as technically possible, the resumption of their normal trading after the exceptional circumstances have ceased to exist.

2. Trading venues shall set out clear procedures to resume normal trading after the exceptional circumstance have ceased to exist, including the timing of such resumption, and shall make those procedures publicly available.

3. Trading venues shall not extend the declaration of exceptional circumstances beyond market close unless this is necessary in the circumstances referred to in points (b), (c) and (e) of Article 3(1).

Article 5

Obligation for trading venues to have market making schemes in place

1. Trading venues shall not be required to have market making scheme as referred to in Article 48(2)(b) of Directive 2014/65/EU in place except for any of the following classes of financial instruments traded through a continuous auction order book trading system:

(a) shares and exchange traded funds for which there is a liquid market as defined in accordance with Article 2(1)(17) of Regulation (EU) No 600/2014 and as specified in Commission Delegated Regulation (EU) 2017/567 [2];

(b) options and futures directly related to the financial instruments set out in point (a);

(c) equity index futures and equity index options for which there is a liquid market as specified in accordance with point (c) of Article 9(1) and point (c) of Article 11(1) of Regulation (EU) No 600/2014 and Commission Delegated Regulation (EU) 2017/583 [3].

---

[1] Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

[2] Commission Delegated Regulation (EU) 2017/567 of 18 May 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions (see page 90 of this Official Journal).

[3] Commission Delegated Regulation (EU) 2017/583 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives (see page 229 of this Official Journal).

2. For the purposes of paragraph 1, a continuous auction order book trading system means a system that by means of an order book and a trading algorithm operated without human intervention matches sell orders with buy orders on the basis of the best available price on a continuous basis.

Article 6

Minimum obligations as regards the market making schemes

1. Trading venues shall describe in their market making scheme the incentives and the requirements that must be met in terms of presence, size and spread by investment firms in order to access those incentives under:

(a) normal trading conditions where the trading venue offers incentives under such conditions.

(b) stressed market conditions, taking into account the additional risks under such conditions.

2. Trading venues shall set out the parameters to identify stressed market conditions in terms of significant short-term changes of price and volume. Trading venues shall consider the resumption of trading after volatility interruptions as stressed market conditions.

3. For the purposes of point (a) under paragraph 1, trading venues may in their market making schemes specify that incentives shall only be granted to the best performer or performers.

Article 7

Fair and non-discriminatory market making schemes

1. Trading venues shall publish on their websites the terms of the market making schemes, the names of the firms that have signed market making agreements under each of those schemes and the financial instruments covered by those agreements.

2. Trading venues shall communicate any changes to the terms of the market making schemes to the participants in those schemes at least one month prior to their application.

3. Trading venues shall provide the same incentives to all participants who perform equally in terms of presence, size and spread, in their market making schemes.

4. Trading venues shall not limit the number of participants in a market making scheme. However, they may limit the access to the incentives included in the scheme to the firms which have met pre-determined thresholds.

5. Trading venues shall continuously monitor the effective compliance of the participants with the market making schemes.

6. Trading venues shall establish procedures to communicate the existence of stressed market conditions on its trading venue to all participants in a market making scheme through readily accessible channels.

Article 8

Entry into force and application

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

It shall apply from 3 January 2018.

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

Done at Brussels, 13 June 2016.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION DELEGATED REGULATION (EU) 2017/579

of 13 June 2016

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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 ([1]), and in particular Article 28(5) thereof,

Whereas:

(1) Given the broad variety of over-the-counter (OTC) derivative contracts, in order to determine when an OTC derivative contract may be considered to have a direct, substantial and foreseeable effect within the Union as set out in Article 28(2) of Regulation (EU) No 600/2014 and to specify cases where it is necessary or appropriate to prevent the evasion of rules and obligations arising from any provision of Regulation (EU) No 648/2012 of the European Parliament and the Council ([2]), a criteria-based approach should be adopted.

(2) Article 33(3) of Regulation (EU) No 600/2014 states that the conditions laid down in Articles 28 and 29 of that Regulation are deemed to be fulfilled when at least one of the counterparties is established in a country for which the Commission has adopted an implementing act declaring equivalence in accordance with Article 33(2) of Regulation (EU) No 600/2014. The present regulatory technical standards should therefore also apply to contracts where both counterparties are established in a third country whose legal, supervisory and enforcement arrangements have not yet been declared equivalent to the requirements laid down in that Regulation.

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

(4) Given the intrinsic relationship between this Regulation and Commission Delegated Regulation (EU) No 285/2014 ([3]), the technical terms necessary for a comprehensive understanding of the technical standards should have the same meaning.

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

([1]) OJ L 173, 12.6.2014, p. 84.
([2]) Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).
([3]) Commission Delegated Regulation (EU) No 285/2014 of 13 February 2014 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on direct, substantial and foreseeable effect of contracts within the Union and to prevent the evasion of rules and obligations (OJ L 85, 21.3.2014, p. 1).

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

(7) OTC derivative contracts that are entered into by specific counterparties with the primary purpose of avoiding the application of the trading obligation applicable to entities that would have been the natural counterparties to the contract, should be considered as evading the rules and obligations laid down in Regulation (EU) No 600/2014 as they hinder the achievement of one of the purposes of that Regulation.

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

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

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

(11) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the provisions laid down in Regulation (EU) No 600/2014 apply from the same date.

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

(13) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council ([1]),

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

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

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

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

Article 2

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

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

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

(b) it is at least equal to 5 per cent of the sum of current exposures, as defined in Article 272(17) of Regulation (EU) No 575/2013 of the European Parliament and of the Council [1], in OTC derivative contracts of the financial counterparty established in the Union issuing the guarantee.

2. When the guarantee is issued for a maximum amount which is below the threshold set out in paragraph 1(a), the contracts covered by that guarantee shall not be considered to have a direct, substantial and foreseeable effect within the Union unless the amount of the guarantee is increased, in which case the direct, substantial and foreseeable effect of the contracts within the Union shall be re-assessed by the guarantor against the conditions set out in points (a) and (b) of paragraph 1 on the day of the increase.

3. Where the liability resulting from one or more OTC derivative contracts is below the threshold set out in paragraph 1(a), such contracts shall not be considered to have a direct, substantial and foreseeable effect within the Union even where the maximum amount of the guarantee covering such liability is equal to or above the threshold set out in paragraph 1(a) and even where the condition set out in paragraph 1(b) has been met.

4. In the event of an increase in the liability resulting from the OTC derivative contracts or of a decrease of the current exposure, the guarantor shall re-assess whether the conditions set out in paragraph 1 are met. Such assessment shall be done respectively on the day of the increase of liability for the condition set out in paragraph 1(a), and on a monthly basis for the condition set out in paragraph 1(b).

5. OTC derivative contracts for an aggregate notional amount of at least EUR 8 billion or the equivalent amount in the relevant foreign currency concluded before a guarantee is issued or increased, and subsequently covered by a guarantee that meets the conditions set out in paragraph 1, shall be considered as having a direct, substantial and foreseeable effect within the Union.

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

Article 3

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

1. An OTC derivative contract shall be deemed to have been designed to circumvent the application of any provision of Regulation (EU) No 600/2014 if the way in which that contract has been concluded is considered, when viewed as a whole and having regard to all the circumstances, to have as its primary purpose the avoidance of the application of any provision of that Regulation.

[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).

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

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

Article 4

Entry into force and application

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

It shall apply from 3 January 2018.

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

Done at Brussels, 13 June 2016.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION DELEGATED REGULATION (EU) 2017/580

of 24 June 2016

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the maintenance of relevant data relating to orders in financial instruments

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 600/2014 of the European Parliament and the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 ([1]), and in particular the fourth subparagraph of Article 25(3) thereof,

Whereas:

(1) Operators of trading venues should be free to determine the manner in which they keep records of relevant data relating to all orders in financial instruments. However, in order to enable effective and efficient collation, comparison and analysis of the relevant order data for market monitoring purposes, such information should be made available to the competent authorities using uniform standards and formats where a competent authority requests such information pursuant to Article 25(2) of Regulation (EU) No 600/2014.

(2) In order to ensure clarity, legal certainty and avoid double storage of the same information this Regulation should cover all data elements relating to orders, including details that are to be reported in accordance with Article 26(1) and (3).

(3) In order to detect and investigate potential or attempted market abuse effectively, competent authorities need to promptly identify persons and entities who may be significantly involved in the order process, including members or participants of trading venues, entities responsible for investment and execution decisions, non-executing brokers and clients on whose behalf orders are initiated. Accordingly operators of trading venues should maintain designations for such parties.

(4) In order to allow competent authorities to more efficiently identify suspicious patterns of potentially abusive behaviour originating from one client, including where the client is operating through a number of investment firms, the operators of trading venues should record the identity of clients on whose behalf their members or participants submitted the order. Operators should identify those clients by unique identifiers in order to facilitate certain and efficient identification of such persons and thereby facilitate more effective analysis of potential market abuse in which clients may be involved.

(5) Operators of trading venues should not be required to record client identifiers for all clients in the trading chain but only for the client on whose behalf the member or participant submitted the order.

(6) The identification of market-making strategies or similar activities is important in order to enable efficient detection of market manipulation. This allows the competent authorities to distinguish the order flow coming from an investment firm acting on the basis of terms pre-determined by the issuer of the instrument which is the subject of the order or by the trading venue to which the order is submitted from the order flow coming from an investment firm acting at its own or at its client's discretion.

(7) The record of the precise date and time and of the details of any order placement, modification, cancellation, rejection and execution should be maintained. This allows monitoring the changes to the order throughout its lifetime, which can be significant in detecting and assessing potential market manipulation and front running behaviours.

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

(8) To ensure an accurate and complete picture of the order book of a trading venue, competent authorities require information on trading sessions in which financial instruments are traded. This information can notably be used to determine when auction periods or continuous trading start and finish and whether orders cause unscheduled circuit breakers. This information is also required to identify how orders will interact, particularly when sessions end at random periods such as auctions. Information on indicative uncrossing prices and volumes would also assist in analysing possible auction manipulation. Given that a single order can impact either the auction uncrossing price, auction uncrossing volume or both, competent authorities need to see the impact of each order on these values. Without this information it would be difficult to identify which order has had the impact on those values. Additionally, a sequence number should be assigned to each relevant event in order to determine the sequence of events when two or more events take place at the same time.

(9) Specification of the position of the orders in an order book allows for the reconstruction of the order book and for analysis of the sequence of execution of orders which is an important element of market abuse surveillance. The position assigned to an order depends on how priority is determined by the trading system. Therefore, operators of trading venues should assign and maintain details of the priority of orders according to the price visibility-time priority or the size-time priority method.

(10) In order to enable effective market monitoring it is necessary to be able to link orders with their corresponding transactions. Accordingly operators of trading venues should maintain distinctive transaction identification codes linking orders to transactions.

(11) Operators of trading venues should, for each order received, record and maintain the order type and the related specific instructions which together determine how each order is to be handled by their matching engines, in accordance with their own classifications. This detailed information is essential for competent authorities to be able to monitor, as part of its market abuse surveillance, trading activity in a given trading venue order book and in particular to replicate how each order behaves within the order book. However, given the broad range of existing and potential new order types designed by operators of trading venues and the specific technicalities attached to the latter, the maintenance of this detailed information according to the operators' internal classification system may not currently allow competent authorities to replicate the order book activity of all trading venues in a consistent manner. Therefore, for competent authorities to be in a position to exactly locate each order within the order book, operators of trading venues should also classify each order received either as a limit order where the order is tradable or as a stop order where the order becomes tradable only upon the realisation of a pre-determined price event.

(12) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the provisions laid down in Regulation (EU) No 600/2014 apply from the same date.

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

(14) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council [1],

HAS ADOPTED THIS REGULATION:

Article 1

Scope, standards and format of relevant order data

1. Operators of trading venues shall keep at the disposal of their competent authority the details of each order advertised through their systems set out in Articles 2 to 13 as specified in the second and third columns of Table 2 of the Annex insofar as they pertain to the order concerned.

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

2. Where competent authorities request any of the details referred to in paragraph 1 in accordance with Article 25(2) of Regulation (EU) No 600/2014, the operators of trading venues shall provide such details using the standards and formats prescribed in the fourth columns of Table 2 of the Annex to this Regulation.

Article 2

Identification of the relevant parties

1. For all orders, operators of trading venues shall maintain the records on the following:

(a) the member or participant of the trading venue who submitted the order to the trading venue, identified as specified in field 1 of Table 2 of the Annex;

(b) the person or computer algorithm within the member or participant of the trading venue to which an order is submitted that is responsible for the investment decision in relation to the order, identified as specified in field 4 of the Table 2 of the Annex;

(c) the person or computer algorithm within the member or participant of the trading venue that is responsible for the execution of the order, identified as specified in field 5 of Table 2 of the Annex;

(d) the member or participant of the trading venue who routed the order on behalf of and in the name of another member or participant of the trading venue, identified as a non-executing broker as specified in field 6 of Table 2 of the Annex;

(e) the client on whose behalf the member or participant of the trading venue submitted the order to the trading venue, identified as specified in field 3 of Table 2 of the Annex.

2. Where a member or participant or client of the trading venue is authorised under the legislation of a Member State to allocate an order to its client following submission of the order to the trading venue and has not yet allocated the order to its client at the time of the submission of the order, that order shall be identified as specified in field 3 of Table 2 of the Annex.

3. Where several orders are submitted to the trading venue together as an aggregated order, the aggregated order shall be identified as specified in field 3 of Table 2 of the Annex.

Article 3

Trading capacity of members or participants of the trading venue and liquidity provision activity

1. The trading capacity in which the member or participant of the trading venue submits an order shall be described as specified in field 7 of Table 2 of the Annex.

2. The following orders shall be identified as specified in field 8 of Table 2 of the Annex:

(a) an order submitted to a trading venue by a member or participant as part of a market-making strategy pursuant to Articles 17 and 48 of Directive 2014/65/EU of the European Parliament and of the Council [1];

(b) an order submitted to a trading venue by a member or participant as part of any other liquidity provision activity carried out on the basis of terms pre-determined either by the issuer of the instrument which is the subject of the order or by that trading venue.

[1] 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).

Article 4

Date and time recording

1. Operators of trading venues shall maintain a record of the date and time of the occurrence of each event listed in field 21 of Table 2 of the Annex to this Regulation with the level of accuracy specified by Article 2 of Commission Delegated Regulation (EU) 2017/574 [1] as specified in field 9 of Table 2 of the Annex to this Regulation. Except for the recording of the date and time of the rejection of orders by trading venue systems, all events referred to in field 21 of Table 2 of the Annex to this Regulation shall be recorded using the business clocks used by trading venue matching engines.

2. Operators of trading venues shall maintain a record of the date and time for each data element listed in fields 49, 50 and 51 of Table 2 of the Annex to this Regulation, with the level of accuracy specified by Article 2 of Delegated Regulation (EU) 2017/574.

Article 5

Validity period and order restrictions

1. Operators of trading venues shall keep a record of the validity periods and order restrictions that are listed in fields 10 and 11 of Table 2 of the Annex.

2. Records of the dates and times in respect of validity periods shall be maintained as specified in field 12 of Table 2 of the Annex for each validity period.

Article 6

Priority and sequence numbers

1. Operators of trading venues which operate trading systems on a price visibility-time priority shall maintain a record of the priority time stamp for all orders as specified in field 13 of Table 2 of the Annex. The priority time stamp shall be maintained with the same level of accuracy specified by Article 4(1).

2. Operators of trading venues which operate trading systems on a size-time priority basis shall maintain a record of the quantities which determine the priority of orders as specified in field 14 of Table 2 of the Annex as well as the priority time stamp referred to in paragraph 1.

3. Operators of trading venues which use a combination of price-visibility-time priority and size-time priority and display orders on their order book in time priority shall comply with paragraph 1.

4. Operators of trading venues which use a combination of price-visibility-time priority and size-time priority and displays orders on its order book in size-time priority shall comply with paragraph 2.

5. Operators of trading venues shall assign and maintain a sequence number for all events as specified in field 15 of Table 2 of the Annex.

Article 7

Identification codes for orders in financial instruments

1. Operators of trading venues shall maintain an individual identification code for each order as specified in field 20 of Table 2 of the Annex. The identification code shall be unique per order book, per trading day and per financial instrument. It shall apply from the receipt of the order by the operator of the trading venue until the removal of the order from the order book. The identification code shall also apply to rejected orders irrespective of the ground for their rejection.

[1] Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks (see page 148 of this Official Journal).

2. The operator of the trading venue shall maintain the relevant details of strategy orders with implied functionality (SOIF) that are disseminated to the public as specified in the Annex. Field 33 of Table 2 of the Annex shall include a statement that the order is an implicit order.

Upon execution of a SOIF, its details shall be maintained by the operator of the trading venue as specified in the Annex.

Upon execution of a SOIF, a strategy linked order identification code shall be indicated using the same identification code for all orders connected to the particular strategy. The strategy linked order identification code shall be as specified in field 46 of Table 2 of the Annex.

3. Orders submitted to a trading venue allowing for a routing strategy shall be identified by that trading venue as 'routed' as specified in field 33 of Table 2 of the Annex when they are routed to another trading venue. Orders submitted to a trading venue allowing for a routing strategy shall retain the same identification code for their lifetime, regardless of whether any remaining quantity is re-posted on the order book of entry.

Article 8

Events affecting the orders in financial instruments

Operators of trading venues shall maintain a record of the details referred to in field 21 of Table 2 of the Annex in relation to the new orders.

Article 9

Type of order in financial instruments

1. Operators of trading venues shall maintain a record of the order type for each order received using their own classification as specified in field 22 of Table 2 of the Annex.

2. Operators of trading venues shall classify each received order either as a limit order or as a stop order as specified in field 23 of Table 2 of the Annex.

Article 10

Prices relating to orders

Operators of trading venues shall maintain a record of all price related details referred to in Section I of Table 2 of the Annex insofar as they pertain to the orders.

Article 11

Order instructions

Operators of trading venues shall maintain records of all order instructions received for each order as specified in Section J of Table 2 of the Annex.

Article 12

Trading venue transaction identification code

Operators of trading venues shall maintain an individual transaction identification code for each transaction resulting from the full or partial execution of an order as specified in field 48 of Table 2 of the Annex.

Article 13

Trading phases and indicative auction price and volume

1. Operators of trading venues shall maintain a record of the order details as specified in Section K of Table 2 of the Annex.

2. Where competent authorities request details referred to in Section K pursuant to Article 1, the details referred to in fields 9 and 15 to 18 of Table 2 of the Annex shall also be considered as details pertaining to the order concerned by that request.

Article 14

Entry into force and application

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

It shall apply from the date referred to in the second paragraph of Article 55 of Regulation (EU) No 600/2014.

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

Done at Brussels, 24 June 2016.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Table 1

Legend for Table 2

SYMBOL	DATA TYPE	DEFINITION
{ALPHANUM-n}	Up to n alphanumerical characters	Free text field.
{CURRENCYCODE_3}	3 alphanumerical characters	3 letter currency code, as defined by ISO 4217 currency codes
{DATE_TIME_FORMAT}	ISO 8601 date and time format	Date and time in the following format: YYYY-MM-DDThh:mm:ss.dddddZ. — 'YYYY' is the year; — 'MM' is the month; — 'DD' is the day; — 'T' — means that the letter 'T' shall be used — 'hh' is the hour; — 'mm' is the minute; — 'ss.dddddd' is the second and its fraction of a second; — Z is UTC time. Dates and times shall be reported in UTC.
{DATEFORMAT}	ISO 8601 date format	Dates shall be formatted by the following format: YYYY-MM-DD.
{DECIMAL-n/m}	Decimal number of up to n digits in total of which up to m digits can be fraction digits	Numerical field for both positive and negative values. — decimal separator is '.' (full stop); — negative numbers are prefixed with '-' (minus); — values are rounded and not truncated.
{INTEGER-n}	Integer number of up to n digits in total	Numerical field for both positive and negative integer values.
{ISIN}	12 alphanumerical characters	ISIN code as defined in ISO 6166
{LEI}	20 alphanumerical characters	Legal entity identifier as defined in ISO 17442
{MIC}	4 alphanumerical characters	Market identifier as defined in ISO 10383
{NATIONAL_ID}	35 alphanumerical characters	The identifier is that set out in Article 6 and Annex II to Commission Delegated Regulation (EU) 2017/590 [1].

[1] Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities (see page 449 of this Official Journal).

Table 2

Details of orders

N.	Field	Content of the order details to be maintained at the disposal of the competent authority	Standards and formats of the order details to be used when providing the relevant order data to competent authority upon request
Section A — Identification of the relevant parties			
1	Identification of the entity which submitted the order	The identity of the member or participant of the trading venue. In case of Direct Electronic Access (DEA) the identity shall be the one of the DEA provider.	{LEI}
2	Direct Electronic Access (DEA)	'true' where the order was submitted to the trading venue using DEA as defined in Article 4(1)(41) of Directive 2014/65/EU. 'false' where the order was not submitted to the trading venue using DEA as defined in Article 4(1)(41) of Directive 2014/65/EU.	'true' 'false'
3	Client identification code	Code used to identify the client of the member or participant of the trading venue. In case there is DEA, the code of the DEA user shall be used. Where the client is a legal entity, the LEI code of the client shall be used. Where the client is not a legal entity, the {NATIONAL_ID} shall be used. In case of aggregated orders, the flag AGGR as specified in Article 2(3) of this Regulation. In case of pending allocations, the flag PNAL as specified in Article 2(2) of this Regulation. This field shall be left blank only if the member or participant of the trading venue has no client.	{LEI} {NATIONAL_ID} 'AGGR' — aggregated orders 'PNAL' — pending allocations
4	Investment decision within firm	Code used to identify the person or the algorithm within the member or participant of the trading venue who is responsible for the investment decision in accordance with Article 8 of Delegated Regulation (EU) 2017/590. Where a natural persons within the member or participant of the trading venue is responsible for the investment decision the person who is responsible or has primary responsibility for the investment decision shall be identified with the {NATIONAL_ID} Where an algorithm was responsible for the investment decision the field shall be populated as set out in Article 8 of Delegated Regulation (EU) 2017/590. This field shall be left blank when the investment decision was not made by a person or algorithm within the member or participant of the trading venue.	{NATIONAL_ID} — Natural persons {ALPHANUM-50} — Algorithms
5	Execution within firm	Code used to identify the person or algorithm within the member or participant of the trading venue who is responsible for the execution of the transaction resulting from the order in accordance with Article 9 of Delegated Regulation (EU) 2017/590. Where a natural person is responsible for the execution of the transaction, the person shall be identified by {NATIONAL_ID}	{NATIONAL_ID} — Natural persons {ALPHANUM-50} — Algorithms

N.	Field	Content of the order details to be maintained at the disposal of the competent authority	Standards and formats of the order details to be used when providing the relevant order data to competent authority upon request
		Where an algorithm is responsible for the execution of the transaction, this field shall be populated in accordance with Article 9 of Delegated Regulation (EU) 2017/590. Where more than one person or a combination of persons and algorithms are involved in the execution of the transaction, the member or participant or client of the trading venue shall determine the trader or algorithm primarily responsible as specified in Article 9(4) of Delegated Regulation (EU) 2017/590 and populate this field with the identity of that trader or algorithm.	
6	Non-executing broker	In accordance with Article 2(d). This field shall be left blank when not relevant.	{LEI}

Section B — Trading capacity and liquidity provision

7	Trading capacity	Indicates whether the order submission results from the member or, participant of the trading venue is carrying out matched principal trading under Article 4(38) of Directive 2014/65/EU, or dealing on its own account under Article 4(6) of Directive 2014/65/EU. Where the order submission does not result from the member or participant of the trading venue carrying out matched principal trading or dealing on its own account, the field shall indicate that the transaction was carried out under any other capacity.	'DEAL' — Dealing on own account 'MTCH' — Matched principal 'AOTC' — Any other capacity
8	Liquidity provision activity	Indicates whether an order is submitted to a trading venue as part of a market-making strategy pursuant to Articles 17 and 48 of Directive 2014/65/EU, or is submitted as part of another activity in accordance with Article 3 of this Regulation.	'true' 'false'

Section C — Date and time

9	Date and Time	The date and time for each event listed in Section [G] and [K].	{DATE_TIME_FORMAT} The number of digits after the 'seconds' shall be determined in accordance with Article 2 of the Commission Delegated Regulation (EU) 2017/574.

Section D — Validity period and order restrictions

10	Validity period	Good-For-Day: the order expires at the end of the trading day on which it was entered in the order book.	'DAVY' — Good-For-Day
		Good-Till-Cancelled: the order will remain active in the order book and be executable until it is actually cancelled.	'GTCV' — Good-Till-Cancelled

N.	Field	Content of the order details to be maintained at the disposal of the competent authority	Standards and formats of the order details to be used when providing the relevant order data to competent authority upon request
		Good-Till-Time: the order expires at the latest at a pre-determined time within the current trading session.	'GTTV' — Good-Till-Time
		Good-Till-Date: the order expires at the end of a specified date.	'GTDV' — Good-Till-Date
		Good-Till-Specified Date and Time: the order expires at a specified date and time.	'GTSV' — Good-Till-Specified Date and Time
		Good After Time: the order is only active after a pre-determined time within the current trading session.	'GATV' — Good After Time
		Good After Date: the order is only active from the beginning of a pre-determined date.	'GADV' — Good After Date
		Good After Specified Date and Time: the order is only active from a pre-determined time on a pre-determined date.	'GASV' — Good After Specified Date and Time
		Immediate-Or-Cancel: an order which is executed upon its entering into the order book (for the quantity that can be executed) and which does not remain in the order book for the remaining quantity (if any) that has not been executed.	'IOCV' — Immediate-Or-Cancel
		Fill-Or-Kill: an order which is executed upon its entering into the order book provided that it can be fully filled: in the event the order can only be partially executed, then it is automatically rejected and cannot therefore be executed.	'FOKV' — Fill-Or-Kill or {ALPHANUM-4} characters not already in use for the trading venue's own classification.
		Other: any additional indications that are unique for specific business models, trading platforms or systems.	
11	Order restriction	Good For Closing Price Crossing Session: where an order qualifies for the closing price crossing session.	'SESR' — Good For Closing Price Crossing Session
		Valid For Auction: the order is only active and can only be executed at auction phases (which can be pre-defined by the member or, participant of the trading venue who submitted the order, e.g. opening and/closing auctions and/or intraday auction).	'VFAR' — Valid For Auction
		Valid For Continuous Trading only: the order is only active during continuous trading.	'VFCR' — Valid For Continuous Trading only

N.	Field	Content of the order details to be maintained at the disposal of the competent authority	Standards and formats of the order details to be used when providing the relevant order data to competent authority upon request
		Other: any additional indications that are unique for specific business models, trading platforms or systems.	{ALPHANUM-4} characters not already in use for the trading venue's own classification. This field shall be populated with multiple flags separated by a comma where there are multiple types applicable.
12	Validity period and time	This refers to the time stamp reflecting the time on which the order becomes active or it is ultimately removed from the order book Good for day: the date of entry with the timestamp immediately prior to midnight Good till tim: the date of entry and the time to that specified in the order Good till date: will be the specified date of expiry with the timestamp immediately prior to midnight Good till specified date and time: the specified date and time of expiry Good after time: the date of entry and the specified time at which the order becomes active Good after date: the specified date with the timestamp immediately after midnight Good after specified date and time: the specified date and time at which the order becomes active Good till Cancel: the ultimate date and time the order is automatically removed by market operations Other: timestamp for any additional validity type.	{DATE_TIME_FORMAT} The number of digits after the 'seconds' is determined in accordance with Article 2 of Delegated Regulation (EU) 2017/574.

Section E — Priority and sequence number

13	Priority time stamp	This field shall be updated every time the priority of an order changes.	{DATE_TIME_FORMAT} The number of digits after the 'seconds' is determined in accordance with Article 2 of Delegated Regulation (EU) 2017/574.
14	Priority size	For trading venues which use size-time priority, this field shall be populated with a positive number corresponding to the quantity. This field shall be updated every time the priority of the order changes.	Up to 20 numeric positive digits.
15	Sequence number	Each and every event listed in section G shall be identified using positive integers in ascending order. The sequence number shall be unique to each type of event; consistent across all events, timestamped by the operator of the trading venue; be persistent for the date that the event occurs.	{INTEGER-50}

N.	Field	Content of the order details to be maintained at the disposal of the competent authority	Standards and formats of the order details to be used when providing the relevant order data to competent authority upon request
Section F — Identification of the order			
16	Segment MIC code	Identification of the trading venue where the order was submitted. If the trading venue uses segment MICs then the segment MIC shall be used. If the trading venue does not use segment MICs then the operating MIC shall be used	{MIC}
17	Order book code	The alphanumerical code established by the trading venue for each and every order book.	{ALPHANUM-20}
18	Financial instrument identification code	Unique and unambiguous identifier of the financial instrument	{ISIN}
19	Date of receipt	Date of receipt of the original order.	{DATEFORMAT}
20	Order identification code	An alphanumerical code assigned by the operator of the trading venue to the individual order.	{ALPHANUM-50}
Section G — Events affecting the order			
21	New order, order modification, order cancellation, order rejections, partial or full execution	New order: receipt of a new order by the operator of the trading venue.	'NEWO' — New order
		Triggered: an order which becomes executable or, as the case may be, non-executable upon the realisation of a pre-determined condition.	'TRIG' — Triggered
		Replaced by the member or participant of the trading venue: where a member, participant or client of the trading venue decides upon its own initiative to change any characteristic of the order it has previously entered into the order book.	'REME' — Replaced by the member or participant of the trading venue
		Replaced by market operations (automatic): where any characteristic of an order is changed by the trading venue operator's IT systems. This includes where a peg order's or a trailing stop order's current characteristics are changed to reflect how the order is located within the order book.	'REMA' — Replaced by market operations (automatic)
		Replaced by market operations (human intervention): where any characteristic of an order is changed by a trading venue operator's staff. This includes the situation where a member, participant of the trading venue has IT issues and needs its orders to be cancelled urgently.	'REMH' — Replaced by market operations (human intervention)
		Change of status at the initiative of the member, participant of the trading venue. This includes activation and deactivation.	'CHME' — Change of status at the initiative of the member/participant of the trading venue

N.	Field	Content of the order details to be maintained at the disposal of the competent authority	Standards and formats of the order details to be used when providing the relevant order data to competent authority upon request
		Change of status due to market operations.	'CHMO' — Change of status due to market operations
		Cancelled at the initiative of the member, participant of the trading venue; where a member, participant or client decides upon its own initiative to cancel the order it has previously entered.	'CAME' — Cancelled at the initiative of the member or participant of the trading venue
		Cancelled by market operations. This includes a protection mechanism provided for investment firms carrying out a market-making activity as laid down in Articles 17 and 48 of Directive 2014/65/EU	'CAMO' -Cancelled by market operations
		Rejected order: an order received but rejected by the operator of the trading venue.	'REMO' — Rejected order
		Expired order: where the order is removed from the order book upon the end of its validity period.	'EXPI' — Expired order
		Partially filled: where the order is not fully executed so that there remains a quantity to be executed.	'PARF' — Partially filled
		Filled: where there is no more quantity to be executed.	'FILL' — Filled {ALPHANUM-4} characters not already in use for the trading venue's own classification.

Section H — Type of order

22	Order type	Identifies the type of order submitted to the trading venue as per the trading venue specifications.	{ALPHANUM-50}
23	Order type classification	Classification of the order according to two generic order types. LIMIT order: in the cases where the order is tradable and STOP order: in the cases where the order becomes tradable only upon the realisation of a pre-determined price event.	The letters 'LMTO' for limit or the letters 'STOP' for stop.

Section I — Prices

24	Limit price	The maximum price at which a buy order can trade or the minimum price at which a sell order can trade. The spread price for a strategy order. It can be negative or positive.	{DECIMAL-18/13} in case the price is expressed as monetary value. Where price is reported in monetary terms, it shall be provided in the major currency unit.

N.	Field	Content of the order details to be maintained at the disposal of the competent authority	Standards and formats of the order details to be used when providing the relevant order data to competent authority upon request
		This field shall be left blank in case of orders that do not have a limit price or in case of unpriced orders. In case of a convertible bond, the real price (clean or dirty) used for the order shall be reflected in this field.	{DECIMAL-11/10} in case the price is expressed as a percentage or yield. {DECIMAL-18/17} in case the price is expressed as basis points
25	Additional limit Price	Any other limit price which may apply to the order. This field shall be left blank if not relevant.	{DECIMAL-18/13} where the price is expressed as a monetary value. Where the price is reported in monetary terms, it shall be provided in the major currency unit. {DECIMAL-11/10 where the price is expressed as a percentage or yield. {DECIMAL-18/17} in case the price is expressed as basis points
26	Stop price	The price that must be reached for the order to become active. For stop orders triggered by events independent of the price of the financial instrument, this field shall be populated with a stop price equal to zero. This field shall be left blank if not relevant.	{DECIMAL-18/13 where the price is expressed as a monetary value. Where the price is reported in monetary terms, it shall be provided in the major currency unit. {DECIMAL-11/10} in case the price is expressed as a percentage or yield. {DECIMAL-18/17} in case the price is expressed as basis points.
27	Pegged limit price	The maximum price at which a pegged order to buy can trade or the minimum price at which a pegged order to sell can trade. This field shall be left blank if not relevant.	{DECIMAL-18/13} where the price is expressed as a monetary value. Where the price is reported in monetary terms, it shall be provided in the major currency unit. {DECIMAL-11/10} in case the price is expressed as a percentage or yield. {DECIMAL-18/17} in case the price is expressed as basis points

N.	Field	Content of the order details to be maintained at the disposal of the competent authority	Standards and formats of the order details to be used when providing the relevant order data to competent authority upon request
28	Transaction price	Traded price of the transaction excluding, where applicable, commission and accrued interest. In the case of option contracts, it shall be the premium of the derivative contract per underlying or index point. In the case of spread bets it shall be the reference price of the direct underlying instrument. For credit default swaps (CDS) it shall be the coupon in basis points. Where price reported in monetary terms, it shall be provided in the major currency unit. Where price is not applicable the field shall be populated with the value 'NOAP'.	{DECIMAL-18/13 in case the price is expressed as monetary. {DECIMAL-11/10} in case the price is expressed as percentage or yield {DECIMAL-18/17} in case the price is expressed as basis points 'NOAP'
29	Price currency	Currency in which the trading price for the financial instrument related to the order is expressed (applicable where the price is expressed as monetary value).	{CURRENCYCODE_3}
30	Currency of leg 2	Where there are multi-currency or cross-currency swaps, the currency of leg 2 shall be the currency in which leg 2 of the contract is denominated. For swaptions where the underlying swap is multi-currency, the currency of leg 2 shall be the currency in which leg 2 of the swap is denominated. This field only needs to be filled in where there are interest rates and currency derivatives contracts.	{CURRENCYCODE_3}
31	Price notation	Indicates whether the price is expressed in monetary value, in percentage, in yield or in basis points.	'MONE' — Monetary value 'PERC' — Percentage 'YIEL' — Yield 'BAPO' — Basis points

Section J — Order instructions

32	Buy-sell indicator	To show if the order is to buy or sell. In case of options and swaptions, the buyer shall be the counterparty that holds the right to exercise the option and the seller shall be the counterparty that sells the option and receives a premium. In case of futures and forwards other than futures and forwards relating to currencies, the buyer shall be the counterparty buying the instrument and the seller the counterparty selling the instrument. In the case of swaps relating to securities, the buyer shall be the counterparty that gets the risk of price movement of the underlying security and receives the security amount. The seller shall be the counterparty paying the security amount.	'BUYI' — buy 'SELL' — sell

N.	Field	Content of the order details to be maintained at the disposal of the competent authority	Standards and formats of the order details to be used when providing the relevant order data to competent authority upon request
		In the case of swaps related to interest rates or inflation indices, the buyer shall be the counterparty paying the fixed rate. The seller shall be the counterparty receiving the fixed rate. In case of basis swaps (float-to-float interest rate swaps), the buyer shall be the counterparty that pays the spread and the seller the counterparty that receives the spread. In the case of swaps and forwards related to currencies and of cross currency swaps, the buyer shall be the counterparty receiving the currency which is first when sorted alphabetically by ISO 4217 standard and the seller shall be the counterparty delivering this currency. In the case of swaps related to dividends, the buyer shall be the counterparty receiving the equivalent actual dividend payments. The seller is the counterparty paying the dividend and receiving the fixed rate. In the case of derivative instruments for the transfer of credit risk except options and swaptions, the buyer shall be the counterparty buying the protection. The seller is the counterparty selling the protection. In case of derivative contracts related to commodities or emission allowances, the buyer shall be the counterparty that receives the commodity or emission allowance specified in the report and the seller the counterparty delivering this commodity or emission allowance. In case of forward rate agreements, the buyer shall be the counterparty paying the fixed rate and the seller the counterparty receiving the fixed rate. For an increase in notional the buyer shall be the same as the acquirer of the financial instrument in the original transaction and the seller shall be the same as the disposer of the financial instrument in the original transaction. For a decrease in notional the buyer shall be the same as the disposer of the financial instrument in the original transaction and the seller shall be the same as the acquirer of the financial instrument in the original transaction.	
33	Order status	To identify orders that are active/inactive/suspended, firm/indicative (assigned to quotes only)/implicit/rerouted. Active — non-quote orders that are tradable. Inactive — non-quote orders that are not tradable. Firm/Indicative — Assigned to quotes only. Indicative quotes mean that they are visible but cannot be executed. This includes warrants in some trading venue. Firm quotes can be executed. Implicit — Used for strategy orders that are derived from implied in or implied out functionality. Routed — Used for orders that are routed by the trading venue to other venues.	'ACTI'- active or 'INAC'- inactive or 'FIRM'- firm quotes or 'INDI'- indicative quotes or 'IMPL'- implied strategy orders or 'ROUT'- routed orders. If multiple statuses are applicable, this field shall be populated with multiple flags separated by comma.

N.	Field	Content of the order details to be maintained at the disposal of the competent authority	Standards and formats of the order details to be used when providing the relevant order data to competent authority upon request
34	Quantity notation	Indicates whether the quantity reported is expressed in number of units, as a nominal value or as a monetary value.	'UNIT' — Number of units 'NOML' — Nominal value 'MONE' — Monetary value
35	Quantity currency	Currency in which the quantity is expressed. Field only needs to be populated where the quantity is expressed as a nominal or monetary value.	{CURRENCYCODE_3}
36	Initial quantity	The number of units of the financial instrument, or the number of derivative contracts in the order. The nominal or monetary value of the financial instrument. For spread bets, the quantity shall be the monetary value wagered per point movement in the underlying financial instrument. For an increase or decrease in notional derivative contracts, the number shall reflect the absolute value of the change and shall be expressed as a positive number. For credit default swaps, the quantity shall be the notional amount for which the protection is acquired or disposed of.	{DECIMAL-18/17} in case the quantity is expressed as number of units {DECIMAL-18/5} in case the quantity is expressed as monetary or nominal value
37	Remaining quantity including hidden	The total quantity that remains in the order book after a partial execution or in the case of any other event affecting the order. On a partial fill order event, this shall be the total remaining volume after that partial execution. On an order entry this shall equal the initial quantity.	{DECIMAL-18/17} in case the quantity is expressed as a number of units {DECIMAL-18/5} where the quantity is expressed as monetary or nominal value
38	Displayed quantity	The quantity that is visible (as opposed to hidden) in the order book.	{DECIMAL-18/17} where the quantity is expressed as a number of units {DECIMAL-18/5} where the quantity is expressed as a monetary or nominal value
39	Traded quantity	Where there is a partial or full execution, this field shall be populated with the executed quantity.	{DECIMAL-18/17} where the quantity is expressed as a number of units {DECIMAL-18/5} where the quantity is expressed as a monetary or nominal value
40	Minimum Acceptable Quantity (MAQ)	The minimum acceptable quantity for an order to be filled which can consist of multiple partial executions and is normally only for non-persistent order types. This field shall be left blank if not relevant.	{DECIMAL-18/17where the quantity is expressed as a number of units {DECIMAL-18/5} where the quantity is expressed as a monetary or nominal value

N.	Field	Content of the order details to be maintained at the disposal of the competent authority	Standards and formats of the order details to be used when providing the relevant order data to competent authority upon request
41	Minimum executable size (MES)	The minimum execution size of any individual potential execution. This field shall be left blank if not relevant.	{DECIMAL-18/17} where the quantity is expressed as a number of units {DECIMAL-18/5} where the quantity is expressed as a monetary or nominal value
42	MES first execution only	Specifies whether the MES is relevant only for the first execution. This field can be left blank where field 41 is left blank.	'true' 'false'
43	Passive only indicator	Indicates if the order is submitted to the trading venue with a characteristic/flag, such that the order shall not immediately execute against any contra visible orders.	'true' 'false'
44	Passive or aggressive indicator	On partial fill and fill order events, indicates whether the order was already resting on the order book and providing liquidity (passive) or the order initiated the trade and thus took liquidity (aggressive). This field shall be left blank if not relevant.	'PASV' — passive or 'AGRE' — aggressive.
45	Self-Execution Prevention	Indicates if the order has been entered with self-execution prevention criteria, so that it would not execute with an order on the opposite side of the book entered by the same member or participant.	'true' 'false'
46	Strategy Linked Order identification	The alphanumerical code used to link all connected orders that are part of a strategy pursuant to Article 7(2).	{ALPHANUM-50}
47	Routing Strategy	The applicable routing strategy as per the trading venue specification. This field shall be left blank if not relevant.	{ALPHANUM-50}
48	Trading venue transaction identification code	Alphanumerical code assigned by the trading venue to the transaction pursuant to Article 12 of this Regulation. The trading venue transaction identification code shall be unique, consistent and persistent per ISO10383 segment MIC and per trading day. Where the trading venue does not use segment MICs, the trading venue transaction identification code shall be unique, consistent and persistent per operating MIC per trading day. The components of the transaction identification code shall not disclose the identity of the counterparties to the transaction for which the code is maintained.	{ALPHANUM-52}

N.	Field	Content of the order details to be maintained at the disposal of the competent authority	Standards and formats of the order details to be used when providing the relevant order data to competent authority upon request
Section K — Trading phases, indicative auction price and volume			
49	Trading phases	The name of each of the different trading phases during which an order is present in the order book including trading halts, circuit breakers and suspensions.	{ALPHANUM-50}
50	Indicative auction price	The price at which each auction is due to uncross in respect to the financial instrument for which one or more orders have been placed.	{DECIMAL-18/5} in case the price is expressed as monetary or nominal value. Where price reported in monetary terms, it shall be provided in the major currency unit. DECIMAL-11/10} in case the price is expressed as a percentage or yield.
51	Indicative auction volume	The volume (number of units of the financial instrument) that can be executed at the indicative auction price in field 50 if the auction ended at that precise moment of time.	{DECIMAL-18/17} in case the quantity is expressed as number of units {DECIMAL-18/5} in case the quantity is expressed as monetary or nominal value

COMMISSION DELEGATED REGULATION (EU) 2017/581

of 24 June 2016

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on clearing access in respect of trading venues and central counterparties

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 ([1]), and in particular Article 35(6) and Article 36(6) thereof,

Whereas:

(1) To prevent distortion of competition, central counterparties (CCPs) as well as trading venues should only be able to deny a request for access to a CCP or a trading venue where they have made all reasonable efforts to manage the risk arising from granting that access but significant undue risk remains.

(2) In accordance with Regulation (EU) No 600/2014 if a CCP or trading venue denies an access request it has to provide full reasons for that decision and this includes identifying how the relevant risks arising from granting access would in the particular situation be unmanageable and that there would be significant undue risk remaining. An appropriate way of doing this is for the party denying access to clearly outline the changes in risk management that would arise from granting access, how it would have to manage the risk associated with changes in consequence of granting access, and to explain the impact on its activities.

(3) Regulation (EU) No 600/2014 does not distinguish between risks incurred by CCPs and trading venues when granting access and includes the same general categories of conditions to be considered by trading venues and CCPs when assessing access requests. However, due to the different nature of the activities of CCPs as compared to trading venues, risks stemming from granting access may in practice impact CCPs and trading venues differently, thus demanding an approach differentiating between CCPs and trading venues.

(4) When a competent authority assesses whether access would threaten the smooth and orderly functioning of the markets or adversely affect systemic risk, it should consider whether the CCP or trading venue in question has adequate risk management procedures, including with respect to operational and legal risks, to avoid the access agreement creating significant undue risks to third parties that cannot be mitigated.

(5) The terms under which access must be permitted should be reasonable and non-discriminatory so as not to undermine the purpose of non-discriminatory access. Charging fees in a discriminatory way so as to deter access should not be permitted. However, fees could differ for objectively justified reasons, such as where the costs to implement the access arrangements are higher. When granting access CCPs and trading venues incur both one-off costs, such as assessing legal requirements, and ongoing costs. Since the scope of the access request and the associated costs for implementing the access agreement are likely to differ on a case-by-case basis, it is not appropriate to cover the specific allocation of costs between the CCP and the trading venue in this Regulation. However, the allocation of costs is an important element of an access agreement, therefore both parties should specify the coverage of costs in that agreement.

(6) Pursuant to Regulation (EU) No 648/2012 of the European Parliament and of the Council ([2]), a CCP wishing to extend its business to additional services or activities not covered by the initial authorisation should submit

([1]) OJ L 173, 12.6.2014, p. 84.
([2]) Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

a request for an extension of authorisation. An extension of authorisation is needed where a CCP intends to offer clearing services on financial instruments with a different risk profile or that have material differences from the CCP's existing product set. When a contract traded on a trading venue to which a CCP has granted access is in a class of financial instruments covered by the CCP's existing authorisation and has therefore similar risk characteristics to the contracts already cleared by the CCP, such a contract should be considered as economically equivalent.

(7) In order to ensure that a CCP does not apply discriminatory collateral and margining requirements to economically equivalent contracts traded on a trading venue that has been granted access to the CCP, any change to the margining methodology and operational requirements regarding margining and netting applied to economically equivalent contracts already cleared by the CCP should be subject to a review by the risk committee of the CCP and be considered as a significant change to the models and parameters for the purpose of the review procedure provided in Regulation (EU) No 648/2012. Such a review should validate that the new models and parameters are non-discriminatory and based on relevant risk considerations.

(8) Regulation (EU) No 648/2012 prevents competitive distortions by requiring non-discriminatory access to CCPs offering clearing of over-the-counter (OTC) derivatives to trading venues. In turn, Regulation (EU) No 600/2014 recognises the need to introduce similar requirements for regulated markets. Given that a CCP may clear both OTC and exchange-traded derivatives, non-discriminatory treatment of economically equivalent contracts traded on a trading venue requesting access to a CCP should take into account all relevant contracts cleared by that CCP, irrespective of where the contracts are traded.

(9) A notification by a relevant competent authority to the CCP college and the European Securities and Markets Authority (ESMA) about the approval of CCP transitional arrangements in accordance with Article 35 of Regulation (EU) No 600/2014 should be made without undue delay in order to assist other relevant competent authorities to understand the impact this will have on the CCP and any trading venues that are connected by close links to that CCP. The notification should contain all relevant information necessary to enable the CCP college and ESMA to understand the decision and to enhance transparency.

(10) Clear requirements about the information to be provided by CCPs and trading venues when notifying competent authorities and ESMA that they wish to benefit from transitional arrangements in accordance with Articles 35 and 36 of Regulation (EU) No 600/2014 should contribute to a transparent and harmonised application of the notification procedure. It is therefore necessary for the notification procedure to include uniform templates for the notifications so as to enable consistent and uniform supervisory practices.

(11) It is important to avoid the risk of larger trading venues using calculation methods that minimise their annual notional amount with the aim of benefiting from the opt-out mechanism to the access provisions. Where there are equally accepted alternative approaches to calculating notional amount, using the calculation which gives the higher value helps avoiding that risk. The methods used for calculating notional amount for the purposes of Regulation (EU) No 600/2014 should enable genuinely smaller trading venues that have not yet acquired the technological capability to engage on an equal footing with the majority of the post-trade infrastructure market to make use of the opt-out mechanism. It is also important for the methods prescribed to be straightforward and unambiguous in order to contribute to consistent and uniform supervisory practices.

(12) It is important for trading venues to be consistent about calculating their notional amount for the purposes of Regulation (EU) No 600/2014 so that the access provisions can be applied fairly by trading venues. This is particularly relevant for certain types of exchange-traded derivatives, traded in units, such as barrels or tons.

(13) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the provisions laid down in Regulation (EU) No 600/2014 apply from the same date. However, to ensure that CCPs and trading venues may benefit from the transitional arrangements provided for in Article 35(5) and Article 36(5) of Regulation (EU) No 600/2014, certain provisions of this Regulation should apply from the date of its entry into force.

(14) The provisions in this Regulation are closely linked, since they deal with the denial and granting of access to CCPs and trading venues, including the procedure for CCPs and trading venues to opt out from the access requirements set out in this Regulation. To ensure coherence between those provisions, most of which should apply at the same time, and to facilitate a comprehensive view and compact access to them by persons subject to those obligations, it is desirable to include the regulatory technical standards required by Article 35(6) and Article 36(6) of Regulation (EU) 600/2014 in a single Regulation.

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

(16) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council [1],

HAS ADOPTED THIS REGULATION:

CHAPTER I

NON-DISCRIMINATORY ACCESS TO CCPs AND TRADING VENUES

SECTION 1

Non-discriminatory access to CCPs

Article 1

Conditions on the denial of access by a CCP

1. A CCP shall assess whether granting access would create any of the risks specified in Articles 2, 3 and 4 and may deny access only if, after making all reasonable efforts to manage its risks, the CCP concludes that there are significant undue risks that cannot be managed.

2. If a CCP denies access, it shall identify which risks specified in Articles 2, 3 and 4 would result from granting access and explain why those risks cannot be managed.

Article 2

Denial of access by a CCP based on the anticipated volume of transactions

A CCP may deny an access request on grounds of the anticipated volume of transactions arising from such access only where this would result in one of the following:

(a) the scalable design of the CCP being exceeded to such an extent that the CCP cannot adapt its systems so as to deal with the anticipated volume of transactions;

(b) the planned capacity of the CCP being exceeded in a way that the CCP would not be able to acquire the required extra capacity to clear the anticipated volume of transactions.

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

Article 3

Denial of access by a CCP based on operational risk and complexity

A CCP may deny an access request on grounds of operational risk and complexity.

Operational risks and complexity shall include any of the following:

(a) incompatibility of CCP and trading venue IT systems impeding the CCP to provide for connectivity between the systems;

(b) lack of human resources with the necessary knowledge, skills and experience to perform the CCP's functions regarding the risk stemming from additional financial instruments where these differ from financial instruments already cleared by the CCP or inability to deploy such human resources.

Article 4

Denial of access by a CCP based on other factors creating significant undue risks

1. A CCP may deny an access request on grounds of significant undue risks where any of the following conditions are met:

(a) the CCP does not offer clearing services in respect of the financial instruments for which access is being requested and would not be able with reasonable efforts to launch a clearing service consistent with the requirements set out in Titles II, III and IV of Regulation (EU) No 648/2012;

(b) granting access would threaten the economic viability of the CCP or its ability to meet minimum capital requirements under Article 16 of Regulation (EU) No 648/2012;

(c) there are legal risks;

(d) there is an incompatibility of CCP rules and trading venue rules that the CCP cannot remedy in cooperation with the trading venue.

2. A CCP may refuse an access request based on legal risk as referred to in point (c) of paragraph 1, where as a result of granting access, the CCP would not be able to enforce its rules relating to close out netting and default procedures or would not be able to manage the risks arising from the simultaneous use of different trade acceptance models.

SECTION 2

Non-discriminatory access to trading venues

Article 5

Conditions on the denial of access by a trading venue

1. A trading venue shall assess whether granting access would create any of the risks specified in Articles 6 and 7 and may deny access only if, after making all reasonable efforts to manage its risks, the trading venue concludes that there are significant undue risks that cannot be managed.

2. If a trading venue denies access, it shall identify which risks specified in Articles 6 and 7 would result from granting access and why those risks cannot be managed.

Article 6

Denial of access by a trading venue based on operational risk and complexity

A trading venue may deny an access request on grounds of operational risk and complexity arising from such access only if there is a risk of incompatibility of CCP IT systems and trading venue IT systems, impeding the trading venue to provide for connectivity between those systems.

Article 7

Denial of access by a trading venue based on other factors creating significant undue risks

A trading venue may deny an access request on grounds of significant undue risks in any of the following cases:

(a) threat to the economic viability of the trading venue or its ability to meet minimum capital requirements under Article 47(1)(f) of Directive 2014/65/EU of the European Parliament and of the Council [1];

(b) incompatibility of trading venue rules and CCP rules that the trading venue cannot remedy in cooperation with the CCP.

Article 8

Conditions under which access is deemed to threaten the smooth and orderly functioning of markets or adversely affect systemic risk

In addition to liquidity fragmentation, as defined in Article 2(1)(45) of Regulation (EU) No 600/2014, for the purposes of Articles 35(4)(b) and 36(4)(b) of that Regulation, granting access shall be deemed to threaten the smooth and orderly functioning of the markets, or adversely affect systemic risk, where the competent authority can provide reasons for the denial, including evidence that the risk management procedures of one or both of the parties to the access request are insufficient to prevent the granting of access from creating significant undue risks to third parties, and there is no remedial action that would sufficiently mitigate those risks.

CHAPTER II

CONDITIONS UNDER WHICH ACCESS MUST BE PERMITTED

Article 9

Conditions under which access must be permitted

1. The parties shall agree on their respective rights and obligations arising from the access granted, including the applicable law governing their relationships. The terms of the access agreement shall:

(a) be clearly defined, transparent, valid and enforceable;

(b) where two or more CCPs have access to the trading venue specify the way in which transactions on the trading venue will be allocated to the CCP that is party to the agreement;

(c) contain clear rules concerning the moment of entry of transfer orders, construed pursuant to Directive 98/26/EC of the European Parliament and of the Council [2], into relevant systems and the moment of irrevocability;

(d) contain rules regarding the termination of the access agreement by any of the parties, which shall:

(i) provide for termination in an orderly manner that does not unduly expose other entities to additional risks, including clear and transparent arrangements for the management and orderly run-off of contracts and positions made under the access agreement that were open at the point of termination;

---

[1] 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] Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166, 11.6.1998, p. 45).

(ii) ensure that the relevant party is given a reasonable amount of time to remedy any breach that does not give rise to immediate termination;

(iii) allow the termination, if risks increase in a way that would have justified denial of access in the first instance;

(e) specify the financial instruments being subject to the access agreement;

(f) specify the cover of the one-off and ongoing costs caused by the access request;

(g) contain provisions for claims and liabilities stemming from the access agreement.

2. The terms of the access agreement shall require that the parties to the agreement put in place adequate policies, procedures and systems to ensure the following:

(a) timely, reliable and secure communication between the parties;

(b) prior consultation to the other party where changes to either party's operations are likely to have a material impact on the access agreement or on the risks to which the other party is exposed;

(c) timely notification to the other party before a change is implemented, in the cases not covered by point (b);

(d) resolution of disputes;

(e) identification, monitoring and management of the potential risks arising from the access agreement;

(f) reception by the trading venue of all necessary information to fulfil its obligations regarding the monitoring of open interest;

(g) acceptance by the CCP of delivery of physically settled commodities.

3. The relevant parties to the access agreement shall ensure the following:

(a) that proper risk management standards are maintained when granting access;

(b) that information provided in the request for access is kept up-to-date throughout the duration of the access agreement, including information about material changes;

(c) that non-public and commercially sensitive information including information provided during the development phase of a financial instrument may only be used for the specific purpose for which it is conveyed and may only be acted upon for the specific purpose agreed by the parties.

Article 10

Non-discriminatory and transparent clearing fees charged by CCPs

1. A CCP shall only charge fees for clearing transactions executed on a trading venue to which it has granted access on the basis of objective criteria, applicable to all clearing members and, where relevant, clients. For this purpose, a CCP shall make all clearing members and, where relevant, clients subject to the same schedule of fees and rebates and its fees shall not depend on the trading venue where the transaction takes place.

2. A CCP shall only charge fees to a trading venue in relation to access on the basis of objective criteria. For this purpose, the same fees and rebates shall apply to all trading venues accessing the CCP with regard to the same or similar financial instruments, unless a different fee schedule can be objectively justified.

3. In accordance with Article 38 of Regulation (EU) No 648/2012 a CCP shall ensure that the fee schedules referred to in paragraphs 1 and 2 of this Article are easily accessible, adequately identified per service provided and sufficiently granular in order to ensure that fees charged are predictable.

4. Paragraphs 1 to 3 shall apply to fees charged to cover one-off and ongoing costs.

Article 11

Non-discriminatory and transparent fees charged by trading venues

1. A trading venue shall only charge fees in relation to access on the basis of objective criteria. For this purpose, the same schedule of fees and rebates shall apply to all CCPs accessing the trading venue with regard to the same or similar financial instruments, unless a different fee schedule can be objectively justified.

2. A trading venue shall ensure that the fee schedules referred to in paragraph 1 are easily accessible, that the fees are adequately identified per service provided and sufficiently granular in order to ensure that the arising fees are predictable.

3. Paragraphs 1 and 2 shall apply to all fees related to access, including those that are charged to cover one-off and ongoing costs.

CHAPTER III

CONDITIONS FOR NON-DISCRIMINATORY TREATMENT OF CONTRACTS

Article 12

Collateral and margining requirements of economically equivalent contracts

1. The CCP shall determine whether contracts traded on the trading venue to which it has granted access are economically equivalent to contracts with similar risk characteristics already cleared by the CCP.

2. For the purposes of this article, a CCP shall consider all contracts traded on the trading venue to which it has granted access, which are in the class of financial instruments covered by the CCP's authorisation referred to in Article 14 of Regulation (EU) No 648/2012, or by any subsequent extension of authorisation referred to in Article 15 of that Regulation, as economically equivalent to the contracts in the respective class of financial instruments already cleared by the CCP.

3. A CCP may consider a contract traded on the trading venue to which it has granted access, which presents a significantly different risk profile or material differences from the contracts already cleared by the CCP in the respective class of financial instruments, as non-economically equivalent where the CCP had obtained an extension of the authorisation pursuant to Article 15 of Regulation (EU) No 648/2012 with respect to that contract and in connection with that trading venue's access request.

4. A CCP shall apply to economically equivalent contracts referred to in paragraph 1 the same margin and collateral methodologies, irrespective of where the contracts are traded. A CCP shall subject the clearing of an economically equivalent contract referred to in paragraph 1 to the adoption of changes to the CCP's risk models and parameters, only if necessary in order to mitigate the risk factors in relation to that trading venue or the contracts traded thereon. Such changes shall be considered as significant changes to the CCP's models and parameters referred to in Articles 28 and 49 of Regulation (EU) No 648/2012.

Article 13

Netting of economically equivalent contracts

1. A CCP shall apply to economically equivalent contracts referred to in Article 12(1) of this Regulation the same netting procedures irrespective of where the contracts were traded, provided that any netting procedure it applies is valid and enforceable in accordance with Directive 98/26/EC and applicable insolvency law.

2. A CCP considering that the legal risk or the basis risk related to a netting procedure it applies to an economically equivalent contract is not sufficiently mitigated, shall subject the clearing of such a contract to the adoption of changes to that netting procedure excluding the netting of such contract. Such changes shall be considered as significant changes to the CCP's risk models and parameters referred to in Article 28 and 49 of Regulation (EU) No 648/2012.

3. For the purpose of paragraph 2, 'basis risk' shall mean the risk arising from less than perfectly correlated movements between two or more assets or contracts cleared by the CCP.

Article 14

Cross-margining of correlated contracts cleared by the same CCP

Where a CCP calculates margins with respect to cross-margining of correlated contracts cleared by the same CCP (portfolio margining) in accordance with Article 41 of Regulation (EU) No 648/2012 and Article 27 of Commission Delegated Regulation (EU) No 153/2013 ([1]), the CCP shall apply its portfolio margining approach to all relevant correlated contracts irrespective of where the contracts are traded. Contracts with a significant and reliable correlation, or an equivalent statistical parameter of dependence, shall benefit from the same offsets or reductions.

CHAPTER IV

TRANSITIONAL ARRANGEMENTS AND FINAL PROVISIONS

Article 15

Notification procedure from the CCP to its competent authority

Where a CCP applies for permission to avail itself of transitional arrangements referred to in Article 35(5) of Regulation (EU) No 600/2014, it shall submit a notification to its competent authority in written form, using Form 1 set out in the Annex to this Regulation.

Article 16

Notification procedure from the competent authority to ESMA and the CCP college

Relevant competent authorities shall notify ESMA and the CCP college of every decision to approve a transitional arrangement in accordance with Article 35(5) of Regulation (EU) No 600/2014 in writing without undue delay and no later than one month from the decision, using Form 2 set out in the Annex to this Regulation.

Article 17

Notification procedure from the trading venue to its competent authority regarding the initial transitional period

Where a trading venue does not wish to be bound by Article 36 of Regulation (EU) No 600/2014, it shall submit a notification to its competent authority and ESMA in written form, using Forms 3.1 and 3.2 set out in the Annex to this Regulation.

Article 18

Notification procedure from the trading venue to its competent authority regarding an extension of the transitional period

Where a trading venue wishes to continue not to be bound by Article 36 of Regulation (EU) No 600/2014 for a further thirty months, it shall submit a notification to its competent authority and ESMA in written form, using Forms 4.1 and 4.2 set out in the Annex to this Regulation.

([1]) Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on requirements for central counterparties (OJ L 52, 23.2.2013, p. 41).

Article 19

Further specifications for the calculation of notional amount

1. In accordance with Article 36(5) of Regulation (EU) No 600/2014, a trading venue that does not wish to be bound by Article 36 of that Regulation for a period of thirty months from the date of application of Regulation (EU) No 600/2014 shall include in its calculation of its annual notional amount all transactions in exchange-traded derivatives concluded in the calendar year preceding the application under its rules.

2. For the purposes of calculating its annual notional amount in accordance with Article 36(5) of Regulation (EU) No 600/2014 for the year preceding the year of entry into application, a trading venue shall use actual figures for the period for which they are available.

Where, in respect of the year preceding the year of entry into application of Regulation (EU) No 600/2014, a trading venue has available data for less than 12 months, it shall produce an estimated figure for that year using the following three inputs:

(a) actual data for the longest possible period commencing at the beginning of the year preceding the year of entry into application of Regulation (EU) No 600/2014, including at least the first eight months;

(b) actual data for the equivalent period during the year before the year referred to in point (a) of this paragraph;

(c) actual data for the entire year before the year referred to in point (a) of this paragraph.

The estimated figure for the annual notional amount shall be calculated by multiplying the inputs referred to in point (a) of the second subparagraph by the inputs referred to in point (c) of the second subparagraph and by dividing them by the inputs referred to in point (b) of the second subparagraph.

3. Where a trading venue wishes to continue not to be bound by Article 36 of Regulation (EU) No 600/2014 for a further thirty month period at the end of the first, or any further, 30 month period, it shall include in its calculation of its annual notional amount in accordance with Article 36(5) of Regulation (EU) No 600/2014 all transactions in exchange-traded derivatives concluded under its rules in each of the first two rolling years of the previous thirty month period.

4. Where there are acceptable alternatives to calculating the annual notional amount for certain types of instruments, but there are notable differences in the values to which such calculation methods give rise, the calculation which gives the higher value shall be used. In particular for derivatives, such as futures or options, including all types of commodity derivatives which are designated in units, the annual notional amount shall be the full value of the derivative's underlying assets at the relevant price at the time at which the transaction is concluded.

Article 20

Approval and verification method by ESMA

1. For the purposes of verification in accordance with Article 36(6)(d) of Regulation (EU) No 600/2014, the trading venue shall submit to ESMA on request all facts and figures on which the calculation is based.

2. When verifying the submitted annual notional amount figures, ESMA shall also consider relevant post-trade data and annual statistics.

3. ESMA shall approve or reject the opt-out within three months of the reception of all relevant information for the notification in accordance with either Article 16 or 17, including the information specified in Article 19.

Article 21

Entry into force and application

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

It shall apply from 3 January 2018.

However, Articles 15, 16, 17, 19 and 20 shall apply from the entry into force of this Regulation.

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

Done at Brussels, 24 June 2016

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Form 1

Notification referred to in Article 15

Name of the CCP	Relevant contact details	Name(s) of trading venue(s) connected by close links	Jurisdiction(s) of trading venue (s) connected by close links
		1. 2. 3. …	1. 2. 3. …

Form 2

Notification referred to in Article 16

Name of the CCP	Relevant contact details	Date of approval decision	Dates of beginning and end of transitional period	Name(s) of trading venue(s) connected by close links	Jurisdiction(s) of trading venue(s) connected by close links
			Beginning: End:	1. 2. 3. …	1. 2. 3. …

Form 3.1

General notification referred to in Article 17

Name of the trading venue	Relevant contact details	Name(s) and jurisdiction(s) of trading venues in the same group based in the Union	Name(s) and jurisdiction(s) of CCP(s) connected by close links
		1. 2. 3. …	1. 2. 3 …

Form 3.2

Notification of notional amount referred to in Article 17

Trading Venue:	Traded notional amount in 2016
Asset class X:	
Asset class Y:	
Asset class Z: …	

Form 4.1

General notification referred to in Article 18

Name of the trading venue	Relevant contact details	Name(s) and jurisdiction(s) of trading venues in the same group based in the Union	Name(s) and jurisdiction(s) of CCP(s) connected by close links
		1. 2. 3. …	1. 2. 3. …

Form 4.2

Notification of notional amount referred to in Article 18

Name of the trading venue:	Notional amount for rolling year …	Notional amount for rolling year …
Asset class X:		
Asset class Y:		
Asset class Z: …		

COMMISSION DELEGATED REGULATION (EU) 2017/582

of 29 June 2016

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards specifying the obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 ([1]), and in particular Article 29(3) thereof,

Whereas:

(1) In order to manage operational and other risks when transactions in cleared derivatives are submitted and accepted for clearing and to provide certainty to counterparties as soon as possible, it is important to determine whether a cleared derivative transaction will be accepted for clearing by a CCP at an early stage, and to the extent possible before the transaction is entered into, as well as the consequences of a CCP not accepting for clearing the derivative transaction submitted.

(2) In order to apply scalable technical solutions ensuring that transactions in cleared derivatives can be submitted and accepted for clearing as quickly as technologically practicable, the information needed by a trading venue and a CCP to perform their tasks should be pre-determined and clearly set in the documentation of the trading venue and the CCP.

(3) In order to appropriately price transactions in derivatives, counterparties take into account that centrally cleared transactions are subject to a different collateral regime than non-centrally cleared transactions, regardless of whether the transaction is cleared because it is mandated to be cleared or whether the transaction is cleared because the relevant parties have otherwise agreed for it to be cleared. Therefore, counterparties should benefit from having the same process and the same requirements for both mandatorily cleared and voluntarily cleared derivative transactions to ensure that cleared derivative transactions are submitted and accepted for clearing as soon as technologically practicable.

(4) Where cleared derivative transactions are concluded on a trading venue, in order to identify before a transaction is entered into whether the transaction will be cleared by a CCP, the trading venue and the CCP should have rules to ensure that that transaction can be automatically cleared. Otherwise, the trading venue should provide the ability to clearing members of the CCP to check orders against the limits set for their clients.

(5) The time granted to a trading venue to process a cleared derivative transaction should be shorter for electronically traded cleared derivative transactions than for non-electronically traded cleared derivative transactions as the level of automated processing should be higher in the former case.

(6) A trading venue should send the information related to cleared derivative transactions to a CCP in a pre-agreed electronic format for both electronically traded and non-electronically traded cleared derivative transactions. Therefore, the time granted to a CCP to decide whether a cleared derivative transaction can be accepted for clearing should be the same for electronically traded and non-electronically traded cleared derivative transactions.

([1]) Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

(7) The processing of cleared derivative transactions entered into on a bilateral basis is usually less automated than the processing of cleared derivative transactions concluded on a trading venue. Therefore, the time granted to counterparties to submit a cleared derivative transaction entered into on a bilateral basis to a CCP should be longer than the time granted for a cleared derivative transaction concluded on a trading venue.

(8) In order to manage the credit risks related to cleared derivative transactions that are entered into on a bilateral basis, a CCP should allow clearing members to review the transaction details of their clients and to decide whether to accept it. As the process between a CCP and a clearing member is usually automated, this process should require limited time.

(9) CCPs as well as clearing members manage credit risk associated to the build-up of current exposures resulting from the clearing of cleared derivatives. Typically, this includes the setting of limits by the CCP or the clearing member per counterparty in order to mitigate the associated exposure risk, which can result in new requests to clear certain cleared derivative transactions not being accepted by the clearing member or by the CCP. Ensuring that cleared derivative transactions are submitted to clearing as quickly as technologically practicable does not therefore imply that all cleared derivative transactions will be accepted for clearing in all circumstances. Where cleared derivative transactions are not accepted for clearing, counterparties should have clarity on the treatment of those transactions in order to hedge their risk.

(10) As the processing of a cleared derivative transaction concluded electronically on a trading venue and submitted for clearing to a CCP requires limited time, the time for the market to move, and for the value and the risk of the cleared derivative transaction to change, in between the order and the non-acceptance is also very limited. Since the damage potentially suffered by counterparties whose transactions are not accepted for clearing by the CCP is negligible, and in order to provide certainty to counterparties, cleared derivative transactions concluded electronically on a trading venue and not accepted for clearing by a CCP should be considered void.

(11) As the processing of cleared derivative transactions other than cleared derivative transactions concluded electronically on a trading venue usually takes a longer time, this period of time may be sufficiently long for the market to have moved, and for the value and the risk of the cleared derivative transaction to have changed significantly, in the meantime. Therefore, voiding the transaction might not be the appropriate treatment for all transactions non-accepted by the CCP. To provide certainty on the treatment of cleared derivative transactions other than cleared derivative transactions concluded electronically on a trading venue and not accepted by a CCP for clearing, the rules of the trading venue, and the contractual arrangements between the counterparties where appropriate, should clarify in advance how these transactions are to be treated.

(12) When a cleared derivative transaction is not accepted for clearing for reasons other than credit-risk related reasons such as technical or clerical problems arising from the transmission of inaccurate or incomplete information, the counterparties may still want to clear that derivative transaction. Where both counterparties agree to re-submit the transaction, provided that the transaction is resubmitted within a relatively short period of time from the first submission and that resubmission allows the investigation and the resolution of the reason why the transaction was not accepted for clearing, a second submission in the form of a new cleared derivative transaction with the same economic terms may be allowed as it still ensures proper management of operational or other non-credit related risks.

(13) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the provisions laid down in Regulation (EU) No 600/2014 apply from the same date.

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

(15) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council [1],

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

HAS ADOPTED THIS REGULATION:

Article 1

Arrangements to facilitate the transfer of information

1. A trading venue shall detail in its rules the information it needs from counterparties to a cleared derivative transaction in order to submit that transaction to a CCP for clearing, and the format in which that information shall be provided.

2. A CCP shall detail in its rules the information it needs from counterparties to a cleared derivative transaction and from trading venues in order to clear that transaction, and the format in which that information shall be provided.

Article 2

Pre-trade check for cleared derivative transactions concluded on a trading venue

1. Trading venues and clearing members shall subject orders for the conclusion of cleared derivative transactions on a trading venue to the requirements set out in paragraphs 2, 3 and 4, except where all the conditions set out in points (a), (b) and (c) of this paragraph are satisfied:

(a) the rules of the trading venue require that each member or participant of the trading venue, which is not a clearing member of a CCP through which the cleared derivative transaction is cleared, has a contractual arrangement with a clearing member of the CCP under which the clearing member automatically becomes counterparty to the cleared derivative transaction;

(b) the rules of the CCP provide that the cleared derivative transaction concluded on a trading venue is cleared automatically and immediately, with the clearing member referred to in point (a) becoming the counterparty to the CCP;

(c) the rules of the trading venue provide that the member or participant of the trading venue or its client becomes counterparty to the cleared derivative transaction, after the cleared derivative transaction is cleared, pursuant to direct or indirect clearing arrangements entered into with the clearing member.

2. A trading venue shall provide tools to ensure pre-conclusion screening on an order-by-order basis by each clearing member of the limits set and maintained by that clearing member for its client pursuant to Commission Delegated Regulation (EU) 2017/589 [1].

3. A trading venue shall ensure before the conclusion of the order that the order of the client is within the limits applicable to this client in accordance with paragraph 2:

(a) within 60 seconds from the receipt of the order when the order is entered into electronically;

(b) within 10 minutes from the receipt of the order when the order is not entered into electronically.

4. When the order is not within the limits applicable to the client in accordance with paragraph 2, the trading venue shall inform the client and the clearing member that the order cannot be concluded in accordance with the following timelines:

(a) where the order is entered into electronically, on a real-time basis;

(b) where the order is not entered into electronically, within 5 minutes as from the moment when the order was checked against the applicable limits.

[1] Commission Delegated Regulation (EU) 2017/589 of 19 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the organisational requirements of investment firms engaged in algorithmic trading (see page 417 of this Official Journal).

Article 3

Time frames for the transfer of information for cleared derivative transactions concluded on a trading venue

1. The trading venue, the CCP and the clearing member shall be subject to the requirements set out in paragraphs 2 to 5 of this Article except where all the conditions set out in points (a), (b) and (c) of Article 2(1) are met.

2. For cleared derivative transactions that are concluded on a trading venue electronically, the trading venue shall send the information related to each transaction to the CCP within 10 seconds from the conclusion of the transaction.

3. For cleared derivative transactions that are concluded on a trading venue non-electronically, the trading venue shall send the information related to each transaction to the CCP within 10 minutes from the conclusion of the transaction.

4. A CCP shall accept or not accept for clearing a cleared derivative transaction concluded on a trading venue within 10 seconds from receiving the information from the trading venue and inform the clearing member and the trading venue of any non-acceptance on a real time basis.

5. The clearing member and the trading venue shall inform the counterparty that concluded the cleared derivative transaction on the trading venue of the non-acceptance as soon as the CCP has informed them of a non-acceptance.

Article 4

Time frames for the transfer of information for cleared derivative transactions concluded on a bilateral basis

1. For cleared derivative transactions concluded by counterparties on a bilateral basis, the clearing member shall:

(a) obtain evidence from its client of the conclusion time frame of the transaction submitted for clearing;

(b) ensure that the counterparties send to the CCP the information referred to in Article 1(2) within 30 minutes from the conclusion of the transaction.

2. The CCP shall send to its clearing member the information referred to in point (b) of paragraph 1 related to the transaction within 60 seconds from receiving this information from the counterparties. The clearing member shall accept or not accept the transaction within 60 seconds from receiving the information from the CCP.

3. The CCP shall accept or not accept the clearing of a cleared derivative transaction concluded on a bilateral basis within 10 seconds from the receipt of the clearing member's acceptance or non-acceptance.

4. However, paragraphs 2 and 3 of this Article shall not apply where all the following conditions are met:

(a) the rules of the CCP ensure the setting and the maintenance on a regular basis of limits by a clearing member for its client pursuant to Delegated Regulation (EU) 2017/589;

(b) the rules of the CCP provide that a cleared derivative transaction that is within the limits in accordance with point (a) of this paragraph is cleared automatically by the CCP within 60 seconds from receiving the information on the cleared derivative transaction from the counterparties.

5. The CCP that does not accept for clearing a cleared derivative transaction concluded on a bilateral basis shall inform the clearing member of the non-acceptance on a real time basis. The clearing member shall inform of the non-acceptance the counterparty that concluded the transaction as soon as it is informed by the CCP.

Article 5

Treatment of cleared derivative transactions not accepted for clearing

1. Where a cleared derivative transaction that is concluded on a trading venue electronically is not accepted by the CCP, the trading venue shall void such contract.

2. Where a cleared derivative transaction, other than a cleared derivative transaction concluded on a trading venue electronically, is not accepted by the CCP, the treatment of the transaction shall be governed by:

(a) the rules of the trading venue, where the contract is submitted for clearing in accordance with the rules of the trading venue;

(b) the agreement between the counterparties in all other situations.

3. Where the non-acceptance is due to a technical or clerical problem, the cleared derivative transaction can be submitted for clearing once more within one hour from the previous submission in the form of a new transaction but with the same economic terms, provided that both counterparties have agreed to the second submission. The trading venue on which the cleared derivative transaction was initially concluded shall not be subject to the requirements of Article 8 of Regulation (EU) No 600/2014 for the submission to clearing of the second cleared derivative transaction.

Article 6

Entry into force and application

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

This Regulation shall apply from the date referred to in the second paragraph of Article 55 of Regulation (EU) No 600/2014.

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

Done at Brussels, 29 June 2016.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION DELEGATED REGULATION (EU) 2017/583

of 14 July 2016

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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

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

Whereas:

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

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

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

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

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

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

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

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

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

(9) The majority of liquid covered bonds are mortgage bonds issued to grant loans for financing private individuals' purchase of a home and the average value of which is directly related to the value of the loan. In the covered bond market, liquidity providers ensure that professional investors trading in large sizes are matched with home owners trading in small sizes. To avoid disruption of this function and contingent detrimental consequences for home owners, the size specific to the instrument above which liquidity providers may benefit from a pre-trade transparency waiver should be set at a the trade size below which lie 40 percent of the transactions since this trade size is deemed reflective of the average price of a home.

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

(11) Investment firms should make public the details of transactions executed outside a trading venue through an APA. This Regulation should set out the way investment firms report their transactions to APAs and should apply in conjunction with Commission Delegated Regulation (EU) 2017/571 [1].

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

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

(14) Exchange for physicals are an integral part of financial markets, allowing market participants to organise and execute exchange-traded derivatives transactions which are linked directly to a transaction in the underlying physical market. They are widely used and they involve a multitude of actors, such as farmers, producers, manufacturers and processors of commodities. Typically an exchange for physical transaction will take place when a seller of a physical asset seeks to close out his corresponding hedging position in a derivative contract with the

[1] Commission Delegated Regulation (EU) 2017/571 of 2 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services providers (see page 126 of this Official Journal).

buyer of the physical asset, when the latter happens to also hold a corresponding hedge in the same derivative contract. They therefore facilitate the efficient closing out of hedging positions which are not necessary anymore.

(15) In respect of transactions executed outside the rules of a trading venue, it is essential to clarify which investment firm is to make public a transaction in cases where both parties to the transaction are investment firms established in the Union in order to ensure the publication of transactions without duplication. Therefore, the responsibility to make a transaction public should always fall on the selling investment firm unless only one of the counterparties is a systematic internaliser and it is the buying firm.

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

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

(18) Regulation (EU) No 600/2014 allows competent authorities to require the publication of supplementary details when publishing information benefitting from a deferral, or to allow deferrals for an extended time period. In order to contribute to the uniform application of these provisions across the Union, it is necessary to frame the conditions and criteria under which supplementary deferrals may be allowed by competent authorities.

(19) Trading in many non-equity financial instruments, and in particular derivatives, is episodic, variable and subject to regular modifications of trading patterns. Static determinations of financial instruments which do not have a liquid market and static determinations of the various thresholds for the purpose of calibrating pre-trade and post-trade transparency obligations without providing for the possibility to adapt the liquidity status and the thresholds in light of changes in trading patterns would therefore not be suitable. It is therefore appropriate to set out the methodology and parameters which are necessary to perform the liquidity assessment and the calculation of the thresholds for the application of pre-trade transparency waivers and deferral of post-trade transparency on a periodic basis.

(20) In order to ensure consistent application of the waivers to pre-trade transparency and the post-trade deferrals, it is necessary to create uniform rules regarding the content and frequency of data competent authorities may request from trading venues, APAs and consolidated tape providers (CTPs) for transparency purposes. It is also necessary to specify the methodology for calculating the respective thresholds and to create uniform rules with regard to publishing the information across the Union. Rules on the specific methodology and data necessary to perform calculations for the purpose of specifying the transparency regime applicable to non-equity financial instruments should be applied in conjunction with Commission Delegated Regulation (EU) 2017/577 [1] which sets out the common elements with regard to the content and frequency of data requests to be addressed to trading venues, APAs and CTPs for the purposes of transparency and other calculations in more general terms.

(21) For bonds other than ETCs and ETNs, transactions below EUR 100 000 should be excluded from the calculations of pre-trade and post-trade transparency thresholds, as those are considered to be of a retail size. Those retail-sized transactions should in all cases benefit from the new transparency regime and any threshold giving rise to a waiver or deferral from transparency should be set above that level.

(22) The purpose of the exemption from transparency obligations set out in Regulation (EU) No 600/2014 is to ensure that the effectiveness of operations conducted by the Eurosystem in the performance of primary tasks as

[1] Commission Delegated Regulation (EU) 2017/577 of 13 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the volume cap mechanism and the provision of information for the purposes of transparency and other calculations (see page 174 of this Official Journal).

set out in the Statute of the European System of Central Banks and of the European Central Bank annexed to the Treaty on the European Union ('the Statute'), and under equivalent national provisions for members of the European System of Central Banks (ESCB) in Member States whose currency is not the euro, which relies on timely and confidential transactions, is not compromised by the disclosure of information on such transactions. It is crucial for central banks to be able to control whether, when and how information about their actions is disclosed so as to maximise the intended impact and limit any unintended impact on the market. Therefore, legal certainty should be provided for the members of the ESCB and their respective counterparties as to the scope of the exemption from transparency requirements.

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

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

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

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

(27) In order to ensure a smooth implementation of the new transparency requirements, it is appropriate to phase-in the transparency provisions. The liquidity threshold 'average daily number of trades' used for the determination of bonds for which there is a liquid market should be adapted in a gradual manner.

(28) By 30 July of the year following the date of application of Regulation (EU) No 600/2014, ESMA should, on an annual basis, submit to the Commission an assessment of the liquidity threshold determining the pre-trade transparency obligations pursuant to Articles 8 and 9 of Regulation (EU) No 600/2014, and, where appropriate, submit a revised regulatory technical standard in order to adapt the liquidity threshold.

(29) Likewise, the trade percentiles used to determine the size specific to the instrument which allow for the pre-trade transparency obligations for non-equity instruments to be waived, should be gradually adapted.

(30) For this purpose, ESMA should, on an annual basis, submit to the Commission an assessment of the waiver thresholds and, where appropriate, submit a revised regulatory standard to adapt the waiver thresholds applicable to non-equity instruments.

(31) For the purpose of the transparency calculations, reference data is necessary to determine the sub-asset class to which each financial instrument belongs. Therefore, it is necessary to require trading venues to provide additional reference data to that required by Commission Delegated Regulation (EU) 2017/585 ([1]).

(32) In the determination of financial instruments not having a liquid market in relation to foreign exchange derivatives, a qualitative assessment was required due to the lack of data necessary for a comprehensive quantitative analysis of the entire market. As a result, until data of better quality is available, foreign exchange derivatives should be considered not to have a liquid market for the purposes of this Regulation.

(33) With a view to allowing for an effective start of the new transparency rules data should be provided by market participants for the calculation and publication of the financial instruments for which there is not a liquid market and the sizes of orders that are large in scale or above the size specific to the instrument sufficiently in advance of the date of application of Regulation (EU) No 600/2014.

(34) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that this Regulation and the provisions laid down in Regulation (EU) No 600/2014 apply from the same date. However, to ensure that the new transparency regulatory regime can operate effectively, certain provisions of this regulation should apply from the date of its entry into force.

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

(36) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council ([2]),

HAS ADOPTED THIS REGULATION:

CHAPTER I

DEFINITIONS

Article 1

Definitions

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

1. 'package transaction' means either of the following:

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

   (b) a transaction which involves the execution of two or more component transactions in financial instruments; and:

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

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

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

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

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

([1]) Commission Delegated Regulation (EU) 2017/585 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the data standards and formats for financial instrument reference data and technical measures in relation to arrangements to be made by the European Securities and Markets Authority and competent authorities (see page 368 of this Official Journal).

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

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

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

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

CHAPTER II

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

Article 2

Pre-trade transparency obligations

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

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

Article 3

Orders which are large in scale

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

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

Article 4

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

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

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

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

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

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

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

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

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

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

Article 5

Size specific to the financial instrument

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

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

2. Indicative pre-trade prices for actionable indications of interest that are above the size specific to the financial instrument determined in accordance with paragraph 1 and smaller than the relevant large in scale size determined in accordance with Article 3 shall be considered close to the price of the trading interests where the trading venue makes public any of the following:

(a) the best available price;

(b) a simple average of prices;

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

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

Article 6

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

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

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

CHAPTER III

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

Article 7

Post-trade transparency obligations

(Article 10(1) and Article 21(1) and (5) of Regulation (EU) No 600/2014)

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

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

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

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

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

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

(a) for the first three years of application of Regulation (EU) No 600/2014, within 15 minutes after the execution of the relevant transaction;

(b) thereafter, within 5 minutes after the execution of the relevant transaction.

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

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

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

8. Information relating to a package transaction shall be made available with respect to each component as close to real-time as is technically possible, having regard to the need to allocate prices to particular financial instruments and shall include the package transaction flag or the exchange for physicals transaction flag as specified in Table 3 of Annex II. Where the package transaction is eligible for deferred publication pursuant to Article 8, information on all components shall be made available after the deferral period for the transaction has lapsed.

Article 8

Deferred publication of transactions

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

1. Where a competent authority authorises the deferred publication of the details of transactions pursuant to Article 11(1) of Regulation (EU) No 600/2014, investment firms trading outside a trading venue and market operators and investment firms operating a trading venue shall make public each transaction no later than 19.00 local time on the second working day after the date of the transaction, provided one of the following conditions is satisfied:

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

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

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

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

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

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

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

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

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

Article 9

Transactions which are large in scale

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

A transaction shall be considered large in scale compared with normal market size where it is equal to or larger than the minimum size of transaction, which shall be calculated in accordance with the methodology set out in Article 13.

Article 10

The size specific to the financial instrument

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

A transaction shall be considered above a size specific to the financial instrument where it is equal to or larger than the minimum size of transaction, which shall be calculated in accordance with the methodology set out in Article 13.

Article 11

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

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

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

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

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

   (ii) transactions in a daily aggregated form for a minimum number of 5 transactions executed on the same day, to be made public the following working day before 9.00 local time;

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

(c) in respect of non-equity instruments that are not sovereign debt and where Article 11(3)(c) of Regulation (EU) No 600/2014 applies, competent authorities shall allow, for an extended time period of deferral of four weeks, the publication of the aggregation of several transactions executed over the course of one calendar week on the following Tuesday before 9.00 local time;

(d) in respect of sovereign debt instruments and where Article 11(3)(d) of Regulation (EU) No 600/2014 applies, competent authorities shall allow, for an indefinite period of time, the publication of the aggregation of several transactions executed over the course of one calendar week on the following Tuesday before 9.00 local time.

2. Where the extended period of deferral set out in paragraph 1(b) has lapsed, the following requirements shall apply:

(a) in respect of all instruments that are not sovereign debt, the publication of the full details of all individual transactions, on the next working day before 9.00 local time;

(b) in respect of sovereign debt instruments where competent authorities decide not to use the options provided for in Article 11(3)(b) and (d) of Regulation (EU) No 600/2014 consecutively, pursuant to the second subparagraph of Article 11(3) of Regulation (EU) No 600/2014, the publication of the full details of all individual transactions on the next working day before 9.00 local time;

(c) in respect of sovereign debt instruments, where competent authorities apply the options provided for in Article 11(3)(b) and (d) of Regulation (EU) No 600/2014 consecutively pursuant to the second subparagraph of Article 11(3) of Regulation (EU) No 600/2014, the publication of several transactions executed in the same calendar week in an aggregated form on the Tuesday following the expiry of the extended period of deferral of four weeks counting from the last day of that calendar week before 9.00 local time.

3. In respect of all instruments that are not sovereign debt, all the details of the transactions on an individual basis shall be published four weeks after the publication of the aggregated details in accordance with paragraph 1(c) before 9.00 local time.

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

(a) the weighted average price;

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

(c) the total number of transactions.

5. Transactions shall be aggregated per ISIN-code. Where the ISIN code is not available, transactions shall be aggregated at the level of the class of financial instruments to which the liquidity test set out in Article 13 applies.

6. Where the weekday foreseen for the publications set out in points (c) and (d) of paragraph 1, and paragraphs 2 and 3, is not a working day, the publications shall be effected on the following working day before 9.00 local time.

Article 12

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

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

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

(a) transactions listed in Article 2(5) of Commission Delegated Regulation (EU) 2017/590 [1];

(b) transactions executed by a management company as defined in Article 2(1)(b) of Directive 2009/65/EC of the European Parliament and of the Council [2] or an alternative investment fund manager as defined in Article 4(1)(b) of Directive 2011/61/EU of the European Parliament and of the Council [3] which transfer the beneficial ownership of financial instruments from one collective investment undertaking to another and where no investment firm is a party to the transaction;

---

[1] Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities (see page 449 of this Official Journal).

[2] Directive 2009/65/EC of the European Parliment 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 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).

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

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

CHAPTER IV

PROVISIONS COMMON TO PRE-TRADE AND POST-TRADE TRANSPARENCY

Article 13

Methodology to perform the transparency calculations

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

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

(a) Static determination of liquidity for:

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

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

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

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

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

(i) all bond types except ETCs and ETNs as defined in Table 2.1 of Annex III and as further specified in Article 17(1);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) the threshold value for:

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

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

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

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

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

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

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

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

(b) the greater of the trade size below which lies the percentage of the transactions corresponding to the trade percentile as further specified in Article 17(3) and the threshold floor for:

(i) each bond type, except ETCs and ETNs, as defined in Table 2.3 of Annex III;

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

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

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

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

(a) the threshold value for:

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

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

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

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

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

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

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

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

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

(c) the greatest of the trade size below which lies the percentage of the transactions corresponding to the trade percentile, the trade size below which lies the percentage of volume corresponding to the volume percentile and the threshold floor for each sub-class considered to have a liquid market for the asset classes of interest rate derivatives, commodity derivatives, credit derivatives, C10 derivatives and CFDs as provided in Tables 5.2, 7.2, 9.2, 10.2 and 11.2 of Annex III;

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

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

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

4. For the purpose of paragraph 3(c) where the trade size corresponding to the volume percentile for the determination of the transaction that is large in scale compared with normal market size is higher than the 97,5 trade percentile, the trade volume shall not be taken into consideration and the size specific to the financial instrument referred to in Article 8(1)(c) and the size of transactions large in scale compared with normal market size referred to in Article 8(1)(a) shall be determined as the greater of the trade size below which lies the percentage of the transactions corresponding to the trade percentile and the threshold floor.

5. In accordance with Delegated Regulations (EU) 2017/590 and (EU) 2017/577 competent authorities shall collect on a daily basis the data from trading venues, APAs and CTPs which is necessary to perform the calculations to determine:

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

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

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

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

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

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

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

11. For the purpose of the determinations referred to in paragraphs 2 and 3, points (b) of paragraph 2 and points (b), (c) and (d) of paragraph 3 shall not apply whenever the number of transactions considered for calculations is smaller than 1 000, in which case the following thresholds shall be applied:

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

(b) the threshold values defined in paragraph 2(a) and paragraph 3(a) for all financial instruments not covered in point (a) of this paragraph.

12. Except when they refer to emission allowances or derivatives thereof, the calculations referred to in paragraph 2(b) and paragraph 3(b), (c) and (d) shall be rounded up to the next:

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

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

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

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

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

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

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

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

17. Competent authorities shall ensure the publication of the results of the calculations referred to under paragraph 5 for each financial instrument and class of financial instrument by 30 April of the year following the date of application of Regulation (EU) No 600/2014 and by 30 April of each year thereafter. The results of the calculations shall apply from 1 June each year following publication.

18. For the purposes of the calculations in paragraph 1(b)(i) and by way of derogation from paragraphs 7, 15 and 17, competent authorities shall, in respect of bonds except ETCs and ETNs, ensure the publication of the calculations referred to under paragraph 5(a) on a quarterly basis, on the first day of February, May, August and November following the date of application of Regulation (EU) No 600/2014 and on the first day of February, May, August and November each year thereafter. The calculations shall include transactions executed in the Union during the preceding calendar quarter and shall apply for the 3 month period beginning on the sixteenth day of February, May, August and November each year.

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

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

Article 14

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

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

A transaction shall be considered to be entered into by a member of the European System of Central Banks (ESCB) in performance of monetary, foreign exchange and financial stability policy where that transaction meets any of the following requirements:

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

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

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

Article 15

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

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

Article 1(6) of Regulation (EU) No 600/2014 shall not apply to the following types of transactions entered into by a member of the ESCB for the performance of an investment operation that is unconnected with that member's performance of one of the tasks referred to in Article 14:

(a) transactions entered into for the management of its own funds;

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

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

Article 16

Temporary suspension of transparency obligations

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

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

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

3. Competent authorities shall take into account the transactions executed on all venues in the Union for the class of bonds, structured finance products, emission allowances or derivatives concerned when performing the calculations referred to in paragraphs 1 and 2. The calculations shall be performed at the level of the class of financial instruments to which the liquidity test set out in Article 13 is applied.

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

Article 17

Provisions for the liquidity assessment for bonds and for the determination of the pre-trade size specific to the instrument thresholds based on trade percentiles

1. For determining the bonds for which there is not a liquid market for the purposes of Article 6 and according to the methodology specified in Article 13(1)(b), the approach for the liquidity criterion 'average daily number of trades' shall be taken applying the 'average daily number of trades' corresponding to stage S1 (15 daily trades).

2. Corporate bonds and covered bonds that are admitted to trading or first traded on a trading venue shall be considered to have a liquid market until the application of the results of the first quarterly liquidity determination as set out in Article 13(18) where:

(a) the issuance size exceeds EUR 1 000 000 000 during stages S1 and S2, as determined in accordance with paragraph 6;

(b) the issuance size exceeds EUR 500 000 000 during stages S3 and S4, as determined in accordance with paragraph 6.

3. For determining the size specific to the financial instrument for the purposes of Article 5 and according to the methodology specified in Article 13(2)(b), the approach for the trade percentile to be applied shall be used applying the trade percentile corresponding to the stage S1 (30th percentile).

4. ESMA shall, by 30 July of the year following the date of application of Regulation (EU) No 600/2014 and by 30 July of each year thereafter, submit to the Commission an assessment of the operation of the thresholds for the liquidity criterion 'average daily number of trades' for bonds as well as the trade percentiles that determine the size specific to the financial instruments covered by paragraph 8. The obligation to submit the assessment of the operation of the thresholds for the liquidity criterion for bonds ceases once S4 in the sequence of paragraph 6 is reached. The obligation to submit the assessment of the trade percentiles ceases once S4 in the sequence of paragraph 8 is reached.

5. The assessment referred to in paragraph 4 shall take into account:

(a) the evolution of trading volumes in non-equity instruments covered by the pre-trade transparency obligations pursuant to Article 8 and 9 of Regulation (EU) No 600/2014;

(b) the impact on liquidity providers of the percentile thresholds used to determine the size specific to the financial instrument; and

(c) any other relevant factors.

6. ESMA shall, in light of the assessment undertaken in accordance with paragraphs 4 and 5, submit to the Commission an amended version of the regulatory technical standard adjusting the threshold for the liquidity criterion 'average daily number of trades' for bonds according to the following sequence:

(a) S2 (10 daily trades) by 30 July of the year following the date of application of Regulation (EU) No 600/2014;

(b) S3 (7 daily trades) by 30 July of the year thereafter; and

(c) S4 (2 daily trades) by 30 July of the year thereafter.

7. Where ESMA does not submit an amended regulatory technical standard adjusting the threshold to the next stage according to the sequence referred to in paragraph 6, the ESMA assessment undertaken in accordance with paragraphs 4 and 5 shall explain why adjusting the threshold to the relevant next stage is not warranted. In this instance, the move to the next stage will be postponed by one year.

8. ESMA shall, in light of the assessment undertaken in accordance with paragraphs 4 and 5, submit to the Commission an amended version of the regulatory technical standard adjusting the threshold for trade percentiles according to the following sequence:

(a) S2 (40th percentile) by 30 July of the year following the date of application of Regulation (EU) No 600/2014;

(b) S3 (50th percentile) by 30 July of the year thereafter; and

(c) S4 (60th percentile) by 30 July of the year thereafter.

9. Where ESMA does not submit an amended regulatory technical standard adjusting the threshold to the next stage according to the sequence referred to in paragraph 8, the ESMA assessment undertaken in accordance with paragraphs 4 and 5 shall explain why adjusting the threshold to the relevant next stage is not warranted. In this instance, the move to the next stage will be postponed by one year.

Article 18

Transitional provisions

1. Competent authorities shall, no later than six months prior to the date of application of Regulation (EU) No 600/2014, collect the necessary data, calculate and ensure publication of the details referred to in Article 13(5).

2. For the purposes of paragraph 1:

(a) the calculations shall be based on a six-month reference period commencing 18 months prior to the date of application of Regulation (EU) No 600/2014;

(b) the results of the calculations contained in the first publication shall be used until the results of the first regular calculations set out in Article 13(17) apply.

3. By derogation from paragraph 1, for all bonds, except ETCs and ETNs, competent authorities shall use their best endeavours to ensure publication of the results of the transparency calculations specified in paragraph 1(b)(i) of Article 13 no later than on the first day of the month preceding the date of application of Regulation (EU) No 600/2014, based on a reference period of three months commencing on the first day of the fifth month preceding the date of application of Regulation (EU) No 600/2014.

4. Competent authorities, market operators and investment firms including investment firms operating a trading venue shall use the information published in accordance with paragraph 3 until the results of the first regular calculation set out in Article 13(18) apply.

5. Bonds, except for ETCs and ETNs, which are admitted to trading or first traded on a trading venue in the three month period preceding the date of application of Regulation (EU) No 600/2014 shall be considered not to have a liquid market as set out in Table 2.2 of Annex III until the results of the first regular calculation set out in Article 13(18) apply.

Article 19

Entry into force and application

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

It shall apply from 3 January 2018. However, Article 18 shall apply from the date of the entry of force of this Regulation.

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

Done at Brussels, 14 July 2016.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX I

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

Information to be made public in accordance with Article 2

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

ANNEX II

Details of transactions to be made available to the public

Table 1

Symbol table for Table 2

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

Table 2

List of details for the purpose of post-trade transparency

Details	Financial instruments	Description/Details to be published	Type of execution/publication venue	Format to be populated as defined in Table 1
Trading date and time	For all financial instruments	Date and time when the transaction was executed.	Regulated Market (RM), Multilateral Trading Facility (MTF), Organised Trading Facility (OTF)	{DATE_TIME_FORMAT}

Details	Financial instruments	Description/Details to be published	Type of execution/publication venue	Format to be populated as defined in Table 1
		For transactions executed on a trading venue, the level of granularity shall be in accordance with the requirements set out in Article 3 of Commission Delegated Regulation (EU) 2017/574 [1]. For transactions not executed on a trading venue, the date and time shall be when the parties agree the content of the following fields: quantity, price, currencies (in fields 31, 34 and 40 as specified in Table 2 of Annex I of Delegated Regulation (EU) 2017/590, instrument identification code, instrument classification and underlying instrument code, where applicable. For transactions not executed on a trading venue the time reported shall be granular to at least the nearest second. Where the transaction results from an order transmitted by the executing firm on behalf of a client to a third party where the conditions for transmission set out in Article 5 of Delegated Regulation (EU) 2017/590 were not satisfied, this shall be the date and time of the transaction rather than the time of the order transmission.	Approved Publication Arrangement (APA) Consolidated tape provider (CTP)	
Instrument identification code type	For all financial instruments	Code type used to identify the financial instrument	RM, MTF, OTF APA CTP	'ISIN' = ISIN-code, where ISIN is available 'OTHR' = other identifier
Instrument identification code	For all financial instruments	Code used to identify the financial instrument	RM, MTF, OTF APA CTP	{ISIN} Where Instrument identification code is not an ISIN, an identifier that identifies the derivative instrument based on the fields 3 to 5, 7 and 8 and 12 to 42 as specified in Annex IV and fields 13 and 24 to 48 as specified in the Annex of Delegated Regulation (EU) 2017/585 and the grouping of derivative instruments as set out in Annex III.
Price	For all financial instruments	Traded price of the transaction excluding, where applicable, commission and accrued interest.	RM, MTF, OTF APA CTP	{DECIMAL-18/13} in case the price is expressed as monetary value

Details	Financial instruments	Description/Details to be published	Type of execution/publication venue	Format to be populated as defined in Table 1
		In the case of option contracts, it shall be the premium of the derivative contract per underlying or index point. In the case of spread bets it shall be the reference price of the underlying instrument. For credit default swaps (CDS) it shall be the coupon in basis points. Where price is reported in monetary terms, it shall be provided in the major currency unit. Where price is currently not available but pending, the value should be 'PNDG'. Where price is not applicable the field shall not be populated. The information reported in this field shall be consistent with the value provided in field Quantity.		{DECIMAL-11/10} in case the price is expressed as percentage or yield 'PNDG' in case the price is not available {DECIMAL-18/17} in case the price is expressed as basis points
Venue of execution	For all financial instruments	Identification of the venue where the transaction was executed. Use the ISO 10383 segment MIC for transactions executed on a trading venue. Where the segment MIC does not exist, use the operating MIC. Use MIC code 'XOFF' for financial instruments admitted to trading or traded on a trading venue, where the transaction on that financial instrument is not executed on a trading venue or systematic internaliser or organised trading platform outside of the Union. Use SINT for financial instrument submitted to trading or traded on a trading venue, where the transaction on that financial instrument is executed on a Systematic Internaliser.	RM, MTF, OTF APA CTP	{MIC} –trading venues 'SINT' — systematic internaliser
Price notation	For all financial instruments	Indication as to whether the price is expressed in monetary value, in percentage or in yield	RM, MTF, OTF APA CTP	'MONE' — Monetary value 'PERC' — Percentage 'YIEL' — Yield 'BAPO' — Basis points
Price Currency	For all financial instruments	Currency in which the price is expressed (applicable if the price is expressed as monetary value)	RM, MTF, OTF APA CTP	{CURRENCYCODE_3}

Details	Financial instruments	Description/Details to be published	Type of execution/publication venue	Format to be populated as defined in Table 1
Notation of the quantity in measurement unit	For commodity derivatives, emission allowance derivatives and emission allowances except in the cases described under Article 11(1) letters (a) and (b) of this Regulation.	Indication of measurement units in which the quantity in measurement unit is expressed	RM, MTF, OTF APA CTP	'TOCD' — tons of carbon dioxide equivalent Or {ALPHANUM-25} otherwise
Quantity in measurement unit	For commodity derivatives, emission allowance derivatives and emission allowances except in the cases described under Article 11(1) letters (a) and (b) of this Regulation.	The equivalent amount of commodity or emission allowance traded expressed in measurement unit	RM, MTF, OTF APA CTP	{DECIMAL-18/17}
Quantity	For all financial instruments except in the cases described under Article 11(1) letters (a) and (b) of this Regulation.	The number of units of the financial instrument, or the number of derivative contracts in the transaction.	RM, MTF, OTF APA CTP	{DECIMAL-18/17}
Notional amount	For all financial instruments except in the cases described under Article 11(1) letters (a) and (b) of this Regulation.	Nominal amount or notional amount For spread bets, the notional amount shall be the monetary value wagered per point movement in the underlying financial instrument. For credit default swaps, it shall be the notional amount for which the protection is acquired or disposed of. The information reported in this field shall be consistent with the value provided in field Price	RM, MTF, OTF APA CTP	{DECIMAL-18/5}
Notional currency	For all financial instruments except in the cases described under Article 11(1) letters (a) and (b) of the Regulation.	Currency in which the notional is denominated	RM, MTF, OTF APA CTP	{CURRENCYCODE_3}

Details	Financial instruments	Description/Details to be published	Type of execution/publication venue	Format to be populated as defined in Table 1
Type	For emission allowances and emission allowance derivatives only	This field is only applicable for emission allowances and emission allowance derivatives.	RM, MTF, OTF APA CTP	'EUAE' — EUA 'CERE' — CER 'ERUE' — ERU 'EUAA' — EUAA 'OTHR' — Other (for derivatives only)
Publication Date and Time	For all financial instruments	Date and time when the transaction was published by a trading venue or APA. For transactions executed on a trading venue, the level of granularity shall be in accordance with the requirements set out in Article 2 of Delegated Regulation (EU) 2017/574. For transactions not executed on a trading venue, the time reported shall be granular to at least the nearest second.	RM, MTF, OTF APA CTP	{DATE_TIME_FORMAT}
Venue of publication	For all financial instruments	Code used to identify the trading venue and APA publishing the transaction.	CTP	Trading venue: {MIC} APA: {MIC} where available. Otherwise, 4 character code as published in the list of data reporting services providers on ESMA's website.
Transaction Identification Code	For all financial instruments	Alphanumerical code assigned by trading venues (pursuant to Article 12 of Commission Delegated Regulation (EU) 2017/580 [2]) and APAs and used in any subsequent reference to the specific trade. The transaction identification code shall be unique, consistent and persistent per ISO 10383 segment MIC and per trading day. Where the trading venue does not use segment MICs, the transaction identification code shall be unique, consistent and persistent per operating MIC per trading day. Where the APA does not use MICs, it should be unique, consistent and persistent per 4-character code used to identify the APA per trading day. The components of the transaction identification code shall not disclose the identity of the counterparties to the transaction for which the code is maintained	RM, MTF, OTF APA CTP	{ALPHANUMERICAL-52}

Details	Financial instruments	Description/Details to be published	Type of execution/publication venue	Format to be populated as defined in Table 1
Transaction to be cleared	For derivatives	Code to identify whether the transaction will be cleared.	RM, MTF, OTF APA CTP	'true' — transaction to be cleared 'false' — transaction not to be cleared

(1) Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks (see page 148 of this Official Journal).
(2) Commission Delegated Regulation (EU) 2017/580 of 24 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the maintenance of relevant data relating to orders in financial instruments (see page 193 of this Official Journal).

Table 3

List of flags for the purpose of post-trade transparency

	Flag	Name of Flag	Type of execution/ publication venue	Description
	'BENC'	Benchmark transaction flag	RM, MTF, OTF APA CTP	All kinds of volume weighted average price transactions and all other trades where the price is calculated over multiple time instances according to a given benchmark.
	'ACTX'	Agency cross transaction flag	APA CTP	Transactions where an investment firm has brought together two clients' orders with the purchase and the sale conducted as one transaction and involving the same volume and price.
	'NPFT'	Non-price forming transaction flag	RM, MTF, OTF CTP	All types of transactions listed under Article 12 of this Regulation and which do not contribute to the price formation.
	'LRGS'	Post-trade LIS transaction flag	RM, MTF, OTF APA CTP	Transactions executed under the post-trade large in scale deferral.
	'ILQD'	Illiquid instrument transaction flag	RM, MTF, OTF APA CTP	Transactions executed under the deferral for instruments for which there is not a liquid market.
	'SIZE'	Post-trade SSTI transaction flag	RM, MTF, OTF APA CTP	Transactions executed under the post-trade size specific to the instrument deferral.
	'TPAC'	Package transaction flag	RM, MTF, OTF APA CTP	Package transactions which are not exchange for physicals as defined in Article 1.

	Flag	Name of Flag	Type of execution/ publication venue	Description
	'XFPH'	Exchange for physicals transaction flag	RM, MTF, OTF APA CTP	Exchange for physicals as defined in Article 1
	'CANC'	Cancellation flag	RM, MTF, OTF APA CTP	When a previously published transaction is cancelled.
	'AMND'	Amendment flag	RM, MTF, OTF APA CTP	When a previously published transaction is amended.

SUPPLEMENTARY DEFERRAL FLAGS

Article 11(1)(a)(i).	'LMTF'	Limited details flag	RM, MTF, OTF APA CTP	First report with publication of limited details in accordance with Article 11(1)(a)(i).
	'FULF'	Full details flag		Transaction for which limited details have been previously published in accordance with Article 11(1)(a)(i).
Article 11(1)(a)(ii).	'DATF'	Daily aggregated transaction flag	RM, MTF, OTF APA CTP	Publication of daily aggregated transaction in accordance with Article 11(1)(a)(ii).
	'FULA'	Full details flag	RM, MTF, OTF APA CTP	Individual transactions for which aggregated details have been previously published in accordance with Article 11(1)(a)(ii).
Article 11(1)(b)	'VOLO'	Volume omission flag	RM, MTF, OTF APA CTP	Transaction for which limited details are published in accordance with Article 11(1)(b).
	'FULV'	Full details flag	RM, MTF, OTF APA CTP	Transaction for which limited details have been previously published in accordance with Article 11(1)(b)
Article 11(1)(c)	'FWAF'	Four weeks aggregation flag	RM, MTF, OTF APA CTP	Publication of aggregated transactions in accordance with Article 11(1)(c).
	'FULJ'	Full details flag	RM, MTF, OTF APA CTP	Individual transactions which have previously benefited from aggregated publication in accordance with Article 11(1)(c).

	Flag	Name of Flag	Type of execution/ publication venue	Description
Article 11(1)(d)	'IDAF'	Indefinite aggregation flag	RM, MTF, OTF APA CTP	Transactions for which the publication of several transactions in aggregated form for an indefinite period of time has been allowed in accordance with Article 11(1)(d).
Consecutive use of Article 11(1)(b) and Article 11(2)(c) for sovereign debt instruments	'VOLW'	Volume omission flag	RM, MTF, OTF APA CTP	Transaction for which limited are published in accordance with Article 11(1)(b) and for which the publication of several transactions in aggregated form for an indefinite period of time will be consecutively allowed in accordance with Article 11(2)(c).
	'COAF'	Consecutive aggregation flag (post volume omission for sovereign debt instruments)	RM, MTF, OTF APA CTP	Transactions for which limited details have been previously published in accordance with Article 11(1)(b) and for which the publication of several transactions in aggregated form for an indefinite period of time has consecutively been allowed in accordance with Article 11(2)(c).

Table 4

Measure of volume

Type of instrument	Volume
All bonds except ETCs and ETNs and structured finance products	Total nominal value of debt instruments traded
ETCs and ETNs bond types	Number of units traded [1]
Securitised derivatives	Number of units traded [1]
Interest rate derivatives	Notional amount of traded contracts
Foreign Exchange Derivatives	Notional amount of traded contracts
Equity derivatives	Notional amount of traded contracts
Commodity derivatives	Notional amount of traded contracts
Credit derivatives	Notional amount of traded contracts
Contract for differences	Notional amount of traded contracts
C10 derivatives	Notional amount of traded contracts
Emission allowance derivatives	Tons of Carbon Dioxide equivalent
Emission allowances	Tons of Carbon Dioxide equivalent

[1] Price per unit.

ANNEX III

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

1. **Instructions for the purpose of this annex**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. **Bonds**

Table 2.1

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

Asset class — Bonds (all bond types except ETCs and ETNs)					
Each individual financial instrument shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria on a cumulative basis					
Average daily notional amount [quantitative liquidity criteria 1]	**Average daily number of trades** [quantitative liquidity criteria 2]				**Percentage of days traded over the period considered** [quantitative liquidity criteria 3]
EUR 100 000	S1	S2	S3	S4	80 %
	15	10	7	2	

Table 2.2

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

Asset class — Bonds (all bond types except ETCs and ETNs)			
Each individual bond shall be determined not to have a liquid market as per Article 13(18) if it is characterised by a specific combination of bond type and issuance size as specified in each row of the table.			
Bond Type		**Issuance size**	
Sovereign Bond	means a bond issued by a sovereign issuer which is either: (a) the Union; (b) a Member State including a government department, an agency or a special purpose vehicle of a Member State; (c) a sovereign entity which is not listed under points (a) and (b).	smaller than (in EUR)	1 000 000 000

Asset class — Bonds (all bond types except ETCs and ETNs)					
Bond Type		**Issuance size**			
Other Public Bond	means a bond issued by any of the following public issuers: (a) in the case of a federal Member State, a member of that federation; (b) a special purpose vehicle for several Member States; (c) an international financial institution established by two or more Member States which have the purpose of mobilising funding and providing financial assistance to the benefit of its members that are experiencing or are threatened by severe financial problems; (d) the European Investment Bank; (e) a public entity which is not an issuer of a sovereign bond as specified in the previous row.	smaller than (in EUR)		500 000 000	
Convertible Bond	means an instrument consisting of a bond or a securitised debt instrument with an embedded derivative, such as an option to buy the underlying equity	smaller than (in EUR)		500 000 000	
Covered Bond	means bonds as referred to in Article 52(4) of Directive 2009/65/EC	during stages S1 and S2		during stages S3 and S4	
		smaller than (in EUR)	1 000 000 000	smaller than (in EUR)	500 000 000
Corporate Bond	means a bond that is issued by a Societas Europaea established in accordance with Council Regulation (EC) No 2157/2001 [1] or a type of company listed in Article 1 of Directive 2009/101/EC of the European Parliament and of the Council [2] or equivalent in third countries	during stages S1 and S2		during stages S3 and S4	
		smaller than (in EUR)	1 000 000 000	smaller than (in EUR)	500 000 000
Bond Type	**For the purpose of the determination of the financial instruments considered not to have a liquid market as per Article 13(18), the following methodology shall be applied**				
Other Bond	A bond that does not belong to any of the above bond types is considered not to have a liquid market				

[1] Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) (OJ L 294, 10.11.2001, p. 1).
[2] Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent (OJ L 258, 1.10.2009, p. 11).

Table 2.3

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

Asset class — Bonds (all bond types except ETCs and ETNs)											
Bond Type	**Transactions to be considered for the calculation of the thresholds per bond type**	**Percentiles to be applied for the calculation of the pre-trade and post-trade SSTI and LIS thresholds for each bond type**									
		SSTI pre-trade					**LIS pre-trade**			**SSTI post-trade**	**LIS post-trade**
		Trade — percentile				**threshold floor**	**Trade — percentile**	**threshold floor**		**Trade — percentile**	**Trade — percentile**
Sovereign Bond	transactions executed on Sovereign Bonds following the exclusion of transactions as specified in Article 13(10)	S1	S2	S3	S4	EUR 300 000	70	EUR 300 000		80	90
		30	40	50	60						
Other Public Bond	transactions executed on Other Public Bonds following the exclusion of transactions as specified in Article 13(10)	S1	S2	S3	S4	EUR 300 000	70	EUR 300 000		80	90
		30	40	50	60						
Convertible Bond	transactions executed on Convertible Bonds following the exclusion of transactions as specified in Article 13(10)	S1	S2	S3	S4	EUR 200 000	70	EUR 200 000		80	90
		30	40	50	60						
Covered Bond	transactions executed on Covered Bonds following the exclusion of transactions as specified in Article 13(10)	S1	S2	S3	S4	EUR 300 000	70	EUR 300 000		80	90
		30	40	40	40						
Corporate Bond	transactions executed on Corporate Bonds following the exclusion of transactions as specified in Article 13(10)	S1	S2	S3	S4	EUR 200 000	70	EUR 200 000		80	90
		30	40	50	60						
Other Bonds	transactions executed on Other Bonds following the exclusion of transactions as specified in Article 13(10)	S1	S2	S3	S4	EUR 200 000	70	EUR 200 000		80	90
		30	40	50	60						

Table 2.4

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

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

Table 2.5

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

Asset class — Bonds (ETC and ETN bond types)				
Pre-trade and post-trade SSTI and LIS thresholds for each individual instrument determined to have a liquid market				
Bond type	**SSTI pre-trade**	**LIS pre-trade**	**SSTI post-trade**	**LIS post-trade**
	Threshold value	**Threshold value**	**Threshold value**	**Threshold value**
ETCs	EUR 1 000 000	EUR 1 000 000	EUR 50 000 000	EUR 50 000 000
ETNs	EUR 1 000 000	EUR 1 000 000	EUR 50 000 000	EUR 50 000 000

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

3. **Structured Finance Products (SFPs)**

Table 3.1

SFPs — classes not having a liquid market

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

Table 3.2

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

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

Table 3.3

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

Asset class — Structured Finance Products (SFPs)												
Transactions to be considered for the calculation of the thresholds	**Percentiles and threshold floors to be applied for the calculation of the pre-trade and post-trade SSTI and LIS thresholds for SFPs determined to have a liquid market if Test 1 is passed**											
	SSTI pre-trade					**LIS pre-trade**		**SSTI post-trade**			**LIS post-trade**	
	Trade — percentile				**Threshold floor**	**Trade — percentile**	**Threshold floor**	**Trade — percentile**	**Threshold floor**		**Trade — percentile**	**Threshold floor**
Transactions executed in all SFPs determined to have a liquid market	S1	S2	S3	S4	EUR 100 000	70	EUR 250 000	80	EUR 500 000		90	EUR 1 000 000
	30	40	50	60								

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

4. **Securitised derivatives**

Table 4.1

Securitised derivatives — classes not having a liquid market

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

Table 4.2

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

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

5. **Interest rate derivatives**

Table 5.1

Interest rate derivatives — classes not having a liquid market

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

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

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

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

Sub-asset class	For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b), each sub-asset class shall be further segmented into sub-classes as defined below	Each sub-class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria. For sub-classes determined to have a liquid market the additional qualitative liquidity criterion, where applicable, shall be applied		
		Average daily notional amount (ADNA) [quantitative liquidity criterion 1]	**Average daily number of trades** [quantitative liquidity criterion 2]	**Additional qualitative liquidity criterion**
Swaptions	a swaption sub-class is defined by the following segmentation criteria: **Segmentation criterion 1** — underlying swap type defined as follows: fixed-to-fixed single currency swap, futures/forwards on fixed-to-fixed single currency swap, fixed-to-float single currency swap, futures/forwards on fixed-to-float single currency swap, float-to-float single currency swap, futures/forwards on float-to-float single currency swap, inflation single currency swap, futures/forwards on inflation single currency swap, OIS single currency swap, futures/forwards on OIS single currency swap, fixed-to-fixed multi-currency swap, futures/forwards on fixed-to-fixed multi-currency swap, fixed-to-float multi-currency swap, futures/forwards on fixed-to-float multi-currency swap, float-to-float multi-currency swap, futures/forwards on float-to-float multi-currency swap, inflation multi-currency swap, futures/forwards on inflation multi-currency swap, OIS multi-currency swap, futures/forwards on OIS multi-currency swap **Segmentation criterion 2** — notional currency defined as the currency in which the notional amount of the option is denominated	EUR 500 000 000	10	

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

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

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

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

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

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

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

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

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

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

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

Table 5.2

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

Asset class — Interest Rate Derivatives															
Sub-asset class	**Percentiles and threshold floors to be applied for the calculation of the pre-trade and post-trade SSTI and LIS thresholds for each sub-class determined to have a liquid market**														
	Transactions to be considered for the calculations of the thresholds	**SSTI pre-trade**					**LIS pre-trade**		**SSTI post-trade**			**LIS post-trade**			
		Trade — percentile				**Threshold floor**	**Trade — percentile**	**Threshold floor**	**Trade — percentile**	**Volume — percentile**	**Threshold floor**	**Trade — percentile**	**Volume — percentile**	**Threshold floor**
Bond futures/forwards	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	S1	S2	S3	S4	EUR 4 000 000	70	EUR 5 000 000	80	60	EUR 20 000 000	90	70	EUR 25 000 000
		30	40	50	60									
Bond options	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	S1	S2	S3	S4	EUR 4 000 000	70	EUR 5 000 000	80	60	EUR 20 000 000	90	70	EUR 25 000 000
		30	40	50	60									
IR futures and FRA	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	S1	S2	S3	S4	EUR 5 000 000	70	EUR 10 000 000	80	60	EUR 20 000 000	90	70	EUR 25 000 000
		30	40	50	60									

Asset class — Interest Rate Derivatives															
Sub-asset class	**Percentiles and threshold floors to be applied for the calculation of the pre-trade and post-trade SSTI and LIS thresholds for each sub-class determined to have a liquid market**														
	Transactions to be considered for the calculations of the thresholds	**SSTI pre-trade**					**LIS pre-trade**		**SSTI post-trade**			**LIS post-trade**			
		Trade — percentile				**Threshold floor**	**Trade — percentile**	**Threshold floor**	**Trade — percentile**	**Volume — percentile**	**Threshold floor**	**Trade — percentile**	**Volume — percentile**	**Threshold floor**
IR options	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	S1	S2	S3	S4	EUR 5 000 000	70	EUR 10 000 000	80	60	EUR 20 000 000	90	70	EUR 25 000 000
		30	40	50	60									
Swaptions	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	S1	S2	S3	S4	EUR 4 000 000	70	EUR 5 000 000	80	60	EUR 9 000 000	90	70	EUR 10 000 000
		30	40	50	60									
Fixed-to-Float 'multi-currency swaps' or 'cross-currency swaps' and futures/forwards on Fixed-to-Float 'multi-currency swaps' or 'cross-currency swaps'	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	S1	S2	S3	S4	EUR 4 000 000	70	EUR 5 000 000	80	60	EUR 9 000 000	90	70	EUR 10 000 000
		30	40	50	60									

Asset class — Interest Rate Derivatives															
Sub-asset class	**Percentiles and threshold floors to be applied for the calculation of the pre-trade and post-trade SSTI and LIS thresholds for each sub-class determined to have a liquid market**														
	Transactions to be considered for the calculations of the thresholds	**SSTI pre-trade**					**LIS pre-trade**		**SSTI post-trade**			**LIS post-trade**			
		Trade — percentile				**Threshold floor**	**Trade — percentile**	**Threshold floor**	**Trade — percentile**	**Volume — percentile**	**Threshold floor**	**Trade — percentile**	**Volume — percentile**	**Threshold floor**
Float-to-Float 'multi-currency swaps' or 'cross-currency swaps' and futures/forwards on Float-to-Float 'multi-currency swaps' or 'cross-currency swaps'	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	S1	S2	S3	S4	EUR 4 000 000	70	EUR 5 000 000	80	60	EUR 9 000 000	90	70	EUR 10 000 000
		30	40	50	60									
Fixed-to-Fixed 'multi-currency swaps' or 'cross-currency swaps' and futures/forwards on Fixed-to-Fixed 'multi-currency swaps' or 'cross-currency swaps'	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	S1	S2	S3	S4	EUR 4 000 000	70	EUR 5 000 000	80	60	EUR 9 000 000	90	70	EUR 10 000 000
		30	40	50	60									
Overnight Index Swap (OIS) 'multi-currency swaps' or 'cross-currency swaps' and futures/forwards on Overnight Index Swap (OIS) 'multi-currency swaps' or 'cross-currency swaps'	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	S1	S2	S3	S4	EUR 4 000 000	70	EUR 5 000 000	80	60	EUR 9 000 000	90	70	EUR 10 000 000
		30	40	50	60									

Asset class — Interest Rate Derivatives															
Sub-asset class	**Percentiles and threshold floors to be applied for the calculation of the pre-trade and post-trade SSTI and LIS thresholds for each sub-class determined to have a liquid market**														
	Transactions to be considered for the calculations of the thresholds	**SSTI pre-trade**					**LIS pre-trade**		**SSTI post-trade**			**LIS post-trade**			
		Trade — percentile				**Threshold floor**	**Trade — percentile**	**Threshold floor**	**Trade — percentile**	**Volume — percentile**	**Threshold floor**	**Trade — percentile**	**Volume — percentile**	**Threshold floor**
Inflation 'multi-currency swaps' or 'cross-currency swaps' and futures/forwards on Inflation 'multi-currency swaps' or 'cross-currency swaps'	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	S1	S2	S3	S4	EUR 4 000 000	70	EUR 5 000 000	80	60	EUR 9 000 000	90	70	EUR 10 000 000
		30	40	50	60									
Fixed-to-Float 'single currency swaps' and futures/forwards on Fixed-to-Float 'single currency swaps'	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	S1	S2	S3	S4	EUR 4 000 000	70	EUR 5 000 000	80	60	EUR 9 000 000	90	70	EUR 10 000 000
		30	40	50	60									
Float-to-Float 'single currency swaps' and futures/forwards on Float-to-Float 'single currency swaps'	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	S1	S2	S3	S4	EUR 4 000 000	70	EUR 5 000 000	80	60	EUR 9 000 000	90	70	EUR 10 000 000
		30	40	50	60									

Asset class — Interest Rate Derivatives															
Sub-asset class	**Percentiles and threshold floors to be applied for the calculation of the pre-trade and post-trade SSTI and LIS thresholds for each sub-class determined to have a liquid market**														
	Transactions to be considered for the calculations of the thresholds	**SSTI pre-trade**					**LIS pre-trade**		**SSTI post-trade**			**LIS post-trade**			
		Trade — percentile				**Threshold floor**	**Trade — percentile**	**Threshold floor**	**Trade — percentile**	**Volume — percentile**	**Threshold floor**	**Trade — percentile**	**Volume — percentile**	**Threshold floor**
Fixed-to-Fixed 'single currency swaps' and futures/forwards on Fixed-to-Fixed 'single currency swaps'	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	S1	S2	S3	S4	EUR 4 000 000	70	EUR 5 000 000	80	60	EUR 9 000 000	90	70	EUR 10 000 000
		30	40	50	60									
Overnight Index Swap (OIS) 'single currency swaps' and futures/forwards on Overnight Index Swap (OIS) 'single currency swaps'	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	S1	S2	S3	S4	EUR 4 000 000	70	EUR 5 000 000	80	60	EUR 9 000 000	90	70	EUR 10 000 000
		30	40	50	60									
Inflation 'single currency swaps' and futures/forwards on Inflation 'single currency swaps'	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	S1	S2	S3	S4	EUR 4 000 000	70	EUR 5 000 000	80	60	EUR 9 000 000	90	70	EUR 10 000 000
		30	40	50	60									

Table 5.3

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

Asset class — Interest Rate Derivatives				
Sub-asset class	**Pre-trade and post-trade SSTI and LIS thresholds for each sub-class determined not to have a liquid market**			
	SSTI pre-trade	**LIS pre-trade**	**SSTI post-trade**	**LIS post-trade**
	Threshold value	**Threshold value**	**Threshold value**	**Threshold value**
Bond futures/forwards	EUR 4 000 000	EUR 5 000 000	EUR 20 000 000	EUR 25 000 000
Bond options	EUR 4 000 000	EUR 5 000 000	EUR 20 000 000	EUR 25 000 000
IR futures and FRA	EUR 5 000 000	EUR 10 000 000	EUR 20 000 000	EUR 25 000 000
IR options	EUR 5 000 000	EUR 10 000 000	EUR 20 000 000	EUR 25 000 000
Swaptions	EUR 4 000 000	EUR 5 000 000	EUR 9 000 000	EUR 10 000 000
Fixed-to-Float 'multi-currency swaps' or 'cross-currency swaps' and futures/forwards on Fixed-to-Float 'multi-currency swaps' or 'cross-currency swaps'	EUR 4 000 000	EUR 5 000 000	EUR 9 000 000	EUR 10 000 000
Float-to-Float 'multi-currency swaps' or 'cross-currency swaps' and futures/forwards on Float-to-Float 'multi-currency swaps' or 'cross-currency swaps'	EUR 4 000 000	EUR 5 000 000	EUR 9 000 000	EUR 10 000 000
Fixed-to-Fixed 'multi-currency swaps' or 'cross-currency swaps' and futures/forwards on Fixed-to-Fixed 'multi-currency swaps' or 'cross-currency swaps'	EUR 4 000 000	EUR 5 000 000	EUR 9 000 000	EUR 10 000 000
Overnight Index Swap (OIS) 'multi-currency swaps' or 'cross-currency swaps' and futures/forwards on Overnight Index Swap (OIS) 'multi-currency swaps' or 'cross-currency swaps'	EUR 4 000 000	EUR 5 000 000	EUR 9 000 000	EUR 10 000 000
Inflation 'multi-currency swaps' or 'cross-currency swaps' and futures/forwards on Inflation 'multi-currency swaps' or 'cross-currency swaps'	EUR 4 000 000	EUR 5 000 000	EUR 9 000 000	EUR 10 000 000

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

6. **Equity derivatives**

Table 6.1

Equity derivatives — classes not having a liquid market

Asset class — Equity Derivatives
any contract as defined Annex I, Section C(4) of Directive 2014/65/EU related to:
(a) one or more shares, depositary receipts, ETFs, certificates, other similar financial instruments, cash-flows or other products related to the performance of one or more shares, depositary receipts, ETFs, certificates, or other similar financial instruments;
(b) an index of shares, depositary receipts, ETFs, certificates, other similar financial instruments, cash-flows or other products related to the performance of one or more shares, depositary receipts, ETFs, certificates, or other similar financial instruments

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

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

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

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

Table 6.2

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

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

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

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

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

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

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

Asset class — Equity Derivatives							
Sub-asset class	**For the purpose of the determination of the pre-trade and post-trade SSTI and LIS thresholds each sub-asset class shall be further segmented into sub-classes as defined below**	**Transactions to be considered for the calculations of the thresholds**	**Pre-trade and post-trade SSTI and LIS threshold values determined for the sub-classes determined to have a liquid market on the basis of the average daily notional amount (ADNA) band to which the sub-class belongs**				
			Average daily notional amount (ADNA)	**SSTI pre-trade**	**LIS pre-trade**	**SSTI post-trade**	**LIS post-trade**
				Threshold value	**Threshold value**	**Threshold value**	**Threshold value**
ETF futures/ forwards	an ETF future/forward sub-class is defined by the following segmentation criteria: **Segmentation criterion 1** — underlying ETF	calculation of thresholds should be performed for each sub-class considering the transactions executed on financial instruments belonging to the sub-class	**< EUR 5 million ADNA**	EUR 20 000	EUR 25 000	EUR 1 000 000	EUR 1 250 000
			EUR 5 million ≤ ADNA < EUR 10 million	EUR 250 000	EUR 300 000	EUR 1 250 000	EUR 1 500 000
			EUR 10 million ≤ ADNA < EUR 20 million	EUR 500 000	EUR 550 000	EUR 2 500 000	EUR 3 000 000
			ADNA ≥ EUR 20 million	EUR 1 000 000	EUR 1 500 000	EUR 5 000 000	EUR 5 500 000
Swaps	a swap sub-class is defined by the following segmentation criteria: **Segmentation criterion 1** — underlying type: single name, index, basket **Segmentation criterion 2** — underlying single name, index, basket **Segmentation criterion 3** — parameter: price return basic performance parameter, parameter return dividend, parameter return variance, parameter return volatility **Segmentation criterion 4** — time to maturity bucket of the swap defined as follows:	calculation of thresholds should be performed for each sub-class considering the transactions executed on financial instruments belonging to the sub-class	**EUR 50 million ≤ ADNA < EUR 100 million**	EUR 250 000	EUR 300 000	EUR 1 250 000	EUR 1 500 000
			EUR 100 million ≤ ADNA < EUR 200 million	EUR 500 000	EUR 550 000	EUR 2 500 000	EUR 3 000 000
			ADNA ≥ EUR 200 million	EUR 1 000 000	EUR 1 500 000	EUR 5 000 000	EUR 5 500 000

Asset class — Equity Derivatives									
Sub-asset class	**For the purpose of the determination of the pre-trade and post-trade SSTI and LIS thresholds each sub-asset class shall be further segmented into sub-classes as defined below**			**Transactions to be considered for the calculations of the thresholds**	**Pre-trade and post-trade SSTI and LIS threshold values determined for the sub-classes determined to have a liquid market on the basis of the average daily notional amount (ADNA) band to which the sub-class belongs**				
					Average daily notional amount (ADNA)	**SSTI pre-trade**	**LIS pre-trade**	**SSTI post-trade**	**LIS post-trade**
						Threshold value	**Threshold value**	**Threshold value**	**Threshold value**
	Price return basic performance parameter	**Parameter return variance/volatility**	**Parameter return dividend**						
	Maturity bucket 1: 0 < time to maturity ≤ 1 month	**Maturity bucket 1**: 0 < time to maturity ≤ 3 months	**Maturity bucket 1**: 0 < time to maturity ≤ 1 year						
	Maturity bucket 2: 1 month < time to maturity ≤ 3 months	**Maturity bucket 2**: 3 months < time to maturity ≤ 6 months	**Maturity bucket 2**: 1 year < time to maturity ≤ 2 years						
	Maturity bucket 3: 3 months < time to maturity ≤ 6 months	**Maturity bucket 3**: 6 months < time to maturity ≤ 1 year	**Maturity bucket 3**: 2 years < time to maturity ≤ 3 years						

Asset class — Equity Derivatives									
Sub-asset class	**For the purpose of the determination of the pre-trade and post-trade SSTI and LIS thresholds each sub-asset class shall be further segmented into sub-classes as defined below**			**Transactions to be considered for the calculations of the thresholds**	**Pre-trade and post-trade SSTI and LIS threshold values determined for the sub-classes determined to have a liquid market on the basis of the average daily notional amount (ADNA) band to which the sub-class belongs**				
					Average daily notional amount (ADNA)	**SSTI pre-trade**	**LIS pre-trade**	**SSTI post-trade**	**LIS post-trade**
						Threshold value	**Threshold value**	**Threshold value**	**Threshold value**
	Maturity bucket 4: 6 months < time to maturity ≤ 1 year	**Maturity bucket 4**: 1 year < time to maturity ≤ 2 years	…						
	Maturity bucket 5: 1 year < time to maturity ≤ 2 years	**Maturity bucket 5**: 2 years < time to maturity ≤ 3 years	**Maturity bucket m**: (n-1) years < time to maturity ≤ n years						
	Maturity bucket 6: 2 years < time to maturity ≤ 3 years	…							
	…	**Maturity bucket m**: (n-1) years < time to maturity ≤ n years							

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

Asset class — Equity Derivatives							
Sub-asset class	**For the purpose of the determination of the pre-trade and post-trade SSTI and LIS thresholds each sub-asset class shall be further segmented into sub-classes as defined below**	**Transactions to be considered for the calculations of the thresholds**	**Pre-trade and post-trade SSTI and LIS threshold values determined for the sub-classes determined to have a liquid market on the basis of the average daily notional amount (ADNA) band to which the sub-class belongs**				
			Average daily notional amount (ADNA)	**SSTI pre-trade**	**LIS pre-trade**	**SSTI post-trade**	**LIS post-trade**
				Threshold value	**Threshold value**	**Threshold value**	**Threshold value**
	Maturity bucket 2: 1 month < time to maturity ≤ 3 months						
	Maturity bucket 3: 3 months < time to maturity ≤ 6 months						
	Maturity bucket 4: 6 months < time to maturity ≤ 1 year						
	Maturity bucket 5: 1 year < time to maturity ≤ 2 years						
	Maturity bucket 6: 2 years < time to maturity ≤ 3 years						
	…						
	Maturity bucket m: (n-1) years < time to maturity ≤ n years						

Table 6.3

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

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

7. **Commodity derivatives**

Table 7.1

Commodity derivatives — classes not having a liquid market

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

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

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

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

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

<table>
<tr><th colspan="5">Asset class — Commodity Derivatives</th></tr>
<tr><th rowspan="2">Sub-asset class</th><th colspan="3" rowspan="2">For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b), each sub-asset class shall be further segmented into sub-classes as defined below</th><th colspan="2">Each sub-class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria</th></tr>
<tr><th>Average daily notional amount (ADNA) [quantitative liquidity criterion 1]</th><th>Average daily number of trades [quantitative liquidity criterion 2]</th></tr>
<tr><td></td><td>Oil/Oil Distillates/Oil Light ends</td><td>Coal</td><td>Natural Gas/'Electricity/Inter-energy</td><td></td><td></td></tr>
<tr><td></td><td>Maturity bucket 1: 0 < time to maturity ≤ 4 months</td><td>Maturity bucket 1: 0 < time to maturity ≤ 6 months</td><td>Maturity bucket 1: 0 < time to maturity ≤ 1 month</td><td></td><td></td></tr>
<tr><td></td><td>Maturity bucket 2: 4 months < time to maturity ≤ 8 months</td><td>Maturity bucket 2: 6 months < time to maturity ≤ 1 year</td><td>Maturity bucket 2: 1 month < time to maturity ≤ 1 year</td><td></td><td></td></tr>
<tr><td></td><td>Maturity bucket 3: 8 months < time to maturity ≤ 1 year</td><td>Maturity bucket 3: 1 year < time to maturity ≤ 2 years</td><td>Maturity bucket 3: 1 year < time to maturity ≤ 2 years</td><td></td><td></td></tr>
<tr><td></td><td>Maturity bucket 4: 1 year < time to maturity ≤ 2 years</td><td>…</td><td>…</td><td></td><td></td></tr>
<tr><td></td><td>…</td><td>Maturity bucket m: (n-1) years < time to maturity ≤ n years</td><td>Maturity bucket m: (n-1) years < time to maturity ≤ n years</td><td></td><td></td></tr>
<tr><td></td><td>Maturity bucket m: (n-1) years < time to maturity ≤ n years</td><td></td><td></td><td></td><td></td></tr>
<tr><td>Energy commodity swaps</td><td colspan="3">an energy commodity swap sub-class is defined by the following segmentation criteria:
Segmentation criterion 1 — energy type: oil, oil distillates, coal, oil light ends, natural gas, electricity, inter-energy
Segmentation criterion 2 — underlying energy</td><td>EUR 10 000 000</td><td>10</td></tr>
</table>

<table>
<tr><td colspan="5">Asset class — Commodity Derivatives</td></tr>
<tr><td rowspan="2">Sub-asset class</td><td colspan="3" rowspan="2">For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b), each sub-asset class shall be further segmented into sub-classes as defined below</td><td colspan="2">Each sub-class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria</td></tr>
<tr><td>Average daily notional amount (ADNA) [quantitative liquidity criterion 1]</td><td>Average daily number of trades [quantitative liquidity criterion 2]</td></tr>
<tr><td></td><td colspan="3">Segmentation criterion 3 — notional currency defined as the currency in which the notional amount of the swap is denominated
Segmentation criterion 4 — settlement type defined as cash, physical or other
Segmentation criterion 5 — load type defined as baseload, peakload, off-peak or others, applicable to energy type: electricity
Segmentation criterion 6 — delivery/cash settlement location applicable to energy types: oil, oil distillates, oil light ends, electricity, inter-energy
Segmentation criterion 7 — time to maturity bucket of the swap defined as follows:</td><td></td><td></td></tr>
<tr><td></td><td>Oil/Oil Distillates/Oil Light ends</td><td>Coal</td><td>Natural Gas/’Electricity/Inter-energy</td><td></td><td></td></tr>
<tr><td></td><td>Maturity bucket 1: 0 < time to maturity ≤ 4 months</td><td>Maturity bucket 1: 0 < time to maturity ≤ 6 months</td><td>Maturity bucket 1: 0 < time to maturity ≤ 1 month</td><td></td><td></td></tr>
<tr><td></td><td>Maturity bucket 2: 4 months < time to maturity ≤ 8 months</td><td>Maturity bucket 2: 6 months < time to maturity ≤ 1 year</td><td>Maturity bucket 2: 1 month < time to maturity ≤ 1 year</td><td></td><td></td></tr>
<tr><td></td><td>Maturity bucket 3: 8 months < time to maturity ≤ 1 year</td><td>Maturity bucket 3: 1 year < time to maturity ≤ 2 years</td><td>Maturity bucket 3: 1 year < time to maturity ≤ 2 years</td><td></td><td></td></tr>
<tr><td></td><td>Maturity bucket 4: 1 year < time to maturity ≤ 2 years</td><td>…</td><td>…</td><td></td><td></td></tr>
</table>

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

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

Table 7.2

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

Asset class — Commodity Derivatives															
Sub-asset class	**Percentiles and threshold floors to be applied for the calculation of the pre-trade and post-trade SSTI and LIS thresholds for the sub-classes determined to have a liquid market**														
	Transactions to be considered for the calculations of the thresholds	**SSTI pre-trade**					**LIS pre-trade**		**SSTI post-trade**			**LIS post-trade**			
		Trade — percentile				**Threshold floor**	**Trade — percentile**	**Threshold floor**	**Trade — percentile**	**Volume — percentile**	**Threshold floor**	**Trade — percentile**	**Volume — percentile**	**Threshold floor**
Metal commodity futures/forwards	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	S1	S2	S3	S4	EUR 250 000	70	EUR 500 000	80	60	EUR 750 000	90	70	EUR 1 000 000
		30	40	50	60									
Metal commodity options	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	S1	S2	S3	S4	EUR 250 000	70	EUR 500 000	80	60	EUR 750 000	90	70	EUR 1 000 000
		30	40	50	60									
Metal commodity swaps	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	S1	S2	S3	S4	EUR 250 000	70	EUR 500 000	80	60	EUR 750 000	90	70	EUR 1 000 000
		30	40	50	60									

Asset class — Commodity Derivatives															
Sub-asset class	**Percentiles and threshold floors to be applied for the calculation of the pre-trade and post-trade SSTI and LIS thresholds for the sub-classes determined to have a liquid market**														
	Transactions to be considered for the calculations of the thresholds	**SSTI pre-trade**					**LIS pre-trade**		**SSTI post-trade**			**LIS post-trade**			
		Trade — percentile				**Threshold floor**	**Trade — percentile**	**Threshold floor**	**Trade — percentile**	**Volume — percentile**	**Threshold floor**	**Trade — percentile**	**Volume — percentile**	**Threshold floor**	
Energy commodity futures/forwards	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	S1	S2	S3	S4	EUR 250 000	70	EUR 500 000	80	60	EUR 750 000	90	70	EUR 1 000 000	
		30	40	50	60										
Energy commodity options	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	S1	S2	S3	S4	EUR 250 000	70	EUR 500 000	80	60	EUR 750 000	90	70	EUR 1 000 000	
		30	40	50	60										
Energy commodity swaps	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	S1	S2	S3	S4	EUR 250 000	70	EUR 500 000	80	60	EUR 750 000	90	70	EUR 1 000 000	
		30	40	50	60										

Asset class — Commodity Derivatives															
Sub-asset class	**Percentiles and threshold floors to be applied for the calculation of the pre-trade and post-trade SSTI and LIS thresholds for the sub-classes determined to have a liquid market**														
	Transactions to be considered for the calculations of the thresholds	**SSTI pre-trade**					**LIS pre-trade**		**SSTI post-trade**			**LIS post-trade**			
		Trade — percentile				**Threshold floor**	**Trade — percentile**	**Threshold floor**	**Trade — percentile**	**Volume — percentile**	**Threshold floor**	**Trade — percentile**	**Volume — percentile**	**Threshold floor**
Agricultural commodity futures/ forwards	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	S1	S2	S3	S4	EUR 250 000	70	EUR 500 000	80	60	EUR 750 000	90	70	EUR 1 000 000
		30	40	50	60									
Agricultural commodity options	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	S1	S2	S3	S4	EUR 250 000	70	EUR 500 000	80	60	EUR 750 000	90	70	EUR 1 000 000
		30	40	50	60									
Agricultural commodity swaps	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	S1	S2	S3	S4	EUR 250 000	70	EUR 500 000	80	60	EUR 750 000	90	70	EUR 1 000 000
		30	40	50	60									

Table 7.3

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

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

8. **Foreign exchange derivatives**

Table 8.1

Foreign exchange derivatives — classes not having a liquid market

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

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

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

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

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

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

Sub-asset class	For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b), each sub-asset class shall be further segmented into sub-classes as defined below	Each sub-class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria	
		Average daily notional amount (ADNA) [quantitative liquidity criterion 1]	**Average daily number of trades** [quantitative liquidity criterion 2]
FX futures	an FX future sub-class is defined by the following segmentation criteria: **Segmentation criterion 1** — underlying currency pair defined as combination of the two currencies underlying the derivative contract **Segmentation criterion 2** — time to maturity bucket of the future defined as follows: **Maturity bucket 1**: 0 < time to maturity ≤ 1 week **Maturity bucket 2**: 1 week < time to maturity ≤ 3 months **Maturity bucket 3**: 3 months < time to maturity ≤ 1 year **Maturity bucket 4**: 1 year < time to maturity ≤ 2 years **Maturity bucket 5**: 2 years < time to maturity ≤ 3 years … **Maturity bucket m**: (n-1) years < time to maturity ≤ n years	FX futures are considered not to have a liquid market	

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

Table 8.2

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

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

9. **Credit derivatives**

Table 9.1

Credit derivatives — classes not having a liquid market

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

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

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

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

Table 9.2

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

Asset class — Credit Derivatives															
Sub-asset class	**Percentiles and threshold floors to be applied for the calculation of the pre-trade and post-trade SSTI and LIS thresholds for the sub-classes determined to have a liquid market**														
	Transactions to be considered for the calculations of the thresholds	**SSTI pre-trade**					**LIS pre-trade**		**SSTI post-trade**			**LIS post-trade**			
		Trade — percentile				**Threshold floor**	**Trade — percentile**	**Threshold floor**	**Trade — percentile**	**Volume — percentile**	**Threshold floor**	**Trade — percentile**	**Volume — percentile**	**Threshold floor**
Index credit default swap (CDS)	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	S1	S2	S3	S4	EUR 2 500 000	70	EUR 5 000 000	80	60	EUR 7 500 000	90	70	EUR 10 000 000
		30	40	50	60									
Single name credit default swap (CDS)	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	S1	S2	S3	S4	EUR 2 500 000	70	EUR 5 000 000	80	60	EUR 7 500 000	90	70	EUR 10 000 000
		30	40	50	60									
Bespoke basket credit default swap (CDS)	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	S1	S2	S3	S4	EUR 2 500 000	70	EUR 5 000 000	80	60	EUR 7 500 000	90	70	EUR 10 000 000
		30	40	50	60									

Asset class — Credit Derivatives															
Sub-asset class	**Percentiles and threshold floors to be applied for the calculation of the pre-trade and post-trade SSTI and LIS thresholds for the sub-classes determined to have a liquid market**														
	Transactions to be considered for the calculations of the thresholds	**SSTI pre-trade**					**LIS pre-trade**		**SSTI post-trade**			**LIS post-trade**			
		Trade — percentile				**Threshold floor**	**Trade — percentile**	**Threshold floor**	**Trade — percentile**	**Volume — percentile**	**Threshold floor**	**Trade — percentile**	**Volume — percentile**	**Threshold floor**
CDS index options	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	S1	S2	S3	S4	EUR 2 500 000	70	EUR 5 000 000	80	60	EUR 7 500 000	90	70	EUR 10 000 000
		30	40	50	60									
Single name CDS options	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	S1	S2	S3	S4	EUR 2 500 000	70	EUR 5 000 000	80	60	EUR 7 500 000	90	70	EUR 10 000 000
		30	40	50	60									

Table 9.3

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

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

10. **C10 derivatives**

Table 10.1

C10 derivatives — classes not having a liquid market

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

Asset class — C10 Derivatives			
Sub-asset class	**For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b), each sub-asset class shall be further segmented into sub-classes as defined below**	**Each sub-class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria**	
		Average daily notional amount (ADNA) [quantitative liquidity criterion 1]	**Average daily number of trades** [quantitative liquidity criterion 2]
	Maturity bucket 5: 9 months < time to maturity ≤ 1 year **Maturity bucket 6**: 1 year < time to maturity ≤ 2 years **Maturity bucket 7**: 2 years < time to maturity ≤ 3 years … **Maturity bucket m**: (n-1) years < time to maturity ≤ n years		

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

Table 10.2

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

Asset class — C10 Derivatives															
Sub-asset class	**Percentiles and threshold floors to be applied for the calculation of the pre-trade and post-trade SSTI and LIS thresholds for the sub-classes determined to have a liquid market**														
	Transactions to be considered for the calculations of the thresholds	**SSTI pre-trade**					**LIS pre-trade**		**SSTI post-trade**			**LIS post-trade**			
		Trade — percentile				**Threshold floor**	**Trade — percentile**	**Threshold floor**	**Trade — percentile**	**Volume — percentile**	**Threshold floor**	**Trade — percentile**	**Volume — percentile**	**Threshold floor**
Freight derivatives	calculation of thresholds should be performed for each sub-class of the sub-asset class considering the transactions executed on financial instruments belonging to the sub-class	S1	S2	S3	S4	EUR 25 000	70	EUR 50 000	80	60	EUR 75 000	90	70	EUR 100 000
		30	40	50	60									

Table 10.3

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

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

11. **Financial contracts for differences (CFDs)**

Table 11.1

CFDs — classes not having a liquid market

Asset class — Financial contracts for differences (CFDs)				
a derivative contract that gives the holder an exposure, which can be long or short, to the difference between the price of an underlying asset at the start of the contract and the price when the contract is closed				
Sub-asset class	**For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b), each sub-asset class shall be further segmented into sub-classes as defined below**	**Each sub-class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria or, where applicable, if it does not meet the qualitative liquidity criterion as defined below**		
		Qualitative liquidity criterion	**Average daily notional amount (ADNA)** [quantitative liquidity criterion 1]	**Average daily number of trades** [quantitative liquidity criterion 2]
Currency CFDs	a currency CFD sub-class is defined by the underlying currency pair defined as combination of the two currencies underlying the CFD/spread betting contract		EUR 50 000 000	100
Commodity CFDs	a commodity CFD sub-class is defined by the underlying commodity of the CFD/spread betting contract		EUR 50 000 000	100
Equity CFDs	an equity CFD sub-class is defined by the underlying equity security of the CFD/spread betting contract	an equity CFD sub-class is considered to have a liquid market if the underlying is an equity security for which there is a liquid market as determined in accordance with Article 2(1)(17)(b) of Regulation (EU) No 600/2014		
Bond CFDs	a bond CFD sub-class is defined by the underlying bond or bond future of the CFD/spread betting contract	a bond CFD sub-class is considered to have a liquid market if the underlying is a bond or bond future for which there is a liquid market as determined in accordance with Articles 6 and 8(1)(b).		

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

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

Table 11.2

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

Asset class — Financial contracts for differences (CFDs)															
Sub-asset class	**Percentiles and threshold floors to be applied for the calculation of the pre-trade and post-trade SSTI and LIS thresholds for the sub-classes determined to have a liquid market**														
	Transactions to be considered for the calculations of the thresholds	**SSTI pre-trade**					**LIS pre-trade**		**SSTI post-trade**			**LIS post-trade**			
		Trade — percentile				**Threshold floor**	**Trade — percentile**	**Threshold floor**	**Trade — percentile**	**Volume — percentile**	**Threshold floor**	**Trade — percentile**	**Volume — percentile**	**Threshold floor**
Currency CFDs	transactions executed on currency CFDs considered to have a liquid market as per Articles 6 and 8(1)(b)	S1	S2	S3	S4	EUR 50 000	70	EUR 60 000	80	60	EUR 90 000	90	70	EUR 100 000
		30	40	50	60									
Commodity CFDs	transactions executed on commodity CFDs considered to have a liquid market as per Articles 6 and 8(1)(b)	S1	S2	S3	S4	EUR 50 000	70	EUR 60 000	80	60	EUR 90 000	90	70	EUR 100 000
		30	40	50	60									
Equity CFDs	transactions executed on equity CFDs considered to have a liquid market as per Articles 6 and 8(1)(b)	S1	S2	S3	S4	EUR 50 000	70	EUR 60 000	80	60	EUR 90 000	90	70	EUR 100 000
		30	40	50	60									

Asset class — Financial contracts for differences (CFDs)																
Sub-asset class	**Percentiles and threshold floors to be applied for the calculation of the pre-trade and post-trade SSTI and LIS thresholds for the sub-classes determined to have a liquid market**															
	Transactions to be considered for the calculations of the thresholds	**SSTI pre-trade**					**LIS pre-trade**		**SSTI post-trade**			**LIS post-trade**		
		Trade — percentile				**Threshold floor**	**Trade — percentile**	**Threshold floor**	**Trade — percentile**	**Volume — percentile**	**Threshold floor**	**Trade — percentile**	**Volume — percentile**	**Threshold floor**
Bond CFDs	transactions executed on bond CFDs considered to have a liquid market as per Articles 6 and 8(1)(b)	S1	S2	S3	S4	EUR 50 000	70	EUR 60 000	80	60	EUR 90 000	90	70	EUR 100 000
		30	40	50	60									
CFDs on an equity future/ forward	transactions executed on CFDs on future on an equity considered to have a liquid market as per Articles 6 and 8(1)(b)	S1	S2	S3	S4	EUR 50 000	70	EUR 60 000	80	60	EUR 90 000	90	70	EUR 100 000
		30	40	50	60									
CFDs on an equity option	transactions executed on CFDs on option on an equity considered to have a liquid market as per Articles 6 and 8(1)(b)	S1	S2	S3	S4	EUR 50 000	70	EUR 60 000	80	60	EUR 90 000	90	70	EUR 100 000
		30	40	50	60									

Table 11.3

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

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

12. **Emission allowances**

Table 12.1

Emission allowances — classes not having a liquid market

Asset class — Emission Allowances		
Sub-asset class	**Each sub-asset class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria**	
	Average Daily Amount (ADA) [quantitative liquidity criterion 1]	**Average daily number of trades** [quantitative liquidity criterion 2]
European Union Allowances (EUA) any unit recognised for compliance with the requirements of Directive 2003/87/EC of the European Parliament and of the Council [1] (Emissions Trading Scheme) which represents the right to emit the equivalent to 1 tonne of carbon dioxide equivalent (tCO_2e)	150 000 tons of Carbon Dioxide Equivalent	5
European Union Aviation Allowances (EUAA) any unit recognised for compliance with the requirements of Directive 2003/87/EC (Emissions Trading Scheme) which represents the right to emit the equivalent to 1 tonne of carbon dioxide equivalent (tCO_2e) from aviation	150 000 tons of Carbon Dioxide Equivalent	5
Certified Emission Reductions (CER) any unit recognised for compliance with the requirements of Directive 2003/87/EC (Emissions Trading Scheme) which represents the emissions reduction equivalent to 1 tonne of carbon dioxide equivalent (tCO_2e)	150 000 tons of Carbon Dioxide Equivalent	5
Emission Reduction Units (ERU) any unit recognised for compliance with the requirements of Directive 2003/87/EC (Emissions Trading Scheme) which represents the emissions reduction equivalent to 1 tonne of carbon dioxide equivalent (tCO_2e)	150 000 tons of Carbon Dioxide Equivalent	5

[1] Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (JO L 275, 25.10.2003, p. 32).

Table 12.2

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

Asset class — Emission Allowances												
Sub-asset class	**Transactions to be considered for the calculation of the thresholds**	**Percentiles and threshold floors to be applied for the calculation of the pre-trade and post-trade SSTI and LIS thresholds for the sub-asset classes determined to have a liquid market**										
		SSTI pre-trade					**LIS pre-trade**		**SSTI post-trade**		**LIS post-trade**	
		Trade — percentile				**Threshold floor**	**Trade — percentile**	**Threshold floor**	**Trade — percentile**	**Threshold floor**	**Trade — percentile**	**Threshold floor**
European Union Allowances (EUA)	transactions executed on all European Union Allowances (EUA)	S1	S2	S3	S4	40 000 tons of Carbon Dioxide Equivalent	70	50 000 tons of Carbon Dioxide Equivalent	80	90 000 tons of Carbon Dioxide Equivalent	90	100 000 tons of Carbon Dioxide Equivalent
		30	40	50	60							
European Union Aviation Allowances (EUAA)	transactions executed on all European Union Aviation Allowance (EUAA)	S1	S2	S3	S4	20 000 tons of Carbon Dioxide Equivalent	70	25 000 tons of Carbon Dioxide Equivalent	80	40 000 tons of Carbon Dioxide Equivalent	90	50 000 tons of Carbon Dioxide Equivalent
		30	40	50	60							
Certified Emission Reductions (CER)	transactions executed on all Certified Emission Reductions (CER)	S1	S2	S3	S4	20 000 tons of Carbon Dioxide Equivalent	70	25 000 tons of Carbon Dioxide Equivalent	80	40 000 tons of Carbon Dioxide Equivalent	90	50 000 tons of Carbon Dioxide Equivalent
		30	40	50	60							
Emission Reduction Units (ERU)	transactions executed on all Emission Reduction Units (ERU)	S1	S2	S3	S4	20 000 tons of Carbon Dioxide Equivalent	70	25 000 tons of Carbon Dioxide Equivalent	80	40 000 tons of Carbon Dioxide Equivalent	90	50 000 tons of Carbon Dioxide Equivalent
		30	40	50	60							

Table 12.3

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

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

13. **Emission allowance derivatives**

Table 13.1

Emission allowance derivatives — classes not having a liquid market

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

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

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

Table 13.2

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

Asset class — Emission Allowance Derivatives													
Sub-asset class	**Transactions to be considered for the calculation of the thresholds**	**Percentiles and threshold floors to be applied for the calculation of the pre-trade and post-trade SSTI and LIS thresholds for the sub-asset classes determined to have a liquid market**											
		SSTI pre-trade					**LIS pre-trade**		**SSTI post-trade**		**LIS post-trade**		
		Trade — percentile				**Threshold floor**	**Trade — percentile**	**Threshold floor**	**Trade — percentile**	**Threshold floor**	**Trade — percentile**	**Threshold floor**	
Emission allowance derivatives whose underlying is of the type European Union Allowances (EUA)	transactions executed on all emission allowance derivatives whose underlying is of the type European Union Allowances (EUA)	S1	S2	S3	S4	40 000 tons of Carbon Dioxide Equivalent	70	50 000 tons of Carbon Dioxide Equivalent	80	90 000 tons of Carbon Dioxide Equivalent	90	100 000 tons of Carbon Dioxide Equivalent	
		30	40	50	60								
Emission allowance derivatives whose underlying is of the type European Union Aviation Allowances (EUAA)	transactions executed on all emission allowance derivatives whose underlying is of the type European Union Aviation Allowances (EUAA)	S1	S2	S3	S4	20 000 tons of Carbon Dioxide Equivalent	70	25 000 tons of Carbon Dioxide Equivalent	80	40 000 tons of Carbon Dioxide Equivalent	90	50 000 tons of Carbon Dioxide Equivalent	
		30	40	50	60								
Emission allowance derivatives whose underlying is of the type Certified Emission Reductions (CER)	transactions executed on all emission allowance derivatives whose underlying is of the type Certified Emission Reductions (CER)	S1	S2	S3	S4	20 000 tons of Carbon Dioxide Equivalent	70	25 000 tons of Carbon Dioxide Equivalent	80	40 000 tons of Carbon Dioxide Equivalent	90	50 000 tons of Carbon Dioxide Equivalent	
		30	40	50	60								
Emission allowance derivatives whose underlying is of the type Emission Reduction Units (ERU)	transactions executed on all emission allowance derivatives whose underlying is of the type Emission Reduction Units (ERU)	S1	S2	S3	S4	20 000 tons of Carbon Dioxide Equivalent	70	25 000 tons of Carbon Dioxide Equivalent	80	40 000 tons of Carbon Dioxide Equivalent	90	50 000 tons of Carbon Dioxide Equivalent	
		30	40	50	60								

Table 13.3

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

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

ANNEX IV

Reference data to be provided for the purpose of transparency calculations

Table 1

Symbol table for Table 2

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

SYMBOL	DATA TYPE	DEFINITION
		'MOSP' — MOSPRIM 'NIBO' — NIBOR 'PRBO' — PRIBOR 'TLBO' — TELBOR 'WIBO' — WIBOR 'TREA' — Treasury 'SWAP' — SWAP 'FUSW' — Future SWAP

Table 2

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

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

#	FIELD	DETAILS TO BE REPORTED	FORMAT FOR REPORTING
5	Contract type	To be populated when the MiFIR identifier is a derivative.	'OPTN' — Options 'FUTR' — Futures 'FRAS' — Forward Rate Agreement (FRA) 'FORW' — Forwards 'SWAP' — Swaps 'PSWP' — Portfolio Swaps 'SWPT' — Swaptions 'FONS' — Futures on a swap 'FWOS' — Forwards on a swap 'FFAS' — Forward Freight Agreements (FFAs) 'SPDB' — Spread betting 'CFDS' — CFD 'OTHR' — Other
6	Reporting day	Day for which the reference data is provided	{DATEFORMAT}
7	Trading venue	Segment MIC for the trading venue, where available, otherwise operational MIC.	{MIC}
8	Maturity	Maturity of the financial instrument. Field applicable for the asset classes of bonds, interest rate derivatives, equity derivatives, commodity derivatives, foreign exchange derivatives, credit derivatives C10 derivatives and derivatives on emission allowances.	{DATEFORMAT}

Bonds (all bond types except ETCs and ETNs) related fields

9	Bond type	Bond type as specified in Table 2.2 of Section 2 of Annex III. To be populated only when the MiFIR identifier is equal to bonds.	'EUSB' — Sovereign Bond 'OEPB' — Other Public Bond 'CVTB' — Convertible Bond 'CVDB' — Covered Bond 'CRPB' — Corporate Bond 'OTHR' — Other
10	Issuance date	Date on which a bond is issued and begins to accrue interest.	{DATEFORMAT}

Emission Allowances related fields

The fields in this section should only be populated for emission allowances as defined in Table 12.1 of Section 12 of Annex III

11	Emissions Allowances sub type	Emissions Allowances	'CERE' — CER 'ERUE' — ERU 'EUAE' — EUA 'EUAA' — EUAA

#	FIELD	DETAILS TO BE REPORTED	FORMAT FOR REPORTING
Derivatives related fields			
Commodity derivatives and C10 derivatives			
12	Specification of the size related to the freight sub-type	To be populated when the base product specified in field 35 in Table 2 of the Annex in Delegated Regulation (EU) 2017/585 is equal to freight.	{ALPHANUM-25}
13	Specific route or time charter average	To be populated when the base product specified in field 35 in Table 2 of the Annex in Delegated Regulation (EU) 2017/585 is equal to freight.	{ALPHANUM-25}
14	Delivery/cash settlement location	To be populated when the base product specified in field 35 in Table 2 of the Annex in Delegated Regulation (EU) 2017/585 is equal to energy.	{ALPHANUM-25}
15	Notional currency	Currency in which the notional is denominated.	{CURRENCYCODE_3}
Interest rate derivatives			
The fields in this section should only be populated for interest rate derivatives as defined in Table 5.1 of Section 5 of Annex III			
16	Underlying type	To be populated for contract type different from swaps, swaptions, futures on a swap and forwards on a swap with one of the following alternatives To be populated for the contract types of swaps, swaptions, futures on a swap and forwards on a swap with regard to the underlying swap with one of the following alternatives	'BOND' — Bond 'BNDF' — Bond Futures 'INTR' — Interest rate 'IFUT' — Interest rate Futures-FRA 'FFMC' — FLOAT TO FLOAT MULTI-CURRENCY SWAPS 'XFMC' — FIXED TO FLOAT MULTI-CURRENCY SWAPS 'XXMC' — FIXED TO FIXED MULTI-CURRENCY SWAPS 'OSMC' — OIS MULTI-CURRENCY SWAPS 'IFMC' — INFLATION MULTI-CURRENCY SWAPS 'FFSC' — FLOAT TO FLOAT SINGLE-CURRENCY SWAPS 'XFSC' — FIXED TO FLOAT SINGLE-CURRENCY SWAPS 'XXSC' — FIXED TO FIXED SINGLE-CURRENCY SWAPS 'OSSC' — OIS SINGLE-CURRENCY SWAPS 'IFSC' — INFLATION SINGLE-CURRENCY SWAPS
17	Issuer of the underlying bond	To be populated when the underlying type is a bond or a bond future with the legal entity identifier code (LEI) of the issuer of the direct or ultimate underlying bond.	{LEI}

#	FIELD	DETAILS TO BE REPORTED	FORMAT FOR REPORTING
18	Maturity date of the underlying bond	To be populated with the date of maturity of the underlying bond. The field applies to debt instruments with defined maturity.	{DATEFORMAT}
19	Issuance date of the underlying bond	To be populated with the issuance date of the underlying bond	{DATEFORMAT}
20	Notional currency of the swaption	To be populated for swaptions.	{CURRENCYCODE_3}
21	Maturity of the underlying swap	To be populated for swaptions, futures on swaps and forwards on a swap only.	{DATEFORMAT}
22	Inflation index ISIN code	In case of swaptions on one of the following underlying swap types: inflation single currency swap, futures/forwards on inflation single currency swap, inflation multi-currency swap, futures/forwards on inflation multi-currency swap; whenever the inflation index has an ISIN, the field has to be populated with the ISIN code for that index.	{ISIN}
23	Inflation index name	To be populated with standardised name of the index in case of swaptions on one of the following underlying swap types: inflation single currency swap, futures/forwards on inflation single currency swap, inflation multi-currency swap, futures/forwards on inflation multi-currency swap.	{ALPHANUM-25}
24	Reference rate	Name of the reference rate.	{INDEX} or {ALPHANUM-25}- if the reference rate is not included in the {INDEX} list
25	IR Term of contract	This field states the term of the contract. The term shall be expressed in days, weeks, months or years.	{INTEGER-3}+'DAYS' — days {INTEGER-3}+'WEEK' — weeks {INTEGER-3}+'MNTH' — months {INTEGER-3}+'YEAR' — years

Foreign exchange derivatives

The fields in this section should only be populated for foreign exchange derivatives as defined in Table 8.1 of Section 8 of Annex III

26	Contract sub-type	To be populated so as to differentiate deliverable and non-deliverable forwards, options and swaps as defined in Table 8.1 of Section 8 of Annex III.	'DLVB' — Deliverable 'NDLV' — Non-deliverable

#	FIELD	DETAILS TO BE REPORTED	FORMAT FOR REPORTING
Equity derivatives			
The fields should only be populated for equity derivatives as defined in Table 6.1 of Section 6 of Annex III			
27	Underlying type	To be populated when the MiFIR identifier is a derivative, the asset class of the underlying is equity and the sub-asset class is neither swaps nor portfolio swaps.	'STIX' — Stock Index 'SHRS' — Share/Stock 'DIVI' — Dividend Index 'DVSE' — Stock dividend 'BSKT' — Basket of shares resulting from a corporate action 'ETFS' — ETFs 'VOLI' — Volatility Index 'OTHR' — Other (including depositary receipts, certificates and other equity like financial instrument)
		To be populated when the MiFIR identifier is a derivative, the asset class of the underlying is equity, the sub-asset class is either swaps or portfolio swaps and the segmentation criterion 2 as defined in Table 6.1 of Section 6 of Annex III is a single name.	'SHRS' — Share/Stock 'DVSE' — Stock dividend 'ETFS' — ETFs 'OTHR' — Other (including depositary receipts, certificates and other equity like financial instrument)
		To be populated when the MiFIR identifier is a derivative, the asset class of the underlying is equity, the sub-asset class is either swaps or portfolio swaps and the segmentation criterion 2 as defined in Table 6.1 of Section 6 of Annex III is an index.	'STIX' — Stock Index 'DIVI' — Dividend Index 'VOLI' — Volatility Index 'OTHR' — Other
		To be populated when the MiFIR identifier is a derivative, the asset class of the underlying is equity, the sub-asset class is either swaps or portfolio swaps and the segmentation criterion 2 as defined in Table 6.1 of Section 6 of Annex III is a basket.	'BSKT' — Basket
28	Parameter	To be populated when the MiFIR identifier is a derivative, the asset class of the underlying is equity and the sub-asset class is one of the following: swaps, portfolio swaps.	'PRBP' — Price return basic performance parameter 'PRDV' — Parameter return dividend 'PRVA' — Parameter return variance 'PRVO' — Parameter return volatility
Contracts for difference (CFDs)			
The fields should only be populated when the contract type is equal to contract for difference or spread betting			
29	Underlying type	To be populated when the MiFIR identifier is a derivative and the contract type is equal to contract for difference or spread betting.	'CURR' — Currency 'EQUI' — Equity

#	FIELD	DETAILS TO BE REPORTED	FORMAT FOR REPORTING
			'BOND' — Bonds 'FTEQ' — Futures on an equity 'OPEQ' — Options on an equity 'COMM' — Commodity 'EMAL' — Emission Allowances 'OTHR' — Other
30	Notional currency 1	Currency 1 of the underlying currency pair. This field is applicable when the underlying type is currency.	{CURRENCYCODE_3}
31	Notional currency 2	Currency 2 of the underlying currency pair. This field is applicable when the underlying type is currency.	{CURRENCYCODE_3}

Credit derivatives

32	ISIN code of the underlying credit default swap	To be populated for derivatives on a credit default swaps with the ISIN code of the underlying swap.	{ISIN}
33	Underlying Index code	To be populated for derivatives on a CDS index with the ISIN code of the index.	{ISIN}
34	Underlying Index name	To be populated for derivatives on a CDS index with the standardised name of the index.	{ALPHANUM-25}
35	Series	The series number of the composition of the index if applicable. To be populated for a CDS Index or a derivative on a CDS Index with the series of the CDS Index.	{DECIMAL-18/17}
36	Version	A new version of a series is issued if one of the constituents defaults and the index has to be re-weighted to account for the new number of total constituents within the index. To be populated for a CDS Index or a derivative on a CDS Index with the version of the CDS Index.	{DECIMAL-18/17}
37	Roll months	All months when the roll is expected as established by the index provider for a given year. Field should be repeated for each month in the roll. To be populated for a CDS Index or a derivative on a CDS Index.	'01', '02', '03', '04', '05', '06', '07', '08', '09', '10', '11', '12'
38	Next roll date	To be populated in the case of a CDS Index or a derivative on a CDS Index with the next roll date of the index as established by the index provider.	{DATEFORMAT}

#	FIELD	DETAILS TO BE REPORTED	FORMAT FOR REPORTING
39	Issuer of sovereign and public type	To be populated when the reference entity of a single name CDS or a derivative on single name CDS is a sovereign issuer as defined in Table 9.1 Section 9 of Annex III.	'TRUE' — the reference entity is an issuer of sovereign and public type 'FALSE' — the reference entity is not an issuer of sovereign and public type
40	Reference obligation	To be populated for a derivative on a single name credit default swap with the ISIN of the reference obligation.	{ISIN}
41	Reference entity	To be populated with the reference entity of a single name CDS or a derivative on single name CDS.	{COUNTRYCODE_2} or ISO 3166-2 — 2 character country code followed by dash '-' and up to 3 alphanumeric character country subdivision code or {LEI}
42	Notional currency	Currency in which the notional is denominated.	{CURRENCYCODE_3}
Emission allowance derivatives The fields in this section should only be populated for emission allowance derivatives as defined in Table 13.1 of Section 13 of Annex III			
43	Emission Allowances derivative sub type	To be populated when variable #3 'MiFIR identifier' is 'DERV'-derivative and variable #4 'asset class of the underlying' is 'EMAL'-emission allowances.	'CERE' — CER 'ERUE' — ERU 'EUAE' — EUA 'EUAA' — EUAA 'OTHR' — Other

COMMISSION DELEGATED REGULATION (EU) 2017/584

of 14 July 2016

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying organisational requirements of trading venues

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU [1], and in particular points (a), (c) and (g) of Article 48(12) thereof,

Whereas:

(1) It is important to ensure that trading venues that enable algorithmic trading have sufficient systems and controls.

(2) The provisions of this Regulation should apply not only to regulated markets but also to multilateral trading facilities and organised trading facilities as determined by Article 18(5) of Directive 2014/65/EU.

(3) The impact of technological development and in particular algorithmic trading is one of the main drivers to determine the capacity and arrangements to manage trading venues. The risks arising from algorithmic trading can be present in any type of trading system that is supported by electronic means. Therefore, specific organisational requirements should be laid down in respect of regulated markets, multilateral trading facilities and organised trading facilities allowing for or enabling algorithmic trading through their systems. Such trading systems are those where algorithmic trading may take place as opposed to trading systems in which algorithmic trading is not permitted, including trading systems where transactions are arranged through voice negotiation.

(4) Governance arrangements, the role of the compliance function, staffing and outsourcing should be regulated as part of the organisational requirements to ensure the resilience of electronic trading systems.

(5) Requirements should be laid down with respect to the systems of trading venues allowing or enabling algorithmic trading. However, their specific application should take place in conjunction with a self-assessment to be conducted by each trading venue since not all trading models present the same risks. Therefore, some organisational requirements may not be appropriate for certain trading models although their trading systems could be supported to a certain extent by electronic means. In particular, the specific requirements to be set in relation to request-for-quote systems or hybrid systems should be considered according to the nature, scale and complexity of the algorithmic trading activity undertaken. Equally, more stringent requirements should be established by the trading venues where appropriate.

(6) Risks arising from algorithmic trading should be carefully taken into account, paying particular attention to those that may affect the core elements of a trading system, including the hardware, software and associated communication lines used by trading venues and members, participants or clients of trading venues ('members') to perform their activity and any type of execution systems or order management systems operated by trading venues, including matching algorithms.

(7) The specific organisational requirements for trading venues have to be determined by means of a robust self-assessment where a number of parameters have to be assessed. That self-assessment should include any other circumstances not expressly set out that may have an impact on their organisation.

(8) The minimum period for keeping records of the self-assessment and the due diligence of members for the purpose of this Regulation should be the same as the general record-keeping obligations established in Directive 2014/65/EU.

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

(9) Where trading venues are required to perform monitoring in real-time, it is necessary for the generation of alerts following that monitoring to be done as close to instantaneously as technically possible and therefore within no more than five seconds in order to be effective. For the same reason, any actions following that monitoring should be undertaken as soon as possible assuming a reasonable level of efficiency and of expenditure on systems on the part of the persons concerned.

(10) Testing facilities offered by trading venues should not pose risks to orderly trading. To that end, trading venues should be required to establish an adequate fair usage policy, ensure a strict separation between the testing environment and the production environment or permit testing only out of trading hours.

(11) Conformance testing should ensure that the most basic elements of the system or the algorithms used by members operate correctly and according to the venue's requirements, including the ability to interact as expected with the trading venue's matching logic and the adequate processing of data flows to and from the trading venue. Testing against disorderly trading conditions should be designed with a view to specifically addressing the reaction of the algorithm or strategy to conditions that may create a disorderly market.

(12) Where trading venues offer arrangements to test algorithms by offering testing symbols, their obligation to provide facilities to test against disorderly trading conditions should be deemed to be fulfilled. In order to enable members to effectively use such testing symbols, trading venues should publish the specifications and characteristics of the testing symbols to the same level of detail made publicly available for real life production contracts.

(13) Trading venues should be subject to an obligation to provide means to facilitate testing against disorderly trading conditions. However, their members should not be required to use those means. It should be considered as a sufficient guarantee if trading venues receive a declaration from their members confirming that such testing has taken place and stating the means used for that testing, but the trading venues should not be obliged to validate the adequacy of those means or the outcome of that testing.

(14) Trading venues and their members should be required to be adequately equipped to cancel unexecuted orders as an emergency measure if unexpected circumstances arise.

(15) The provision of direct electronic access (DEA) service to an indeterminate number of persons may pose a risk to the provider of that service and also to the resilience and capacity of the trading venue where the orders are sent. To address such risks, where trading venues allow sub-delegation, the DEA provider should be able to identify the different order flows from the beneficiaries of sub-delegation.

(16) Where sponsored access is permitted by a trading venue, prospective sponsored access clients should be subjected to a process of authorisation by the trading venue. Trading venues should also be allowed to decide that the provision of direct market access services by their members is subject to authorisation.

(17) Trading venues should specify the requirements to be met by their members in order for them to be allowed to provide DEA and determine the minimum standards to be met by prospective DEA clients in the due diligence process. Those requirements and standards should be adapted to the risks posed by the nature, scale and complexity of their expected trading, and the service being provided. In particular, they should include an assessment of the level of expected trading, the order volume and the type of connection offered.

(18) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the related national provisions transposing Directive 2014/65/EU apply from the same date.

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

(20) The European Securities and Markets Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council ([1]),

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

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL ORGANISATIONAL REQUIREMENTS FOR TRADING VENUES ENABLING OR ALLOWING ALGORITHMIC TRADING THROUGH THEIR SYSTEMS

Article 1

Subject matter and scope

(Article 48 of Directive 2014/65/EU)

1. This Regulation lays down detailed rules for the organisational requirements of the systems of the trading venues allowing or enabling algorithmic trading, in relation to their resilience and capacity, requirements on trading venues to ensure appropriate testing of algorithms and requirements in relation to the controls concerning DEA pursuant to Article 48(12)(a),(b) and (g) of Directive 2014/65/EU.

2. For the purposes of this Regulation, it is considered that a trading venue allows or enables algorithmic trading where order submission and order matching is facilitated by electronic means.

3. For the purposes of this Regulation, any arrangements or systems that allow or enable algorithmic trading shall be considered 'algorithmic trading systems'.

Article 2

Self-assessments of compliance with Article 48 of Directive 2014/65/EU

(Article 48 of Directive 2014/65/EU)

1. Before the deployment of a trading system and at least once a year, trading venues shall carry out a self-assessment of their compliance with Article 48 of Directive 2014/65/EU, taking into account the nature, scale and complexity of their business. The self-assessment shall include an analysis of all parameters set out in the Annex to this Regulation.

2. Trading venues shall keep a record of their self-assessment for at least five years.

Article 3

Governance of trading venues

(Article 48(1) of Directive 2014/65/EU)

1. As part of their overall governance and decision making framework, trading venues shall establish and monitor their trading systems through a clear and formalised governance arrangement setting out:

(a) their analysis of technical, risk and compliance issues when taking critical decisions.

(b) clear lines of accountability, including procedures to approve the development, deployment and subsequent updates of trading systems and to resolve problems identified when monitoring the trading systems;

(c) effective procedures for the communication of information such that instructions can be sought and implemented in an efficient and timely manner;

(d) separation of tasks and responsibilities, to ensure effective supervision of compliance by the trading venues.

2. The management body or the senior management of trading venues shall approve:

(a) the self-assessment of compliance in accordance with Article 2;

(b) measures to expand the capacity of the trading venue where necessary in order to comply with Article 11;

(c) actions to remedy any material shortcomings detected in the course of their monitoring in accordance with Articles 12 and 13 and after the periodic review of the performance and capacity of the trading systems in accordance with Article 14.

Article 4

Compliance function within the governance arrangements

(Article 48(1) of Directive 2014/65/EU)

1. Trading venues shall ensure that their compliance function is responsible for:

(a) providing clarity to all staff involved in algorithmic trading about the trading venues' legal obligations with respect to such trading;

(b) developing and maintaining the policies and procedures to ensure that the algorithmic trading systems comply with those obligations.

2. Trading venues shall ensure that their compliance staff has at least a general understanding of the way in which algorithmic trading systems and algorithms operate.

The compliance staff shall be in continuous contact with persons within the trading venue who have detailed technical knowledge of the venue's algorithmic trading systems or algorithms.

Trading venues shall also ensure that compliance staff have, at all times, direct contact with persons who have access to the functionality referred to in Article 18(2)(c) ('kill functionality') or access to that kill functionality and to those who are responsible for the algorithmic trading system.

3. Where the compliance function, or elements thereof, is outsourced to a third party, trading venues shall provide the third party with the same access to information as they would to their own compliance staff. Trading venues shall enter into an agreement with such compliance consultants, ensuring that:

(a) data privacy is guaranteed;

(b) auditing of the compliance function by internal and external auditors or by the competent authority is not hindered.

Article 5

Staffing

(Article 48(1) of Directive 2014/65/EU)

1. Trading venues shall employ a sufficient number of staff with the necessary skills to manage their algorithmic trading systems and trading algorithms and with sufficient knowledge of:

(a) the relevant trading systems and algorithms;

(b) the monitoring and testing of such systems and algorithms;

(c) the types of trading undertaken by the members, participants or clients of the trading venue ('members');

(d) the trading venue's legal obligations.

2. Trading venues shall define the necessary skills referred to in paragraph 1. The staff referred to in paragraph 1 shall have those necessary skills at the time of recruitment or shall acquire them through training after recruitment. The trading venues shall ensure that those staff's skills remain up-to-date and shall evaluate their skills on a regular basis.

3. The staff training referred to in paragraph 2 shall be tailored to the experience and responsibilities of the staff, taking into account the nature, scale and complexity of their activities.

4. The staff referred to in in paragraph 1 shall include staff with sufficient seniority to perform their functions effectively within the trading venue.

Article 6

Outsourcing and procurement

(Article 48(1) of Directive 2014/65/EU)

1. Trading venues outsourcing all or part of their operational functions in relation to the systems allowing or enabling algorithmic trading shall ensure that:

(a) the outsourcing agreement exclusively relates to operational functions and does not alter the responsibilities of the senior management and the management body;

(b) the relationship and obligations of the trading venue towards its members, competent authorities, or any third parties, such as clients of data feed services are not altered;

(c) they meet the requirements that they must comply with in order to be authorised in accordance with Title III of Directive 2014/65/EU.

2. For the purposes of this article, operational functions shall include all direct activities related to the performance and surveillance of the trading systems supporting the following elements:

(a) upstream connectivity, order submission capacity, throttling capacities and ability to balance customer order entrance through different gateways;

(b) trading engine to match orders;

(c) downstream connectivity, order and transaction edit and any other type of market data feed;

(d) infrastructure to monitor the performance of the elements referred to in points (a), (b) and (c).

3. Trading venues shall document the process of selecting the service provider to whom the operational functions are to be outsourced ('the service provider'). They shall take the necessary steps to ensure, before concluding the outsourcing agreement and throughout its duration, that the following conditions are satisfied:

(a) the service provider has the ability to perform the outsourced functions reliably and professionally and is the holder of any authorisations required by law for those purposes;

(b) the service provider properly supervises the carrying out of the outsourced functions and adequately manages risks associated with the outsourcing agreement;

(c) the outsourced services are provided in accordance with the specifications of the outsourcing agreement, which are based on pre-determined methods for assessing the standard of performance of the service provider, including metrics to measure the service provided and specifications of the requirements that shall be met;

(d) the trading venue has the necessary expertise to supervise the outsourced functions effectively and manage risks associated with the outsourcing agreement;

(e) the trading venue has the ability to take swift action if the service provider does not carry out the functions effectively and in compliance with applicable laws and regulatory requirements;

(f) the service provider discloses to the trading venue any fact that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with its legal obligations;

(g) the trading venue is able to terminate the outsourcing agreement where necessary without detriment to the continuity and quality of its services to clients;

(h) the service provider cooperates with the competent authorities of the trading venue in connection with the outsourced activities;

(i) the trading venue has effective access to data related to the outsourced activities and to the business premises of the service provider, and auditors of the trading venue and competent authorities have effective access to data related to the outsourced activities;

(j) the trading venue sets out requirements to be met by the service providers to protect confidential information relating to the trading venue and its members, and to the venue's proprietary information and software;

(k) the service provider meets the requirements referred to in point (j);

(l) the trading venue and the service provider establish, implement and maintain a contingency plan for disaster recovery and periodic testing of backup facilities, where that is necessary having regard to the operational function that has been outsourced;

(m) the outsourcing agreement specifies the obligations of the service provider in case it cannot provide its services, including the provision of the service by a substituting firm;

(n) the trading venue has access to information in relation to the business continuity arrangements referred to in Article 16 of the service provider.

4. Outsourcing agreements shall be concluded in writing and shall set out:

(a) the assignment of rights and obligations between service provider and trading venue;

(b) a clear description of:

(i) the operational functions that are outsourced;

(ii) the access of the trading venue to the books and records of the service provider;

(iii) the procedure to identify and address potential conflicts of interest;

(iv) the responsibility assumed by each party;

(v) the procedure for the amendment and termination of the agreement.

(c) the means to ensure that both the trading venue and the service provider facilitate in any way necessary the exercise by the competent authority of its supervisory powers.

5. Trading venues shall report to the competent authorities their intention to outsource operational functions in the following cases:

(a) where the service provider provides the same service to other trading venues;

(b) where critical operational functions necessary for business continuation would be outsourced, in which case the trading venues shall request a prior authorisation from the competent authority.

6. For the purposes of point (b) in paragraph 5, critical operational functions shall include those functions necessary to comply with the obligations referred to in Article 47(1)(b), (c) and (e) of Directive 2014/65/EU.

7. Trading venues shall inform the competent authorities of any outsourcing agreements not subject to prior authorisation requirement immediately after the signature of the agreement.

CHAPTER II

CAPACITY AND RESILIENCE OF TRADING VENUES

Article 7

Due diligence for members of trading venues

(Article 48(1) of Directive 2014/65/EU)

1. Trading venues shall set out the conditions for using its electronic order submission systems by its members. Those conditions shall be set having regard to the trading model of the trading venue and shall cover at least the following:

(a) pre-trade controls on price, volume and value of orders and usage of the system and post-trade controls on the trading activities of the members;

(b) qualifications required of staff in key positions within the members;

(c) technical and functional conformance testing;

(d) policy of use of the kill functionality;

(e) provisions on whether the member may give its own clients direct electronic access to the system and if so, the conditions applicable to those clients.

2. Trading venues shall undertake a due diligence assessment of their prospective members against the conditions referred to in paragraph 1 and shall set out the procedures for such assessment.

3. Trading venues shall, once a year, conduct a risk-based assessment of the compliance of their members with the conditions referred to in paragraph 1 and check whether their members are still registered as investment firms. The risk-based assessment shall take into account the scale and potential impact of trading undertaken by each member as well as the time elapsed since the member's last risk based assessment.

4. Trading venues shall, where necessary, undertake additional assessments of their members' compliance with the conditions referred to in paragraph 1 following the annual risk-based assessment laid down in paragraph 3.

5. Trading venues shall set out criteria and procedures for imposing sanctions on a non-compliant member. Those sanctions shall include suspension of access to the trading venue and loss of membership.

6. Trading venues shall for at least five years maintain records of:

(a) the conditions and procedures for the due diligence assessment;

(b) the criteria and procedures for imposing sanctions;

(c) the initial due diligence assessment of their members;

(d) the annual risk-based assessment of their members;

(e) the members that failed the annual risk-based assessment and any sanctions imposed on such members.

Article 8

Testing of the trading systems

(Article 48(1) of Directive 2014/65/EU)

1. Trading venues shall, prior to deploying or updating a trading system, make use of clearly defined development and testing methodologies which ensure at least that:

(a) the trading system does not behave in an unintended manner;

(b) the compliance and risk management controls embedded in the systems work as intended, including the automatic generation of error reports;

(c) the trading system can continue to work effectively in case of a significant increase of the number of messages managed by the system.

2. Trading venues shall be able to demonstrate at all times that they have taken all reasonable steps to avoid that their trading systems contribute to disorderly trading conditions.

Article 9

Conformance testing

(Article 48(6) of Directive 2014/65/EU)

1. Trading venues shall require their members to undertake conformance testing prior to the deployment or a substantial update of:

(a) the access to the trading venue's system;

(b) the member's trading system, trading algorithm or trading strategy.

2. The conformance testing shall ensure that the basic functioning of the member's trading system, algorithm and strategy complies with the trading venue's conditions.

3. The conformance testing shall verify the functioning of the following:

(a) the ability of the system or algorithm to interact as expected with the trading venue's matching logic and the adequate processing of the data flows from and to the trading venue;

(b) the basic functionalities such as submission, modification or cancellation of an order or an indication of interest, static and market data downloads and all business data flows;

(c) the connectivity, including the cancel on disconnect command, market data feed loss and throttles, and the recovery, including the intra-day resumption of trading and the handling of suspended instruments or non-updated market data.

4. Trading venues shall provide a conformance testing environment to their actual and prospective members which:

(a) is accessible on conditions equivalent to those applicable to the trading venue's other testing services;

(b) provides a list of financial instruments which can be tested and which are representative of every class of instruments available in the production environment;

(c) is available during general market hours or, if available only outside market hours, on a pre-scheduled periodic basis;

(d) is supported by staff with sufficient knowledge.

5. Trading venues shall deliver a report of the results of the conformance testing to the actual or prospective member only.

6. Trading venues shall require their actual and prospective members to use their conformance testing facilities.

7. Trading venues shall ensure an effective separation of the testing environment from the production environment for the conformance testing referred to in paragraphs 1 to 3.

Article 10

Testing the members' algorithms to avoid disorderly trading conditions

(Article 48(6) of Directive 2014/65/EU)

1. Trading venues shall require their members to certify that the algorithms they deploy have been tested to avoid contributing to or creating disorderly trading conditions prior to the deployment or substantial update of a trading algorithm or trading strategy and explain the means used for that testing.

2. Trading venues shall provide their members with access to a testing environment which shall consist of any of the following:

(a) simulation facilities which reproduce as realistically as possible the production environment, including disorderly trading conditions, and which provide the functionalities, protocols and structure that allow members to test a range of scenarios that they consider relevant to their activity;

(b) testing symbols as defined and maintained by the trading venue.

3. Trading venues shall ensure an effective separation of the testing environment from the production environment for the tests referred to in paragraph 1.

Article 11

Trading venues' capacity

(Article 48(1) of Directive 2014/65/EU)

1. Trading venues shall ensure that their trading systems have sufficient capacity to perform their functions without systems failures, outages or errors in matching transactions at least at the highest number of messages per second recorded on that system during the previous five years multiplied by two.

For the purposes of establishing the highest number of messages, the following messages shall be taken into account:

(a) any input, including orders and modifications or cancellations of orders;

(b) any output, including the system's response to an input, display of order book data and dissemination of post-trade flow that implies independent use of the trading system's capacity.

2. The elements of a trading system to be considered for the purposes of paragraph 1 shall be those supporting the following activities:

(a) upstream connectivity, order submission capacity, throttling capacities and ability to balance customer order entrance through different gateways;

(b) trading engine which enables the trading venue to match orders at an adequate latency;

(c) downstream connectivity, order and transaction edit and any other type of market data feed;

(d) infrastructure to monitor the performance of the abovementioned elements.

3. Trading venues shall assess whether the capacity of their trading systems remains adequate when the number of messages has exceeded the highest number of messages per second recorded on that system during the previous five years. After the assessment, the trading venues shall inform the competent authority about any measures planned to expand their capacity and the time of the implementation of such measures.

4. Trading venues shall ensure that their systems are able to cope with rising message flows without material degradation of their systems performance. In particular, the design of the trading system shall enable its capacity to be expanded within reasonable time whenever necessary.

5. Trading venues shall immediately make public and report to the competent authority and members any severe trading interruption not due to market volatility and any other material connectivity disruptions.

Article 12

General monitoring obligations

(Article 48(1) of Directive 2014/65/EU)

1. Trading venues shall ensure that their algorithmic trading systems are at all times adapted to the business which takes place through them and are robust enough to ensure continuity and regularity in the performance of the markets on which they operate, regardless of the trading model used.

2. Trading venues shall conduct real time monitoring of their algorithmic trading systems in relation to the following:

(a) their performance and their capacity referred to in Article 11(4);

(b) orders sent by their members on an individual and an aggregated basis.

In particular, trading venues shall operate throttling limits and monitor the concentration flow of orders to detect potential threats to the orderly functioning of the market.

3. Real-time alerts shall be generated within five seconds of the relevant event.

Article 13

Ongoing monitoring

(Article 48(1) of Directive 2014/65/EU)

1. Trading venues shall be able to demonstrate at all times to their competent authority that they monitor in real time the performance and usage of the elements of their trading systems referred to in Article 11(2) in relation to the following parameters:

(a) percentage of the maximum message capacity utilised per second;

(b) total number of messages managed by the trading system broken down per element of the trading system, including:

  (i) number of messages received per second;

  (ii) number of messages sent per second;

  (iii) number of messages rejected by the system per second;

(c) period of time between receiving a message in any outer gateway of the trading system and sending a related message from the same gateway after the matching engine has processed the original message;

(d) performance of the matching engine.

2. Trading venues shall take all appropriate action in relation to any issues identified in the trading system during the ongoing monitoring as soon as reasonably possible, in order of priority, and shall be able to adjust, wind down, or shut down the trading system, if necessary.

Article 14

Periodic review of the performance and capacity of the algorithmic trading systems

(Article 48(1) of Directive 2014/65/EU)

1. Trading venues shall, in the context of the self-assessment to be performed in accordance with Article 2, evaluate the performance and capacity of their algorithmic trading systems and associated processes for governance, accountability, approval and business continuity arrangements.

2. As part of the evaluation referred to in paragraph 1, trading venues shall perform stress tests where they simulate adverse scenarios to verify the performance of the hardware, software and communications and identify the scenarios under which the trading system or parts of the trading system perform their functions with systems failures, outages or errors in matching transactions.

3. Stress tests shall cover all trading phases, trading segments and types of instruments traded by the trading venue and shall simulate members' activities with the existing connectivity set-up.

4. The adverse scenarios referred to in paragraph 2 shall be based on the following:

(a) an increased number of messages received, starting at the highest number of messages managed by the trading venue's system during the previous five years;

(b) unexpected behaviour of the trading venue's operational functions;

(c) random combination of stressed and normal market conditions and unexpected behaviour of the trading venue's operational functions.

5. The evaluation of the performance and capacity of the trading venue described in paragraphs 1 to 4 shall be conducted by an independent assessor or by a department within the trading venue other than the one that holds the responsibility for the function that is being reviewed.

6. Trading venues shall take action to promptly and effectively remedy any deficiencies identified in the evaluation of the performance and capacity of the trading venue referred to in paragraphs 1 to 4 and shall keep record of the review and any remedy action taken in this respect for at least five years.

Article 15

Business continuity arrangements

(Article 48(1) of Directive 2014/65/EU)

1. Trading venues shall be able to demonstrate at all times that their systems have sufficient stability by having effective business continuity arrangements to address disruptive incidents.

2. The business continuity arrangements shall ensure that trading can be resumed within or close to two hours of a disruptive incident and that the maximum amount of data that may be lost from any IT service of the trading venue after a disruptive incident is close to zero.

Article 16

Business continuity plan

(Article 48(1) of Directive 2014/65/EU)

1. Trading venues shall, in the context of their governance and decision making framework in accordance with Article 3, establish a business continuity plan to implement effective business continuity arrangements provided for in Article 15. The business continuity plan shall set out the procedures and arrangements for managing disruptive incidents.

2. The business continuity plan shall provide for the following minimum content:

(a) a range of possible adverse scenarios relating to the operation of the algorithmic trading systems, including the unavailability of systems, staff, work space, external suppliers or data centres or loss or alteration of critical data and documents;

(b) the procedures to be followed in case of a disruptive event;

(c) the maximum time to resume the trading activity and the amount of data that may be lost in the IT system;

(d) procedures for relocating the trading system to a back-up site and operating the trading system from that site.

(e) back-up of critical business data including up-to-date information of the necessary contacts to ensure communication inside the trading venue, between the trading venue and its members and between the trading venue and clearing and settlement infrastructures;

(f) staff training on the operation of the business continuity arrangements;

(g) assignment of tasks and establishment of a specific security operations team ready to react immediately after a disruptive incident;

(h) an ongoing programme for testing, evaluation and review of the arrangements including procedures for modification of the arrangements in light of the results of that programme.

3. Clock synchronisation after a disruptive incident shall be included in the business continuity plan.

4. Trading venues shall ensure that an impact assessment identifying the risks and consequences of disruption is carried out and periodically reviewed. For this purpose, any decision by the trading venue not to take into account an identified risk of unavailability of the trading system in the business continuity plan shall be adequately documented and explicitly approved by the management body of the trading venue.

5. Trading venues shall ensure that their senior management:

(a) establishes clear objectives and strategies in terms of business continuity;

(b) allocates adequate human, technological and financial resources to pursue the objectives and strategies under point (a);

(c) approves the business continuity plan and any amendments thereof necessary as a consequence of organisational, technological and legal changes;

(d) is informed, at least on a yearly basis, of the outcome of the impact assessment or any review thereof and of any findings concerning the adequacy of the business continuity plan;

(e) establishes a business continuity function within the organisation.

6. The business continuity plan shall set out procedures to address any disruptions of outsourced critical operational functions, including where those critical operational functions become unavailable.

Article 17

Periodic review of business continuity arrangements

(Article 48(1) of Directive 2014/65/EU)

1. Trading venues shall, in the context of their self-assessment in accordance with Article 2, test on the basis of realistic scenarios the operation of the business continuity plan and verify the capability of the trading venue to recover from disruptive incidents and to resume trading as set out in Article 15(2).

2. Trading venues shall, where considered necessary, having regard to the results of the periodic review in accordance with paragraph 1, ensure that a review of their business continuity plan and arrangements is carried out by either an independent assessor or a department within the trading venue other than the one responsible for the function under review. The results of the testing activity shall be documented in writing, stored and submitted to the trading venue's senior management as well as to the operating units involved in the business continuity plan.

3. Trading venues shall ensure that testing of the business continuity plan does not interfere with normal trading activity.

Article 18

Prevention of disorderly trading conditions

(Article 48(4), (5) and (6) of Directive 2014/65/EU)

1. Trading venues shall have at least the following arrangements in place to prevent disorderly trading and breaches of capacity limits:

(a) limits per member of the number of orders sent per second;

(b) mechanisms to manage volatility;

(c) pre-trade controls.

2. For the purposes of paragraph 1, trading venues shall be able to:

(a) request information from any member or user of sponsored access on their organisational requirements and trading controls;

(b) suspend a member's or a trader's access to the trading system at the initiative of the trading venue or at the request of that member, a clearing member, the CCP, where provided for in the CCP's governing rules, or the competent authority;

(c) operate a kill functionality to cancel unexecuted orders submitted by a member, or by a sponsored access client under the following circumstances:

  (i) upon request of the member, or of the sponsored access client where the member, or client is technically unable to delete its own orders;

  (ii) where the order book contains erroneous duplicated orders;

  (iii) following a suspension initiated either by the market operator or the competent authority;

(d) cancel or revoke transactions in case of malfunction of the trading venue's mechanisms to manage volatility or of the operational functions of the trading system;

(e) balance entrance of orders among their different gateways, where the trading venue uses more than one gateway in order to avoid collapses.

3. Trading venues shall set out policies and arrangements in respect of:

(a) mechanisms to manage volatility in accordance with Article 19;

(b) pre-trade and post-trade controls used by the venue and pre-trade and post-trade controls necessary for their members to access the market;

(c) members' obligation to operate their own kill functionality;

(d) information requirements for members;

(e) suspension of access;

(f) cancellation policy in relation to orders and transactions including:

(i) timing;

(ii) procedures;

(iii) reporting and transparency obligations;

(iv) dispute resolution procedures;

(v) measures to minimise erroneous trades;

(g) order throttling arrangements including:

(i) number of orders per second on pre-defined time intervals;

(ii) equal-treatment policy among members unless the throttle is directed to individual members;

(iii) measures to be adopted following a throttling event.

4. Trading venues shall make public their policies and arrangements set out in paragraphs 2 and 3. That obligation shall not apply with regard to the specific number of orders per second on pre-defined time intervals and the specific parameters of their mechanisms to manage volatility.

5. Trading venues shall maintain full records of their policies and arrangements under paragraph 3 for a minimum period of five years.

Article 19

Mechanisms to manage volatility

(Article 48(5) of Directive 2014/65/EU)

1. Trading venues shall ensure that appropriate mechanisms to automatically halt or constrain trading are operational at all times during trading hours.

2. Trading venues shall ensure that:

(a) mechanisms to halt or constrain trading are tested before implementation and periodically thereafter when the capacity and performance of trading systems is reviewed;

(b) IT and human resources are allocated to deal with the design, maintenance and monitoring of the mechanisms implemented to halt or constrain trading;

(c) mechanisms to manage market volatility are continuously monitored.

3. Trading venues shall maintain records of the rules and parameters of the mechanisms to manage volatility and any changes thereof, as well as records of the operation, management and upgrading of those mechanisms.

4. Trading venues shall ensure that their rules of the mechanisms to manage volatility include procedures to manage situations where the parameters have to be manually overridden to ensure orderly trading.

Article 20

Pre-trade and post-trade controls

(Article 48(4) and (6) of Directive 2014/65/EU)

1. Trading venues shall carry out the following pre-trade controls adapted for each financial instruments traded on them:

(a) price collars, which automatically block orders that do not meet pre-set price parameters on an order-by-order basis;

(b) maximum order value, which automatically prevents orders with uncommonly large order values from entering the order book by reference to notional values per financial instrument;

(c) maximum order volume, which automatically prevents orders with an uncommonly large order size from entering the order book.

2. The pre-trade controls laid down in paragraph 1 shall be designed so as to ensure that:

(a) their automated application has the ability to readjust a limit during the trading session and in all its phases;

(b) their monitoring has a delay of no more than five seconds;

(c) an order is rejected once a limit is breached;

(d) procedures and arrangements are in place to authorise orders above the limits upon request from the member concerned. Such procedures and arrangements shall apply in relation to a specific order or set of orders on a temporary basis in exceptional circumstances.

3. Trading venues may establish the post-trade controls that they deem appropriate on the basis of a risk assessment of their members' activity.

Article 21

Pre-determination of the conditions to provide direct electronic access

(Article 48(7) of Directive 2014/65/EU)

Trading venues permitting DEA through their systems shall set out and publish the rules and conditions pursuant to which their members may provide DEA to their own clients. Those rules and conditions shall at least cover the specific requirements set out in Article 22 of Commission Delegated Regulation (EU) 2017/589 ([1]).

([1]) Commission Delegated Regulation (EU) 2017/589 of 19 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the organisational requirements of investment firms engaged in algorithmic trading (see page 417 of this Official Journal).

Article 22

Specific requirements for trading venues permitting sponsored access

(Article 48(7) of Directive 2014/65/EU)

1. Trading venues shall make the provision of sponsored access subject to their authorisation and shall require that firms having sponsored access are subject to at least the same controls as those referred to in Article 18(3)(b).

2. Trading venues shall ensure that sponsored access providers are at all times exclusively entitled to set or modify the parameters that apply to the controls referred to in paragraph 1 over the order flow of their sponsored access clients.

3. Trading venues shall be able to suspend or withdraw the provision of sponsored access to clients having infringed Directive 2014/65/EU, Regulations of the European Parliament and of the Council (EU) No 600/2014 ([1]) and (EU) No 596/2014 ([2]) or the trading venue's internal rules.

Article 23

Security and limits to access

(Article 48(1) of Directive 2014/65/EU)

1. Trading venues shall have in place procedures and arrangements for physical and electronic security designed to protect their systems from misuse or unauthorised access and to ensure the integrity of the data that is part of or passes through their systems, including arrangements that allow the prevention or minimisation of the risks of attacks against the information systems as defined in Article 2(a) of Directive 2013/40/EU of the European Parliament and of the Council ([3]).

2. In particular, trading venues shall set up and maintain measures and arrangements for physical and electronic security to promptly identify and prevent or minimise the risks related to:

(a) unauthorised access to their trading system or to a part thereof, including unauthorised access to the work space and data centres;

(b) system interferences that seriously hinder or interrupt the functioning of an information system by inputting data, by transmitting, damaging, deleting, deteriorating, altering or suppressing such data, or by rendering such data inaccessible;

(c) data interferences that delete, damage, deteriorate, alter or suppress data on the information system, or render such data inaccessible;

(d) interceptions, by technical means, of non-public transmissions of data to, from or within an information system, including electromagnetic emissions from an information system carrying such data.

3. Trading venues shall promptly inform the competent authority of incidents of misuse or unauthorised access by promptly providing an incident report indicating the nature of the incident, the measures adopted in response to the incident and the initiatives taken to avoid similar incidents from occurring in the future.

([1]) Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

([2]) Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

([3]) Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA (OJ L 218, 14.8.2013, p. 8).

Article 24

Entry into force

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

It shall apply from the date that appears first in the second subparagraph of Article 93(1) of Directive 2014/65/EU.

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

Done at Brussels, 14 July 2016.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Parameters to be considered in the self-assessments of the trading venues, as referred to in Article 2(1)

(a) Nature of the trading venue, in terms of:

(i) types and regulatory status of the instruments traded on the venue such as whether the trading venue trades liquid instruments subject to mandatory trading;

(ii) the role of the trading venue in the financial system such as whether the financial instruments traded on it can be traded elsewhere.

(b) Scale, in terms of potential impact of the trading venue on the fair and orderly functioning of the markets based on at least the following elements:

(i) the number of algorithms operating on the venue;

(ii) the messaging volume capacities of the venue;

(iii) the volume of trading executed on the venue;

(iv) the percentage of algorithmic trading over the total trading activity and the total turnover traded on the venue;

(v) the percentage of high-frequency trading (HFT) activity over the total trading activity and the total amount traded on the venue;

(vi) the number of its members and participants;

(vii) the number of its members providing DEA including, where applicable, the specific number of its members providing for sponsored access and the conditions under which DEA is offered or can be delegated;

(viii) the ratio of unexecuted orders to transactions as observed and determined pursuant to Commission Delegated Regulation (EU) 2017/566 ([1]);

(ix) the number and percentage of remote members;

(x) the number of co-location or proximity hosting sites provided;

(xi) the number of countries and regions in which the trading venue is undertaking business activity;

(xii) the operating conditions for mechanisms to manage volatility and whether dynamic or static trading limits are used to trigger trading halts or rejection of orders.

(c) Complexity, in terms of:

(i) the classes of financial instruments traded on the trading venue;

(ii) the trading models available in the trading venue including the different trading models operating at the same time such as auction, continuous auction and hybrid systems;

(iii) the use of pre-trade transparency waivers in combination with the trading models operated;

(iv) the diversity of trading systems employed by the venue and the extent of the control by the trading venue over setting, adjusting, testing, and reviewing its trading systems;

(v) the structure of the trading venue in terms of ownership and governance and its organisational, operational, technical, physical, and geographical set-up;

(vi) the various locations of the connectivity and technology of the trading venue;

(vii) the diversity of the physical trading infrastructure of the trading venue;

(viii) the level of outsourcing of the trading venue and in particular where any operational functions have been outsourced;

(ix) the frequency of changes to trading models, IT systems and membership of the trading venue.

([1]) Commission Delegated Regulation (EU) 2017/566 of 18 May 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the ratio of unexecuted orders to transactions in order to prevent disorderly trading conditions (see page 84 of this Official Journal).

COMMISSION DELEGATED REGULATION (EU) 2017/585

of 14 July 2016

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the data standards and formats for financial instrument reference data and technical measures in relation to arrangements to be made by the European Securities and Markets Authority and competent authorities

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 [1], and in particular the third subparagraph of Article 27(3) thereof,

Whereas:

(1) For the purpose of effective market monitoring by competent authorities, reference data for financial instruments should be reported in a consistent format and according to uniform standards.

(2) Reporting and publication of reference data in electronic, machine-readable and downloadable form and format facilitates the efficient use and exchange of that data.

(3) Promptly receiving reference data in respect of all financial instruments that are admitted to trading or that are traded on a trading venue or via a systematic internaliser, enables competent authorities and the European Securities and Markets Authority (ESMA) to ensure data quality and effective market monitoring and thus contributing to market integrity.

(4) To ensure that trading venues and systematic internalisers submit complete and accurate reference data and that competent authorities are able to effectively receive and use such data in a timely manner, appropriate submission timelines should be established. Adequate time should be allowed to identify inaccuracies or incompleteness thereof prior to publication. To ensure that reference data submitted is consistent with the corresponding information reported in accordance with Article 26 of Regulation (EU) No 600/2014, reference data in respect of a given day should be used by competent authorities to validate and exchange the reports of transactions executed on that same day.

(5) In accordance with Article 27(2) of Regulation (EU) No 600/2014, senders and recipients of reference data have to ensure the effective receipt, efficient exchange and quality of the data and its consistency with corresponding transaction reports provided in Article 26 of that Regulation. Trading venues and systematic internalisers should therefore provide complete and accurate reference data and should promptly inform competent authorities of identified incompleteness or inaccuracy in data already provided. They should also maintain adequate systems and controls for the purpose of accurate, complete and timely provision of reference data.

(6) For the purposes of efficient use and exchange of reference data, and in order to ensure that reference data are consistent with corresponding data provided in transaction reports, trading venues and systematic internalisers must base the identification of financial instruments and legal entities to be included in the reference data on uniform accepted standards. In particular, and in order to ensure that reference data are matched with corresponding transaction reports, trading venues and systematic internalisers should ensure that International Securities Identifying Number codes in accordance with ISO 6166 pertaining to the financial instruments being reported are obtained and included in the reported data.

(7) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the provisions laid down in Regulation (EU) No 600/2014 apply from the same date.

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

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

(9) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council [1],

HAS ADOPTED THIS REGULATION:

Article 1

Content, standards, form and format of reference data

Trading venues and systematic internalises shall provide competent authorities with all details of financial instrument reference data ('reference data') referred to in Table 3 of the Annex that pertain to the financial instrument concerned. All details provided shall be submitted in accordance with the standards and formats specified in Table 3 of the Annex, in an electronic and machine-readable form and in a common XML template in accordance with the ISO 20022 methodology.

Article 2

Timing for provision of reference data to competent authorities

1. Trading venues and systematic internalisers shall provide their competent authority by 21.00 CET on each day they are open for trading with the reference data for all financial instruments that are admitted to trading or that are traded, including where orders or quotes are placed through their system, before 18.00 CET on that day.

2. Where a financial instrument is admitted to trading or traded, including where an order or a quote is placed for the first time, after 18.00 CET on a day on which a trading venue or systematic internaliser is open for trading, the reference data in respect of the financial instrument concerned shall be provided by 21.00 CET on the next day on which the trading venue or systematic internaliser concerned is open for trading.

Article 3

Identification of financial instruments and legal entities

1. Prior to the commencement of trading in a financial instrument in a trading venue or systematic internaliser, the trading venue or systematic internaliser concerned shall obtain the ISO 6166 International Securities Identifying Number ('ISIN') code for the financial instrument.

2. Trading venues and systematic internalisers shall ensure that legal entity identifier codes included in the reference data provided comply with the ISO 17442:2012 standard, pertain to the issuer concerned, and are listed in the Global Legal Entity Identifier database maintained by the Central Operating Unit appointed by the the Legal Entity Identifier Regulatory Oversight Committee.

Article 4

Arrangements to ensure effective receipt of reference data

1. Competent authorities shall monitor and assess the completeness of the reference data they receive from a trading venue or systematic internaliser, and the compliance of that data with the standards and formats specified in Table 3 of the Annex.

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

2. Following receipt of reference data in respect of each day on which trading venues and systematic internalisers are open for trading, competent authorities shall notify trading venues and systematic internalisers of any incompleteness in that data and of any failure to deliver reference data by the deadlines set out in Article 2.

3. ESMA shall monitor and assess the completeness of reference data it receives from competent authorities, and compliance of the data with the standards and formats specified in Table 3 of the Annex.

4. Following receipt of reference data from competent authorities, ESMA shall notify them of any incompleteness in that data and of any failure to deliver reference data by the deadlines set out in Article 7(1).

Article 5

Arrangements to ensure the quality of the reference data

Competent authorities shall conduct quality assessments regarding the content and accuracy of the reference data received pursuant to Article 27(1) of Regulation (EU) No 600/2014 on at least a quarterly basis.

Article 6

Methods and arrangements for supplying reference data

1. Trading venues and systematic internalisers shall ensure that they provide complete and accurate reference data to their competent authorities pursuant to Articles 1 and 3.

2. Trading venues and systematic internalisers shall put methods and arrangements in place that enable them to identify incomplete or inaccurate reference data previously submitted. A trading venue or systematic internaliser detecting that submitted reference data is incomplete or inaccurate shall promptly notify its competent authority and transmit to the competent authority complete and correct relevant reference data without undue delay.

Article 7

Arrangements for efficient exchange and publication of reference data

1. Competent authorities shall transmit complete and accurate reference data to ESMA each day no later than 23.59 CET using the secure electronic communication channel established for that purpose between competent authorities and ESMA.

2. On the day following receipt of reference data in accordance with paragraph 1, ESMA shall consolidate the data received from each competent authority.

3. ESMA shall make the consolidated data available to all competent authorities by 8.00 CET on the day following its receipt using the secure electronic communication channels referred to in paragraph 1.

4. Competent authorities shall use the consolidated data in respect of a given day to validate the transaction reports in respect of transactions executed on that given day and reported pursuant to Article 26 of Regulation (EU) No 600/2014.

5. Each competent authority shall use the consolidated data for a given day to exchange transaction reports submitted on that given day in accordance with the second subparagraph of Article 26(1) of Regulation (EU) No 600/2014.

6. ESMA shall publish the reference data in an electronic, downloadable and machine-readable form.

Article 8

Entry into force and application

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

It shall apply from the date referred to in the second paragraph of Article 55 of Regulation (EU) No 600/2014.

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

Done at Brussels, 14 July 2016.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Table 1

Legend for Table 3

SYMBOL	DATA TYPE	DEFINITION
{ALPHANUM-n}	Up to n alphanumerical characters	Free text field.
{CFI_CODE}	6 characters	ISO 10962 CFI code
{COUNTRYCODE_2}	2 alphanumerical characters	2 letter country code, as defined by ISO 3166-1 alpha-2 country code
{CURRENCYCODE_3}	3 alphanumerical characters	3 letter currency code, as defined by ISO 4217 currency codes
{DATE_TIME_FORMAT}	ISO 8601 date and time format	— Date and time in the following format: YYYY-MM-DDThh:mm:ss.dddddd Z. — 'YYYY' is the year; — 'MM' is the month; — 'DD' is the day; — 'T' – means that the letter 'T' shall be used — 'hh' is the hour; — 'mm' is the minute; — 'ss.dddddd' is the second and its fraction of a second; — Z is UTC time. Dates and times shall be reported in UTC.
{DATEFORMAT}	ISO 8601 date format	Dates shall be formatted by the following format: YYYY-MM-DD.
{DECIMAL-n/m}	Decimal number of up to n digits in total of which up to m digits can be fraction digits	Numerical field for both positive and negative values. — decimal separator is '.' (full stop); — negative numbers are prefixed with '-' (minus); — values are rounded and not truncated.
{INDEX}	4 alphabetic characters	'EONA' – EONIA 'EONS' – EONIA SWAP 'EURI' – EURIBOR 'EUUS' – EURODOLLAR 'EUCH' – EuroSwiss 'GCFR' – GCF REPO 'ISDA' – ISDAFIX 'LIBI' – LIBID 'LIBO' – LIBOR 'MAAA' – Muni AAA 'PFAN' – Pfandbriefe 'TIBO' – TIBOR 'STBO' – STIBOR 'BBSW' – BBSW 'JIBA' – JIBAR 'BUBO' – BUBOR

SYMBOL	DATA TYPE	DEFINITION
		'CDOR' – CDOR 'CIBO' – CIBOR 'MOSP' – MOSPRIM 'NIBO' – NIBOR 'PRBO' – PRIBOR 'TLBO' – TELBOR 'WIBO' – WIBOR 'TREA' – Treasury 'SWAP' – SWAP 'FUSW' – Future SWAP
{INTEGER-n}	Integer number of up to n digits in total	Numerical field for both positive and negative integer values.
{ISIN}	12 alphanumerical characters	ISIN code, as defined in ISO 6166
{LEI}	20 alphanumerical characters	Legal entity identifier as defined in ISO 17442
{MIC}	4 alphanumerical characters	Market identifier as defined in ISO 10383
{FISN}	35 alphanumeric characters	FISN code as defined in ISO 18774

Table 2

Classification of commodity and emission allowances derivatives for Table 3 (Fields 35 to 37)

Base product	Sub product	Further sub product
'AGRI' -Agricultural	'GROS' – Grains and Oil Seeds	'FWHT' – Feed Wheat 'SOYB' – Soybeans 'CORN' – Maize 'RPSD' – Rapeseed 'RICE' – Rice 'OTHR' – Other
	'SOFT' – Softs	'CCOA' – Cocoa 'ROBU' – Robusta Coffee 'WHSG' – White Sugar 'BRWN' – Raw Sugar 'OTHR' – Other
	'POTA' – Potato	
	'OOLI' – Olive oil	'LAMP' – Lampante
	'DIRY' – Dairy	
	'FRST' – Forestry	

Base product	Sub product	Further sub product
	'SEAF' – Seafood	
	'LSTK' – Livestock	
	'GRIN' – Grain	'MWHT' – Milling Wheat
'NRGY' – Energy	'ELEC' – Electricity	'BSLD' -Base load 'FITR' – Financial Transmission Rights 'PKLD' – Peak load 'OFFP' – Off-peak 'OTHR' – Other
	'NGAS' – Natural Gas	'GASP' – GASPOOL 'LNGG' – LNG 'NBPG' – NBP 'NCGG' – NCG 'TTFG' – TTF
	'OILP' – Oil	'BAKK' – Bakken 'BDSL' – Biodiesel 'BRNT' – Brent 'BRNX' – Brent NX 'CNDA' – Canadian 'COND' – Condensate 'DSEL' – Diesel 'DUBA' – Dubai 'ESPO' – ESPO 'ETHA' – Ethanol 'FUEL' – Fuel 'FOIL' – Fuel Oil 'GOIL' – Gasoil 'GSLN' – Gasoline 'HEAT' – Heating Oil 'JTFL' – Jet Fuel 'KERO' – Kerosene 'LLSO' – Light Louisiana Sweet (LLS) 'MARS' – Mars 'NAPH' – Naptha 'NGLO' – NGL 'TAPI' – Tapis 'URAL' – Urals 'WTIO' – WTI
	'COAL' – Coal 'INRG' – Inter Energy 'RNNG' – Renewable energy 'LGHT' – Light ends 'DIST' – Distillates	

Base product	Sub product	Further sub product
'ENVR' – Environmental	'EMIS' – Emissions	'CERE' – CER 'ERUE' – ERU 'EUAE' – EUA 'EUAA' – EUAA 'OTHR' – Other
	'WTHR' – Weather 'CRBR' – Carbon related	
'FRGT' – 'Freight'	'WETF' – Wet	'TNKR' – Tankers
	'DRYF' – Dry	'DBCR' – Dry bulk carriers
	'CSHP' – Container ships	
'FRTL' – 'Fertilizer'	'AMMO' – Ammonia 'DAPH' – DAP (Diammonium Phosphate) 'PTSH' – Potash 'SLPH' -Sulphur 'UREA' – Urea 'UAAN' – UAN (urea and ammonium nitrate)	
'INDP' – Industrial products	'CSTR' – Construction 'MFTG' – Manufacturing	
'METL' – Metals	'NPRM' – Non Precious	'ALUM' – Aluminium 'ALUA' – Aluminium Alloy 'CBLT' – Cobalt 'COPR' – Copper 'IRON' – Iron ore 'LEAD' – Lead 'MOLY' – Molybdenum 'NASC' – NASAAC 'NICK' – Nickel 'STEL' – Steel 'TINN' – Tin 'ZINC' – Zinc 'OTHR' – Other
	'PRME' – Precious	'GOLD' – Gold 'SLVR' – Silver 'PTNM' – Platinum 'PLDM' – Palladium 'OTHR' – Other

Base product	Sub product	Further sub product
'MCEX' – Multi Commodity Exotic		
'PAPR' – Paper	'CBRD' – Containerboard 'NSPT' – Newsprint 'PULP' – Pulp 'RCVP' – Recovered paper	
'POLY' – Polypropylene	'PLST' – Plastic	
'INFL' – Inflation		
'OEST' – Official economic statistics		
'OTHC' – Other C10 as defined in Table 10.1 of Section 10 of Annex III to Commission Delegated Regulation (EU) 2017/583 [1]		
'OTHR' – Other		

[1] Commission Delegated Regulation (EU) 2017/583 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives (see page 229 of this Official Journal).

Table 3

Details to be reported as financial instrument reference data

N.	FIELD	CONTENT TO BE REPORTED	FORMAT AND STANDARDS TO BE USED FOR REPORTING
General Fields			
1	Instrument identification code	Code used to identify the financial instrument.	{ISIN}
2	Instrument full name	Full name of the financial instrument.	{ALPHANUM-350}
3	Instrument classification	Taxonomy used to classify the financial instrument. A complete and accurate CFI code shall be provided.	{CFI_CODE}
4	Commodities or emission allowance derivative indicator	Indication as to whether the financial instrument falls within the definition of commodities derivative under Article 2(1)(30) of Regulation (EU) No 600/2014 or is a derivative relating to emission allowances referred to in Section C(4) of Annex I to Directive 2014/65/EU.	'true' – Yes 'false' – No
Issuer related fields			
5	Issuer or operator of the trading venue identifier	LEI of issuer or trading venue operator.	{LEI}

N.	FIELD	CONTENT TO BE REPORTED	FORMAT AND STANDARDS TO BE USED FOR REPORTING
Venue related fields			
6	Trading venue	Segment MIC for the trading venue or systematic internaliser, where available, otherwise operating MIC.	{MIC}
7	Financial instrument short name	Short name of financial instrument in accordance with ISO 18774.	{FISN}
8	Request for admission to trading by issuer	Whether the issuer of the financial instrument has requested or approved the trading or admission to trading of its financial instrument on a trading venue.	'true'- Yes 'false' – No
9	Date of approval of the admission to trading	Date and time the issuer has approved admission to trading or trading in its financial instruments on a trading venue.	{DATE_TIME_FORMAT}
10	Date of request for admission to trading	Date and time of the request for admission to trading on the trading venue.	{DATE_TIME_FORMAT}
11	Date of admission to trading or date of first trade	Date and time of the admission to trading on the trading venue or the date and time when the instrument was first traded or an order or quote was first received by the trading venue.	{DATE_TIME_FORMAT}
12	Termination date	Where available, the date and time when the financial instrument ceases to be traded or to be admitted to trading on the trading venue.	{DATE_TIME_FORMAT}
Notional related fields			
13	Notional currency 1	Currency in which the notional is denominated. In the case of an interest rate or currency derivative contract, this will be the notional currency of leg 1 or the currency 1 of the pair. In the case of swaptions where the underlying swap is single-currency, this will be the notional currency of the underlying swap. For swaptions where the underlying is multi-currency, this will be the notional currency of leg 1 of the swap.	{CURRENCYCODE_3}
Bonds or other forms of securitised debt related fields			
14	Total issued nominal amount	Total issued nominal amount in monetary value.	{DECIMAL-18/5}
15	Maturity date	Date of maturity of the financial instrument. Field applicable to debt instruments with defined maturity.	{DATEFORMAT}
16	Currency of nominal value	Currency of the nominal value for debt instruments.	{CURRENCYCODE_3}
17	Nominal value per unit/ minimum traded value	Nominal value of each instrument. If not available, the minimum traded value shall be populated.	{DECIMAL-18/5}

N.	FIELD	CONTENT TO BE REPORTED	FORMAT AND STANDARDS TO BE USED FOR REPORTING
18	Fixed rate	The fixed rate percentage of return on a Debt instrument when held until maturity date, expressed as a percentage.	{DECIMAL-11/10} Expressed as a percentage (e.g. 7.0 means 7 % and 0.3 means 0,3 %)
19	Identifier of the index/ benchmark of a floating rate bond	Where an identifier exists.	{ISIN}
20	Name of the index/benchmark of a floating rate bond	Where no identifier exists, name of the index.	{INDEX} Or {ALPHANUM-25} – if the index name is not included in the {INDEX} list
21	Term of the index/benchmark of a floating rate bond.	Term of the index/benchmark of a floating rate bond. The term shall be expressed in days, weeks, months or years.	{INTEGER-3}+'DAYS' – days {INTEGER-3}+'WEEK' – weeks {INTEGER-3}+'MNTH' – months {INTEGER-3}+'YEAR' – years
22	Base Point Spread of the index/benchmark of a floating rate bond	Number of basis points above or below the index used to calculate a price	{INTEGER-5}
23	Seniority of the bond	Identify the type of bond: senior debt, mezzanine, subordinated or junior.	'SNDB' – Senior Debt 'MZZD' – Mezzanine 'SBOD' – Subordinated Debt 'JUND' – Junior Debt

Derivatives and Securitised Derivatives related fields

24	Expiry date	Expiry date of the financial instrument. Field applicable to derivatives with a defined expiry date.	{DATEFORMAT}
25	Price multiplier	Number of units of the underlying instrument represented by a single derivative contract. For a future or option on an index, the amount per index point. For spreadbets the movement in the price of the underlying instrument on which the spreadbet is based.	{DECIMAL-18/17}
26	Underlying instrument code	ISIN code of the underlying instrument. For ADRs, GDRs and similar instruments, the ISIN code of the financial instrument on which those instruments are based. For convertible bonds, the ISIN code of the instrument in which the bond can be converted. For derivatives or other instruments which have an underlying, the underlying instrument ISIN code, when the underlying is admitted to trading, or traded on a trading venue. Where the underlying is a stock dividend, then the ISIN code of the related share entitling the underlying dividend.	{ISIN}

N.	FIELD	CONTENT TO BE REPORTED	FORMAT AND STANDARDS TO BE USED FOR REPORTING
		For Credit Default Swaps, the ISIN of the reference obligation shall be provided. In case the underlying is an Index and has an ISIN, the ISIN code for that index. Where the underlying is a basket, include the ISINs of each constituent of the basket that is admitted to trading or is traded on a trading venue. Fields 26 and 27 shall be reported as many times as necessary to list all instruments in the basket.	
27	Underlying issuer	In case the instrument is referring to an issuer, rather than to one single instrument, the LEI code of the Issuer.	{LEI}
28	Underlying index name	In case the underlying is an Index, the name of the index.	{INDEX} Or {ALPHANUM-25} – if the index name is not included in the {INDEX} list
29	Term of the underlying index	In case the underlying is an index, the term of the index.	{INTEGER-3}+'DAYS' – days {INTEGER-3}+'WEEK' – weeks {INTEGER-3}+'MNTH' – months {INTEGER-3}+'YEAR' – years
30	Option type	Indication as to whether the derivative contract is a call (right to purchase a specific underlying asset) or a put (right to sell a specific underlying asset) or whether it cannot be determined whether it is a call or a put at the time of execution. In case of swaptions it shall be: — 'Put', in case of receiver swaption, in which the buyer has the right to enter into a swap as a fixed-rate receiver. — 'Call', in case of payer swaption, in which the buyer has the right to enter into a swap as a fixed-rate payer. In case of Caps and Floors it shall be: — 'Put', in case of a Floor. — 'Call', in case of a Cap. Field only applies to derivatives that are options or warrants.	'PUTO' – Put 'CALL' – Call 'OTHR' – where it cannot be determined whether it is a call or a put
31	Strike price	Predetermined price at which the holder will have to buy or sell the underlying instrument, or an indication that the price cannot be determined at the time of execution. Field applicable to options or warrants, where strike price can be determined at the time of execution. Where price is currently not available but pending, the value shall be 'PNDG'. Where strike price is not applicable the field shall not be populated.	{DECIMAL-18/13} in case the price is expressed as monetary value {DECIMAL-11/10} in case the price is expressed as percentage or yield {DECIMAL-18/17} in case the price is expressed as basis points 'PNDG' in case the price is not available
32	Strike price currency	Currency of the strike price	{CURRENCYCODE_3}

N.	FIELD	CONTENT TO BE REPORTED	FORMAT AND STANDARDS TO BE USED FOR REPORTING
33	Option exercise style	Indication as to whether the option may be exercised only at a fixed date (European and Asian style), a series of pre-specified dates (Bermudan) or at any time during the life of the contract (American style). This field is only applicable for options, warrants and entitlement certificates.	'EURO' – European 'AMER' – American 'ASIA' – Asian 'BERM' – Bermudan 'OTHR' – Any other type
34	Delivery type	Indication as to whether the financial instrument is settled physically or in cash. Where delivery type cannot be determined at time of execution, the value shall be 'OPTL'. This field is only applicable for derivatives.	'PHYS' – Physically Settled 'CASH' – Cash settled 'OPTL' – Optional for counterparty or when determined by a third party

Commodity and emission allowances derivatives

35	Base product	Base product for the underlying asset class as specified in the classification of commodities and emission allowances derivatives table.	Only values in the 'Base product' column of the classification of commodities derivatives table are allowed.
36	Sub product	The Sub Product for the underlying asset class as specified in the classification of commodities and emission allowances derivatives table. Field requires a Base product.	Only values in the 'Sub product' column of the classification of commodities derivatives table are allowed are allowed.
37	Further sub product	The Further sub product for the underlying asset class as specified in the classification of commodities and emission allowances derivatives table. Field requires a Sub product.	Only values in the 'Further sub product' of the classification of commodities derivatives table are allowed.
38	Transaction type	Transaction type as specified by the trading venue	'FUTR' – Futures 'OPTN' – Options 'TAPO' – TAPOS 'SWAP' – SWAPS 'MINI' – Minis 'OTCT' – OTC 'ORIT' – Outright 'CRCK' – Crack 'DIFF' – Differential 'OTHR' – Other
39	Final price type	Final price type as specified by the trading venue	'ARGM' – Argus/McCloskey 'BLTC' – Baltic 'EXOF' – Exchange 'GBCL' – GlobalCOAL 'IHSM' – IHS McCloskey 'PLAT' – Platts 'OTHR' – Other

N.	FIELD	CONTENT TO BE REPORTED	FORMAT AND STANDARDS TO BE USED FOR REPORTING
Interest rate derivatives			
— The fields in this section shall only be populated for instruments that have non-financial instrument of type interest rates as underlying.			
40	Reference rate	Name of the reference rate	{INDEX} Or {ALPHANUM-25}- if the reference rate is not included in the {INDEX} list
41	IR Term of contract	If the asset class is Interest Rates, this field states the term of the contract. The term shall be expressed in days, weeks, months or years.	{INTEGER-3}+'DAYS' – days {INTEGER-3}+'WEEK' – weeks {INTEGER-3}+'MNTH' – months {INTEGER-3}+'YEAR' – years
42	Notional currency 2	In the case of multi-currency or cross-currency swaps the currency in which leg 2 of the contract is denominated. For swaptions where the underlying swap is multi-currency, the currency in which leg 2 of the swap is denominated.	{CURRENCYCODE_3}
43	Fixed rate of leg 1	An indication of the fixed rate of leg 1 used, if applicable.	{DECIMAL -11/10} Expressed as a percentage (e.g. 7.0 means 7 % and 0.3 means 0,3 %)
44	Fixed rate of leg 2	An indication of the fixed rate of leg 2 used, if applicable	{DECIMAL -11/10} Expressed as a percentage (e.g. 7.0 means 7 % and 0.3 means 0,3 %)
45	Floating rate of leg 2	An indication of the interest rate used if applicable.	{INDEX} Or {ALPHANUM-25} – if the reference rate is not included in the {INDEX} list
46	IR Term of contract of leg 2	An indication of the reference period of the interest rate, which is set at predetermined intervals by reference to a market reference rate. The term shall be expressed in days, weeks, months or years.	{INTEGER-3}+'DAYS' – days {INTEGER-3}+'WEEK' – weeks {INTEGER-3}+'MNTH' – months {INTEGER-3}+'YEAR' – years
Foreign exchange derivatives			
— The fields in this section shall only be populated for instruments that have non-financial instrument of type foreign exchange as underlying.			
47	Notional currency 2	Field shall be populated with the underlying currency 2 of the currency pair (the currency one will be populated in the notional currency 1 field 13).	{CURRENCYCODE_3}
48	FX Type	Type of underlying currency	'FXCR' – FX Cross Rates 'FXEM' – FX Emerging Markets 'FXMJ' – FX Majors

COMMISSION DELEGATED REGULATION (EU) 2017/586

of 14 July 2016

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the exchange of information between competent authorities when cooperating in supervisory activities, on-the-spot verifications and investigations

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instrument amending Directive 2002/92/EC and Directive 2011/61/EU [1], and in particular, the third subparagraph of Article 80(3),

Whereas:

(1) The information to be exchanged in accordance with Directive 2014/65/EU should be of a sufficient scope and nature to allow competent authorities to discharge their supervisory duties and functions effectively. Consequently, it is necessary for competent authorities to be able to exchange information that enables them to supervise the conduct of natural and legal persons in their respective jurisdictions.

(2) In order for competent authorities to be able to effectively monitor investment firms, market operators and data service providers, it is important for them to exchange relevant information on: general background information and constituting documents (including national incorporation documents, or other documents that provide an insight into the structure and operational activities of an entity); information relating to the authorisation process; information relating to the management bodies of investment firms, including for example information that can verify the suitability of members of the management body such as their work experience (including their curriculum vitae stating relevant education and training, previous professional experience and professional activities or other related functions currently required for the purposes of Directive 2014/65/EU); information on their reputation; information on shareholders and members with qualified holdings such as background corporate information and reputation; information on a firm's authorisation including information on those firms granted or refused authorisation; information on the organisation requirements of regulated markets; information on the authorisation of data service providers; information on waivers granted or refused to categorise clients as 'professional'; information on sanctions and enforcement action; information on operational activities and relevant conduct and compliance history.

(3) It is important to enable competent authorities to also exchange relevant information for the effective monitoring of credit institutions where they provide investment services or perform investment activities.

(4) In order to discharge their supervisory duties in a comprehensive manner, it is also important that competent authorities be able to exchange relevant information they may hold, including information on investment firms, market operators, data service reporting providers, credit institutions, financial counterparties, members or participants of regulated markets, multilateral trading facilities or persons exempt under Article 2 or 3 of Directive 2014/65/EU. In addition, competent authorities should be able to exchange relevant background information on persons who provide investment services without the required authorisation under Directive 2014/65/EU.

(5) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the related national provisions transposing Directive 2014/65/EU apply from the same date.

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

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

(7) ESMA has requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council [1].

(8) ESMA did not conduct public consultations on these draft regulatory technical standards as these relate to the exchange of information between competent authorities when cooperating in supervisory activities, on-the-spot verifications and investigations and this was considered disproportionate in relation to the scope and impact,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

The information to be exchanged between the competent authority to whom a request for cooperation is made (requested authority) and the competent authority who makes a request for cooperation (requesting authority) under Article 80 of Directive 2014/65/EU may concern the following entities:

(a) an investment firm, a market operator or a data reporting service provider authorised in accordance with Directive 2014/65/EU;

(b) a credit institution authorised under Directive 2013/36/EU of the European Parliament and of the Council [2] providing investment services or performing investment activities;

(c) any other natural or legal person, or any unincorporated entity or association, not specified in points (a) and (b).

Article 2

Information to be exchanged in relation to investment firms, market operators or data reporting service providers

1. Where a competent authority decides to request cooperation it may request the following information in relation to entities mentioned in point (a) of Article 1:

(a) general information and documents relating to the constitution of the entities:

  (i) information concerning the name of the entities, address of their head and/or registered office, contact details, the national identification number of the entity and excerpts from nationally held registers;

  (ii) information concerning constitutional documents that the entities are required to have under their relevant national legislation;

(b) information as specified in Article 7(4) of Directive 2014/65/EU relating to the authorisation process of an entity where such information is not present on the ESMA public register set-up pursuant to Article 8(1)(k) of Regulation (EU) No 1095/2010;

(c) information relating to members of the management body, or persons effectively directing the business, of the entities, which have been provided as part of the authorisation process including:

  (i) their names, personal identification number (where available in that Member State), place of residence and contact details;

  (ii) information on the position to which such persons are appointed within the entity;

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

[2] 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).

(iii) an organisational chart of the management structure or identification of persons responsible for the activities carried out under Directive 2014/65/EU by the entity;

(d) information necessary to assess the suitability of members of the management body or persons effectively directing the business of the entities, including:

(i) information relating to the work experience;

(ii) information relating to the reputation of a member or person including:

— information on criminal records, or criminal investigations or proceedings, relevant civil and administrative cases, and disciplinary actions (including disqualification as a company director or bankruptcy, insolvency or similar procedures), through an official certificate if available, or through another equivalent document,

— information on open investigations, enforcement proceedings, sanctions, or other enforcement decision against a person,

— refusal of registration, authorisation, membership or licence to carry out a trade, business or profession; the withdrawal, revocation or termination of such a registration, authorisation, membership or licence, or exclusion by a regulatory or government body or by a professional body or association,

— dismissal from a position of employment or from a position of trust, fiduciary relationship or similar;

(e) information on shareholders and members with qualifying holdings including:

(i) the list of persons with a qualifying holding;

(ii) for shareholders who are members of a corporate group, an organisational chart of the corporate group indicating the activities carried by each firm within the group and identifying any firms or individuals within the group operating under the provisions set out in Directive 2014/65/EU;

(iii) information and documents necessary to assess their suitability;

(f) information on the organisational structure, operating conditions and compliance with requirements set out in Directive 2014/65/EU including:

(i) information on compliance and risk management policies and procedures that are required under Directive 2014/65/EU in relation to entities and their tied agents;

(ii) compliance records of the entities including information held by competent authorities;

(iii) information on organisational and administrative arrangements designed to prevent conflicts of interest as defined in Article 23 of Directive 2014/65/EU;

(iv) in the case of investment firms which manufacture financial instruments for sale to clients, information on the process for the approval of each financial instrument including information on the target market and distribution strategy as well as information about its review policy arrangements;

(v) with respect to investment firms, information relating to their obligations pursuant to Directive 97/9/EC of the European Parliament and of the Council ([1]);

(vi) information that can be requested from investment firms in accordance with the activities and requirements specified in Article 16 of Directive 2014/65/EU;

(g) information on the authorisation of investment firms granted in accordance with Articles 5 to 10 of Directive 2014/65/EU;

(h) information on the authorisation of regulated markets and data reporting service providers granted respectively in accordance with Articles 44, 45 and 46 as well as Articles 59 to 63 of Directive 2014/65/EU;

([1]) Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes (OJ L 84, 26.3.1997, p. 22).

(i) information on waivers granted or refused in relation to clients who may be treated as professionals on request as set out in Annex II of Directive 2014/65/EU;

(j) information on sanctions and enforcement action imposed against the entities including:

(i) information on sanctions levied against an entity, or against the member of the management body or persons effectively directing the business of the entity;

(ii) information relating to breaches by entities, or by the persons fulfilling management positions;

(iii) information on criminal records, criminal or administrative investigations or proceedings, relevant civil and administrative cases and disciplinary actions, through an official certificate if available, or another equivalent document;

(k) information related to the operational activities and relevant conduct and compliance history related to the subject of the request including:

(i) information related to the business activities of an entity, in accordance with Directive 2014/65/EU;

(ii) internal minutes or records kept by firms and branches for inspection by the relevant competent authority;

(l) any other information necessary for cooperating in supervisory activities, on-the-spot verifications or investigations referred to in Article 80(1) of Directive 2014/65/EU.

2. Where a Member State requires that a third-country firm establishes a branch pursuant to Article 39(1) and (2) of Directive 2014/65/EU, the competent authority of another Member State may request from the authority competent for the supervision of that branch, information obtained from the home state authority in relation to the authorisation of the opening of the branch, including:

(a) information relevant for monitoring compliance with Regulation (EU) No 600/2014 of the European Parliament and of the Council [1] or provisions and measures adopted for the transposition of Directive 2014/65/EU;

(b) response of the third country investment firm's management body, or persons effectively directing the business of the entity, to questions from the competent authority.

Article 3

Information to be exchanged in relation to credit institutions

Where a competent authority decides to request cooperation it may request the following information in relation to entities mentioned in point (b) of Article 1:

(a) information referred to in points (a), (f), (i) and (j) of Article 2(1);

(b) any further information relevant for monitoring credit institutions' compliance with Regulation (EU) No 600/2014 or provisions and measures adopted for the transposition of Directive 2014/65/EU;

(c) any other information necessary for cooperating in supervisory activities, on-the-spot verifications or investigations referred to in Article 80(1) of Directive 2014/65/EU.

Article 4

Information to be exchanged in relation to persons referred to in point (c) of Article 1

1. Where a competent authority decides to request cooperation in relation to natural persons referred to in point (c) of Article 1 it may request at least the person's name, date and place of birth, personal national identification number, address, and contact details.

[1] Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

2. In relation to legal persons, or any unincorporated entity or association, referred to in point (c) of Article 1, a competent authority may also request at least documents certifying the business name and registered address of its head office, and postal address if different, contact details and its national identification number; registration of legal form in accordance with relevant national legislation; a complete list of persons who effectively direct the business, their name, date and place of birth, address, contact details, their national identification number.

3. In addition, competent authorities may request the following information to be exchanged in relation to persons providing investment services or activities without the required authorisation or registration in accordance with Directive 2014/65/EU:

(a) details of the investment services and activities that are being provided;

(b) details of any persons known to have been contacted by the individual or legal person in relation to the provision of investment services or the performance of investment activities without the required authorisation or registration.

4. In any case, competent authorities may request information in relation to persons referred to in point (c) of Article 1 obtained in accordance with, and relevant for monitoring compliance with Regulation (EU) No 600/2014 or provisions adopted in implementation of Directive 2014/65/EU or may request any other information necessary for cooperating in supervisory activities, on-the-spot verifications or investigations, referred to in Article 80(1) of Directive 2014/65/EU.

Article 5

Entry into force and application

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

It shall apply from the date that appears first in the second subparagraph of Article 93(1) of Directive 2014/65/EU.

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

Done at Brussels, 14 July 2016.

For the Commission

The President

Jean-Claude JUNCKER

COMMISSION DELEGATED REGULATION (EU) 2017/587

of 14 July 2016

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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

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

Whereas:

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

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

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

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

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

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

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

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

(8) The specific methodology and data necessary to perform calculations for the purpose of specifying the transparency regime applicable to equity and equity-like financial instruments should be applied in conjunction with the common elements with regard to the content and frequency of data requests to be addressed to trading venues, approved publication arrangements (APAs) and consolidated tape providers (CTPs) for the purposes of transparency and other calculations laid down in Commission Delegated Regulation (EU) 2017/577 ([1]).

(9) The pre-trade and post-trade transparency regime established by Regulation (EU) No 600/2014 should be appropriately calibrated to the market and applied in a uniform manner throughout the Union. In particular, a static determination of the most relevant markets in terms of liquidity, the sizes of orders that are large in scale and standard market sizes would not adequately capture regular modifications of trading patterns affecting equity and equity-like instruments. Therefore, it is essential to lay down the necessary calculations to be performed, including the periods of time to be taken into account when making calculations and the periods of time during which the results of these calculations are applicable, methods of calculation as well as the identification of the competent authority responsible for performing the calculations in accordance with the determination of the relevant competent authority for the purpose of Article 26 of Regulation (EU) No 600/2014 as specified in Commission Delegated Regulation (EU) 2017/571 ([2]). In this respect, to avoid market distortion effects, the calculation periods should ensure that the relevant thresholds of the regime are updated at appropriate intervals to reflect market conditions. It is also appropriate to provide for the centralised publication of the results of the calculations so that they are made available to all financial market participants and competent authorities in the Union in a single place and in a user-friendly manner. To that end, competent authorities should notify ESMA of the results of their calculations and ESMA should publish those calculations on its website.

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

(11) For ETFs, and contrary to shares, depositary receipts, certificates and other similar financial instruments, the average daily turnover does not appear as an appropriate proxy for the calibration of the large-in-scale thresholds. For these instruments, the measure of actual liquidity is not adequately captured by the average daily turnover since the creation and redemption mechanisms inherent to ETFs allow to access additional and non-displayed liquidity. In order to reduce the risk of circumvention, it is also important that two ETFs on the

([1]) Commission Delegated Regulation (EU) 2017/577 of 13 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the volume cap mechanism and the provision of information for the purposes of transparency and other calculations (see page 174 of this Official Journal).

([2]) Commission Delegated Regulation (EU) 2017/571 of 2 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services providers (see page 126 of this Official Journal).

same underlying have the same large-in-scale thresholds regardless of whether they have similar average daily turnover or not. Therefore, a single large-in-scale threshold for all ETFs should be established which should apply regardless of their underlying or of their liquidity.

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

(13) Investment firms should make public the details of transactions executed outside a trading venue through an APA. Therefore, the way investment firms report the details of the transactions to APAs should be laid down and those provisions should apply in conjunction with the requirements applicable to APAs specified in Delegated Regulation (EU) 2017/571.

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

(15) In respect of transactions executed outside the rules of a trading venue, it is essential to clarify which investment firm is to make public a transaction in cases where both parties to the transaction are investment firms established in the Union in order to ensure the publication of transactions without duplication. Therefore, the responsibility to make a transaction public should always fall on the selling investment firm unless only one of the counterparties is a systematic internaliser and it is the buying firm.

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

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

(18) To ensure that the new transparency regulatory regime can operate effectively, it is appropriate to provide for the collection of certain data and for an early publication of the most relevant markets in terms of liquidity, the sizes of orders that are large in scale, the deferred publication thresholds and standard market sizes.

(19) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions of this Regulation and the provisions laid down in Regulation (EU) No 600/2014 apply from the same date. However, to ensure that the new transparency regulatory regime can operate effectively, certain provisions of this Regulation should apply from the date of its entry into force.

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

(21) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council [1],

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL

Article 1

Definitions

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

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

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

(3) 'securities financing transaction' means a securities financing transaction as defined in Article 3(6) of Delegated Regulation (EU) 2017/577;

(4) 'systematic internaliser' means an investment firm as defined in Article 4(1)(20) of Directive 2014/65/EU of the European Parliament and of the Council [2].

Article 2

Transactions not contributing to the price discovery process

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

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

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

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

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

(d) the transaction is executed by a management company as defined in Article 2(1)(b) of Directive 2009/65/EC of the European Parliament and of the Council [3], or an alternative investment fund manager as defined in Article 4(1)(b) of Directive 2011/61/EU of the European Parliament and of the Council [4], which transfers the beneficial ownership of shares from one collective investment undertaking to another and where no investment firm is a party to the transaction;

---

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

[2] 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).

[3] 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).

[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).

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

(f) the purpose of the transaction is to transfer shares as collateral in bilateral transactions or in the context of central counterparty (CCP) margin or collateral requirements or as part of the default management process of a CCP;

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

(h) the transaction is a securities financing transaction;

(i) the transaction is carried out under the rules or procedures of a trading venue, a CCP or a central securities depository to effect a buy-in of unsettled transactions in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council ([1]).

CHAPTER II

PRE-TRADE TRANSPARENCY

Section 1

Pre-trade transparency for trading venues

Article 3

Pre-trade transparency obligations

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

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

2. The transparency requirements referred to in paragraph 1 shall also apply to any 'actionable indication of interest' as defined in Article 2(1)(33) and pursuant to Article 8 of Regulation (EU) No 600/2014.

Article 4

Most relevant market in terms of liquidity

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

1. For the purposes of Article 4(1)(a) of Regulation (EU) No 600/2014, the most relevant market in terms of liquidity for a share, depositary receipt, ETF, certificate or other similar financial instrument shall be considered to be the trading venue with the highest turnover within the Union for that financial instrument.

2. For the purpose of determining the most relevant markets in terms of liquidity in accordance with paragraph 1, competent authorities shall calculate the turnover in accordance with the methodology set out in Article 17(4) in respect of each financial instrument for which they are the competent authority and for each trading venue where that financial instrument is traded.

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

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

([1]) Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).

(b) it shall cover either the preceding calendar year or, where applicable, the period of the preceding calendar year during which the financial instrument was admitted to trading or traded on a trading venue and was not suspended from trading.

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

5. Paragraphs 2 and 3 shall not apply to shares, depositary receipts, ETFs, certificates and other similar financial instruments which were first admitted to trading or first traded on a trading venue four weeks or less before the end of the preceding calendar year.

Article 5

Specific characteristics of negotiated transactions

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

A negotiated transaction in shares, depositary receipts, ETF, certificates or other similar financial instruments shall be considered to be a transaction which is negotiated privately but reported under the rules of a trading venue and where any of the following circumstances applies:

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

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

(ii) both are dealing on own account;

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

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

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

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

Article 6

Negotiated transactions subject to conditions other than the current market price

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

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

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

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

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

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

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

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

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

(h) the transaction is a securities financing transaction;

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

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

Article 7

Orders that are large in scale

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

1. An order in respect of a share, depositary receipt, certificate or other similar financial instrument shall be considered to be large in scale where the order is equal to or larger than the minimum size of orders set out in Tables 1 and 2 of Annex II.

2. An order in respect of an ETF shall be considered to be large in scale where the order is equal to or larger than EUR 1 000 000.

3. For the purpose of determining orders that are large in scale, competent authorities shall calculate, in accordance with paragraph 4, the average daily turnover in respect of shares, depositary receipts, certificates and other similar financial instruments traded on a trading venue.

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

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

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

Paragraphs 3 and 4 shall not apply to shares, depositary receipts, certificates and other similar financial instruments first admitted to trading or first traded on a trading venue four weeks or less before the end of the preceding calendar year.

5. Unless the price or other relevant conditions for the execution of an order are amended, the waiver referred to in Article 4(1) of Regulation (EU) No 600/2014 shall continue to apply in respect of an order that is large in scale when entered into an order book but that, following partial execution, falls below the threshold applicable for that financial instrument as determined in accordance with paragraphs 1 and 2.

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

7. The estimated average daily turnover referred to in paragraph 6 shall be used for the calculation of orders that are large in scale during a six-week period following the date that the share, depositary receipt, certificate or other similar financial instrument was admitted to trading or first traded on a trading venue.

8. The competent authority shall calculate and ensure publication of the average daily turnover based on the first four weeks of trading before the end of the six-week period referred to in paragraph 7.

9. The average daily turnover referred to in paragraph 8 shall be used for the calculation of orders that are large in scale and until an average daily turnover calculated in accordance with paragraph 3 applies.

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

Article 8

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

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

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

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

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

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

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

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

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

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

Section 2

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

Article 9

Arrangements for the publication of a firm quote

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

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

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

(b) the arrangement complies with technical arrangements equivalent to those specified for approved publication arrangements (APAs) in Article 15 of Delegated Regulation (EU) 2017/571 that facilitate the consolidation of the data with similar data from other sources;

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

(d) the arrangement includes the publication of the time the quotes have been entered or amended in accordance with Article 50 of Directive 2014/65/EU as specified in Commission Delegated Regulation (EU) 2017/574 ([1]).

Article 10

Prices reflecting prevailing market conditions

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

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

Article 11

Standard market size

(Article 14(2) and (4) of Regulation (EU) No 600/2014)

1. The standard market size for shares, depositary receipts, ETFs, certificates and other similar financial instruments for which there is a liquid market shall be determined on the basis of the average value of transactions for each financial instrument calculated in accordance with paragraphs 2 and 3 and in accordance with Table 3 of Annex II.

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

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

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

(b) it shall cover either the preceding calendar year or, where applicable, the period of the preceding calendar year during which the financial instrument was admitted to trading or traded on a trading venue and was not suspended from trading;

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

Paragraphs 2 and 3 shall not apply to shares, depositary receipts, ETFs, certificates and other similar financial instruments first admitted to trading or first traded on a trading venue four weeks or less before the end of the preceding calendar year.

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

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

([1]) Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks (see page 148 of this Official Journal).

6. The competent authority shall calculate and ensure publication of the average value of transactions based on the first four weeks of trading before the end of the six-week period referred to in paragraph 5.

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

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

CHAPTER III

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

Article 12

Post-trade transparency obligations

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

1. Market operators and investment firms operating a trading venue and investment firms trading outside the rules of a trading venue shall make public the details of each transaction by applying reference Tables 2, 3 and 4 of Annex I.

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

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

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

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

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

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

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

Article 13

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

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

The obligation in Article 20(1) of Regulation (EU) No 600/2014 shall not apply to the following:

(a) excluded transactions listed under Article 2(5) of Commission Delegated Regulation (EU) 2017/590 [1] where applicable;

[1] Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities (see page 449 of this Official Journal).

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

(c) give-up transactions and give-in transactions;

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

Article 14

Real time publication of transactions

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

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

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

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

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

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

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

3. Information relating to a portfolio trade shall be made public with respect to each constituent transaction as close to real-time as is technically possible, having regard to the need to allocate prices to particular shares, depositary receipts, ETFs, certificates and other similar financial instruments. Each constituent transaction shall be assessed separately for the purposes of determining whether deferred publication in respect of that transaction is applicable pursuant to Article 15.

Article 15

Deferred publication of transactions

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

1. Where a competent authority authorises the deferred publication of the details of transactions pursuant to Article 7(1) of Regulation (EU) No 600/2014, market operators and investment firms operating a trading venue and investment firms trading outside a trading venue shall make public each transaction no later than at the end of the relevant period set out in Tables 4, 5 and 6 of Annex II provided that the following criteria are satisfied:

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

(b) the size of the transaction is equal to or exceeds the relevant minimum qualifying size specified in Tables 4, 5 or 6 of Annex II, as appropriate.

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

3. For transactions for which deferred publication is permitted until the end of the trading day as specified in Tables 4, 5 and 6 of Annex II, investment firms trading outside a trading venue and market operators and investment firms operating a trading venue shall make public the details of those transactions either:

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

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

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

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

Article 16

References to trading day and daily trading hours

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

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

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

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

CHAPTER IV

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

Article 17

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

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

1. At the latest 14 months after the date of the entry into application of Regulation (EU) No 600/2014 and by 1 March of each year thereafter, competent authorities shall, in relation to each financial instrument for which they are the competent authority, collect the data, calculate and ensure publication of the following information:

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

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

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

2. Competent authorities, market operators and investment firms including investment firms operating a trading venue shall use the information published in accordance with paragraph 1 for the purposes of points (a) and (c) of Article 4(1) and paragraphs 2 and 4 of Article 14 of Regulation (EU) No 600/2014, for a period of 12 months from 1 April of the year in which the information is published.

Where the information referred to in the first subparagraph is replaced by new information pursuant to paragraph 3 during the 12-month period referred to therein, competent authorities, market operators and investment firms including investment firms operating a trading venue shall use that new information for the purposes of points (a) and (c) of Article 4(1) and paragraphs 2 and 4 of Article 14 of Regulation (EU) No 600/2014.

3. Competent authorities shall ensure that the information to be made public pursuant to paragraph 1 is updated on a regular basis for the purposes of Regulation (EU) No 600/2014 and that all changes to a specific share, depositary receipt, ETF, certificate or other similar financial instrument which significantly affects the previous calculations and the published information are included in such updates.

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

5. After the end of the trading day, but before the end of the day, trading venues shall submit to competent authorities the details set out in Tables 1 and 2 of Annex III whenever the financial instrument is admitted to trading or first traded on that trading venue or whenever those previously submitted details have changed.

Article 18

Reference to competent authorities

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

The competent authority for a specific financial instrument responsible for performing the calculations and ensuring the publication of the information referred to in Articles 4, 7, 11 and 17 shall be the competent authority of the most relevant market in terms of liquidity in Article 26 of Regulation (EU) No 600/2014 and specified in Article 16 of Delegated Regulation (EU) 2017/571.

Article 19

Transitional provisions

1. By way of derogation from Article 17(1), competent authorities shall collect the data, calculate and ensure publication immediately upon their completion in accordance with the following timeframe:

(a) where the date on which financial instruments are traded for the first time on a trading venue within the Union is a date not less than 10 weeks prior to the date of application of Regulation (EU) No 600/2014, competent authorities shall publish the result of the calculations no later than four weeks prior to the date of application of Regulation (EU) No 600/2014;

(b) where the date on which financial instruments are traded for the first time on a trading venue within the Union is a date falling within the period commencing 10 weeks prior to the date of application of Regulation (EU) No 600/2014 and ending on the day preceding the date of application of Regulation (EU) No 600/2014, competent authorities shall publish the result of the calculations no later than the date of application of Regulation (EU) No 600/2014.

2. The calculations referred to in paragraph 1 shall be performed as follows:

(a) where the date on which financial instruments are traded for the first time on a trading venue within the Union is a date not less than 16 weeks prior to the date of application of Regulation (EU) No 600/2014, the calculations shall be based on data available for a 40-week reference period commencing 52 weeks prior to the date of application of Regulation (EU) No 600/2014;

(b) where the date on which financial instruments are traded for the first time on a trading venue within the Union is a date within the period commencing 16 weeks prior to the date of application of Regulation (EU) No 600/2014 and ending 10 weeks prior to the date of application of Regulation (EU) No 600/2014, the calculations shall be based on data available for the first four week trading period of that financial instrument;

(c) where the date on which financial instruments are traded for the first time on a trading venue within the Union is a date falling within the period commencing 10 weeks prior to the date of application of Regulation (EU) No 600/2014 and ending on the day preceding the date of application of Regulation (EU) No 600/2014, the calculations shall be based on the previous trading history of those financial instruments or other financial instruments considered to have similar characteristics to those financial instruments.

3. Competent authorities, market operators and investment firms including investment firms operating a trading venue shall use the information published in accordance with paragraph 1 for the purposes of points (a) and (c) of Article 4(1) and paragraphs 2 and 4 of Article 14 of Regulation (EU) No 600/2014 for a period of 15 months commencing on the date of application of that Regulation.

4. During the period referred to in paragraph 3, competent authorities shall ensure the following with regard to the financial instruments referred to in points (b) and (c) of paragraph 2:

(a) that the information published in accordance with paragraph 1 remains appropriate for the purposes of points (a) and (c) of Article 4(1) and paragraphs 2 and 4 of Article 14 of Regulation (EU) No 600/2014;

(b) that the information published in accordance with paragraph 1 is updated on the basis of a longer trading period and a more comprehensive trading history, where necessary.

Article 20

Entry into force and application

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

It shall apply from 3 January 2018.

However Article 19 shall apply from the date of entry into force of this Regulation.

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

Done at Brussels, 14 July 2016.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX I

Information to be made public

Table 1

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

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

Table 2

Symbol table for Table 3

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

Table 3

List of details for the purpose of post-trade transparency

Field identifier	Description and details to be published	Type of execution or publication venue	Format to be populated as defined in Table 2
Trading date and time	Date and time when the transaction was executed. For transactions executed on a trading venue, the level of granularity shall be in accordance with the requirements set out in Article 2 of Delegated Regulation (EU) 2017/574. For transactions not executed on a trading venue, the date and time when the parties agree the content of the following fields: quantity, price, currencies in fields 31, 34 and 44 as specified in Table 2 of Annex 1 of Delegated Regulation (EU) 2017/590, instrument identification code, instrument classification and underlying instrument code, where applicable. For transactions not executed on a trading venue the time reported shall be granular to at least the nearest second.	Regulated Market (RM), Multilateral Trading Facility (MTF), Organised Trading Facility (OTF) Approved Publication Arrangement (APA) Consolidated tape provider (CTP)	{DATE_TIME_FORMAT}

Field identifier	Description and details to be published	Type of execution or publication venue	Format to be populated as defined in Table 2
	Where the transaction results from an order transmitted by the executing firm on behalf of a client to a third party where the conditions for transmission set out in Article 4 of Delegated Regulation (EU) 2017/590 were not satisfied, this shall be the date and time of the transaction rather than the time of the order transmission.		
Instrument identification code	Code used to identify the financial instrument	RM, MTF APA CTP	{ISIN}
Price	Traded price of the transaction excluding, where applicable, commission and accrued interest. Where price is reported in monetary terms, it shall be provided in the major currency unit. Where price is currently not available but pending, the value should be 'PNDG'. Where price is not applicable the field shall not be populated. The information reported in this field shall be consistent with the values provided in field Quantity.	RM, MTF APA CTP	{DECIMAL-18/13} in case the price is expressed as monetary value {DECIMAL-11/10} in case the price is expressed as percentage or yield 'PNDG' in case the price is not available
Price currency	Currency in which the price is expressed (applicable if the price is expressed as monetary value).	RM, MTF APA CTP	{CURRENCYCODE_3}
Quantity	Number of units of the financial instruments. The nominal or monetary value of the financial instrument. The information reported in this field shall be consistent with the values provided in field Price.	RM, MTF APA CTP	{DECIMAL-18/17} in case the quantity is expressed as number of units {DECIMAL-18/5} in case the quantity is expressed as monetary or nominal value
Venue of execution	Identification of the venue where the transaction was executed. Use the ISO 10383 segment MIC for transactions executed on a trading venue,. Where the segment MIC does not exist, use the operating MIC. Use MIC code 'XOFF' for financial instruments admitted to trading or traded on a trading venue, where the transaction on that financial instrument is not executed on a trading venue, systematic internaliser or organised trading platform outside of the Union.	RM, MTF APA CTP	trading venues: {MIC} Systematic internalisers: 'SINT'

Field identifier	Description and details to be published	Type of execution or publication venue	Format to be populated as defined in Table 2
	Use SINT for financial instruments admitted to trading or traded on a trading venue, where the transaction on that financial instrument is executed on a Systematic Internaliser.		
Publication date and time	Date and time when the transaction was published by a trading venue or APA. For transactions executed on a trading venue, the level of granularity shall be in accordance with the requirements set out in Article 2 of Delegated Regulation (EU) 2017/574. For transactions not executed on a trading venue, the date and time shall be granular to at least the nearest second.	RM, MTF APA CTP	{DATE_TIME_FORMAT}
Venue of Publication	Code used to identify the trading venue or APA publishing the transaction.	CTP	trading venue: {MIC} APA: ISO 10383 segment MIC (4 characters) where available. Otherwise, 4-character code as published in the list of data reporting services providers on ESMA's website.
Transaction identification code	Alphanumerical code assigned by trading venues (pursuant to Article 12 of Commission Delegated Regulation (EU) 2017/580 [1]) and APAs and used in any subsequent reference to the specific trade. The transaction identification code shall be unique, consistent and persistent per ISO 10383 segment MIC and per trading day. Where the trading venue does not use segment MICs, the transaction identification code shall be unique, consistent and persistent per operating MIC per trading day. Where the APA does not use MICs, it should be unique, consistent and persistent per 4-character code used to identify the APA per trading day. The components of the transaction identification code shall not disclose the identity of the counterparties to the transaction for which the code is maintained	RM, MTF APA CTP	{ALPHANUM-52}

[1] Commission Delegated Regulation (EU) 2017/580 of 24 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the maintenance of relevant data relating to orders in financial instruments (see page 193 of this Official Journal).

Table 4

List of flags for the purpose of post-trade transparency

Flag	Name	Type of execution or publication venue	Description
'BENC'	Benchmark transactions flag	RM, MTF APA CTP	Transactions executed in reference to a price that is calculated over multiple time instances according to a given benchmark, such as volume-weighted average price or time-weighted average price.
'ACTX'	Agency cross transactions flag	APA CTP	Transactions where an investment firm has brought together clients' orders with the purchase and the sale conducted as one transaction and involving the same volume and price.
'NPFT'	Non-price forming transactions flag	RM, MTF CTP	Transactions where the exchange of financial instruments is determined by factors other than the current market valuation of the financial instrument as listed under Article 13.
'TNCP'	Transactions not contributing to the price discovery process for the purposes of Article 23 of Regulation (EU) No 600/2014 flag	RM, MTF APA CTP	Transaction not contributing to the price discovery process for the purposes of Article 23 of Regulation (EU) No 600/2014 and as set out in Article 2.
'SDIV'	Special dividend transaction flag	RM, MTF APA CTP	Transactions that are either: executed during the ex-dividend period where the dividend or other form of distribution accrues to the buyer instead of the seller; or executed during the cum-dividend period where the dividend or other form of distribution accrues to the seller instead of the buyer.
'LRGS'	Post-trade large in scale transaction flag	RM, MTF APA CTP	Transactions that are large in scale compared with normal market size for which deferred publication is permitted under Article 15.
'RFPT'	Reference price transaction flag	RM, MTF CTP	Transactions which are executed under systems operating in accordance with Article 4(1)(a) of Regulation (EU) No 600/2014.
'NLIQ'	Negotiated transaction in liquid financial instruments flag	RM, MTF CTP	Transactions executed in accordance with Article 4(1)(b)(i) of Regulation (EU) No 600/2014.
'OILQ'	Negotiated transaction in illiquid financial instruments flag	RM, MTF CTP	Transactions executed in accordance with Article 4(1)(b)(ii) of Regulation (EU) No 600/2014.
'PRIC'	Negotiated transaction subject to conditions other than the current market price flag	RM, MTF CTP	Transactions executed in accordance with Article 4(1)(b)(iii) of Regulation (EU) No 600/2014 and as set out in Article 6.
'ALGO'	Algorithmic transaction flag	RM, MTF CTP	Transactions executed as a result of an investment firm engaging in algorithmic trading as defined in Article 4(1)(39) of Directive 2014/65/EU.

Flag	Name	Type of execution or publication venue	Description
'SIZE'	Transaction above the standard market size flag	APA CTP	Transactions executed on a systematic internaliser where the size of the incoming order was above the standard market size as determined in accordance with Article 11.
'ILQD'	Illiquid instrument transaction flag	APA CTP	Transactions in illiquid instruments as determined in accordance with Articles 1 to 9 of Commission Delegated Regulation (EU) 2017/567 [1] executed on a systematic internaliser.
'RPRI'	Transactions which have received price improvement flag	APA CTP	Transactions executed on a systematic internaliser with a price improvement in accordance with Article 15(2) of Regulation (EU) No 600/2014.
'CANC'	Cancellation flag	RM, MTF APA CTP	When a previously published transaction is cancelled.
'AMND'	Amendment flag	RM, MTF APA CTP	When a previously published transaction is amended.
'DUPL'	Duplicative trade reports flag	APA	When a transaction is reported to more than one APA in accordance with Article 17(1) of Delegated Regulation (EU) 2017/571.

[1] Commission Delegated Regulation (EU) 2017/567 of 18 May 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions (see page 90 of this Official Journal).

ANNEX II

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

Table 1

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

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

Table 2

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

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

Table 3

Standard market sizes

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

Table 4

Deferred publication thresholds and delays for shares and depositary receipts

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

Table 5

Deferred publication thresholds and delays for ETFs

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

Table 6

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

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

ANNEX III

Reference data to be provided for the purpose of transparency calculations

Table 1

Symbol table

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

Table 2

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

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

COMMISSION DELEGATED REGULATION (EU) 2017/588

of 14 July 2016

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the tick size regime for shares, depositary receipts and exchange-traded funds

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU [1], and in particular Article 49(3) and (4) thereof,

Whereas:

(1) A tick size regime or minimum tick sizes should be set out in respect of certain financial instruments to ensure the orderly functioning of the markets. In particular, the risk of an ever-decreasing tick size for shares, depositary receipts and certain types of exchange-traded funds and its impact on the orderliness of the market should be controlled by means of a mandatory tick size regime.

(2) For other financial instruments, given the nature of those instruments and the microstructures of the markets on which they are traded, a tick size regime cannot be presumed to effectively contribute to the orderliness of the markets and, hence, those instruments should not be subject to the tick size regime.

(3) In particular, certificates are only traded in certain Member States. In view of the characteristics of those financial instruments and the liquidity, scale and nature of the markets on which they are traded, a mandatory tick size regime is not necessary to prevent the occurrence of disorderly trading conditions.

(4) Non-equity financial instruments and fixed income products are largely traded over the counter, with only a limited number of transactions being executed on trading venues. Due to the specific characteristics of the liquidity of those instruments on electronic platforms and their fragmentation, no mandatory tick size regime for those instruments is deemed necessary either.

(5) The correlation between exchange-traded funds and the underlying equity instruments renders it necessary to determine a minimum tick size for exchange-traded funds having as underlying shares and depositary receipts. However, exchange-traded funds having financial instruments which are not shares or depositary receipts as their underlying should not be subject to a mandatory tick size regime.

(6) It is important that all exchange-traded funds covered by this Regulation have the same tick size regime based on a single liquidity band, regardless of their average daily number of transactions, so that the risk of circumvention of the tick size regime in relation to those instruments is reduced.

(7) The meaning of the term 'most relevant market in terms of liquidity' should be clarified for the purposes of this Regulation, since Regulation (EU) No 600/2014 of the European Parliament and of the Council [2] uses this term for both the purpose of the reference price waiver and for the purpose of transaction reporting.

(8) The tick size regime only determines the minimum difference between two price levels of orders sent in relation to a financial instrument in the order-book. It should therefore be applied equally, regardless of the currency of the financial instrument.

---

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

[2] Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

(9) Competent authorities should be able to react to events known in advance that lead to a change in the number of transactions in a financial instrument whereby the applicable tick size may no longer be appropriate. To that end, a specific procedure should be set out to avoid disorderly market conditions arising from corporate actions that may cause the tick size of one specific instrument to be unsuitable. That procedure should apply to corporate actions that could significantly affect the liquidity of that instrument. While assessing the impact of a corporate action on a specific financial instrument, competent authorities should take account of any previous corporate actions with similar characteristics.

(10) To ensure that the tick size regime can operate effectively and that market participants have sufficient time to implement the new requirements, it is appropriate to provide for the collection of certain data and for an early publication of the average daily number of transactions for each financial instrument covered by this Regulation.

(11) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the related national provisions transposing Directive 2014/65/EU apply from the same date. However, to ensure that the tick size regime can operate effectively, certain provisions of this Regulation should apply from the date of its entry into force.

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

(13) ESMA has conducted open public consultations on the draft regulatory technical standards on which this regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council [1],

HAS ADOPTED THIS REGULATION:

Article 1

Most relevant market in terms of liquidity

For the purposes of this Regulation, the most relevant market in terms of liquidity for a share or a depositary receipt shall be considered to be the most relevant market in terms of liquidity as referred to in Article 4(1)(a) of Regulation (EU) No 600/2014 and specified in Article 4 of Commission Delegated Regulation (EU) 2017/587 [2].

Article 2

Tick size for shares, depositary receipts and exchange-traded funds

(Article 49(1) and (2) of Directive 2014/65/EU)

1. Trading venues shall apply to orders in shares or depositary receipts a tick size which is equal to or greater than the one corresponding to:

(a) the liquidity band in the table in the Annex corresponding to average daily number of transactions in the most relevant market in terms of liquidity for that instrument; and

(b) the price range in that liquidity band corresponding to the price of the order.

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

[2] Commission Delegated Regulation (EU) 2017/587 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser (see page 387 of this Official Journal).

2. By way of derogation from paragraph 1(a), where the most relevant market in terms of liquidity for a share or depositary receipt operates only a trading system that matches orders on the basis of a periodic auction and a trading algorithm operated without human intervention, trading venues shall apply the liquidity band corresponding to the lowest average daily number of transactions in the table in the Annex.

3. Trading venues shall apply to orders in exchange-traded funds a tick size which is equal to or greater than the one corresponding to:

(a) the liquidity band in the table in the Annex corresponding to the highest average daily number of transactions; and

(b) the price range in that liquidity band corresponding to the price of the order.

4. The requirements set out in paragraph 3 shall only apply to exchange-traded funds the underlying financial instruments of which are solely equities subject to the tick size regime under paragraph 1 or a basket of such equities.

Article 3

Average daily number of transactions for shares and depositary receipts

(Article 49(1) and (2) of Directive 2014/65/EU)

1. By 1 March of the year following the date of application of Regulation (EU) No 600/2014 and by 1 March of each year thereafter, the competent authority for a specific share or depositary receipt shall, when determining the most relevant market in terms of liquidity for that share or depositary receipt calculate the average daily number of transactions for that financial instrument in that market and ensure the publication of that information.

The competent authority referred to in subparagraph 1shall be the competent authority of the most relevant market in terms of liquidity as specified in Article 16 of Commission Delegated Regulation (EU) 2017/590 ([1]).

2. The calculation referred to in paragraph 1 shall have the following characteristics:

(a) it shall include, for each trading venue, transactions executed under the rules of that trading venue, excluding reference price and negotiated transactions flagged as set out in Table 4 of Annex I to Delegated Regulation (EU) 2017/587 and transactions executed on the basis of at least one order that has benefitted from a large in scale waiver and where the transaction size is above the applicable large-in-scale threshold as determined in accordance with Article 7 of Delegated Regulation (EU) 2017/587;

(b) it shall cover either the preceding calendar year or, where applicable, the period of the preceding calendar year during which the financial instrument was admitted to trading or has been traded on a trading venue and was not suspended from trading.

3. Paragraphs 1 and 2 shall not apply to shares and depositary receipts which were first admitted to trading or were first traded on a trading venue four weeks or less before the end of the preceding calendar year.

4. Trading venues shall apply the tick sizes of the liquidity band corresponding to the average daily number of transactions as published in accordance with paragraph 1 from 1 April following that publication.

5. Before the first admission to trading or before the first day of trading of a share or depositary receipt, the competent authority of the trading venue where that financial instrument is to be first admitted to trading or is to be first traded shall estimate the average daily number of transactions for that trading venue, taking into account the previous trading history of that financial instrument, where applicable, as well as the previous trading history of financial instruments that are considered to have similar characteristics, and publish that estimation.

The tick sizes of the liquidity band corresponding to that published estimate average daily number of transactions shall apply from the publication of that estimate until the publication of the average daily number of transactions for that instrument in accordance with paragraph 6.

([1]) Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities (see page 449 of this Official Journal).

6. No later than six weeks after the first day of trading of the share or depositary receipt, the competent authority of the trading venue where the financial instrument was first admitted to trading or was first traded on a trading venue shall calculate and ensure the publication of the average daily number of transactions in that financial instrument for that trading venue, using the data relating to the first four weeks of trading of that financial instrument.

The tick sizes of the liquidity band corresponding to that published average daily number of transactions shall apply from the publication until a new average daily number of transactions for that instrument has been calculated and published in accordance with the procedure set out in paragraphs 1 to 4.

7. For the purposes of this Article, the average daily number of transactions for a financial instrument shall be calculated by dividing, for the relevant time period and the relevant trading venue, the total number of transactions in that financial instrument by the number of trading days.

Article 4

Corporate actions

(Article 49(1) and (2) of Directive 2014/65/EU)

Where a competent authority considers that a corporate action may modify the average daily number of transactions of a particular financial instrument thereby causing this financial instrument to fall within a different liquidity band, the competent authority shall determine and ensure publication of a new applicable liquidity band for that financial instrument treating it as if it were first admitted to trading or first traded on a trading venue and apply the procedure set out in Article 3(5) and (6).

Article 5

Transitional provisions

1. The competent authority of the trading venue where a share or depositary receipt was first admitted to trading or has been traded for the first time before the date of application of Regulation (EU) No 600/2014, shall collect the necessary data and calculate and ensure the publication of the average daily number of transactions for that financial instrument and for that trading venue within the following time limits:

(a) no later than 4 weeks prior to the date of application of Regulation (EU) No 600/2014 where the date on which shares or depositary receipts are traded for the first time on a trading venue within the Union is a date not less than 10 weeks prior to the date of application of Regulation (EU) No 600/2014;

(b) no later than the date of application of Regulation (EU) No 600/2014 where the date on which financial instruments are traded for the first time on a trading venue within the Union is a date falling within the period commencing 10 weeks prior to the date of application of Regulation (EU) No 600/2014 and ending on the day preceding the date of application of Regulation (EU) No 600/2014.

2. The calculations referred to in paragraph 1(a) shall be carried out as follows:

(a) where the date on which shares or depositary receipts are traded for the first time on a trading venue within the Union is a date not less than 16 weeks prior to the date of application of Regulation (EU) No 600/2014, the calculation shall be based on data available for a 40-week reference period commencing 52 weeks prior to the date of application of Regulation (EU) No 600/2014;

(b) where the date on which shares or depositary receipts are traded for the first time on a trading venue within the Union is a date within the period commencing 16 weeks prior to the date of application of Regulation (EU) No 600/2014 and ending 10 weeks prior to the date of application of Regulation (EU) No 600/2014, the calculation shall be based on data available for the first 4-week trading period of the financial instrument;

(c) where the date on which shares or depositary receipts are traded for the first time on a trading venue within the Union is a date falling within the period commencing 10 weeks prior to the date of application of Regulation (EU) No 600/2014 and ending on the day preceding the date of application of Regulation (EU) No 600/2014, the calculation shall be based on the trading history of the share or depositary receipt or other financial instruments considered to have similar characteristics to those shares or depositary receipts.

3. The tick sizes of the liquidity band corresponding to the published average daily number of transactions referred to in paragraph 1 shall be applied until 1 April of the year following the date of application of Regulation (EU) No 600/2014. During that period, competent authorities shall ensure that the tick sizes for financial instruments referred to under points (b) and (c) of paragraph 2 and for which they are the competent authority, do not contribute to disorderly trading conditions. Where a competent authority identifies a risk for the orderly functioning of the markets due to such tick sizes, it shall determine and publish an updated average daily number of transactions for the relevant financial instruments to address that risk. It shall do so on the basis of longer and more comprehensive trading history data of those instruments. Trading venues shall immediately apply the liquidity band corresponding to that updated average daily number of transactions. They shall do so until 1 April of the year following the date of application of Regulation (EU) No 600/2014 or until any further publication by the competent authority in accordance with this paragraph.

Article 6

Entry into force and application

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

It shall apply from 3 January 2018.

However, Article 5 shall apply from the date of entry into force of this Regulation.

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

Done at Brussels, 14 July 2016.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Tick size table

	Liquidity bands					
Price ranges	0 ≤ Average daily number of transactions < 10	10 ≤ Average daily number of transactions < 80	80 ≤ Average daily number of transactions < 600	600 ≤ Average daily number of transactions < 2 000	2 000 ≤ Average daily number of transactions < 9 000	9 000 ≤ Average daily number of transactions
0 ≤ price < 0,1	0,0005	0,0002	0,0001	0,0001	0,0001	0,0001
0,1 ≤ price < 0,2	0,001	0,0005	0,0002	0,0001	0,0001	0,0001
0,2 ≤ price < 0,5	0,002	0,001	0,0005	0,0002	0,0001	0,0001
0,5 ≤ price < 1	0,005	0,002	0,001	0,0005	0,0002	0,0001
1 ≤ price < 2	0,01	0,005	0,002	0,001	0,0005	0,0002
2 ≤ price < 5	0,02	0,01	0,005	0,002	0,001	0,0005
5 ≤ price < 10	0,05	0,02	0,01	0,005	0,002	0,001
10 ≤ price < 20	0,1	0,05	0,02	0,01	0,005	0,002
20 ≤ price < 50	0,2	0,1	0,05	0,02	0,01	0,005
50 ≤ price < 100	0,5	0,2	0,1	0,05	0,02	0,01
100 ≤ price < 200	1	0,5	0,2	0,1	0,05	0,02
200 ≤ price < 500	2	1	0,5	0,2	0,1	0,05
500 ≤ price < 1 000	5	2	1	0,5	0,2	0,1
1 000 ≤ price < 2 000	10	5	2	1	0,5	0,2
2 000 ≤ price < 5 000	20	10	5	2	1	0,5
5 000 ≤ price < 10 000	50	20	10	5	2	1
10 000 ≤ price < 20 000	100	50	20	10	5	2
20 000 ≤ price < 50 000	200	100	50	20	10	5
50 000 ≤ price	500	200	100	50	20	10

COMMISSION DELEGATED REGULATION (EU) 2017/589

of 19 July 2016

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the organisational requirements of investment firms engaged in algorithmic trading

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

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

Whereas:

(1) Systems and risk controls used by an investment firm engaged in algorithmic trading, providing direct electronic access or acting as general clearing members, should be efficient, resilient and have adequate capacity, having regard to the nature, scale and complexity of the business model of that investment firm.

(2) To that end, an investment firm should address all risks that may affect the core elements of an algorithmic trading system, including risks related to the hardware, software and associated communication lines used by that firm to perform its trading activities. To ensure the same conditions for algorithmic trading independently of trading form, any type of execution system or order management system operated by an investment firm should be covered by this Regulation.

(3) As a part of its overall governance framework and decision making framework, an investment firm should have a clear and formalised governance arrangement, including clear lines of accountability, effective procedures for the communication of information and a separation of tasks and responsibilities. That arrangement should ensure reduced dependency on a single person or unit.

(4) Conformance testing should be made in order to verify that the trading systems of an investment firm communicate and interact properly with the trading systems of the trading venue or of the direct market access (DMA) provider and that market data are processed correctly.

(5) Investment decision algorithms make automated trading decisions by determining which financial instrument should be purchased or sold. Order execution algorithms optimise order-execution processes by automatic generation and submission of orders or quotes, to one or several trading venues once the investment decision has been taken. Trading algorithms that are investment decision algorithms should be differentiated from order execution algorithms having regard to their potential impact on the overall fair and orderly functioning of the market.

(6) The requirements concerning the testing of trading algorithms should be based on the potential impact that those algorithms may have on the overall fair and orderly functioning of the market. In this regard, only pure investment decision algorithms which generate orders that are only to be executed by non-automated means and with human intervention should be excluded from the testing requirements.

(7) When introducing trading algorithms, an investment firm should ensure controlled deployment of trading algorithms, regardless of whether those trading algorithms are new or previously have been successfully deployed in another trading venue, and whether their architecture has been materially modified. The controlled

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

deployment of trading algorithms should ensure that the trading algorithms perform as expected in a production environment. The investment firm should therefore set cautious limits on the number of financial instruments being traded, the price, value and number of orders, the strategy positions and the number of markets involved and by monitoring the activity of the algorithm more intensively.

(8) Compliance with the specific organisational requirements for an investment firm should be determined according to a self-assessment which includes an assessment of compliance with the criteria set out in Annex I to this Regulation. That self-assessment should furthermore include all other circumstances that may have an impact on the organisation of that investment firm. That self-assessment should be made regularly and should allow the investment firm to gain a full understanding of the trading systems and trading algorithms it uses and the risks stemming from algorithmic trading, irrespective of whether those systems and algorithms were developed by the investment firm itself, purchased from a third party, or designed or developed in close cooperation with a client or a third party.

(9) An investment firm should be able to withdraw all or some of its orders where this becomes necessary ('kill functionality'). For such a withdrawal to be effective, an investment firm should always be in a position to know which trading algorithms, traders or clients are responsible for an order.

(10) An investment firm engaged in algorithmic trading should monitor that its trading systems cannot be used for any purpose that is contrary to Regulation (EU) No 596/2014 of the European Parliament and of the Council ([1]) or to the rules of a trading venue to which it is connected. Suspicious transactions or orders should be reported to the competent authorities in accordance with that Regulation.

(11) Different types of risks should be addressed by different types of controls. Pre-trade controls should be conducted before an order is submitted to a trading venue. An investment firms should also monitor its trading activity and implement real-time alerts which identify signs of disorderly trading or a breach of its pre-trade limits. Post-trade controls should be put in place to monitor the market and credit risks of the investment firm through post-trade reconciliation. In addition, potential market abuse and violations of the rules of the trading venue should be prevented through specific surveillance systems that generate alerts on the following day at the latest and that are calibrated to minimise false positive and false negative alerts.

(12) The generation of alerts following real time monitoring should be done as instantaneously as technically possible. Any actions following that monitoring should be undertaken as soon as possible having regard to a reasonable level of efficiency and expenditure of the persons and systems concerned.

(13) An investment firm providing direct electronic access ('DEA provider') should remain responsible for the trading carried out through the use of its trading code by its DEA clients. A DEA provider should therefore establish policies and procedures to ensure that trading of its DEA clients complies with the requirements applicable to that provider. That responsibility should constitute the principal factor for establishing pre-trade and post-trade controls and for assessing the suitability of prospective DEA clients. A DEA provider should therefore have sufficient knowledge about the intentions, capabilities, financial resources and trustworthiness of its DEA clients, including, where publicly available, information about the prospective DEA clients' disciplinary history with competent authorities and trading venues.

(14) A DEA provider should comply with the provisions of this Regulation even where it is not engaged in algorithmic trading, since its clients may use the DEA to engage in algorithmic trading.

(15) Due diligence assessment of prospective DEA clients should be adapted to the risks posed by the nature, scale and complexity of their expected trading activities and to the DEA being provided. In particular, the expected level of trading and order volume and the type of connection offered to the relevant trading venues should be assessed.

(16) The content and format of the forms to be used by an investment firm engaged in high frequency trading technique for submitting to the competent authorities the records of its placed orders and the length of time that those records should be kept should be laid down.

([1]) Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

(17) To ensure consistency with the general obligation for an investment firm to keep records of orders, the required record keeping periods for an investment firm engaging in high-frequency algorithmic trading technique should be aligned with the ones laid down in Article 25(1) of Regulation (EU) No 600/2014 of the European Parliament and of the Council ([1]).

(18) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the related national provisions transposing Directive 2014/65/EU apply from the same date.

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

(20) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council ([2]),

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL ORGANISATIONAL REQUIREMENTS

Article 1

General organisational requirements

(Article 17(1) of Directive 2014/65/EU)

As part of its overall governance and decision making framework, an investment firm shall establish and monitor its trading systems and trading algorithms through a clear and formalised governance arrangement, having regard to the nature, scale and complexity of its business and setting out:

(a) clear lines of accountability, including procedures to approve the development, deployment and subsequent updates of trading algorithms and to solve problems identified when monitoring trading algorithms;

(b) effective procedures for the communication of information within the investment firm, such that instructions can be sought and implemented in an efficient and timely manner;

(c) a separation of tasks and responsibilities of trading desks on the one hand and supporting functions, including risk control and compliance functions, on the other, to ensure that unauthorised trading activity cannot be concealed.

Article 2

Role of the compliance function

(Article 17(1) of Directive 2014/65/EU)

1. An investment firm shall ensure that its compliance staff has at least a general understanding of how the algorithmic trading systems and trading algorithms of the investment firm operate. The compliance staff shall be in continuous contact with persons within the firm who have detailed technical knowledge of the firm's algorithmic trading systems and algorithms.

([1]) Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

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

2. An investment firm shall also ensure that compliance staff have, at all times, contact with the person or persons within the investment firm who have access to the functionality referred to in Article 12 ('kill functionality') or direct access to that kill functionality and to those who are responsible for each trading system or algorithm.

3. Where the compliance function or elements thereof are outsourced to a third party, an investment firm shall provide the third party with the same access to information as it would to its own compliance staff. An investment firm shall ensure that through such external compliance function:

(a) privacy of data is guaranteed;

(b) the compliance function can be audited by internal and external auditors or by the competent authority.

Article 3

Staffing

(Article 17(1) of Directive 2014/65/EU)

1. An investment firm shall employ a sufficient number of staff with the necessary skills to manage its algorithmic trading systems and trading algorithms and with sufficient technical knowledge of:

(a) the relevant trading systems and algorithms;

(b) the monitoring and testing of such systems and algorithms;

(c) the trading strategies that the investment firm deploys through its algorithmic trading systems and trading algorithms;

(d) the investment firm's legal obligations

2. An investment firm shall specify the necessary skills referred to in paragraph 1. The staff referred to in paragraph 1 shall have those necessary skills at the time of recruitment or shall acquire them through training after recruitment. The investment firm shall ensure that those staff's skills remain up-to-date through continuous training and shall evaluate their skills on a regular basis.

3. The staff training referred to in paragraph 2 shall be tailored to the experience and responsibilities of the staff, having regard to the nature, scale and complexity of the investment firms' activities. In particular, staff involved in order submission shall receive training on order submission systems and market abuse.

4. An investment firm shall ensure that the staff responsible for the risk and compliance functions of algorithmic trading have:

(a) sufficient knowledge of algorithmic trading and strategies;

(b) sufficient skills to follow up on information provided by automatic alerts;

(c) sufficient authority to challenge staff responsible for algorithmic trading where such trading gives rise to disorderly trading conditions or suspicions of market abuse.

Article 4

IT outsourcing and procurement

(Article 17(1) of Directive 2014/65/EU)

1. An investment firm shall remain fully responsible for its obligations under this Regulation where it outsources or procures software or hardware used in algorithmic trading activities.

2. An investment firm shall have sufficient knowledge and the necessary documentation to ensure effective compliance with paragraph 1 in relation to any procured or outsourced hardware or software used in algorithmic trading.

CHAPTER II

RESILIENCE OF TRADING SYSTEMS

SECTION I

Testing and deployment of trading algorithms systems and strategies

Article 5

General methodology

(Article 17(1) of Directive 2014/65/EU)

1. Prior to the deployment or substantial update of an algorithmic trading system, trading algorithm or algorithmic trading strategy, an investment firm shall establish clearly delineated methodologies to develop and test such systems, algorithms or strategies.

2. A person designated by the senior management of the investment firm shall authorise the deployment or substantial update of an algorithmic trading system, trading algorithm or algorithmic trading strategy.

3. The methodologies referred to in paragraph 1 shall address the design, performance, recordkeeping and approval of the algorithmic trading system, trading algorithm or algorithmic trading strategy. They shall also set out the allocation of responsibilities, the allocation of sufficient resources and the procedures to seek instructions within the investment firm.

4. The methodologies referred to in paragraph 1 shall ensure that the algorithmic trading system, trading algorithm or algorithmic trading strategy:

(a) does not behave in an unintended manner;

(b) complies with the investment firm's obligations under this Regulation;

(c) complies with the rules and systems of the trading venues accessed by the investment firm;

(d) does not contribute to disorderly trading conditions, continues to work effectively in stressed market conditions and, where necessary under those conditions, allows for the switching off of the algorithmic trading system or trading algorithm.

5. An investment firm shall adapt its testing methodologies to the trading venues and markets where the trading algorithm will be deployed. An investment firm shall undertake further testing if there are substantial changes to the algorithmic trading system or to the access to the trading venue in which the algorithmic trading system, trading algorithm or algorithmic trading strategy are to be used.

6. Paragraphs 2 to 5 shall only apply to trading algorithms leading to order execution.

7. An investment firm shall keep records of any material change made to the software used for algorithmic trading, allowing it to determine:

(a) when a change was made;

(b) the person that has made the change;

(c) the person that has approved the change;

(d) the nature of the change.

Article 6

Conformance testing

(Article 17(1) of Directive 2014/65/EU)

1. An investment firm shall test the conformance of its algorithmic trading systems and trading algorithms with:

(a) the system of the trading venue in any of the following cases:

  (i) when accessing that trading venue as a member;

  (ii) when connecting to that trading venue through a sponsored access arrangement for the first time;

(iii) where there is a material change of the systems of that trading venue;

(iv) prior to the deployment or material update of the algorithmic trading system, trading algorithm or algorithmic trading strategy of that investment firm.

(b) the system of the direct market access provider in any of the following cases:

(i) when accessing that trading venue through a direct market access arrangement for the first time;

(ii) when there is a material change affecting the direct market access functionality of that provider;

(iii) prior to the deployment or material update of the algorithmic trading system, trading algorithm or algorithmic trading strategy of that investment firm.

2. Conformance testing shall verify whether the basic elements of the algorithmic trading system or the trading algorithm operate correctly and in accordance with the requirements of the trading venue or the direct market access provider. For this purpose the testing shall verify that the algorithmic trading system or trading algorithm:

(a) interacts with the trading venue's matching logic as intended;

(b) adequately processes the data flows downloaded from the trading venue.

Article 7

Testing environments

(Article 17(1) of Directive 2014/65/EU)

1. An investment firm shall ensure that testing of compliance with the criteria laid down in Article 5(4)(a), (b) and (d) is undertaken in an environment that is separated from its production environment and that is used specifically for the testing and development of algorithmic trading systems and trading algorithms.

For the purposes of the first subparagraph, a production environment shall mean an environment where algorithmic trading systems effectively operate, and comprise software and hardware used by traders, order routing to trading venues, market data, dependent databases, risk control systems, data capture, analysis systems and post-trade processing systems.

2. An investment firm may comply with the testing requirements referred to in paragraph 1 by using its own testing environment or a testing environment provided by a trading venue, a DEA provider or a vendor.

3. An investment firm shall retain full responsibility for the testing of its algorithmic trading systems, trading algorithms or algorithmic trading strategies and for making any required changes to them.

Article 8

Controlled deployment of algorithms

(Article 17(1) of Directive 2014/65/EU)

Before deployment of a trading algorithm, an investment firm shall set predefined limits on:

(a) the number of financial instruments being traded;

(b) the price, value and numbers of orders;

(c) the strategy positions; and

(d) the number of trading venues to which orders are sent.

SECTION 2

Post-deployment management

Article 9

Annual self-assessment and validation

(Article 17(1) of Directive 2014/65/EU)

1. An investment firm shall annually perform a self-assessment and validation process and on the basis of that process issue a validation report. In the course of that process the investment firm shall review, evaluate and validate the following:

(a) its algorithmic trading systems, trading algorithms and algorithmic trading strategies;

(b) its governance, accountability and approval framework;

(c) its business continuity arrangement;

(d) its overall compliance with Article 17 of Directive 2014/65/EU, having regard to the nature, scale and complexity of its business.

The self-assessment shall also include at least an analysis of compliance with the criteria set out in Annex I to this Regulation.

2. The risk management function of the investment firm referred to in Article 23(2) of Commission Delegated Regulation (EU) 2017/565 [1], shall draw up the validation report and, for that purpose, involve staff with the necessary technical knowledge. The risk management function shall inform the compliance function of any deficiencies identified in the validation report.

3. The validation report shall be audited by the firm's internal audit function, where such function exists, and be subject to approval by the investment firm's senior management.

4. An investment firm shall remedy any deficiencies identified in the validation report.

5. Where an investment firm has not established a risk management function referred to in Article 23(2) of Delegated Regulation (EU) 2017/565, the requirements set out in relation to the risk management function in this Regulation shall apply to any other function established by the investment firm in accordance with Article 23(2) of Delegated Regulation (EU) 2017/565.

Article 10

Stress testing

(Article 17(1) of Directive 2014/65/EU)

As part of its annual self-assessment referred to in Article 9, an investment firm shall test that its algorithmic trading systems and the procedures and controls referred to in Articles 12 to 18 can withstand increased order flows or market stresses. The investment firm shall design such tests, having regard to the nature of its trading activity and its trading systems. The investment firm shall ensure that the tests are carried out in such a way that they do not affect the production environment. Those tests shall comprise:

(a) running high messaging volume tests using the highest number of messages received and sent by the investment firm during the previous six months, multiplied by two;

(b) running high trade volume tests, using the highest volume of trading reached by the investment firm during the previous six months, multiplied by two.

[1] Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (see page 1 of this Official Journal).

Article 11

Management of material changes

(Article 17(1) of Directive 2014/65/EU)

1. An investment firm shall ensure that any proposed material change to the production environment related to algorithmic trading is preceded by a review of that change by a person designated by senior management of the investment firm. The depth of the review shall be proportionate to the magnitude of the proposed change.

2. An investment firm shall establish procedures to ensure that any change to the functionality of its systems is communicated to traders in charge of the trading algorithm and to the compliance function and the risk management function.

SECTION 3

Means to ensure resilience

Article 12

Kill functionality

(Article 17(1) of Directive 2014/65/EU)

1. An investment firm shall be able to cancel immediately, as an emergency measure, any or all of its unexecuted orders submitted to any or all trading venues to which the investment firm is connected ('kill functionality').

2. For the purposes of paragraph 1, unexecuted orders shall include those originating from individual traders, trading desks or, where applicable, clients.

3. For the purposes of paragraph 1 and 2, an investment firm shall be able to identify which trading algorithm and which trader, trading desk or, where applicable, which client is responsible for each order that has been sent to a trading venue.

Article 13

Automated surveillance system to detect market manipulation

(Article 17(1) of Directive 2014/65/EU)

1. An investment firm shall monitor all trading activity that takes place through its trading systems, including that of its clients, for signs of potential market manipulation as referred to in Article 12 of Regulation (EU) No 596/2014.

2. For the purposes of paragraph 1, the investment firm shall establish and maintain an automated surveillance system which effectively monitors orders and transactions, generates alerts and reports and, where appropriate, employs visualisation tools.

3. The automated surveillance system shall cover the full range of trading activities undertaken by the investment firm and all orders submitted by it. It shall be designed having regard to the nature, scale and complexity of the investment firm's trading activity, such as the type and volume of instruments traded, the size and complexity of its order flow and the markets accessed.

4. The investment firm shall cross-check any indications of suspicious trading activity that have been generated by its automated surveillance system during the investigation phase against other relevant trading activities undertaken by that firm.

5. The investment firm's automated surveillance system shall be adaptable to changes to the regulatory obligations and the trading activity of the investment firm, including changes to its own trading strategy and that of its clients.

6. The investment firm shall review its automated surveillance system at least once a year to assess whether that system and the parameters and filters employed by it are still adequate to the investment firm's regulatory obligations and trading activity, including its ability to minimise the generation of false positive and false negative surveillance alerts.

7. Using a sufficiently detailed level of time granularity, the investment firm's automated surveillance system shall be able to read, replay and analyse order and transaction data on an *ex-post* basis, with sufficient capacity to be able to operate in an automated low-latency trading environment where relevant. It shall also be able to generate operable alerts at the beginning of the following trading day or, where manual processes are involved, at the end of the following trading day. The investment firm's surveillance system shall have adequate documentation and procedures in place for the effective follow-up to alerts generated by it.

8. Staff responsible for monitoring the investment firm's trading activities for the purposes of paragraphs 1 to 7 shall report to the compliance function any trading activity that may not be compliant with the investment firm's policies and procedures or with its regulatory obligations. The compliance function shall assess that information and take appropriate action. Such action shall include reporting to the trading venue or submitting a suspicious transaction or order report in accordance with Article 16 of Regulation (EU) No 596/2014.

9. An investment firm shall ensure that its records of trade and account information are accurate, complete and consistent by reconciling as soon as practicable its own electronic trading logs with records provided by its trading venues, brokers, clearing members, central counterparties, data providers or other relevant business partners, where applicable and appropriate considering the nature, scale and complexity of the business.

Article 14

Business continuity arrangements

(Article 17(1) of Directive 2014/65/EU)

1. An investment firm shall have business continuity arrangements in place for its algorithmic trading systems which are appropriate to the nature, scale and complexity of its business. Those arrangements shall be documented in a durable medium.

2. Business continuity arrangements of an investment firm shall effectively deal with disruptive incidents and, where appropriate, ensure a timely resumption of the algorithmic trading. Those arrangements shall be adapted to the trading systems of each of the trading venue accessed and shall include the following:

(a) a governance framework for the development and of the deployment of the business continuity arrangement;

(b) a range of possible adverse scenarios relating to the operation of the algorithmic trading systems, including the unavailability of systems, staff, work space, external suppliers or data centres or loss or alteration of critical data and documents;

(c) procedures for relocating the trading system to a back-up site and operating the trading system from that site, where having such a site is appropriate to the nature, scale and complexity of the algorithmic trading activities of the investment firm;

(d) staff training on the operation of the business continuity arrangements;

(e) usage policy regarding the functionality referred to in Article 12;

(f) arrangements for shutting down the relevant trading algorithm or trading system where appropriate;

(g) alternative arrangements for the investment firm to manage outstanding orders and positions.

3. An investment firm shall ensure that its trading algorithm or trading system can be shut down in accordance with its business continuity arrangements without creating disorderly trading conditions.

4. An investment firm shall review and test its business continuity arrangements on an annual basis and modify the arrangements in light of that review.

Article 15

Pre-trade controls on order entry

(Article 17(1) of Directive 2014/65/EU)

1. An investment firm shall carry out the following pre-trade controls on order entry for all financial instruments:

(a) price collars, which automatically block or cancel orders that do not meet set price parameters, differentiating between different financial instruments, both on an order-by-order basis and over a specified period of time;

(b) maximum order values, which prevent orders with an uncommonly large order value from entering the order book;

(c) maximum order volumes, which prevent orders with an uncommonly large order size from entering the order book;

(d) maximum messages limits, which prevent sending an excessive number of messages to order books pertaining to the submission, modification or cancellation of an order.

2. An investment firm shall immediately include all orders sent to a trading venue into the calculation of the pre-trade limits referred to in paragraph 1.

3. An investment firm shall have in place repeated automated execution throttles which control the number of times an algorithmic trading strategy has been applied. After a pre-determined number of repeated executions, the trading system shall be automatically disabled until re-enabled by a designated staff member.

4. An investment firm shall set market and credit risk limits that are based on its capital base, its clearing arrangements, its trading strategy, its risk tolerance, experience and certain variables, such as the length of time the investment firm has been engaged in algorithmic trading and its reliance on third-party vendors. The investment firm shall adjust those market and credit risk limits to account for the changing impact of the orders on the relevant market due to different price and liquidity levels.

5. An investment firm shall automatically block or cancel orders from a trader if it becomes aware that that trader does not have permission to trade a particular financial instrument. An investment firm shall automatically block or cancel orders where those orders risk compromising the investment firm's own risk thresholds. Controls shall be applied, where appropriate, on exposures to individual clients, financial instruments, traders, trading desks or the investment firm as a whole.

6. An investment firm shall have procedures and arrangements in place for dealing with orders which have been blocked by the investment firm's pre-trade controls but which the investment firm nevertheless wishes to submit. Such procedures and arrangements shall be applied in relation to a specific trade on a temporary basis and in exceptional circumstances. They shall be subject to verification by the risk management function and authorisation by a designated individual of the investment firm.

Article 16

Real-time monitoring

(Article 17(1) of Directive 2014/65/EU)

1. An investment firm shall, during the hours it is sending orders to trading venues, monitor in real time all algorithmic trading activity that takes place under its trading code, including that of its clients, for signs of disorderly trading, including trading across markets, asset classes, or products, in cases where the firm or its clients engage in such activities.

2. The real-time monitoring of algorithmic trading activity shall be undertaken by the trader in charge of the trading algorithm or algorithmic trading strategy, and by the risk management function or by an independent risk control function established for the purpose of this provision. That risk control function shall be considered to be independent, regardless of whether the real-time monitoring is conducted by a member of the staff of the investment firm or by a third party, provided that that function is not hierarchically dependent on the trader and can challenge the trader as appropriate and necessary within the governance framework referred to in Article 1.

3. Staff members in charge of the real-time monitoring shall respond to operational and regulatory issues in a timely manner and shall initiate remedial action where necessary.

4. An investment firm shall ensure that the competent authority, the relevant trading venues and, where applicable, DEA providers, clearing members and central counterparties can at all times have access to staff members in charge of real-time monitoring. For that purpose, the investment firm shall identify and periodically test its communication channels, including its contact procedures for out of trading hours, to ensure that in an emergency the staff members with the adequate level of authority may reach each other in time.

5. The systems for real-time monitoring shall have real-time alerts to assist staff in identifying unanticipated trading activities undertaken by means of an algorithm. An investment firm shall have a process in place to take remedial action as soon as possible after an alert has been generated, including, where necessary, an orderly withdrawal from the market. Those systems shall also provide alerts in relation to algorithms and DEA orders triggering circuit breakers of a trading venue. Real-time alerts shall be generated within five seconds after the relevant event.

Article 17

Post-trade controls

(Article 17(1) of Directive 2014/65/EU)

1. An investment firm shall continuously operate the post-trade controls that it has in place. Where a post-trade control is triggered, the investment firm shall undertake appropriate action, which may include adjusting or shutting down the relevant trading algorithm or trading system or an orderly withdrawal from the market.

2. Post-trade controls referred to in paragraph 1 shall include the continuous assessment and monitoring of market and credit risk of the investment firm in terms of effective exposure.

3. An investment firm shall keep records of trade and account information, which are complete, accurate and consistent. The investment firm shall reconcile its own electronic trading logs with information about its outstanding orders and risk exposures as provided by the trading venues to which it sends orders, by its brokers or DEA providers, by its clearing members or central counterparties and by its data providers or other relevant business partners. Reconciliation shall be made in real-time where the aforementioned market participants provide the information in real-time. An investment firm shall have the capability to calculate in real time its outstanding exposure and that of its traders and clients.

4. For derivatives, the post-trade controls referred to in paragraph 1 shall include controls regarding the maximum long and short and overall strategy positions, with trading limits to be set in units that are appropriate to the types of financial instruments involved.

5. Post-trade monitoring shall be undertaken by the traders responsible for the algorithm and the risk control function of the investment firm.

Article 18

Security and limits to access

(Article 17(1) of Directive 2014/65/EU)

1. An investment firm shall implement an IT strategy with defined objectives and measures which:

(a) is in compliance with the business and risk strategy of the investment firm and is adapted to its operational activities and the risks to which it is exposed;

(b) is based on a reliable IT organisation, including service, production, and development;

(c) complies with an effective IT security management.

2. An investment firm shall set up and maintain appropriate arrangements for physical and electronic security that minimise the risks of attacks against its information systems and that includes effective identity and access management. Those arrangements shall ensure the confidentiality, integrity, authenticity, and availability of data and the reliability and robustness of the investment firm's information systems.

3. An investment firm shall promptly inform the competent authority of any material breaches of its physical and electronic security measures. It shall provide an incident report to the competent authority, indicating the nature of the incident, the measures taken following the incident and the initiatives taken to avoid similar incidents from recurring.

4. An investment firm shall annually undertake penetration tests and vulnerability scans to simulate cyber-attacks.

5. An investment firm shall ensure that it is able to identify all persons who have critical user access rights to its IT systems. The investment firm shall restrict the number of such persons and shall monitor their access to IT systems to ensure traceability at all times.

CHAPTER III

DIRECT ELECTRONIC ACCESS

Article 19

General provisions for DEA

(Article 17(5) of Directive 2014/65/EU)

A DEA provider shall establish policies and procedures to ensure that trading of its DEA clients complies with the trading venue's rules so as to ensure that the DEA provider meets the requirements in accordance with Article 17(5) of Directive 2014/65/EU.

Article 20

Controls of DEA providers

(Article 17(5) of Directive 2014/65/EU)

1. A DEA provider shall apply the controls laid down in Articles 13, 15 and 17 and the real-time monitoring laid down in Article 16 to the order flow of each of its DEA clients. Those controls and that monitoring shall be separate and distinct from the controls and monitoring applied by DEA clients. In particular, the orders of a DEA client shall always pass through the pre-trade controls that are set and controlled by the DEA provider.

2. A DEA provider may use its own pre-trade and post-trade controls, controls provided by a third party or controls offered by the trading venue and real time monitoring. In all circumstances, the DEA provider shall remain responsible for the effectiveness of those controls. The DEA provider shall also ensure that it is solely entitled to set or modify the parameters or limits of those pre-trade and post-trade controls and real time monitoring. The DEA provider shall monitor the performance of the pre-trade and post-trade controls on an on-going basis.

3. The limits of the pre-trade controls on order submission shall be based on the credit and risk limits which the DEA provider applies to the trading activity of its DEA clients. Those limits shall be based on the initial due diligence and periodic review of the DEA client by the DEA provider.

4. The parameters and limits of the controls applied to DEA clients using sponsored access shall be as stringent as those imposed on DEA clients using DMA.

Article 21

Specifications for the systems of DEA providers

(Article 17(5) of Directive 2014/65/EU)

1. A DEA provider shall ensure that its trading systems enable it to:

(a) monitor orders submitted by a DEA client using the trading code of the DEA provider;

(b) automatically block or cancel orders from individuals which operate trading systems that submit orders related to algorithmic trading and which lack authorisation to send orders through DEA,;

(c) automatically block or cancel orders from a DEA client for financial instruments which that client is not authorised to trade, using an internal flagging system to identify and block single DEA clients or a group of DEA clients;

(d) automatically block or cancel orders from a DEA client that breach the risk management thresholds of the DEA provider, applying controls to exposures of individual DEA clients, financial instruments or groups of DEA clients;

(e) stop order flows transmitted by its DEA clients;

(f) suspend or withdraw DEA services to any DEA client where the DEA provider is not satisfied that continued access would be consistent with its rules and procedures for fair and orderly trading and market integrity;

(g) carry out, whenever necessary, a review of the internal risk control systems of DEA clients.

2. A DEA provider shall have procedures to evaluate, manage and mitigate market disruption and firm-specific risks. The DEA provider shall be able to identify the persons to be notified in the event of an error resulting in violations of the risk profile or in potential violations of the trading venue's rules.

3. A DEA provider shall at all times be able to identify its different DEA clients and the trading desks and traders of those DEA clients, who submit orders through the DEA provider's systems, by assigning a unique identification code to them.

4. A DEA provider allowing a DEA client to provide its DEA access to its own clients ('sub-delegation') shall be able to identify the different order flows from the beneficiaries of such sub-delegation without being required to know the identity of the beneficiaries of such arrangement.

5. A DEA provider shall record data relating to the orders submitted by its DEA clients, including modifications and cancellations, the alerts generated by its monitoring systems and the modifications made to its filtering process.

Article 22

Due diligence assessment of prospective DEA clients

(Article 17(5) of Directive 2014/65/EU)

1. A DEA provider shall conduct a due diligence assessment of its prospective DEA clients to ensure that they meet the requirements set out in this Regulation and the rules of the trading venue to which it offers access.

2. The due diligence assessment referred to in paragraph 1 shall cover:

(a) the governance and ownership structure of the prospective DEA client;

(b) the types of strategies to be undertaken by the prospective DEA client;

(c) the operational set-up, the systems, the pre-trade and post-trade controls and the real time monitoring of the prospective DEA client. The investment firm offering DEA allowing DEA clients to use third-party trading software for accessing trading venues shall ensure that the software includes pre-trade controls that are equivalent to the pre-trade controls set out in this Regulation.

(d) the responsibilities within the prospective DEA client for dealing with actions and errors;

(e) the historical trading pattern and behaviour of the prospective DEA client;

(f) the level of expected trading and order volume of the prospective DEA client;

(g) the ability of the prospective DEA client to meet its financial obligations to the DEA provider;

(h) the disciplinary history of the prospective DEA client, where available.

3. A DEA provider allowing sub-delegation shall ensure that a prospective DEA client, before granting that client access, has a due diligence framework in place that is at least equivalent to the one described in paragraphs 1 and 2.

Article 23

Periodic review of DEA clients

(Article 17(5) of Directive 2014/65/EU)

1. A DEA provider shall review its due diligence assessment processes annually.

2. A DEA provider shall carry out an annual risk-based reassessment of the adequacy of its clients' systems and controls, in particular taking into account changes to the scale, nature or complexity of their trading activities or strategies, changes to their staffing, ownership structure, trading or bank account, regulatory status, financial position and whether a DEA client has expressed an intention to sub-delegate the access it receives from the DEA provider.

CHAPTER IV

INVESTMENT FIRMS ACTING AS GENERAL CLEARING MEMBERS

Article 24

Systems and controls of investment firms acting as general clearing members

(Article 17(6) of Directive 2014/65/EU)

Any systems used by an investment firm acting as a general clearing member ('clearing firm') to support the provision of its clearing services to its clients shall be subject to appropriate due diligence assessments, controls and monitoring.

Article 25

Due diligence assessments of prospective clearing clients

(Article 17(6) of Directive 2014/65/EU)

1. A clearing firm shall make an initial assessment of a prospective clearing client, taking into account the nature, scale and complexity of the prospective clearing client's business. Each prospective clearing client shall be assessed against the following criteria:

(a) credit strength, including any guarantees given;

(b) internal risk control systems;

(c) intended trading strategy;

(d) payment systems and arrangements that enable the prospective clearing client to ensure a timely transfer of assets or cash as margin, as required by the clearing firm in relation to the clearing services it provides;

(e) systems settings and access to information that helps the prospective clearing client to respect any maximum trading limit agreed with the clearing firm;

(f) any collateral provided to the clearing firm by the prospective clearing client;

(g) operational resources, including technological interfaces and connectivity;

(h) any involvement of the prospective clearing client in a breach of the rules ensuring the integrity of the financial markets, including involvement in market abuse, financial crime or money laundering activities.

2. A clearing firm shall annually review the on-going performance of its clearing clients against the criteria listed in paragraph 1. The binding written agreement referred to in Article 17(6) of Directive 2014/65/EU shall contain those criteria and set out the frequency at which the clearing firm shall review its clearing clients' performance against those criteria, where this review is to be conducted more than once a year. The binding written agreement shall set out the consequences for clearing clients that do not comply with those criteria.

Article 26

Position limits

(Article 17(6) of Directive 2014/65/EU)

1. A clearing firm shall set out and communicate to its clearing clients appropriate trading and position limits to mitigate and manage its own counterparty, liquidity, operational and other risks.

2. A clearing firm shall monitor its clearing clients' positions against the limits referred to in paragraph 1 as close to real-time as possible and have appropriate pre-trade and post-trade procedures for managing the risk of breaches of the position limits, by way of appropriate margining practice and other appropriate means.

3. A clearing firm shall document in writing the procedures referred to in paragraph 2 and record whether the clearing clients comply with those procedures.

Article 27

Disclosure of information about the services provided

(Article 17(6) of Directive 2014/65/EU)

1. A clearing firm shall publish the conditions under which it offers its clearing services. It shall offer those services on reasonable commercial terms.

2. A clearing firm shall inform its prospective and existing clearing clients of the levels of protection and of the costs associated with the different levels of segregation it provides. Information on the different levels of segregation shall include a description of the main legal effects of the respective levels of segregation offered, including information on the insolvency law applicable in the relevant jurisdiction.

CHAPTER V

HIGH-FREQUENCY ALGORITHMIC TRADING TECHNIQUE AND FINAL PROVISIONS

Article 28

Content and format of order records

(Article 17(2) of Directive 2014/65/EU)

1. An investment firm that engages in a high-frequency algorithmic trading technique shall immediately after order submission record the details of each submitted order using the format set out in tables 2 and 3 of Annex II.

2. An investment firm that engages in a high-frequency algorithmic trading technique shall update the information referred to in paragraph 1 in the standards and formats specified in the fourth column of tables 2 and 3 of Annex II.

3. The records referred to in paragraphs 1 and 2 shall be kept for five years from the date of the submission of an order to a trading venue or to another investment firm for execution.

Article 29

Entry into force and application

(Article 17(2) of Directive 2014/65/EU)

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

It shall apply from 3 January 2018.

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

Done at Brussels, 19 July 2016.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX I

Criteria to be considered in the investment firm's self-assessment as referred to in Article 9(1)

1. When considering the nature of its business, an investment firm shall consider the following, where applicable:

   (a) the regulatory status of the firm and, where applicable, of its DEA clients, including the regulatory requirements to which it is subject as an investment firm under Directive 2014/65/EU, and other relevant regulatory requirements;

   (b) the firm's roles in the market, including whether it is a market maker and whether it executes orders for clients or rather only trades on its own account;

   (c) the level of automation of trading and of other processes or activities of the firm;

   (d) the types and regulatory status of the instruments, products and asset classes that the firm trades in;

   (e) the types of strategies the firm employs and the risks contained in these strategies for the firm's own risk management and for the fair and orderly functioning of the markets; the firm shall consider in particular the nature of these strategies, such as market making or arbitrage, and whether those strategies are long-term, short-term, directional, or non-directional;

   (f) the latency sensitivity of the firm's strategies and trading activities;

   (g) the type and regulatory status of trading venues and other liquidity pools accessed and in particular whether the trading activity on those trading venues and other liquidity pools are lit, dark or over-the-counter trading;

   (h) the connectivity solutions of the firm and whether it accesses trading venues as a member, as a DEA client or as a DEA provider;

   (i) the extent to which the firm relies on third parties for the development and maintenance of its algorithms or trading systems and whether these algorithms or trading systems are self-developed, co-developed with a third party, or purchased from, or outsourced to, a third party;

   (j) the firm's ownership and governance structure, how it is structured organisationally and operationally, and whether it is a partnership, subsidiary, publicly traded company, or otherwise;

   (k) the firm's risk management, compliance, audit structure and organisation;

   (l) the date of establishment of the firm and level of experience and competency of its personnel and whether it is recently established.

2. When considering the scale of its business, an investment firm shall consider the following, where applicable:

   (a) the number of algorithms and strategies running in parallel;

   (b) the number of individual instruments, products, and asset classes traded;

   (c) the number of trading desks operated and individual trading identifiers of the natural persons and algorithms responsible for order execution used;

   (d) the messaging volume capacities and in particular the number of orders submitted, adjusted, cancelled and executed;

   (e) the monetary value of its gross and net positions intraday and overnight;

   (f) the number of markets accessed either as a member or participant or via DEA;

   (g) the number and size of the firm's clients and notably the firm's DEA clients;

   (h) the number of co-location or proximity hosting sites to which the firm has connectivity;

   (i) the throughput size of connectivity infrastructure of the firm;

(j) the number of clearing members or CCP memberships of the firm;

(k) the firm's size in terms of number of traders and front-office, middle-office and back-office staff employed as full-time equivalent;

(l) the number of the firm's physical locations;

(m) the number of countries and regions in which the firm is undertaking trading activities;

(n) the firm's annual earnings and profits.

3. When considering the complexity of its business, an investment firm shall consider the following, where applicable:

(a) the nature of the strategies carried out by the firm or by its clients, to the extent that these strategies are known by the firm and, in particular, whether these strategies imply algorithms initiating orders related to correlated instruments or on several trading venues or liquidity pools;

(b) the firm's algorithms, in terms of coding, inputs upon which the algorithms are reliant, interdependencies, and the rule exceptions contained in the algorithms, or otherwise;

(c) the firm's trading systems in terms of diversity of trading systems employed, and the extent to which the firm has control over setting, adjusting, testing, and reviewing its trading systems;

(d) the structure of the firm in terms of ownership and governance and its organisational, operational, technical, physical, or geographical set up;

(e) the diversity of the firm's connectivity, technology or clearing solutions;

(f) the diversity of the firm's physical trading infrastructures;

(g) the level of outsourcing undertaken or offered by the firm and in particular where key functions are being outsourced;

(h) the firm's provision or usage of DEA, whether it is DMA or sponsored access, and the conditions under which DEA is offered to clients; and,

(i) the speed of trading by the firm or its clients.

ANNEX II

Content and format of order records as referred to in Article 28

Table 1

Legend for Tables 2 and 3

SYMBOL	DATA TYPE	DEFINITION
{ALPHANUM-n}	Up to n alphanumerical characters	Free text field.
{CURRENCYCODE_3}	3 alphanumerical characters	3 letter currency code, as defined by ISO 4217 currency codes
{DATE_TIME_FORMAT}	ISO 8601 date and time format	Date and time in the following format: YYYY-MM-DDThh:mm:ss.dddddd Z. — 'YYYY' is the year; — 'MM' is the month; — 'DD' is the day; — 'T' — means that the letter 'T' shall be used — 'hh' is the hour; — 'mm' is the minute; — 'ss.dddddd' is the second and its fraction of a second; — Z is UTC time. Dates and times shall be reported in UTC.
{DECIMAL-n/m}	Decimal number of up to n digits in total of which up to m digits can be fraction digits	Numerical field for both positive and negative values. — decimal separator is '.' (full stop); — negative numbers are prefixed with '–' (minus); — values are rounded and not truncated.
{INTEGER-n}	Integer number of up to n digits in total	Numerical field for both positive and negative integer values.
{ISIN}	12 alphanumerical characters	ISIN code as defined in ISO 6166.
{LEI}	20 alphanumerical characters	Legal entity identifier as defined in ISO 17442.
{MIC}	4 alphanumerical characters	Market identifier as defined in ISO 10383.
{NATIONAL_ID}	35 alphanumerical characters	The identifier is that set out in Article 6 and ANNEX II to [RTS 22 on transaction reporting obligations under Article 26 of Regulation (EU) No 600/2014].

Table 2

Information relating to every initial decision to deal and incoming orders from clients

N.	Field	Description	Standards and Format
1	Client first name(s)	Full first name(s) of the client. Where there is more than one first name, all names shall be included in this field and be separated by a comma. This field shall be left blank in case of coverage by the Legal Entity Identifier (LEI).	{ALPHANUM-140}

N.	Field	Description	Standards and Format
2	Client surname(s)	Full surname(s) of the client. Where there is more than one surname, all surnames shall be included in this field and be separated by a comma. This field shall be left blank in case of coverage by the LEI	{ALPHANUM-140}
3	Client identification code	Code used to identify the client of the investment firm. In case there is DEA, the code of the DEA user shall be used. Where the client is a legal entity, the LEI code of the client shall be used. Where the client is not a legal entity, the {NATIONAL_ID} shall be used. In the case of aggregated orders, the flag AGGR as specified in Article 2(3) of Commission Delegated Regulation (EU) 2017/580 [1] shall be used. In the case of pending allocations, the flag PNAL as specified in Article 2(2) of Delegated Regulation (EU) 2017/580 shall be used. This field shall be left blank only if the investment firm has no client.	{LEI} {NATIONAL_ID} 'AGGR' — aggregated orders 'PNAL' — pending allocations
4	Name(s) of person acting on behalf of the client	This field shall contain the full first name(s) of the person acting on behalf of the client. Where there is more than one first name, all names shall be included in this field separated by a comma.	{ALPHANUM-140}
5	Surname(s) of person acting on behalf of the client	This field shall contain the full surname(s) of the person acting on behalf of the client. In case there is more than one surname, all surnames shall be included in this field separated by a comma.	{ALPHANUM-140}
6	Investment decision within firm	Code used to identify the person or the algorithm within the investment firm who is responsible for the investment decision in accordance with Article 8 of Commission Delegated Regulation (EU) 2017/590 [2]. Where a natural person was responsible for the investment decision the person who was responsible or had primary responsibility for the investment decision shall be identified with the {NATIONAL_ID}. Where an algorithm was responsible for the investment decision the field shall be populated as set out in Article 8 of Delegated Regulation (EU) 2017/590. This field shall be left blank where the investment decision was not made by a person or an algorithm within the investment firm.	{NATIONAL_ID} — Natural persons {ALPHANUM-50} — Algorithms
7	Initial order designation	Code used to identify the order that was received from the client or generated by the investment firm before the order is processed and submitted to the trading venue or investment firm.	{ALPHANUM-50}
8	Buy-Sell indicator	To show if the order is to buy or sell.	'BUYI' — buy 'SELL' — sell

N.	Field	Description	Standards and Format
		In case of options and swaptions, the buyer shall be the counterparty that holds the right to exercise the option and the seller shall be the counterparty that sells the option and receives a premium. In case of futures and forwards other than futures and forwards relating to currencies, the buyer shall be the counterparty buying the instrument and the seller the counterparty selling the instrument. In case of swaps relating to securities, the buyer shall be the counterparty that gets the risk of price movement of the underlying security and receives the security amount. The seller shall be the counterparty paying the security amount. In case of swaps related to interest rates or inflation indices, the buyer shall be the counterparty paying the fixed rate. The seller shall be the counterparty receiving the fixed rate. In case of basis swaps (float-to-float interest rate swaps), the buyer shall be the counterparty that pays the spread and the seller the counterparty that receives the spread. In case of swaps and forwards related to currencies and of cross currency swaps, the buyer shall be the counterparty receiving the currency which is first when sorted alphabetically by ISO 4217 standard and the seller shall be the counterparty delivering this currency. In case of swaps related to dividends, the buyer shall be the counterparty receiving the equivalent actual dividend payments. The seller is the counterparty paying the dividend and receiving the fixed rate. In case of derivative instruments for the transfer of credit risk except options and swaptions, the buyer shall be the counterparty buying the protection. The seller is the counterparty selling the protection. In case of derivative contracts related to commodities or emission allowances, the buyer shall be the counterparty that receives the commodity or emission allowance specified in the report and the seller the counterparty delivering this commodity or emission allowance. In case of forward rate agreements, the buyer shall be the counterparty paying the fixed rate and the seller the counterparty receiving the fixed rate. For an increase in notional the buyer shall be the same as the acquirer of the financial instrument in the original transaction and the seller shall be the same as the disposer of the financial instrument in the original transaction. For a decrease in notional the buyer shall be the same as the disposer of the financial instrument in the original transaction and the seller shall be the same as the acquirer of the financial instrument in the original transaction.	
9	Financial instrument identification code	Unique and unambiguous identifier of the financial instrument	{ISIN}

N.	Field	Description	Standards and Format
10	Price	Limit price of the order excluding, where applicable, commission and accrued interest. For stop orders, this shall be the stop price for the order. Where there are option contracts, the price shall be the premium of the derivative contract per underlying or index point. Where there are spread bets, the price shall be the reference price of the direct underlying instrument. For credit default swaps, the price shall be the coupon in basis points. Where the price is reported in monetary terms, the price shall be provided in the major currency unit. Where the price is not applicable, the field shall be populated with the value 'NOAP'. Where the price is currently not available but pending, the value shall be 'PNDG'. Where the agreed price is zero, a price of zero shall be used. Where applicable, values shall not be rounded or truncated.	{DECIMAL-18/13} in case the price is expressed as monetary value. {DECIMAL-11/10} in case the price is expressed as percentage or yield. {DECIMAL-18/17} in case the price is expressed as basis points. 'PNDG' in case the price is not available. 'NOAP' in case the price is not applicable.
11	Price notation	Indicates whether the price and the strike price are expressed in monetary value, in percentage, in yield or in basis points.	'MONE' — Monetary value 'PERC' — Percentage 'YIEL' — Yield 'BAPO' — Basis points
12	Price multiplier	Number of units of the underlying instruments represented by a single derivative contract. Monetary value covered by a single swap contract, where the quantity field indicates the number of swap contracts in the transaction. For a future or option on an index, the amount per index point. For spreadbets, the movement in the price of the underlying instrument on which the spreadbet is based. The information reported in this field shall be consistent with the values provided in fields 10 and 26.	{DECIMAL- 18/17} '1' — If non-derivative financial instruments not traded by contracts.
13	Price currency	Currency in which the price for the financial instrument related to the order is expressed (applicable where the price is expressed as a monetary value).	{CURRENCYCODE_3}
14	Currency of leg 2	Where there are multi-currency or cross-currency swaps, the currency of leg 2 shall be the currency in which leg 2 of the contract is denominated. For swaptions where the underlying swap is multi-currency, the currency of leg 2 shall be the currency in which leg 2 of the swap is denominated. This field is only applicable to interest rate and currency derivatives contracts.	{CURRENCYCODE_3}

N.	Field	Description	Standards and Format
15	Underlying instrument code	ISIN code of the underlying instrument. For ADRs, GDRs and similar instruments, the {ISIN} of the financial instrument on which the instruments is based. For convertible bonds, the {ISIN} of the instrument into which the bond can be converted. For derivatives or other instruments which have an underlying, the ISIN code for the underlying instrument, where the underlying is admitted to trading, or traded on a trading venue. Where the underlying is a stock dividend, the ISIN code of the related share entitling the underlying dividend. For credit default swaps, the ISIN of the reference obligation shall be provided. In case the underlying is an index and has an ISIN, the ISIN code for that index. Where the underlying is a basket, include all the ISINs for each constituent of the basket that is admitted to trading or is traded on a trading venue. This field shall be repeated as many times as necessary to list all reportable instruments in the basket.	{ISIN}
16	Option type	Indicates whether the derivative contract is a call (right to purchase a specific underlying asset) or a put (right to sell a specific underlying asset) or whether it cannot be determined whether it is a call or a put at the time the order is placed. In case of swaptions it shall be: — 'PUTO', in case of receiver swaption, in which the buyer has the right to enter into a swap as a fixed-rate receiver. — 'CALL', in case of payer swaption, in which the buyer has the right to enter into a swap as a fixed-rate payer. In case of caps and floors it shall be: — 'PUTO', in case of a floor. — 'CALL', in case of a cap. Field only applies to derivatives that are options or warrants.	'PUTO' — Put 'CALL' — Call 'OTHR' — where it cannot be determined whether it is a call or a put
17	Strike price	Predetermined price at which the holder will have to buy or sell the underlying instrument or an indication that the price cannot be determined at the time the order is placed. Field only applies to an option or warrant where the strike price can be determined at the time the order is placed. Where the strike price is not applicable, the field shall not be populated.	{DECIMAL-18/13} in case the price is expressed as monetary value. {DECIMAL-11/10} in case the price is expressed as percentage or yield. {DECIMAL-18/17} in case the price is expressed as basis points. 'PNDG' in case the price is not available.
18	Strike price currency	Currency of the Strike Price	{CURRENCYCODE_3}

N.	Field	Description	Standards and Format
19	Up-front payment	Monetary value of any up-front payment in basis points of notional received or paid by the seller. Where the seller receives the up-front payment, the value populated shall be positive. Where the seller pays the up-front payment, the value populated shall be negative. For an increase or decrease of notional in derivative contracts, the number shall reflect the absolute value of the change and shall be expressed as a positive number.	{DECIMAL-18/5}
20	Delivery type	Indicates whether the transaction is settled physically or in cash. Where the delivery type cannot be determined at time of order placement, the value shall be 'OPTL'. The field only needs to be populated where there are derivatives.	'PHYS' — Physically settled 'CASH' — Cash settled 'OPTL' — Optional for counterparty or when determined by a third party.
21	Option exercise style	Indicates whether the option may be exercised only at a fixed date (European and Asian style), a series of pre-specified dates (Bermudan) or at any time during the life of the contract (American style). This field is only applicable for options.	'EURO' — European 'AMER' — American 'ASIA' — Asian 'BERM' — Bermudan 'OTHR' — Any other type
22	Maturity date	Date of maturity of the financial instrument. Field is only applicable for debt instruments with a defined maturity date.	{DATEFORMAT}
23	Expiry date	Expiry date of the reported financial instrument. Field is only applicable for derivatives with a defined expiry date.	{DATEFORMAT}
24	Quantity currency	Currency in which the quantity is expressed. Field is only applicable if quantity is expressed as a nominal or monetary value.	{CURRENCYCODE_3}
25	Quantity notation	Indicates whether the quantity reported is expressed as number of units, as a nominal value or as a monetary value.	'UNIT' — Number of units 'NOML' — Nominal value 'MONE' — Monetary value
26	Initial quantity	The number of units of the financial instrument or the number of derivative contracts in the order. The nominal or monetary value of the financial instrument. For spread bets, the quantity shall be the monetary value wagered per point movement in the underlying financial instrument. For an increase or decrease in notional derivative contracts, the number shall reflect the absolute value of the change and shall be expressed as a positive number. For credit default swaps, the quantity shall be the notional amount for which the protection is acquired or disposed of.	{DECIMAL-18/17} in case the quantity is expressed as number of units. {DECIMAL-18/5} in case the quantity is expressed as monetary or nominal value.

N.	Field	Description	Standards and Format
27	Date and time	The exact date and time of the receipt of the order or the exact date and time when the decision to deal was made. Where applicable, this field shall be maintained in accordance with Article 3 and table 2 in the Annex of Commission Delegated Regulation (EU) 2017/574 ([3]).	{DATE_TIME_FORMAT} Where applicable, the number of digits after the 'seconds' shall be determined in accordance with Table 2 in the Annex of Delegated Regulation (EU) 2017/574.
28	Additional information from the client	Any instructions, parameters, conditions and any other details of the order that were transmitted by the client to the investment firm.	Free text

([1]) Commission Delegated Regulation (EU) 2017/580 24 June 2016 of supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the maintenance of relevant data relating to orders in financial instruments (see page 193 of this Official Journal).
([2]) Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities (see page 449 of this Official Journal).
([3]) Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks (see page 148 of this Official Journal).

Table 3

Information relating to outgoing and executed orders

N.	Field/Content	Description	Format
1	Buy-Sell indicator	Indicates whether the order is to buy or to sell, as determined in the description of field 8 of table 2.	'BUYI' — buy 'SELL' — sell
2	The trading capacity	Indicates whether the order submission results from the member, participant or client of the trading venue is carrying out matched principal trading under Article 4(38) of Directive 2014/65/EU, or is dealing on its own account under Article 4(6) of Directive 2014/65/EU. Where the order submission does not result from the member, participant or client of the trading venue carrying out matched principal trading or dealing on its own account, the field shall indicate that the transaction was carried out under any other capacity.	'DEAL' — Dealing on own account 'MTCH' — Matched principal 'AOTC' — Any other capacity
3	Liquidity provision activity	Indicates whether an order is submitted to a trading venue as part of a market making strategy pursuant to Articles 17 and 48 of Directive 2014/65/EU, or is submitted as part of another activity in accordance with Article 3 of Commission Delegated Regulation (EU) 2017/575. ([1]).	'true' 'false'
4	Execution within firm	Code used to identify the person or algorithm within the investment firm who is responsible for the execution of the transaction resulting from the order in accordance with Article 9 of Delegated Regulation (EU) 2017/590. Where a natural person is responsible for the execution of the transaction, the person shall be identified by {NATIONAL_ID} Where an algorithm is responsible for the execution of the transaction, this field shall be populated in accordance with Article 9 of Delegated Regulation (EU) 2017/590.	{NATIONAL_ID} — Natural persons {ALPHANUM-50} — Algorithms

N.	Field/Content	Description	Format
		Where more than one person or a combination of persons and algorithms are involved in the execution of the transaction, the firm shall determine the trader or algorithm primarily responsible as specified in Article 9 of Delegated Regulation (EU) 2017/590 and populate this field with the identity of that trader or algorithm. This field shall only be applicable for executed orders.	
5	The identification code of the order submitted to the trading venue or to another investment firm	Internal code used by the investment firm to identify the order submitted to the trading venues or to another investment firm, provided that the code is unique per trading day and per financial instrument.	{ALPHANUM-50}
6	The identification code of the order assigned by another investment firm or trading venue to which the order was submitted	An alphanumerical code assigned by another investment firm or the trading venue to which the order was submitted by the investment firm for execution. This field shall be populated with the identification code assigned by the latter investment firm or trading venue.	{ALPHANUM-50}
7	Order receiver identification code	The code of the investment firm to which the order was transmitted or code of the trading venue to which the order was transmitted.	For an investment firm: {LEI} For a trading venue:{MIC}
8	Order type	Identifies the type of order submitted to the trading venue as per the trading venue specifications.	{ALPHANUM-50}
9	Limit price	The maximum price at which a buy order can trade or the minimum price at which a sell order can trade. The spread price for a strategy order. It can be negative or positive. This field shall be left blank in case of orders that do not have a limit price or in case of unpriced orders. In case of a convertible bond, the real price (clean or dirty) used for the order shall be reflected in this field. Where an order is executed, the investment firm shall also record the price at which the transaction was executed.	{DECIMAL-18/13} where the price is expressed as a monetary value. Where a price is reported in monetary terms, it shall be provided in the major currency unit. {DECIMAL-11/10} in case the price is expressed as a percentage or yield. {DECIMAL-18/17} in case the price is expressed as basis points.
10	Price currency	Currency in which the trading price is expressed (applicable where the price is expressed as a monetary value) for the financial instrument related to the order.	{CURRENCYCODE_3}
11	Price notation	Indicates whether the price and strike price are expressed in monetary value, in percentage or in yield or in basis points.	'MONE' — Monetary value 'PERC' — Percentage 'YIEL' — Yield 'BAPO' — Basis points
12	Additional limit price	Any other limit price which may apply to the order. This field shall be left blank if not relevant.	{DECIMAL-18/13} where the price is expressed as a monetary value.

N.	Field/Content	Description	Format
			Where the price is reported in monetary terms, it shall be provided in the major currency unit. {DECIMAL-11/10} where the price is expressed as a percentage or yield. {DECIMAL-18/17} in case the price is expressed as basis points.
13	Stop price	The price that must be reached for the order to become active. For stop orders triggered by events independent of the price of the financial instrument, this field shall be populated with a stop price equal to zero. This field shall be left blank if not relevant.	{DECIMAL-18/13} where the price is expressed as a monetary value. Where the price is reported in monetary terms, it shall be provided in the major currency unit. {DECIMAL-11/10} in case the price is expressed as a percentage or yield. {DECIMAL-18/17} in case the price is expressed as basis points.
14	Pegged limit price	The maximum price at which a pegged order to buy can trade or the minimum price at which a pegged order to sell can trade. This field shall be left blank if not relevant.	{DECIMAL-18/13} where the price is expressed as a monetary value. Where the price is reported in monetary terms, it shall be provided in the major currency unit. {DECIMAL-11/10} where the price is expressed as a percentage or yield. {DECIMAL-18/17} in case the price is expressed as basis points.
15	Remaining quantity including hidden	The total quantity that remains in the order book after a partial execution or in the case of any other event affecting the order. On a partial fill order event, this shall be the total remaining volume after that partial execution. On an order entry this shall equal the initial quantity.	{DECIMAL-18/17} where the quantity is expressed as a number of units. {DECIMAL-18/5} where the quantity is expressed as a monetary or nominal value.
16	Displayed quantity	The quantity that is visible (as opposed to hidden) in the order book.	{DECIMAL-18/17} where the quantity is expressed as a number of units. {DECIMAL-18/5}where the quantity is expressed as a monetary or nominal value.
17	Traded quantity	Where there is a partial or full execution, this field shall be populated with the executed quantity.	{DECIMAL-18/17} where the quantity is expressed as a number of units. {DECIMAL-18/5} where the quantity is expressed as a monetary or nominal value.

N.	Field/Content	Description	Format
18	Minimum acceptable quantity (MAQ)	The minimum acceptable quantity for an order to be filled which can consist of multiple partial executions and is normally only for non-persistent order types. This field shall be left blank if not relevant.	{DECIMAL-18/17} where the quantity is expressed as a number of units. {DECIMAL-18/5} where the quantity is expressed as a monetary or nominal value.
19	Minimum executable size (MES)	The minimum execution size of any individual potential execution. This field shall be left blank if not relevant.	{DECIMAL-18/17} where the quantity is expressed as a number of units. {DECIMAL-18/5} where the quantity is expressed as a monetary or nominal value.
20	MES first execution only	Specifies whether the MES is relevant only for the first execution. This field can be left blank where field 19 is left blank.	'true' 'false'
21	Passive only indicator	Indicates if the order is submitted to the trading venue with a characteristic/flag such that the order shall not immediately execute against any contra visible orders.	'true' 'false'
22	Self-Execution Prevention	Indicates whether the order has been entered with self-execution prevention criteria, so that it would not execute with an order on the opposite side of the book entered by the same member or participant.	'true' 'false'
23	Date and time (submission of order)	The exact date and time of the submission of an order to the trading venue or to another investment firm.	{DATE_TIME_FORMAT} The number of digits after the 'seconds' shall be determined in accordance with Table 2 in the Annex of Delegated Regulation (EU) 2017/574.
24	Date and time (receipt of order)	The exact date and time of any message that is transmitted to and received from the trading venue or other investment firm in relation to the order.	{DATE_TIME_FORMAT} The number of digits after the 'seconds' shall be determined in accordance with Table 2 in the Annex of Delegated Regulation (EU) 2017/574
25	Sequence number	Every event listed in field 26 shall be identified by the investment firm, using positive integers in ascending order. The sequence number shall be unique to each type of event, consistent across all events, timestamped by the investment firm and persistent for the date that the event occurs.	{INTEGER-50}
26	New order, order modification, order cancellation, order rejections, partial or full execution	New order: receipt of a new order by the operator of the trading venue. Triggered: an order which becomes executable or, as the case may be, non-executable upon the realisation of a pre-determined condition.	'NEWO' — New order 'TRIG' — Triggered

N.	Field/Content	Description	Format
		Replaced by the member, participant or client of the trading venue: where a member, participant or client of the trading venue decides upon its own initiative to change any characteristic of the order it has previously entered into the order book.	'REME' — Replaced by the member or participant or client of the trading venue.
		Replaced by market operations (automatic): where any characteristic of an order is changed by the trading venue operator's IT systems. This includes where a peg order's or a trailing stop order's current characteristics are changed to reflect how the order is located within the order book.	'REMA' — Replaced by market operations (automatic).
		Replaced by market operations (human intervention): where any characteristic of an order is changed by a trading venue operator's staff. This includes the situation where a member, participant or client of the trading venue has IT issues and needs its orders to be cancelled urgently.	'REMH' — Replaced by market operations (human intervention).
		Change of status at the initiative of the member, participant or client of the trading venue. This includes activation and deactivation.	'CHME' — Change of status at the initiative of the member/participant/client of the trading venue.
		Change of status due to market operations.	'CHMO' — Change of status due to market operations.
		Cancelled at the initiative of the member, participant or client of the trading venue.	'CAME' — Cancelled at the initiative of the member or participant or client of the trading venue.
		Cancelled by market operations. This includes a protection mechanism provided for investment firms engaging in algorithmic trading to pursue a market making strategy as laid down in Articles 17 and 48 of Directive 2014/65/EU.	'CAMO' -Cancelled by market operations.
		Rejected order: an order received but rejected by the operator of the trading venue.	'REMO' — Rejected order
		Expired order. where the order is removed from the order book upon the end of its validity period.	'EXPI' — Expired order
		Partially filled: where the order is not fully executed so that there remains a quantity to be executed.	'PARF' — Partially filled
		Filled: where there is no more quantity to be executed.	'FILL' — Filled {ALPHANUM-4} characters not already in use for the trading venue's own classification.
27	Short selling indicator	A short sale concluded by an investment firm on its own behalf or on behalf of a client, as described in Article 11 of Delegated Regulation (EU) 2017/590.	'SSHO' — Short sale with no exemption
		When an investment firm executes a transaction on behalf of a client who is selling and the investment firm, acting on a best effort basis, cannot determine whether it is a short sale transaction, this field shall be populated with 'UNDI'.	'SSEX' — Short sale with exemption
		Where the transaction is for a transmitted order that has met the conditions for transmission set out in Article 4 of Delegated Regulation (EU) 2017/590, this field shall be populated by the receiving firm in the receiving firm's report using the information received from the transmitting firm.	'SELL' — No short sale 'UNDI' — Information not available

N.	Field/Content	Description	Format
		This field is only applicable where the instrument is covered by Regulation (EU) No 236/2012 of the European Parliament and of the Council ([2]) and the seller is the investment firm or a client of the investment firm. This field is only applicable in case of executed orders.	
28	Waiver indicator	Indicates whether the transaction was executed under a pre-trade waiver in accordance with Articles 4 and 9 of Regulation (EU) No 600/2014. For equity instruments: 'RFPT' = Reference price transaction 'NLIQ' = Negotiated transactions in liquid financial instruments 'OILQ' = Negotiated transactions in illiquid financial instruments 'PRIC' = Negotiated transactions subject to conditions other than the current market price of that equity financial instrument. For non-equity instruments: 'SIZE' = Above specific size transaction 'ILQD' = Illiquid instrument transaction This field is only applicable where there are orders that were executed under a waiver on a trading venue.	Populate one or more of the following flags: 'RFPT' — Reference price 'NLIQ' — Negotiated (liquid) 'OILQ' — Negotiated (illiquid) 'PRIC' — Negotiated (conditions) 'SIZE' — Above specified size 'ILQD' — Illiquid instrument
29	Routing Strategy	The applicable routing strategy as per the trading venue specification. This field shall be left blank if not relevant.	{ALPHANUM-50}
30	Trading venue transaction identification code	Alphanumerical code assigned by the trading venue to the transaction pursuant to Article 12 of Delegated Regulation (EU) 2017/575. This field is only applicable where there are orders that were executed on a trading venue.	{ALPHANUM-52}
31	Validity period	Good-For-Day: the order expires at the end of the trading day on which it was entered in the order book.	'GDAY' — Good-For-Day
		Good-Till-Cancelled: the order will remain active in the order book and be executable until it is actually cancelled.	'GTCA' — Good-Till-Cancelled
		Good-Till-Time: the order expires at the latest at a pre-determined time within the current trading session.	'GTHT' — Good-Till-Time
		Good-Till-Date: the order expires at the end of a specified date.	'GTHD' — Good-Till-Date
		Good-Till-Specified Date and Time: the order expires at a specified date and time.	'GTDT' — Good-Till-Specified Date and Time
		Good After Time: the order is only active after a pre-determined time within the current trading session.	'GAFT' — Good After Time

N.	Field/Content	Description	Format
		Good After Date: the order is only active from the beginning of a pre-determined date.	'GAFD' — Good After Date
		Good After Specified Date and Time: the order is only active from a pre-determined time on a pre-determined date.	'GADT' — Good After Specified Date and Time
		Immediate-Or-Cancel: an order which is executed upon its entering into the order book (for the quantity that can be executed) and which does not remain in the order book for the remaining quantity (if any) that has not been executed.	'IOCA' — Immediate-Or-Cancel
		Fill-Or-Kill: an order which is executed upon its entering into the order book provided that it can be fully filled: In the event the order can only be partially executed, then it is automatically rejected and cannot therefore be executed. Other: any additional indications that are unique for specific business models, trading platforms or systems.	'F' — Fill-Or-Kill or {ALPHANUM-4} characters not already in use for the trading venue's own classification.
32	Order restriction	Good For Closing Price Crossing Session: where an order qualifies for the closing price crossing session.	'SESR' — Good For Closing Price Crossing Session
		Valid For Auction: the order is only active and can only be executed at auction phases (which can be pre-defined by the member, participant or client of the trading venue who submitted the order, e.g. opening and/or closing auctions and/or intraday auction).	'VFAR' — Valid For Auction
		Valid For Continuous Trading only: the order is only active during continuous trading.	'VFCR' — Valid For Continuous Trading only
		Other: any additional indications that are unique for specific business models, trading platforms or systems.	{ALPHANUM-4} characters not already in use for the trading venue's own classification. This field shall be populated with multiple flags separated by a comma where there are multiple types applicable.
33	Validity period date and time	This refers to the time stamp reflecting the time on which the order becomes active or is ultimately removed from the order book. Good for day: the date of entry with the timestamp immediately prior to midnight. Good till time: the date of entry and the time to that specified in the order. Good till date: the specified date of expiry with the timestamp immediately prior to midnight. Good till specified date and time: the specified date and time of expiry Good after time: the date of entry and the specified time at which the order becomes active.	{DATE_TIME_FORMAT} The number of digits after the 'seconds' shall be determined in accordance with Table 2 in the Annex of Delegated Regulation (EU) 2017/574.

N.	Field/Content	Description	Format
		Good after date: the specified date with the timestamp immediately after midnight. Good after specified date and time: Default will be the specified date and time at which the order becomes active. Good till Cancel: the ultimate date and time the order is automatically removed by market operations Other: timestamp for any additional validity type.	
34	Aggregated order	Indicates whether the order is an aggregated order in accordance with Article 2(3) of Delegated Regulation (EU) 2017/575.	'true' 'false'
35	Additional information relating to the outgoing order	Any instructions, parameters, conditions and any other details of the order that are: transmitted by the investment firm to the trading venue and in particular those instructions, parameters, conditions and details which are necessary for the trading venue to have a clear understanding of how the order has to be handled by it; or transmitted by the trading venue to the investment firm and in particular those instructions, parameters, conditions and details which are necessary for the investment firm to have a clear feedback information on how the order has been handled.	Free text

(1) Commission Delegated Regulation (EU) 2017/575 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards concerning the data to be published by execution venues on the quality of execution of transactions (see page 152 of this Official Journal).

(2) Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps (OJ L 86, 24.3.2012, p. 1).

COMMISSION DELEGATED REGULATION (EU) 2017/590

of 28 July 2016

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 [1], and in particular the third subparagraph of Article 26(9) thereof,

Whereas:

(1) For the purposes of effective data analysis by competent authorities, there should be consistency in the standards and formats used when reporting transactions.

(2) Given market practices, supervisory experience and market developments, the meaning of a transaction for reporting purposes should be broad. It should cover purchases and sales of reportable instruments as well as other cases of acquisition or disposal of reportable instruments, as these may also give rise to market abuse concerns. Furthermore, changes to notional amount may give rise to concerns about possible market abuse as they are similar in nature to additional purchase or sale transactions. In order for competent authorities to distinguish those changes from other purchases or sales, information on those changes should be specifically reported in transaction reports.

(3) The concept of a transaction should not include acts or events which do not need to be reported to competent authorities for market surveillance purposes. In order to ensure that information on such acts and events is not included in transaction reports, they should be specifically excluded from the meaning of a transaction.

(4) In order to clarify which investment firms are required to report transactions, the activities or services which lead to a transaction should be specified. Accordingly, an investment firm should be considered to be executing a transaction where it performs a service or activity referred to in points 1, 2 and 3 of Section A of Annex I to Directive 2014/65/EU of the European Parliament and of the Council [2], makes the investment decision in accordance with a discretionary mandate given by a client, or transfers financial instruments to or from accounts, provided that in each case such services or activities have resulted in a transaction. However, in accordance with Article 26(4) of Regulation (EU) No 600/2014, investment firms which are considered to have transmitted orders which result in transactions should not be considered as having executed those transactions.

(5) In order to avoid non-reporting or double reporting by investment firms that transmit orders to each other, the investment firm that intends to transmit the order should agree with the firm receiving the order whether the receiving firm will report all the details of the resulting transaction or transmit the order onwards to another investment firm. In the absence of an agreement, the order should be deemed not transmitted and each investment firm should submit its own transaction report containing [all] the details that pertain to the transaction that each investment firm is reporting. Moreover, the details relating to the order to be transmitted between firms should be specified in order to ensure that the competent authorities receive information that is relevant, accurate and complete.

(6) In order to ensure certain and efficient identification of investment firms responsible for execution of transactions, those firms should ensure that they are identified in the transaction report submitted pursuant to their transaction reporting obligation using validated, issued and duly renewed legal entity identifiers (LEIs).

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

[2] 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).

(7) In order to ensure consistent and robust identification of natural persons referred to in transaction reports, they should be identified by a concatenation of the country of their nationality followed by identifiers assigned by the country of nationality of those persons. Where those identifiers are not available, natural persons should be identified by identifiers created from a concatenation of their date of birth and name.

(8) In order to facilitate market surveillance, client identification should be consistent, unique and robust. Transaction reports should therefore include the full name and date of birth of clients that are natural persons and should identify clients that are legal entities by their LEIs.

(9) Persons or computer algorithms which make investment decisions may be responsible for market abuse. Therefore, in order to ensure effective market surveillance, where investment decisions are made by a person other than the client or by a computer algorithm, the person or algorithm should be identified in the transaction report using unique, robust and consistent identifiers. Where more than one person in an investment firm makes the investment decision, the person taking the primary responsibility for the decision should be identified in the report.

(10) The persons or computer algorithms responsible for determining the venue to access or an investment firm to which the orders are to be transmitted or any other conditions related to the execution of the order may thereby be responsible for market abuse. Therefore, in order to ensure effective market surveillance, a person or computer algorithm within the investment firm that is responsible for such activities should be identified in the transaction report. Where both a person and computer algorithm are involved, or more than one person or algorithm is involved, the investment firm should determine, on a consistent basis following predetermined criteria, which person or algorithm is primarily responsible for those activities.

(11) In order to enable effective market monitoring, transaction reports should include exact information on any change in the position of an investment firm or its client resulting from a reportable transaction at the time such transaction took place. Investment firms should therefore report related fields in an individual transaction report consistently and should report a transaction or different legs of a transaction in such manner that their reports, collectively, provide a clear overall picture which accurately reflects changes in position.

(12) Short Sale transactions should be specifically flagged as such regardless of whether these transactions constitute a full or partial short sale transaction.

(13) Effective market surveillance in the case of a transaction in a combination of financial instruments presents particular challenges for market surveillance. The competent authority needs to have the global view and needs to be able to see separately the transaction in respect of each financial instrument that is part of a transaction in which more than one financial instrument is involved. Therefore, investment firms which execute transactions in a combination of financial instruments should report the transaction for each financial instrument separately and link those reports by an identifier that is unique at the level of the firm to the group of transaction reports related to that execution.

(14) In order to safeguard the effectiveness of market abuse surveillance of legal persons, Member States should ensure that LEIs are developed, attributed and maintained in accordance with internationally established principles to ensure legal persons are consistently and uniquely identified. Investment firms should obtain LEIs from their clients before providing services which would trigger reporting obligations in respect of transactions carried out on behalf of those clients and use those LEIs in their transaction reports.

(15) In order to ensure efficient and effective market monitoring, transaction reports should be submitted only once and to a single competent authority that can route them to other relevant competent authorities. Therefore, where an investment firm executes a transaction, it should submit the report to the competent authority of the home Member State of the investment firm irrespective of whether or not a branch is involved, or whether the reporting firm executed the transaction through a branch in another Member State. Moreover, where a transaction is executed wholly or partly through a branch of an investment firm located in another Member State, the report should be submitted only once to the competent authority of the home Member State of the investment firm unless otherwise agreed by the competent authorities of the home and the host Member State. In order to ensure that competent authorities of host Member State can supervise the services provided by branches within their territory, they need to receive transaction reports on the activities of branches. For this reason, and to allow for the transaction reports to be routed to all the relevant competent authorities for the branches that take part in those transactions, it is necessary to include granular data on branch activity in the reports.

(16) Complete and accurate transaction reporting data is essential to market abuse surveillance. Trading venues and investment firms should therefore have methods and arrangements to ensure that complete and accurate transaction reports are submitted to competent authorities. ARMs should not be covered by this regulation since they are subject to own specific regime specified in the Commission Delegated Regulation (EU) 2017/571 ([1]) and have analogous requirements to ensure the data completeness and accuracy.

(17) In order to be able to track the cancellations or corrections, the investment firm should retain the details of the corrections and cancellations provided to it by the ARM in the case where the ARM, in accordance with instructions from the investment firm, cancels or corrects a transaction report submitted on behalf of an investment firm.

(18) Determination of the most relevant market in terms of liquidity enables the routing of transaction reports to other competent authorities and enables investors to identify the competent authorities to whom they must report their short positions pursuant to Articles 5, 7 and 8 of Regulation (EU) No 236/2012 of the European Parliament and of the Council ([2]). The rules for determining the relevant competent authority under Directive 2004/39/EC of the European Parliament and of the Council ([3]) have worked effectively for most financial instruments and should therefore remain unchanged. However, new rules should be introduced specifically for those instruments which are not covered by Directive 2004/39/EC, namely for debt instruments issued by a third-country entity, emission allowances and for derivatives for which the immediate underlying has no global identifier, or is a basket or a non-EEA index.

(19) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the provisions laid down in Regulation (EU) No 600/2014 apply from the same date.

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

(21) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council ([4]),

HAS ADOPTED THIS REGULATION:

Article 1

Data standards and formats for transaction reporting

A transaction report shall include all details referred to in Table 2 of Annex I that pertain to the financial instruments concerned. All details to be included in transaction reports shall be submitted in accordance with the standards and formats specified in Table 2 of Annex I, in an electronic and machine-readable form and in a common XML template in accordance with the ISO 20022 methodology.

Article 2

Meaning of transaction

1. For the purposes of Article 26 of Regulation (EU) No 600/2014, the conclusion of an acquisition or disposal of a financial instrument referred to in Article 26(2) of Regulation (EU) No 600/2014 shall constitute a transaction.

([1]) Commission Delegated Regulation (EU) 2017/571 of 2 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services providers (see page 126 of this Official Journal).

([2]) Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps (OJ L 86, 24.3.2012, p. 1).

([3]) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

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

2. An acquisition referred to in paragraph 1 shall include the following:

(a) a purchase of a financial instrument;

(b) entering into a derivative contract;

(c) an increase in the notional amount of a derivative contract.

3. A disposal referred to in paragraph 1 shall include the following:

(a) sale of a financial instrument;

(b) closing out of a derivative contract;

(c) a decrease in the notional amount of a derivative contract.

4. For the purposes of Article 26 of Regulation (EU) No 600/2014, transaction shall also include a simultaneous acquisition and disposal of a financial instrument where there is no change in the ownership of that financial instrument but post-trade publication is required under Articles 6, 10, 20 or 21 of Regulation (EU) No 600/2014.

5. A transaction for the purposes of Article 26 of Regulation (EU) No 600/2014 shall not include the following:

(a) securities financing transactions as defined in Article 3(11) of Regulation (EU) 2015/2365 of the European Parliament and of the Council [1];

(b) a contract arising exclusively for clearing or settlement purposes;

(c) a settlement of mutual obligations between parties where the net obligation is carried forward;

(d) an acquisition or disposal that is solely a result of custodial activity;

(e) a post-trade assignment or novation of a derivative contract where one of the parties to the derivative contract is replaced by a third party;

(f) a portfolio compression;

(g) the creation or redemption of units of a collective investment undertaking by the administrator of the collective investment undertaking;

(h) the exercise of a right embedded in a financial instrument, or the conversion of a convertible bond and the resultant transaction in the underlying financial instrument;

(i) the creation, expiration or redemption of a financial instrument as a result of pre-determined contractual terms, or as a result of mandatory events which are beyond the control of the investor where no investment decision by the investor takes place at the point in time of the creation, expiration or redemption of the financial instrument;

(j) a decrease or increase in the notional amount of a derivative contract as a result of pre-determined contractual terms or mandatory events where no investment decision by the investor takes place at the point in time of the change in the notional amount;

(k) a change in the composition of an index or a basket that occurs after the execution of a transaction;

(l) an acquisition under a dividend re-investment plan;

(m) an acquisition or disposal under an employee share incentive plan, or arising from the administration of an unclaimed asset trust, or of residual fractional share entitlements following corporate events or as part of shareholder reduction programmes where all the following criteria are met:

(i) the dates of acquisition or disposal are pre-determined and published in advance;

[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).

(ii) the investment decision concerning the acquisition or disposal that is taken by the investor amounts to a choice by the investor to enter into the transaction with no ability to unilaterally vary the terms of the transaction;

(iii) there is a delay of at least ten business days between the investment decision and the moment of execution;

(iv) the value of the transaction is capped at the equivalent of EUR 1 000 for a one-off transaction for the particular investor in the particular instrument or, where the arrangement results in transactions, the cumulative value of the transaction shall be capped at the equivalent of EUR 500 for the particular investor in the particular instrument per calendar month;

(n) an exchange and tender offer on a bond or other form of securitised debt where the terms and conditions of the offer are pre-determined and published in advance and the investment decision amounts to a choice by the investor to enter into the transaction with no ability to unilaterally vary its terms;

(o) an acquisition or disposal that is solely a result of a transfer of collateral.

The exclusion provided for in point (a) of the first subparagraph shall not apply to the securities financing transactions to which a member of the European System of Central Banks is a counterparty.

The exclusion provided for in point (i) of the first subparagraph shall not apply to initial public offerings or secondary public offerings or placings, or debt issuance.

Article 3

Meaning of execution of a transaction

1. An investment firm shall be deemed to have executed a transaction within the meaning of Article 2, where it provides any of the following services or performs any of the following activities that result in a transaction:

(a) reception and transmission of orders in relation to one or more financial instruments;

(b) execution of orders on behalf of clients;

(c) dealing on own account;

(d) making an investment decision in accordance with a discretionary mandate given by a client;

(e) transfer of financial instruments to or from accounts.

2. An investment firm shall not be deemed to have executed a transaction where it has transmitted an order in accordance with Article 4.

Article 4

Transmission of an order

1. An investment firm transmitting an order pursuant to Article 26(4) of Regulation (EU) No 600/2014 (transmitting firm) shall be deemed to have transmitted that order only if the following conditions are met:

(a) the order was received from its client or results from its decision to acquire or dispose of a specific financial instrument in accordance with a discretionary mandate provided to it by one or more clients;

(b) the transmitting firm has transmitted the order details referred to in paragraph 2 to another investment firm (receiving firm);

(c) the receiving firm is subject to Article 26(1) of Regulation (EU) No 600/2014 and agrees either to report the transaction resulting from the order concerned or to transmit the order details in accordance with this Article to another investment firm.

For the purposes of point (c) of the first subparagraph the agreement shall specify the time limit for the provision of the order details by the transmitting firm to the receiving firm and provide that the receiving firm shall verify whether the order details received contain obvious errors or omissions before submitting a transaction report or transmitting the order in accordance with this Article.

2. The following order details shall be transmitted in accordance with paragraph 1, insofar as pertinent to a given order:

(a) the identification code of the financial instrument;

(b) whether the order is for the acquisition or disposal of the financial instrument;

(c) the price and quantity indicated in the order;

(d) the designation and details of the client of the transmitting firm for the purposes of the order;

(e) the designation and details of the decision maker for the client where the investment decision is made under a power of representation;

(f) a designation to identify a short sale;

(g) a designation to identify a person or algorithm responsible for the investment decision within the transmitting firm;

(h) country of the branch of the investment firm supervising the person responsible for the investment decision and country of the investment firm's branch that received the order from the client or made an investment decision for a client in accordance with a discretionary mandate given to it by the client;

(i) for an order in commodity derivatives, an indication whether the transaction is to reduce risk in an objectively measurable way in accordance with Article 57 of Directive 2014/65/EU;

(j) the code identifying the transmitting firm.

For the purposes of point (d) of the first subparagraph, where the client is a natural person, the client shall be designated in accordance with Article 6.

For the purposes of point (j) of the first subparagraph, where the order transmitted was received from a prior firm that did not transmit the order in accordance with the conditions set out in this Article, the code shall be the code identifying the transmitting firm. Where the order transmitted was received from a prior transmitting firm in accordance with the conditions set out in this Article, the code provided pursuant to point (j) referred to in the first subparagraph shall be the code identifying the prior transmitting firm.

3. Where there is more than one transmitting firm in relation to a given order, the order details referred to in points (d) to (i) of the first subparagraph of paragraph 2 shall be transmitted in respect of the client of the first transmitting firm.

4. Where the order is aggregated for several clients, information referred to in paragraph 2 shall be transmitted for each client.

Article 5

Identification of the investment firm executing a transaction

1. An investment firm which executes a transaction shall ensure that it is identified with a validated, issued and duly renewed ISO 17442 legal entity identifier code in the transaction report submitted pursuant to Article 26(1) of Regulation (EU) No 600/2014.

2. An investment firm which executes a transaction shall ensure that the reference data related to its legal entity identifier is renewed in accordance with the terms of any of the accredited Local Operating Units of the Global Legal Entity Identifier System.

Article 6

Designation to identify natural persons

1. A natural person shall be identified in a transaction report using the designation resulting from the concatenation of the ISO 3166-1 alpha-2 (2 letter country code) of the nationality of the person, followed by the national client identifier listed in Annex II based on the nationality of the person.

2. The national client identifier referred to in paragraph 1 shall be assigned in accordance with the priority levels provided in Annex II using the highest priority identifier that a person has regardless of whether that identifier is already known to the investment firm.

3. Where a natural person is a national of more than one European Economic Area (EEA) country, the country code of the first nationality when sorted alphabetically by its ISO 3166-1 alpha-2 code and the identifier of that nationality assigned in accordance with paragraph 2 shall be used. Where a natural person has a non-EEA nationality, the highest priority identifier in accordance with the field referring to 'all other countries' provided in Annex II shall be used. Where a natural person has EEA and non-EEA nationality, the country code of the EEA nationality and the highest priority identifier of that nationality assigned in accordance with paragraph 2 shall be used.

4. Where the identifier assigned in accordance with paragraph 2 refers to CONCAT, the natural person shall be identified by the investment firm using the concatenation of the following elements in the following order:

(a) the date of birth of the person in the format YYYYMMDD;

(b) the five first characters of the first name;

(c) the five first characters of the surname.

5. For the purposes of paragraph 4, prefixes to names shall be excluded and first names and surnames shorter than five characters shall be appended by '#' so as to ensure that references to names and surnames in accordance with paragraph 4 contain five characters. All characters shall be in upper case. No apostrophes, accents, hyphens, punctuation marks or spaces shall be used.

Article 7

Details of the identity of the client and identifier and details for the decision maker

1. A transaction report relating to a transaction executed on behalf of a client who is a natural person shall include the full name and date of birth of the client as specified in Fields 9, 10, 11, 18, 19 and 20 of Table 2 of Annex I.

2. Where the client is not the person taking the investment decision in relation to that transaction, the transaction report shall identify the person taking such decision on behalf of the client as specified in fields 12 to 15 for the buyer and in fields 21 to 24 for the seller in Table 2 of Annex I.

Article 8

Identification of person or computer algorithm responsible for the investment decision

1. Where a person or computer algorithm within an investment firm makes the investment decision to acquire or dispose of a specific financial instrument, that person or computer algorithm shall be identified as specified in field 57 of Table 2 of Annex I. The investment firm shall only identify such a person or computer algorithm where that investment decision is made either on behalf of the investment firm itself, or on behalf of a client in accordance with a discretionary mandate given to it by the client.

2. Where more than one person within the investment firm takes the investment decision, the investment firm shall determine the person taking the primary responsibility for that decision. The person taking primary responsibility for the investment decision shall be determined in accordance with pre-determined criteria established by the investment firm.

3. Where a computer algorithm within the investment firm is responsible for the investment decision in accordance with paragraph 1, the investment firm shall assign a designation for identifying the computer algorithm in a transaction report. That designation shall comply with the following conditions:

(a) it is unique for each set of code or trading strategy that constitutes the algorithm, regardless of the financial instruments or markets that the algorithm applies to;

(b) it is used consistently when referring to the algorithm or version of the algorithm once assigned to it;

(c) it is unique over time.

Article 9

Identification of person or computer algorithm responsible for execution of a transaction

1. Where a person or computer algorithm within the investment firm which executes a transaction determines which trading venue, systematic internaliser or organised trading platform located outside the Union to access, which firms to transmit orders to or any conditions related to the execution of an order, that person or computer algorithm shall be identified in field 59 of Table 2 of Annex I.

2. Where a person within the investment firm is responsible for the execution of the transaction, the investment firm shall assign a designation for identifying that person in a transaction report in accordance with Article 6.

3. Where a computer algorithm within the investment firm is responsible for the execution of the transaction, the investment firm shall assign a designation for identifying the computer algorithm in accordance with Article 8(3).

4. Where a person and computer algorithm are both involved in execution of the transaction, or more than one person or algorithm are involved, the investment firm shall determine which person or computer algorithm is primarily responsible for the execution of the transaction. The person or computer algorithm taking primary responsibility for the execution shall be determined in accordance with pre-determined criteria established by the investment firm.

Article 10

Designation to identify an applicable waiver

Transaction reports shall identify the applicable waiver pursuant to Article 4 or Article 9 of Regulation (EU) No 600/2014 under which the executed transaction has taken place in accordance with field 61 of Table 2 of Annex I to this Regulation.

Article 11

Designation to identify a short sale

1. Transaction reports shall identify transactions which, at the time of their execution, are short sale transactions, or are in part a short sale transaction, in accordance with field 62 of Table 2 of Annex I.

2. An investment firm shall determine on a best effort basis the short sales transactions in which its client is the seller, including when an investment firm aggregates orders from several clients. The investment firm shall identify those short sale transactions in its transaction report in accordance with field 62 of Table 2 of Annex I.

3. Where an investment firm executes a short sale transaction on its own behalf, it shall indicate in the transaction report whether the short sale transaction was undertaken in a market making or primary dealer capacity under an exemption provided by Article 17 of Regulation (EU) No 236/2012.

Article 12

Reporting of an execution for a combination of financial instruments

Where an investment firm executes a transaction involving two or more financial instruments, the investment firm shall report the transaction for each financial instrument separately and shall link those reports by an identifier that is unique at the level of the firm to the group of transaction reports related to that execution as specified in field 40 of Table 2 of Annex I.

Article 13

Conditions upon which legal entity identifiers are to be developed, attributed and maintained

1. Member States shall ensure that legal entity identifiers are developed, attributed and maintained in accordance with the following principles:

(a) uniqueness;

(b) accuracy;

(c) consistency;

(d) neutrality;

(e) reliability;

(f) open source;

(g) flexibility;

(h) scalability;

(i) accessibility.

Member States shall also ensure that legal entity identifiers are developed, attributed and maintained using uniform global operational standards, are subject to the governance framework of the Legal Entity Identifier Regulatory Oversight Committee and are available at a reasonable cost.

2. An investment firm shall not provide a service triggering the obligation to submit a transaction report for a transaction entered into on behalf of a client who is eligible for the legal entity identifier code, prior to obtaining the legal entity identifier code from that client.

3. The investment firm shall ensure that the length and construction of the code are compliant with the ISO 17442 standard and that the code is included in the Global LEI database maintained by the Central Operating Unit appointed by the the Legal Entity Identifier Regulatory Oversight Committee and pertains to the client concerned.

Article 14

Reporting transactions executed by branches

1. An investment firm shall report transactions executed wholly or partly through its branch to the competent authority of the home Member State of the investment firm unless otherwise agreed by the competent authorities of the home and host Member States.

2. Where an investment firm executes a transaction wholly or partly through its branch, it shall report the transaction only once.

3. Where country code details in respect of an investment firm's branch are required to be included in a transaction report in accordance with fields 8, 17, 37, 58 or 60 of Table 2 of Annex I due to the partial or full execution of a transaction through that branch, the investment firm shall provide in the transaction report the ISO 3166 country code for the relevant branch in all of the following cases:

(a) where the branch received the order from a client or made an investment decision for a client in accordance with a discretionary mandate given to it by the client;

(b) where the branch has supervisory responsibility for the person responsible for the investment decision concerned;

(c) where the branch has supervisory responsibility for the person responsible for execution of the transaction;

(d) where the transaction was executed on a trading venue or an organised trading platform located outside the Union using the branch's membership of that trading venue or an organised trading platform.

4. Where one or more of the cases provided in paragraph 3 do not apply to a branch of the investment firm, the relevant fields in Table 2 of Annex I shall be populated with the ISO country code for the home Member State of the investment firm, or, in the case of a third country firm, the country code of the country where the firm has established its head office or registered office.

5. The branch of a third country firm shall submit the transaction report to the competent authority which authorised the branch. The branch of a third country firm shall fill in the relevant fields in Table 2 of Annex I with the ISO country code for the Member State of the authorising competent authority.

Where a third country firm has set up branches in more than one Member State within the Union, those branches shall jointly choose one of the competent authorities from the Member States to whom transaction reports are to be sent pursuant to paragraphs 1 to 3.

Article 15

Methods and arrangements for reporting financial transactions

1. The methods and arrangements by which transaction reports are generated and submitted by trading venues and investment firms shall include:

(a) systems to ensure the security and confidentiality of the data reported;

(b) mechanisms for authenticating the source of the transaction report;

(c) precautionary measures to enable the timely resumption of reporting in the case of a failure of the reporting system;

(d) mechanisms for identifying errors and omissions within transaction reports;

(e) mechanisms to avoid the reporting of duplicate transaction reports, including where an investment firm relies on a trading venue to report the details of transactions executed by the investment firm through the systems of the trading venue in accordance with Article 26(7) of Regulation (EU) No 600/2014;

(f) mechanisms to ensure that the trading venue only submits reports on behalf of those investment firms that have chosen to rely on the trading venue to send reports on their behalf for transactions completed through systems of the trading venue;

(g) mechanisms to avoid reporting of any transaction where there is no obligation to report under Article 26(1) of Regulation (EU) No 600/2014 either because there is no transaction within the meaning of Article 2 of this Regulation or because the instrument which is the subject of the transaction concerned does not fall within the scope of Article 26(2) of Regulation (EU) No 600/2014;

(h) mechanisms for identifying unreported transactions for which there is an obligation to report under Article 26 of Regulation (EU) No 600/2014, including cases where transaction reports rejected by the competent authority concerned have not been successfully re-submitted.

2. Where the trading venue or investment firm becomes aware of any error or omission within a transaction report submitted to a competent authority, any failure to submit a transaction report including any failure to resubmit a rejected transaction report for transactions that are reportable, or of the reporting of a transaction for which there is no obligation to report, it shall promptly notify the relevant competent authority of this fact.

3. Investment firms shall have arrangements in place to ensure that their transaction reports are complete and accurate. Those arrangements shall include testing of their reporting process and regular reconciliation of their front-office trading records against data samples provided to them by their competent authorities to that effect.

4. Where competent authorities do not provide data samples, investment firms shall reconcile their front-office trading records against the information contained in the transaction reports that they have submitted to the competent authorities, or in the transaction reports that ARMs or trading venues have submitted on their behalf. The reconciliation shall include checking the timeliness of the report, the accuracy and completeness of the individual data fields and their compliance with the standards and formats specified in Table 2 of Annex I.

5. Investment firms shall have arrangements in place to ensure that their transaction reports, when viewed collectively, reflect all changes in their position and in the position of their clients in the financial instruments concerned at the time transactions in the financial instruments are executed.

6. Where an ARM, in accordance with instructions from the investment firm, cancels or corrects a transaction report submitted on behalf of an investment firm, the investment firm shall retain the details of the corrections and cancellations provided to it by the ARM.

7. The reports referred to in Article 26(5) of Regulation (EU) No 600/2014 shall be sent to the competent authority of the home Member State of the trading venue.

8. Competent authorities shall use secure electronic communication channels when exchanging transaction reports with each other.

Article 16

Determination of the most relevant market in terms of liquidity

1. In the case of a transferable security within the meaning of Article 4(1)(44)(a) of Directive 2014/65/EU, an emission allowance or a unit in a collective investment undertaking, the most relevant market in terms of liquidity for that financial instrument (the most relevant market) shall be determined once each calendar year on the basis of the data of the previous calendar year, provided that the financial instrument was admitted to trading or traded at the beginning of the previous calendar year, as follows:

(a) for instruments admitted to trading on one or more regulated markets, the most relevant market shall be the regulated market where the turnover, as defined in Article 17(4) of Commission Delegated Regulation (EU) 2017/587 ([1]) for the previous calendar year for that instrument is the highest;

(b) for instruments not admitted to trading on regulated markets, the most relevant market shall be the MTF where the turnover for the previous calendar year for that instrument is the highest;

(c) for the purposes of points (a) and (b), the highest turnover shall be calculated by excluding all transactions that benefit from pre-trade transparency waivers pursuant to Article 4(1)(a), (b) or (c) of Regulation (EU) No 600/2014.

([1]) Commission Delegated Regulation (EU) 2017/587 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser (see page 387 of this Official Journal).

2. By derogation from paragraph 1 of this Article, where a transferable security within the meaning of Article 4(1)(44)(a) of Directive 2014/65/EU, an emission allowance or a unit in a collective investment undertaking was not admitted to trading or traded at the beginning of the previous calendar year or where there is insufficient or non-existent data to calculate the turnover in accordance with point (c) of paragraph 1 of this Article for the purpose of determining the most relevant market for that financial instrument, the most relevant market for the financial instrument shall be the market of the Member State in which a request for admission to trading was first made or where the instrument was first traded.

3. In the case of a transferable security within the meaning of Article 4(1)(44)(b) of Directive 2014/65/EU or a money market instrument whose issuer is established in the Union, the most relevant market shall be the market of the Member State where the registered office of the issuer is situated.

4. In the case of a transferable security within the meaning of Article 4(1)(44)(b) of Directive 2014/65/EU or a money market instrument whose issuer is established outside the Union, the most relevant market shall be the market of the Member State where the request for admission to trading of that financial instrument was first made or where the financial instrument was first traded on a trading venue.

5. In the case of a financial instrument which is a derivative contract or a contract for difference or a transferable security within the meaning of Article 4(1)(44)(c) of Directive 2014/65/EU, the most relevant market shall be determined as follows:

(a) where the underlying in the financial instrument is a transferable security within the meaning of Article 4(1)(44)(a) of Directive 2014/65/EU or an emission allowance which is admitted to trading on a regulated market or is traded on an MTF, the most relevant market shall be the market deemed to be the most relevant market for the underlying security in accordance with paragraph 1 or 2 of this Article;

(b) where the underlying in a financial instrument is a transferable security within the meaning of Article 4(1)(44)(b) of Directive 2014/65/EU or a money market instrument which is admitted to trading on a regulated market or traded on an MTF or an OTF the most relevant market shall be the market deemed to be the most relevant market for the underlying financial instrument in accordance with paragraph 3 or 4 of this Article;

(c) where the underlying in a financial instrument is a basket which contains financial instruments, the most relevant market shall be the market of the Member State in which the financial instrument was first admitted to trading or traded on a trading venue;

(d) where the underlying in a financial instrument is an index which contains financial instruments, the most relevant market shall be the market of the Member State in which the financial instrument was first admitted to trading or traded on a trading venue;

(e) where the underlying of the financial instrument is a derivative admitted to trading or traded on a trading venue, the most relevant market shall be the market of the Member State in which that derivative is admitted to trading or traded on a trading venue.

6. For financial instruments that are not covered by paragraphs 1 to 5, the most relevant market shall be the market of the Member State of the trading venue which first admitted the financial instrument to trading or on which the financial instrument was first traded.

Article 17

Entry into force and application

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

It shall apply from 3 January 2018.

However, the second subparagraph of Article 2(5) shall apply 12 months after the date of entry into force of the delegated act adopted by the Commission pursuant to Article 4(9) of Regulation (EU) 2015/2365.

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

Done at Brussels, 28 July 2016.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX I

Table 1

Legend for Table 2

SYMBOL	DATA TYPE	DEFINITION
{ALPHANUM-n}	Up to n alphanumerical characters	Free text field.
{CFI_CODE}	6 characters	ISO 10962 CFI code
{COUNTRYCODE_2}	2 alphanumerical characters	2 letter country code, as defined by ISO 3166-1 alpha-2 country code
{CURRENCYCODE_3}	3 alphanumerical characters	3 letter currency code, as defined by ISO 4217 currency codes
{DATE_TIME_FORMAT}	ISO 8601 date and time format	Date and time in the following format: YYYY-MM-DDThh:mm:ss.dddddZ. — 'YYYY' is the year; — 'MM' is the month; — 'DD' is the day; — 'T' – means that the letter 'T' shall be used — 'hh' is the hour; — 'mm' is the minute; — 'ss.dddddd' is the second and its fraction of a second; — Z is UTC time. Dates and times shall be reported in UTC.
{DATEFORMAT}	ISO 8601 date format	Dates shall be formatted in the following format: YYYY-MM-DD.
{DECIMAL-n/m}	Decimal number of up to n digits in total of which up to m digits can be fraction digits	Numerical field for both positive and negative values. — decimal separator is '.' (full stop); — negative numbers are prefixed with '-' (minus); Values are rounded and not truncated.
{INDEX}	4 alphabetic characters	'EONA' – EONIA 'EONS' – EONIA SWAP 'EURI' – EURIBOR 'EUUS' – EURODOLLAR 'EUCH' – EuroSwiss 'GCFR' – GCF REPO 'ISDA' – ISDAFIX 'LIBI' – LIBID 'LIBO' – LIBOR 'MAAA' – Muni AAA 'PFAN' – Pfandbriefe 'TIBO' – TIBOR 'STBO' – STIBOR 'BBSW' – BBSW 'JIBA' – JIBAR 'BUBO' – BUBOR

SYMBOL	DATA TYPE	DEFINITION
		'CDOR' – CDOR 'CIBO' – CIBOR 'MOSP' – MOSPRIM 'NIBO' – NIBOR 'PRBO' – PRIBOR 'TLBO' – TELBOR 'WIBO' – WIBOR 'TREA' – Treasury 'SWAP' – SWAP 'FUSW' – Future SWAP
{INTEGER-n}	Integer number of up to n digits in total	Numerical field for both positive and negative integer values.
{ISIN}	12 alphanumerical characters	ISIN code, as defined in ISO 6166
{LEI}	20 alphanumerical characters	Legal entity identifier as defined in ISO 17442
{MIC}	4 alphanumerical characters	Market identifier as defined in ISO 10383
{NATIONAL_ID}	35 alphanumerical characters	The identifier is derived in accordance with Article 6 and the Table of Annex II.

Table 2

Details to be reported in transaction reports

All fields are mandatory, unless stated otherwise.

N	FIELD	CONTENT TO BE REPORTED	FORMAT AND STANDARDS TO BE USED FOR REPORTING
1	Report status	Indication as to whether the transaction report is new or a cancellation.	'NEWT' – New 'CANC' – Cancellation
2	Transaction Reference Number	Identification number that is unique to the executing firm for each transaction report. Where, pursuant to Article 26(5) of Regulation (EU) No 600/2014, a trading venue submits a transaction report on behalf of a firm that is not subject to Regulation (EU) No 600/2014, the trading venue shall populate this field with a number that has been internally generated by the trading venue and that is unique for each transaction report submitted by the trading venue.	{ALPHANUM-52}
3	Trading venue transaction identification code	This is a number generated by trading venues and disseminated to both the buying and the selling parties in accordance with Article 12 of Commission Delegated Regulation (EU) 2017/580 [1]. This field is only required for the market side of a transaction executed on a trading venue.	{ALPHANUM-52}

N	FIELD	CONTENT TO BE REPORTED	FORMAT AND STANDARDS TO BE USED FOR REPORTING
4	Executing entity identification code	Code used to identify the entity executing the transaction.	{LEI}
5	Investment Firm covered by Directive 2014/65/EU	Indicates whether the entity identified in field 4 is an investment firm covered by Article 4(1) of Directive 2014/65/EU.	'true'- yes 'false'- no
6	Submitting entity identification code	Code used to identify the entity submitting the transaction report to the competent authority in accordance with Article 26(7) of Regulation (EU) No 600/2014. Where the report is submitted by the executing firm directly to the competent authority, it shall be populated with the LEI of the executing firm (where the executing firm is a legal entity). Where the report is submitted by a trading venue, it shall be populated with the LEI of the operator of the trading venue. Where the report is submitted by an ARM, it shall be populated with the LEI of the ARM.	{LEI}

Buyer details

— For joint accounts fields 7-11 shall be repeated for each buyer.

— Where the transaction is for a transmitted order that has met the conditions for transmission set out in Article 4, the information in fields 7-15 shall be populated by the receiving firm in the receiving firm's report with the information received from the transmitting firm.

— Where the transmission is for a transmitted order that has not met the conditions for transmission set out in Article 4 the receiving firm shall treat the transmitting firm as the buyer.

7	Buyer identification code	Code used to identify the acquirer of the financial instrument. Where the acquirer is a legal entity, the LEI code of the acquirer shall be used. Where the acquirer is a non-legal entity, the identifier specified in Article 6 shall be used. Where the transaction was executed on a trading venue or on an organised trading platform outside of the Union that utilises a central counterparty (CCP) and where the identity of the acquirer is not disclosed, the LEI code of the CCP shall be used. Where the transaction was executed on a trading venue or on an organised trading platform outside of the Union that does not utilise a CCP and where the identity of the acquirer is not disclosed, the MIC code of the trading venue or of the organised trading platform outside of the Union shall be used. Where the acquirer is an investment firm acting as a systematic internaliser (SI), the LEI code of the SI shall be used. 'INTC' shall be used to designate an aggregate client account within the investment firm in order to report a transfer into or out of that account with an associated allocation to the individual client(s) out of or into that account respectively.	{LEI} {MIC} {NATIONAL_ID} 'INTC'

N	FIELD	CONTENT TO BE REPORTED	FORMAT AND STANDARDS TO BE USED FOR REPORTING
		In case of options and swaptions, the buyer shall be the counterparty that holds the right to exercise the option and the seller shall be the counterparty that sells the option and receives a premium. In case of futures and forwards other than futures and forwards relating to currencies, the buyer shall be the counterparty buying the instrument and the seller the counterparty selling the instrument. In the case of swaps relating to securities, the buyer shall be the counterparty that gets the risk of price movement of the underlying security and receives the security amount. The seller shall be the counterparty paying the security amount. In the case of swaps related to interest rates or inflation indices, the buyer shall be the counterparty paying the fixed rate. The seller shall be the counterparty receiving the fixed rate. In case of basis swaps (float-to-float interest rate swaps), the buyer shall be the counterparty that pays the spread and the seller the counterparty that receives the spread. In the case of swaps and forwards related to currencies and of cross currency swaps, the buyer shall be the counterparty receiving the currency which is first when sorted alphabetically by ISO 4217 standard and the seller shall be the counterparty delivering this currency. In the case of swap related to dividends, the buyer shall be the counterparty receiving the equivalent actual dividend payments. The seller is the counterparty paying the dividend and receiving the fixed rate. In the case of derivative instruments for the transfer of credit risk except options and swaptions, the buyer shall be the counterparty buying the protection. The seller is the counterparty selling the protection. In case of derivative contract related to commodities, the buyer shall be the counterparty that receives the commodity specified in the report and the seller the counterparty delivering this commodity. In case of forward rate agreements, the buyer shall be the counterparty paying the fixed rate and the seller the counterparty receiving the fixed rate. For an increase in notional, the buyer shall be the same as the acquirer of the financial instrument in the original transaction and the seller shall be the same as the disposer of the financial instrument in the original transaction. For a decrease in notional the buyer shall be the same as the disposer of the financial instrument in the original transaction and the seller shall be the same as the acquirer of the financial instrument in the original transaction.	

Additional details

— Field 8-15 are only applicable if the buyer is a client

— Fields 9-11 are only applicable if the buyer is a natural person

N	FIELD	CONTENT TO BE REPORTED	FORMAT AND STANDARDS TO BE USED FOR REPORTING
8	Country of the branch for the buyer	Where the acquirer is a client, this field shall identify the country of the branch that received the order from the client or made an investment decision for a client in accordance with a discretionary mandate given to it by the client as required by Article 14(3). Where this activity was not conducted by a branch this shall be populated with the country code of the home Member State of the investment firm or the country code of the country where the investment firm has established its head office or registered office (in the case of third country firms). Where the transaction is for a transmitted order that has met the conditions for transmission set out in Article 4, this field shall be populated using the information received from the transmitting firm.	{COUNTRYCODE_2}
9	Buyer – first name(s)	Full first name(s) of the buyer. In case of more than one first name, all names shall be included in this field separated by a comma.	{ALPHANUM-140}
10	Buyer – surname(s)	Full surname(s) of the buyer. In case of more than one surname, all surnames shall be included in this field separated by a comma.	{ALPHANUM-140}
11	Buyer – date of birth	Date of birth of the buyer	{DATEFORMAT}

Buyer decision maker

— Fields 12-15 are only applicable if the decision maker acts under a power of representation

12	Buyer decision maker code	Code used to identify the person who makes the decision to acquire the financial instrument. Where the decision is made by an investment firm, this field shall be populated with the identity of the investment firm rather than the individual making the investment decision. Where the decision maker is a legal entity, the LEI code of the decision maker shall be used. Where the decision maker is a non-legal entity, the identifier specified in Article 6 shall be used.	{LEI} {NATIONAL_ID}

Buyer decision maker details

— Fields 13-15 are only applicable if the decision maker is a natural person

13	Buy decision maker – First Name(s)	Full first name(s) of the decision maker for the buyer. In case of more than one first name, all names shall be included in this field separated by a comma	{ALPHANUM-140}
14	Buy decision maker – Surname(s)	Full surname(s) of the decision maker for the buyer. In case of more than one surname, all surnames shall be included in this field separated by a comma	{ALPHANUM-140}

N	FIELD	CONTENT TO BE REPORTED	FORMAT AND STANDARDS TO BE USED FOR REPORTING
15	Buy decision maker – Date of birth	Date of birth of the decision maker for the buyer	{DATEFORMAT}

Seller details and decision maker

— For joint accounts fields 16-20 shall be repeated for each seller.

— Where the transaction for a seller is for a transmitted order that has met the conditions for transmission set out in Article 4, the information in fields 16-24 shall be populated by the receiving firm in the receiving firm's report from the information received from the transmitting firm.

— Where the transmission is for a transmitted order that has not met the conditions for transmission set out in Article 4, the receiving firm shall treat the transmitting firm as the seller.

16	Seller identification code	Code used to identify the disposer of the financial instrument. Where the disposer is a legal entity, the LEI code of the disposer shall be used. Where the disposer is a non-legal entity, the identifier specified in Article 6 shall be used. Where the transaction was executed on a trading venue or on an organised trading platform outside of the Union that utilises a CCP and where the identity of the disposer is not disclosed, the LEI code of the CCP shall be used. Where the transaction was executed on a trading venue or on an organised trading platform outside of the Union that does not utilise a CCP and where the identity of the disposer is not disclosed, the MIC code of the trading venue or of the organised trading platform outside of the Union shall be used. Where the disposer is an investment firm acting as a SI, the LEI code of the SI shall be used 'INTC' shall be used to designate an aggregate client account within the investment firm in order to report a transfer into or out of that account with an associated allocation to the individual client(s) out of or into that account respectively. In case of options and swaptions, the buyer shall be the counterparty that holds the right to exercise the option and the seller shall be the counterparty that sells the option and receives a premium. In case of futures and forwards other than futures and forwards relating to currencies, the buyer shall be the counterparty buying the instrument and the seller the counterparty selling the instrument.	{LEI} {MIC} {NATIONAL_ID} 'INTC'

N	FIELD	CONTENT TO BE REPORTED	FORMAT AND STANDARDS TO BE USED FOR REPORTING
		In the case of swaps relating to securities, the buyer shall be the counterparty that gets the risk of price movement of the underlying security and receives the security amount. The seller shall be the counterparty paying the security amount. In the case of swaps related to interest rates or inflation indices, the buyer shall be the counterparty paying the fixed rate. The seller shall be the counterparty receiving the fixed rate. In case of basis swaps (float-to-float interest rate swaps), the buyer shall be the counterparty that pays the spread and the seller the counterparty that receives the spread. In the case of swaps and forwards related to currencies and of cross currency swaps, the buyer shall be the counterparty receiving the currency which is first when sorted alphabetically by ISO 4217 standard and the seller shall be the counterparty delivering this currency. In the case of swap related to dividends, the buyer shall be the counterparty receiving the equivalent actual dividend payments. The seller is the counterparty paying the dividend and receiving the fixed rate. In the case of derivative instruments for the transfer of credit risk except options and swaptions, the buyer shall be the counterparty buying the protection. The seller is the counterparty selling the protection. In case of derivative contracts related to commodities, the buyer shall be the counterparty that receives the commodity specified in the report and the seller the counterparty delivering this commodity. In case of forward rate agreements, the buyer shall be the counterparty paying the fixed rate and the seller the counterparty receiving the fixed rate. For an increase in notional, the seller shall be the same as the disposer in the original transaction. For a decrease in notional the seller shall be the same as the acquirer of the financial instrument in the original transaction.	
17-24	**Fields 17-24 mirror all buyer related fields numbered 8-15 (buyer details and decision maker) for the seller.**		

Transmission details

— Fields 26 and 27 shall only be populated for transaction reports by a receiving firm where all the conditions for transmission in Article 4 have been met.

— Where a firm acts both as a receiving firm and a transmitting firm it shall populate field 25 to indicate that it is a transmitting firm and shall populate fields 26 and 27 from its perspective as a receiving firm.

25	Transmission of order indicator	'true' shall be populated by the transmitting firm within the transmitting firm's report where the conditions for transmission specified in Article 4 were not satisfied 'false' – in all other circumstances	'true' 'false'
26	Transmitting firm identification code for the buyer	Code used to identify the firm transmitting the order This shall be populated by the receiving firm within the receiving firm's report with the identification code provided by the transmitting firm.	{LEI}

N	FIELD	CONTENT TO BE REPORTED	FORMAT AND STANDARDS TO BE USED FOR REPORTING
27	Transmitting firm identification code for the seller	Code used to identify the firm transmitting the order. This shall be populated by the receiving firm within the receiving firm's report with the identification code provided by the transmitting firm	{LEI}
Transaction details			
28	Trading date time	Date and time when the transaction was executed. For transactions executed on a trading venue, the level of granularity shall be in accordance with the requirements set out in Article of Commission Delegated Regulation (EU) 2017/574 ([2]). For transactions not executed on a trading venue, the date and time shall be when the parties agree the content of the following fields: quantity, price, currencies in fields 31, 34 and 44, instrument identification code, instrument classification and underlying instrument code, where applicable. For transactions not executed on a trading venue the time reported shall be at least to the nearest second. Where the transaction results from an order transmitted by the executing firm on behalf of a client to a third party where the conditions for transmission set out in Article 4 were not satisfied, this shall be the date and time of the transaction rather than the time of the order transmission.	{DATE_TIME_FORMAT}
29	Trading capacity	Indication of whether the transaction results from the executing firm carrying out matched principal trading under Article 4(1)(38) of Directive 2014/65/EU or dealing on own account under Article 4(1)(6) of Directive 2014/65/EU. Where the transaction does not result from the executing firm carrying out matched principal trading or dealing on own account, the field shall indicate that the transaction was carried out under any other capacity.	'DEAL' – Dealing on own account 'MTCH' – Matched principal 'AOTC' – Any other capacity
30	Quantity	The number of units of the financial instrument, or the number of derivative contracts in the transaction. The nominal or monetary value of the financial instrument. For spread bets, the quantity shall be the monetary value wagered per point movement in the underlying financial instrument. For credit default swaps, the quantity shall be the notional amount for which the protection is acquired or disposed of. For increase or decrease in notional amount derivative contracts, the number shall reflect the absolute value of the change and shall be expressed as a positive number. The information reported in this field shall be consistent with the values provided in fields 33 and 46.	{DECIMAL-18/17} in case the quantity is expressed as number of units {DECIMAL-18/5} in case the quantity is expressed as monetary or nominal value

N	FIELD	CONTENT TO BE REPORTED	FORMAT AND STANDARDS TO BE USED FOR REPORTING
31	Quantity currency	Currency in which the quantity is expressed. Only applicable if quantity is expressed as nominal or monetary value.	{CURRENCYCODE_3}
32	Derivative notional increase/ decrease	Indication as to whether the transaction is an increase or decrease of notional of a derivative contract. Field only applies when there is change in notional for a derivative contract.	'INCR' – Increase 'DECR' – Decrease
33	Price	Traded price of the transaction excluding, where applicable, commission and accrued interest. In the case of option contracts, it shall be the premium of the derivative contract per underlying or index point. In the case of spread bets it shall be the reference price of the underlying instrument. For credit default swaps (CDS) it shall be the coupon in basis points. Where price is reported in monetary terms, it shall be provided in the major currency unit. Where price is currently not available but pending, the value shall be 'PNDG' Where price is not applicable the value shall be 'NOAP' The information reported in this field shall be consistent with the values provided in fields 30 and 46.	{DECIMAL-18/13} in case the price is expressed as monetary value {DECIMAL-11/10} in case the price is expressed as percentage or yield {DECIMAL-18/17} in case the price is expressed as basis points 'PNDG' in case the price is not available 'NOAP' in case the price is not applicable
34	Price Currency	Currency in which the price is expressed (applicable if the price is expressed as monetary value).	{CURRENCYCODE_3}
35	Net amount	The net amount of the transaction means the cash amount which is paid by the buyer of the debt instrument upon the settlement of the transaction. This cash amount equals to: (clean price * nominal value)+any accrued coupons. As a result, the net amount of the transaction excludes any commission or other fees charged to the buyer of the debt instrument. Field only applies when the financial instrument is debt.	{DECIMAL-18/5}
36	Venue	Identification of the venue where the transaction was executed. Use the ISO 10383 segment MIC for transactions executed on a trading venue, Systematic Internaliser (SI) or organised trading platform outside of the Union. Where the segment MIC does not exist, use the operating MIC. Use MIC code 'XOFF' for financial instruments admitted to trading, or traded on a trading venue or for which a request for admission was made, where the transaction on that financial instrument is not executed on a trading venue, SI or organised trading platform outside of the Union, or where an investment firm does not know it is trading with another investment firm acting as an SI.	{MIC}

N	FIELD	CONTENT TO BE REPORTED	FORMAT AND STANDARDS TO BE USED FOR REPORTING
		Use MIC code 'XXXX' for financial instruments that are not admitted to trading or traded on a trading venue or for which no request for admission has been made and that are not traded on an organised trading platform outside of the Union but where the underlying is admitted to trading or traded on a trading venue.	
37	Country of the branch membership	Code used to identify the country of a branch of the investment firm whose market membership was used to execute the transaction. Where a branch's market membership was not used, this field shall be populated with the country code of the home Member State of the investment firm or the country code of the country where the firm has established its head office or registered office (in the case of third country firms). This field shall only be populated for the market side of a transaction executed on a trading venue or on an organised trading platform outside of the Union.	{COUNTRYCODE_2}
38	Up-front payment	Monetary value of any up-front payment received or paid by the seller. Where the seller receives the up-front payment, the value populated is positive. Where the seller pays the up-front payment, the value populated is negative.	{DECIMAL-18/5}
39	Up-front payment currency	Currency of the up-front payment.	{CURRENCYCODE_3}
40	Complex trade component id	Identifier, internal to the reporting firm to identify all the reports related to the same execution of a combination of financial instruments in accordance with Article 12. The code must be unique at the level of the firm for the group of reports related to the execution. Field only applies when the conditions specified in Article 12 apply.	{ALPHANUM-35}

Instrument details

41	Instrument identification code	Code used to identify the financial instrument This field applies to financial instruments for which a request for admission to trading has been made, that are admitted to trading or traded on a trading venue or on a systematic internaliser. It also applies to financial instruments which have an ISIN and are traded on organised trading platform outside of the Union where the underlying is a financial instrument traded on a trading venue.	{ISIN}

N	FIELD	CONTENT TO BE REPORTED	FORMAT AND STANDARDS TO BE USED FOR REPORTING
Fields 42-56 are not applicable where: transactions are executed on a trading venue or with an investment firm acting as a SI; or field 41 is populated with an ISIN that exists on the reference data list from ESMA			
42	Instrument full name	Full name of the financial instrument	{ALPHANUM-350}
43	Instrument classification	Taxonomy used to classify the financial instrument A complete and accurate CFI code shall be provided.	{CFI_CODE}
44	Notional currency 1	Currency in which the notional is denominated. In the case of an interest rate or currency derivative contract, this will be the notional currency of leg 1 or the currency 1 of the pair. In the case of swaptions where the underlying swap is single-currency, this will be the notional currency of the underlying swap. For swaptions where the underlying is multi-currency, this will be the notional currency of leg 1 of the swap.	{CURRENCYCODE_3}
45	Notional currency 2	In the case of multi-currency or cross-currency swaps the currency in which leg 2 of the contract is denominated. For swaptions where the underlying swap is multi-currency, the currency in which leg 2 of the swap is denominated	{CURRENCYCODE_3}
46	Price multiplier	Number of units of the underlying instrument represented by a single derivative contract. Monetary value covered by a single swap contract where the quantity field indicates the number of swap contracts in the transaction. For a future or option on an index, the amount per index point. For spreadbets the movement in the price of the underlying instrument on which the spreadbet is based. The information reported in this field shall be consistent with the values provided in fields 30 and 33.	{DECIMAL-18/17}
47	Underlying instrument code	ISIN code of the underlying instrument. For ADRs, GDRs and similar instruments, the ISIN code of the financial instrument on which those instruments are based. For convertible bonds, the ISIN code of the instrument in which the bond can be converted. For derivatives or other instruments which have an underlying, the underlying instrument ISIN code, when the underlying is admitted to trading, or traded on a trading venue. Where the underlying is a stock dividend, then ISIN code of the related share entitling the underlying dividend.	{ISIN}

N	FIELD	CONTENT TO BE REPORTED	FORMAT AND STANDARDS TO BE USED FOR REPORTING
		For Credit Default Swaps, the ISIN of the reference obligation shall be provided. In case the underlying is an Index and has an ISIN, the ISIN code for that index. Where the underlying is a basket, include the ISIN of each constituent of the basket that is admitted to trading or is traded on a trading venue. Field 47 shall be reported as many times as necessary to list all reportable instruments in the basket.	
48	Underlying index name	When the underlying is an index, the name of the Index.	{INDEX} Or {ALPHANUM-25} – if the index name is not included in the {INDEX} list
49	Term of the underlying index	In case the underlying is an index, the term of the index.	{INTEGER-3}+'DAYS' – days {INTEGER-3}+'WEEK' – weeks {INTEGER-3} – 'MNTH' – months {INTEGER-3}+'YEAR' – years
50	Option type	Indication as to whether the derivative contract is a call (right to purchase a specific underlying asset) or a put (right to sell a specific underlying asset) or whether it cannot be determined whether it is a call or a put at the time of execution. In case of swaptions it shall be: — 'PUTO', in case of receiver swaption, in which the buyer has the right to enter into a swap as a fixed-rate receiver. — 'Call', in case of payer swaption, in which the buyer has the right to enter into a swap as a fixed-rate payer. In case of Caps and Floors it shall be: — 'PUTO', in case of a Floor. — 'Call', in case of a Cap. Field only applies to derivatives that are options or warrants.	'PUTO' – Put 'CALL' – Call 'OTHR' – where it cannot be determined whether it is a call or a put
51	Strike price	Pre-determined price at which the holder will have to buy or sell the underlying instrument, or an indication that the price cannot be determined at the time of execution. Field only applies to an option or warrant where strike price can be determined at the time of execution. Where price is currently not available but pending, the value shall be 'PNDG' Where strike price is not applicable the field shall not be populated.	{DECIMAL-18/13} in case the price is expressed as monetary value {DECIMAL-11/10} in case the price is expressed as percentage or yield {DECIMAL-18/17} in case the price is expressed as basis points 'PNDG' in case the price is not available

N	FIELD	CONTENT TO BE REPORTED	FORMAT AND STANDARDS TO BE USED FOR REPORTING
52	Strike price currency	Currency of the strike price	{CURRENCYCODE_3}
53	Option exercise style	Indication as to whether the option may be exercised only at a fixed date (European and Asian style), a series of pre-specified dates (Bermudan) or at any time during the life of the contract (American style). This field is only applicable for options, warrants and entitlement certificates.	'EURO' – European 'AMER' – American 'ASIA' – Asian 'BERM' – Bermudan 'OTHR' – Any other type
54	Maturity date	Date of maturity of the financial instrument. Field only applies to debt instruments with defined maturity.	{DATEFORMAT}
55	Expiry date	Expiry date of the financial instrument. Field only applies to derivatives with a defined expiry date.	{DATEFORMAT}
56	Delivery type	Indication as to whether the transaction is settled physically or in cash. Where delivery type cannot be determined at time of execution, the value shall be 'OPTL' The field is only applicable for derivatives.	'PHYS' – Physically settled 'CASH' – Cash settled 'OPTL' – Optional for counterparty or when determined by a third party

Trader, algorithms, waivers and indicators

57	Investment decision within firm	Code used to identify the person or algorithm within the investment firm who is responsible for the investment decision. For natural persons, the identifier specified in Article 6 shall be used If the investment decision was made by an algorithm, the field shall be populated as set out in Article 8. Field only applies for investment decision within the firm. Where the transaction is for a transmitted order that has met the conditions for transmission set out in Article 4, this field shall be populated by the receiving firm within the receiving firm's report using the information received from the transmitting firm.	{NATIONAL_ID} – Natural persons {ALPHANUM-50} – Algorithms
58	Country of the branch supervising the person responsible for the investment decision	Code used to identify the country of the branch of the investment firm for the person responsible for the investment decision, as set out in Article 14(3)(b). Where the person responsible for the investment decision was not supervised by a branch, this field shall be populated with the country code of the home Member State of the investment firm or the country code of the country where the firm has established its head office or registered office (in the case of third country firms).	{COUNTRYCODE_2}

N	FIELD	CONTENT TO BE REPORTED	FORMAT AND STANDARDS TO BE USED FOR REPORTING
		Where the transaction is for a transmitted order that has met the conditions for transmission set out in Article 4, this field shall be populated by the receiving firm within the receiving firm's report using the information received from the transmitting firm. This field is not applicable when the investment decision was made by an algorithm	
59	Execution within firm	Code used to identify the person or algorithm within the investment firm who is responsible for the execution. For natural persons, the identifier specified in Article 6 shall be used. If the execution was made by an algorithm, the field shall be populated as set out in Article 9.	{NATIONAL_ID} – Natural persons {ALPHANUM-50} – Algorithms
60	Country of the branch supervising the person responsible for the execution	Code used to identify the country of the branch of the investment firm for the person responsible for the execution of the transaction, as set out in Article 14(3)(c). Where the person responsible was not supervised by a branch, this field shall be populated with the country code of the home Member State of the investment firm, or the country code of the country where the firm has established its head office or registered office (in the case of third country firms) This field is not applicable when the execution was made by an algorithm	{COUNTRYCODE_2}
61	Waiver indicator	Indication as to whether the transaction was executed under a pre-trade waiver in accordance with Articles 4 and 9 of Regulation (EU) No 600/2014. For equity instruments: 'RFPT' = Reference price transaction 'NLIQ' = Negotiated transactions in liquid financial instruments 'OILQ' = Negotiated transactions in illiquid financial instruments 'PRIC' = Negotiated transactions subject to conditions other than the current market price of that equity financial instrument. For non-equity instruments: 'SIZE' = Above specific size transaction 'ILQD' = Illiquid instrument transaction This field shall only be populated for the market side of a transaction executed under a waiver on a trading venue.	Populate one or more of the following flags: 'RFPT' – Reference price 'NLIQ' – Negotiated (liquid) 'OILQ' – Negotiated (illiquid) 'PRIC' – Negotiated (conditions) 'SIZE' – Above specified size 'ILQD' – Illiquid instrument
62	Short selling indicator	A short sale concluded by an investment firm on its own behalf or on behalf of a client, as described in Article 11. When an investment firm executes a transaction on behalf of a client who is selling and the investment firm, acting on a best effort basis, cannot determine whether it is a short sale transaction, this field shall be populated with 'UNDI'	'SESH' – Short sale with no exemption 'SSEX' – Short sale with exemption 'SELL' – No short sale 'UNDI' – Information not available

N	FIELD	CONTENT TO BE REPORTED	FORMAT AND STANDARDS TO BE USED FOR REPORTING
		Where the transaction is for a transmitted order that has met the conditions for transmission set out in Article 4 of this Regulation, this field shall be populated by the receiving firm in the receiving firm's reports using the information received from the transmitting firm. This field is only applicable when, the instrument is covered by Regulation (EU) No 236/2012, and the seller is the investment firm or a client of the investment firm.	
63	OTC post-trade indicator	Indicator as to the type of transaction in accordance with Articles 20(3)(a) and 21(5)(a) of Regulation (EU) No 600/2014. For all instruments: 'BENC' = Benchmark transactions 'ACTX' = Agency cross transactions 'LRGS' = Post-trade large-in-scale transactions 'ILQD' = Illiquid instrument transaction 'SIZE' = Above specific size transaction 'CANC' = Cancellations 'AMND' = Amendments For equity instruments: 'SDIV' = Special dividend transactions 'RPRI' = Transactions which have received price improvement 'DUPL'= Duplicative trade reports 'TNCP' = Transactions not contributing to the price discovery process for the purposes of Article 23 of Regulation (EU) No 600/2014 For non-equity instruments: 'TPAC' = Package transaction 'XFPH' = Exchange for Physical transaction	Populate one or more of the following flags: 'BENC' – Benchmark 'ACTX' – Agency cross 'LRGS' – Large in scale 'ILQD' – Illiquid instrument 'SIZE' – Above specified size 'CANC' – Cancellations 'AMND' – Amendments 'SDIV' – Special dividend 'RPRI' – Price improvement 'DUPL' – Duplicative 'TNCP' – Not contributing to the price discovery process 'TPAC' – Package 'XFPH' – Exchange for Physical
64	Commodity derivative indicator	Indication as to whether the transaction reduces risk in an objectively measurable way in accordance with Article 57 of Directive 2014/65/EU. Where the transaction is for a transmitted order that has met the conditions for transmission set out in Article 4, this field shall be populated by the receiving firm in the receiving firm's reports using the information received from the transmitting firm. This field is only applicable for commodity derivative transactions.	'true' – yes 'false' – no
65	Securities financing transaction indicator	'true' shall be populated where the transaction falls within the scope of activity but is exempted from reporting under Regulation (EU) 2015/2365. 'false' otherwise.	true – yes false – no

(1) Commission Delegated Regulation (EU) 2017/580 of 24 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the maintenance of relevant data relating to orders in financial instruments (see page 193 of this Official Journal).

(2) Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks (see page 148 of this Official Journal).

ANNEX II

National client identifiers for natural persons to be used in transaction reports

ISO 3166 — 1 alpha 2	Country Name	1st priority identifier	2nd priority identifier	3rd priority identifier
AT	Austria	CONCAT		
BE	Belgium	Belgian National Number (Numéro de registre national — Rijksregisternummer)	CONCAT	
BG	Bulgaria	Bulgarian Personal Number	CONCAT	
CY	Cyprus	National Passport Number	CONCAT	
CZ	Czech Republic	National identification number (Rodné číslo)	Passport Number	CONCAT
DE	Germany	CONCAT		
DK	Denmark	Personal identity code 10 digits alphanumerical: DDMMYYXXXX	CONCAT	
EE	Estonia	Estonian Personal Identification Code (Isikukood)		
ES	Spain	Tax identification number (Código de identificación fiscal)		
FI	Finland	Personal identity code	CONCAT	
FR	France	CONCAT		
GB	United Kingdom	UK National Insurance number	CONCAT	
GR	Greece	10 DSS digit investor share	CONCAT	
HR	Croatia	Personal Identification Number (OIB — Osobni identifikacijski broj)	CONCAT	
HU	Hungary	CONCAT		
IE	Ireland	CONCAT		
IS	Iceland	Personal Identity Code (Kennitala)		
IT	Italy	Fiscal code (Codice fiscale)		
LI	Liechtenstein	National Passport Number	National Identity Card Number	CONCAT

ISO 3166 — 1 alpha 2	Country Name	1st priority identifier	2nd priority identifier	3rd priority identifier
LT	Lithuania	Personal code (Asmens kodas)	National Passport Number	CONCAT
LU	Luxembourg	CONCAT		
LV	Latvia	Personal code (Personas kods)	CONCAT	
MT	Malta	National Identification Number	National Passport Number	
NL	Netherlands	National Passport Number	National identity card number	CONCAT
NO	Norway	11 digit personal id (Foedselsnummer)	CONCAT	
PL	Poland	National Identification Number (PESEL)	Tax Number (Numer identyfikacji podatkowej)	
PT	Portugal	Tax number (Número de Identificação Fiscal)	National Passport Number	CONCAT
RO	Romania	National Identification Number (Cod Numeric Personal)	National Passport Number	CONCAT
SE	Sweden	Personal identity number	CONCAT	
SI	Slovenia	Personal Identification Number (EMŠO: Enotna Matična Številka Občana)	CONCAT	
SK	Slovakia	Personal number (Rodné číslo)	National Passport Number	CONCAT
All other countries		**National Passport Number**	**CONCAT**	

COMMISSION DELEGATED REGULATION (EU) 2017/591

of 1 December 2016

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the application of position limits to commodity derivatives

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments ([1]), and in particular Article 57(3) and (12) thereof,

Whereas:

(1) In order to ensure a harmonised approach to applying position limits to commodity derivatives in the Union, a methodology should be specified for calculating those limits. The methodology should prevent regulatory arbitrage and promote consistency whilst providing competent authorities with sufficient flexibility to take into account the variations among different commodity derivatives markets and the markets in the underlying commodities. The methodology for calculating the limits should allow competent authorities to balance the objectives of setting limits at a level sufficiently low to prevent persons holding positions in those commodity derivatives from abusing or distorting the market against the objectives of supporting orderly pricing and settlement arrangements, developing new commodity derivatives and enabling commodity derivatives to continue to support the functioning of commercial activities in the underlying commodity market.

(2) In order to clearly identify a limited number of concepts stemming from Directive 2014/65/EU, as well as to specify technical terms necessary for this Regulation, a number of terms should be defined to ensure uniform application.

(3) Long and short positions in a commodity derivative of market participants should be netted off against each other to determine the effective size of a position a person controls at any point in time. The size of a position held through an option contract should be calculated on a delta equivalent basis. As this Regulation applies a different methodology to the calculation of position limits for spot and other months' contracts, such netting should be applied separately to the spot and other months' positions.

(4) Directive 2014/65/EU requires that any positions held by other persons on behalf of a person should be included in the calculation of that person's position limit and for position limits to be applied at both an entity level and at a group level and it is therefore necessary to aggregate positions at a group level. It is appropriate to only provide for aggregation at the group level if a parent undertaking can control the use of positions. Accordingly, parent undertakings should aggregate positions held by their subsidiaries with any positions that the parent entity holds directly, in addition to the subsidiaries aggregating their own positions. Such aggregation can lead to positions calculated at the level of the parent undertaking which are larger or, due to a netting of long and short positions held by different subsidiaries, lower than at individual subsidiary level. Positions should not be aggregated at the level of the parent undertaking if the positions are held by collective investment undertakings which hold those positions on behalf of their investors rather than on behalf of their parent undertakings in cases where the parent undertaking cannot control the use of those positions for its own benefit.

(5) The concept of the same commodity derivative should establish a demanding threshold to prevent persons from inappropriately netting positions across dissimilar commodity derivatives in order to circumvent and weaken the robustness of the position limit on the principal commodity derivative contract. This should not prevent competent authorities from setting similar position limits for similar commodity derivative contracts under the coordination of the European Securities and Markets Authority (ESMA). Commodity derivatives should only be considered as trading in significant volume on a trading venue if they exceed the liquidity threshold specified in this Regulation for a sufficient period of time.

([1]) OJ L 173, 12.6.2014, p. 173.

(6) Where an over-the-counter (OTC) contract is valued on the same underlying commodity that is deliverable at the same location and with the same contractual conditions and if it is having a highly correlated economic outcome to a contract traded on a trading venue, it should be deemed economically equivalent regardless of small differences in the contractual specifications concerning the lot sizes and the date of delivery. Also differences in post trade risk management arrangements, such as clearing arrangements, should not be barriers to declaring such contracts as economically equivalent. In order to prevent inappropriate netting of potentially dominant positions traded on a trading venue by the use of bilateral arrangements in OTC contracts and to ensure an efficient operation of the position limits regime in practice it is necessary for commodity derivatives traded OTC to be considered economically equivalent to trading venue contracts only in limited circumstances. To deter avoidance of position limits and to enhance the integrity of the position limit regime it is necessary that a definition of an economically equivalent OTC contract is narrowly framed so that it does not permit a person to net an OTC position against multiple other positions or to exercise discretion in the choice of positions against which it is netted.

(7) In order to establish which positions in commodity derivatives are objectively measurable as reducing risks directly relating to commercial activity, certain criteria should be provided, including the use of the accounting definition of a hedging contract based on International Financial Reporting Standards (IFRS) rules. That accounting definition should be also available to non-financial entities even though they do not apply IFRS rules at an entity level.

(8) Additionally, non-financial entities should be able to use risk management techniques to mitigate their overall risks arising from their commercial activity or that of their group, including risks arising from several geographic markets, several products, time horizons or entities ('macro or portfolio hedging'). When a non-financial entity uses macro or portfolio hedging, it may not be able to establish a one-to-one link between a specific position in a commodity derivative and a specific risk arising from the commercial activity that the commodity derivative is intended to hedge. A non-financial entity may also use a non-equivalent commodity derivative to hedge a specific risk arising from commercial activity where an identical commodity derivative is not available or where a more closely correlated commodity derivative does not have sufficient liquidity ('proxy hedging'). In such cases, risk management policies and systems should be able to prevent non-hedging transactions from being categorised as hedging and should be able to provide for a sufficiently disaggregate view of the hedging portfolio so that speculative components are identified and counted towards the position limits. Positions should not qualify as reducing risks related to commercial activity solely on the grounds that they have been included as part of a risk-reducing portfolio on an overall basis.

(9) A risk may evolve over time and, in order to adapt to the evolution of the risk, commodity derivatives initially executed for reducing risk related to commercial activity, may have to be offset through the use of additional commodity derivative contracts that close out those commodity derivative contracts that have become unrelated to the commercial risk. Additionally, the evolution of a risk that has been addressed by the entering into of a position in a commodity derivative for the purpose of reducing risk should not subsequently give rise to the re-evaluation of that position as not being a privileged transaction ab initio.

(10) Non-financial entities should be able to apply for the exemption in relation to hedging of commercial activities before entering into a position. The application should give the competent authority a clear and concise overview of the commercial activities of the non-financial entity in respect of an underlying commodity, the associated risks and how commodity derivatives are utilised to mitigate those risks. Position limits apply at all times and should the exemption ultimately not be granted by the competent authority, the non-financial entity should reduce any position in excess of a limit accordingly and may face supervisory measures in respect of a breach of a limit. Non-financial entities should re-assess their activities periodically to ensure that the continued application of the exemption is justified.

(11) The spot-month period, which is the time period immediately before delivery at expiry, is specific to each commodity derivative and may not correspond to exactly one month. Spot month contracts should therefore refer to the contract that is the next contract in that commodity derivative to mature. Restricting the positions a person may hold in the period during which delivery of the physical commodity is to be made limits the quantity of the underlying deliverable supply each person may make or take delivery of, thereby preventing the accumulation of dominant positions by individuals which may enable them to squeeze the market through

restricting access to the commodity. The standard baseline for the spot month position limit for both physically and cash settled commodity derivatives should therefore be computed as a percentage of the deliverable supply estimate. Competent authorities should be able to implement a schedule of decreasing position limits ranging from the point in time when a contract becomes a spot month contract until maturity in order to more precisely ensure that position limits are adequately set throughout the spot month period and to ensure orderly settlement.

(12) The other months' position limit is applied across all maturities other than the spot month. The standard baseline for the other months' position limits for both physically and cash settled commodity derivatives should be computed as a percentage of the total open interest. The distribution of positions across the other months' of a commodity contract is often concentrated in the months closest to maturity. Therefore total open interest provides a more appropriate baseline for setting position limits than using a figure averaged across all maturities.

(13) The standard baseline of 25 % of deliverable supply and of open interest has been set with reference to the experience of other markets and other jurisdictions. The baseline should be adjusted by competent authorities to enable it to be reduced by a maximum of 20 % (or 22,5 % in the case of some agricultural commodity derivatives) and to be increased by a maximum of 10 % (or 15 % in the case of less liquid commodity derivatives) should the characteristics of the market require it, such as an absence of market participants, in order to support the orderly settlement and functioning of the contract and its underlying market. Since any adjustment to the baseline figure applies only where, and for so long as, objective characteristics of the market require it, temporary adjustments to the baseline should be therefore possible. Competent authorities should ensure that an adjustment downwards of the baseline is effected whenever it is necessary to prevent dominant positions and to support orderly pricing in the commodity derivative and in the underlying commodity. The range reflects that Directive 2014/65/EU covers a wider range of commodity derivatives and markets than other markets and jurisdictions. The definition of commodity derivative under Article 2(1)(30) of Regulation (EU) No 600/2014 of the European Parliament and of the Council [1] is broad, comprising also securitised derivatives and cash settled derivatives which do not have a tangible underlying such as climatic variables. For securitised derivatives the concept of spot and other months' does not apply. For derivatives without a tangible underlying the deliverable supply cannot be used to establish a position limit. Therefore competent authorities should be able to enhance or adjust the methodologies to determine position limits for these commodity derivatives based on different parameters like number of securities issued or the use of open interest also for the spot month.

(14) Certain commodity derivatives, in particular for power and gas, provide that the underlying be delivered constantly over a specified period of time such as day, month or year. Moreover, certain contracts with longer delivery periods such as year or quarter may be automatically substituted by related contracts of shorter delivery periods such as quarter or month (cascading contracts). In these cases, a spot month position limit for the contract to be substituted prior to delivery would be inappropriate, as such limit would not cover the expiry and physical delivery or cash settlement of the contract. To the extent that delivery periods of contracts for the same underlying overlap, a single position limit should apply to all the related contracts in order to properly take into account the positions across those contracts which may potentially be delivered. To facilitate this, related contracts should be measured in units of the underlying and aggregated and netted accordingly.

(15) For certain agricultural commodity derivatives, which have a material impact on consumer food prices, the methodology enables a competent authority to set a baseline and position limit beneath the minimum of the general range where it finds evidence of speculative activity impacting significantly on prices.

(16) The competent authority should assess whether the factors listed under paragraph 3 of Article 57 of Directive 2014/65/EU necessitate adjustment of the baseline in order to set the final level of the position limit. The assessment should take into account these factors as relevant for the particular commodity derivative in question. The methodologies should provide a direction of how to set the limit without taking away the ultimate decision on an appropriate position limit for a commodity derivative from the competent authority in order to prevent market abuse. The factors should give important indications to the competent authorities and also to ESMA to facilitate forming its opinions and ensuring an adequate alignment of position limits across the Union, including by assessing the impact of volatility on a case by case basis and as frequently as necessary to ensure position limits remain appropriate.

[1] Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

(17) Position limits should not create barriers to the development of new commodity derivatives and should not prevent less liquid sections of the commodity derivative markets from working adequately. Competent authorities should take into account in applying the methodology the time required to develop and attract liquidity to both new and existing commodity derivatives and, in particular, for commodity derivatives that may support risk management in bespoke or immature markets or seek to develop new hedging arrangements in new commodities. Given the broad range of markets and commodities to which the position limits regime applies, there is no single and predetermined time period which adequately captures the shift from a commodity derivative contract being new to being established. Equally, there are many commodity derivative contracts which may never attract sufficient participants or liquidity to enable the effective application of position limits without the risk of participants regularly and inadvertently breaching the limit and consequently disrupting the pricing and settlement of those commodity derivatives. In order to address these risks to the efficient functioning of markets, the methodology provides for a tiered approach whereby the position limit for the spot month and for other months is set at a fixed level of 2 500 lots for commodity derivatives and 2,5 million securities in issue for securitised derivatives with a commodity underlying until a threshold of 10 000 lots or 10 million securities, respectively, is exceeded. Contracts exceeding these thresholds while still being relatively illiquid should, where appropriate, be able to benefit from a higher limit in order to ensure that trading in such contracts is not unduly constrained.

(18) The number, composition, and the role of market participants in a commodity derivative can influence the nature and the size of positions that certain market participants hold in the market. For some commodity derivatives, certain market participants might hold a large position which reflects their role in the buying and selling of, and the delivery of, the commodity when they are on the opposite side of the market to the majority of other market participants providing liquidity or risk management services for the underlying commodity market.

(19) The supply, use, access to, and availability of the underlying commodity are characteristics of the underlying commodity market. Through the assessment of more granular components of these characteristics, such as perishability of the commodity and method of transportation, the competent authority can determine the flexibility of the market and adjust position limits appropriately.

(20) For some commodity derivatives there may be a large discrepancy between open interest and deliverable supply. This may occur where there is relatively little derivative trading compared with the deliverable supply, in which case open interest will be smaller in comparison with deliverable supply, or, for example, where a particular commodity derivative is widely used to hedge many different risk exposures and deliverable supply is therefore smaller in comparison with open interest. Such significant discrepancies between open interest and deliverable supply justify adjustments from the baseline applicable to the other months' limit upwards or downwards in order to avoid a disorderly market when the spot month approaches.

(21) With the same objective of limiting disorderly markets as the spot month approaches because of large discrepancies between calculations of deliverable supply and open interest, deliverable supply is defined to include any substitute grades or types of a commodity that can be delivered in settlement of a commodity derivative contract under the terms of that contract.

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

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

(24) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council [1],

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

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation lays down rules for the calculation of the net position held by a person in a commodity derivative and the methodology for calculating the position limits on the size of that position.

Article 2

Definitions

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

(1) 'non-financial entity' means a natural or legal person other than:

(a) an investment firm authorised in accordance with Directive 2014/65/EC,

(b) a credit institution authorised in accordance with Directive 2013/36/EU of the European Parliament and of the Council ([1]),

(c) an insurance undertaking authorised in accordance with Council Directive 73/239/EEC ([2]),

(d) an assurance undertaking authorised in accordance with Directive 2002/83/EC of the European Parliament and of the Council ([3]),

(e) a reinsurance undertaking authorised in accordance with Directive 2005/68/EC of the European Parliament and of the Council ([4]),

(f) a UCITS and, where relevant, its management company, authorised in accordance with Directive 2009/65/EC of the European Parliament and of the Council ([5]),

(g) an institution for occupational retirement provision within the meaning of Article 6(a) of Directive 2003/41/EC of the European Parliament and of the Council ([6]),

(h) an alternative investment fund managed by AIFMs authorised or registered in accordance with Directive 2011/61/EU of the European Parliament and of the Council ([7]),

([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).

([2]) First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance (OJ L 228, 16.8.1973, p. 3).

([3]) Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance (OJ L 345, 19.12.2002, p. 1).

([4]) Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC (OJ L 323, 9.12.2005, p. 1).

([5]) 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).

([6]) 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).

([7]) 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).

(i) a CCP authorised in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council [1],

(j) a central securities depositary authorised in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council [2].

A third-country entity is a non-financial entity if it would not require authorisation under any of the aforementioned legislation if it was based in the Union and subject to Union law.

(2) 'spot month contract' means the commodity derivative contract in relation to a particular underlying commodity whose maturity is the next to expire in accordance with the rules set by the trading venue.

(3) 'other months' contract' means any commodity derivative contract that is not a spot month contract.

CHAPTER II

METHOD FOR CALCULATING THE SIZE OF THE NET POSITION OF A PERSON

Article 3

Aggregation and netting of positions in a commodity derivative

(Article 57(1) of Directive 2014/65/EU)

1. The net position of a person in a commodity derivative shall be the aggregation of its positions held in that commodity derivative traded on a trading venue, in commodity derivatives considered the same commodity derivative to that commodity derivative in accordance with paragraph 1 of Article 5, and in economically equivalent OTC contracts pursuant to Article 6.

2. Where a person holds both long and short positions in any of the commodity derivatives referred to in paragraph 1, the person shall net those positions to determine its net position for that commodity derivative.

3. Positions held by a non-financial entity in commodity derivatives that are objectively measureable as reducing risks in accordance with Article 7, as approved by the competent authority pursuant to Article 8, shall not be aggregated for the purposes of determining the net position of that non-financial entity.

4. A person shall determine separately the net position it holds in a commodity derivative for both the spot month contracts and the other months' contracts.

Article 4

Method of calculating positions for legal entities within a group

(Article 57(1) of Directive 2014/65/EU)

1. A parent undertaking shall determine its net position by aggregating the following positions in accordance with Article 3:

(a) its own net position;

(b) the net positions of each of its subsidiary undertakings.

2. By way of derogation to paragraph 1, the parent undertaking of a collective investment undertaking or, where the collective investment undertaking has appointed a management company, the parent undertaking of that management company shall not aggregate the positions in commodity derivatives in any collective investment undertaking where it does not in any way influence the investment decisions in respect of opening, holding or closing those positions.

---

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

[2] Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).

Article 5

Same commodity derivatives and significant volumes

(Article 57(6) of Directive 2014/65/EU)

1. A commodity derivative traded on a trading venue shall be considered the same commodity derivative as a commodity derivative traded on another trading venue where the following conditions are met:

(a) both commodity derivatives have identical contractual specifications, terms and conditions, excluding post trade risk management arrangements;

(b) both commodity derivatives form a single fungible pool of open interest or, in the case of commodity derivatives defined under point (c) of Article 4(1)(44) of Directive 2014/65/EU, of securities in issue by which the positions held in a commodity derivative traded on one trading venue may be closed out against the positions held in the commodity derivative traded on the other trading venue.

2. A commodity derivative shall be considered to be traded in a significant volume on a trading venue when the trading in the commodity derivative on that trading venue over a consecutive three month period:

(a) exceeds an average daily open interest of 10 000 lots in the spot and other months' combined; or

(b) in the case of commodity derivatives defined under point (c) of Article 4(1)(44) of Directive 2014/65/EU, when the number of units traded multiplied by the price exceeds an average daily amount of 1 million EUR.

3. The trading venue where the largest volume of trading in the same commodity derivative takes place shall be the trading venue that over one year has:

(a) the largest average daily open interest; or

(b) in the case of commodity derivatives defined under point (c) of Article 4(1)(44) of Directive 2014/65/EU, the highest average daily amount.

Article 6

OTC contracts economically equivalent to commodity derivatives traded on trading venues

(Article 57(1) of Directive 2014/65/EU)

An OTC derivative shall be considered economically equivalent to a commodity derivative traded on a trading venue where it has identical contractual specifications, terms and conditions, excluding different lot size specifications, delivery dates diverging by less than one calendar day and different post trade risk management arrangements.

Article 7

Positions qualifying as reducing risks directly related to commercial activities

(Article 57(1) of Directive 2014/65/EU)

1. A position held by a non-financial entity in commodity derivatives traded on trading venues or in economically equivalent OTC contracts pursuant to Article 6 qualifies as reducing risks directly relating to the commercial activities of that non-financial entity where by itself, or in combination with other derivatives in accordance with paragraph 2 ('position in a portfolio of commodity derivatives'), the position meets one of the following criteria:

(a) it reduces the risks arising from the potential change in the value of assets, services, inputs, products, commodities or liabilities that the non-financial entity or its group owns, produces, manufactures, processes, provides, purchases, merchandises, leases, sells, or incurs or reasonably anticipates owning, producing, manufacturing, processing, providing, purchasing, merchandising, leasing, selling or incurring in the normal course of its business;

(b) it qualifies as a hedging contract pursuant to International Financial Reporting Standards (IFRS) adopted in accordance with Article 3 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council [1].

2. For the purposes of paragraph 1, a qualifying risk-reducing position taken on its own or in combination with other derivatives is one for which the non-financial entity or the person holding the position on behalf of that entity:

(a) describes the following in its internal policies:

(i) the types of commodity derivative contracts included in the portfolios used to reduce risks directly relating to commercial activity and their eligibility criteria;

(ii) the link between the portfolio and the risks that the portfolio is mitigating;

(iii) the measures adopted to ensure that the positions concerning those contracts serve no other purpose than covering risks directly related to the commercial activities of the non-financial entity, and that any position serving a different purpose can be clearly identified;

(b) is able to provide a sufficiently disaggregated view of the portfolios in terms of class of commodity derivative, underlying commodity, time horizon and any other relevant factors.

Article 8

Application for the exemption from position limits

(Article 57(1) of Directive 2014/65/EU)

1. A non-financial entity holding a qualifying position in a commodity derivative shall apply for the exemption referred to in the second subparagraph of paragraph 1 of Article 57 of Directive 2014/65/EU to the competent authority which sets the position limit for that commodity derivative.

2. The person referred to in paragraph 1 shall submit to the competent authority the following information which demonstrates how the position reduces risks directly relating to the non-financial entity's commercial activity:

(a) a description of the nature and value of the non-financial entity's commercial activities in the commodity to which the commodity derivative for which an exemption is sought is relevant;

(b) a description of the nature and value of the non-financial entity's activities in the trading of and positions held in the relevant commodity derivatives traded on trading venues and in their economically equivalent OTC contracts;

(c) a description of the nature and size of the exposures and risks in the commodity which the non-financial entity has or expects to have as a result of its commercial activities and which are or would be mitigated by the use of commodity derivatives;

(d) an explanation of how the non-financial entity's use of commodity derivatives directly reduces its exposure and risks in its commercial activities.

3. The competent authority shall approve or reject the application within 21 calendar days after it has received the application and shall notify the non-financial entity of its approval or rejection of the exemption.

4. The non-financial entity shall notify the competent authority if there is a significant change to the nature or value of the non-financial entity's commercial activities or its trading activities in commodity derivatives and the change is relevant to the information set out in point (b) of paragraph 2 and shall submit a new application for the exemption if it intends to continue to use it.

[1] Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p. 1).

CHAPTER III

METHODOLOGY FOR COMPETENT AUTHORITIES TO CALCULATE POSITION LIMITS

SECTION 1

Determination of baseline figures

Article 9

Methodology for determining the baseline figure for spot month limits

(Article 57(4) of Directive 2014/65/EU)

1. Competent authorities shall determine a baseline figure for the spot month position limit in a commodity derivative by calculating 25 % of the deliverable supply for that commodity derivative.

2. The baseline figure shall be specified in lots which shall be the unit of trading used by the trading venue on which the commodity derivative trades representing a standardised quantity of the underlying commodity.

3. Where a competent authority establishes different position limits for different times within the spot month period, those position limits shall decrease on an incremental basis towards the maturity of the commodity derivative and shall take into account the position management arrangements of the trading venue.

4. By way of derogation to paragraph 1, competent authorities shall determine the baseline figure for the spot month position limit for any derivative contract with an underlying that qualifies as food intended for human consumption with a total combined open interest in spot and other months' contracts exceeding 50 000 lots over a consecutive three month period by calculating 20 % of the deliverable supply in that commodity derivative.

Article 10

Deliverable supply

(Article 57(3) of Directive 2014/65/EU)

1. Competent authorities shall calculate the deliverable supply for a commodity derivative by identifying the quantity of the underlying commodity that can be used to fulfil the delivery requirements of the commodity derivative.

2. Competent authorities shall determine the deliverable supply for a commodity derivative referred to in paragraph 1 by reference to the average monthly amount of the underlying commodity available for delivery over the one year period immediately preceding the determination.

3. In order to identify the quantity of the underlying commodity meeting the conditions of paragraph 1, competent authorities shall take into account the following criteria:

(a) the storage arrangements for the underlying commodity;

(b) the factors that may affect the supply of the underlying commodity.

Article 11

Methodology for determining the baseline figure for other months' limits

(Article 57(4) of Directive 2014/65/EU)

1. Competent authorities shall determine a baseline figure for the other months' position limit in a commodity derivative by calculating 25 % of the open interest in that commodity derivative.

2. The baseline figure shall be specified in lots which shall be the unit of trading used by the trading venue on which the commodity derivative trades representing a standardised quantity of the underlying commodity.

Article 12

Open interest

(Article 57(3) of Directive 2014/65/EU)

Competent authorities shall calculate the open interest in a commodity derivative by aggregating the number of lots of that commodity derivative that are outstanding on trading venues at a point in time.

Article 13

Methodology for determining the baseline figure in respect of certain contracts

(Article 57(4) of Directive 2014/65/EU)

1. By way of derogation to Article 9, competent authorities shall determine the baseline figure for the spot month position limits for cash settled spot month contracts which are under C(10) of Annex I to Directive 2014/65/EU and which have no measurable deliverable supply of their underlying commodities by calculating 25 % of the open interest in those commodity derivative contracts.

2. By way of derogation to Articles 9 and 11, competent authorities shall determine the baseline figure for the position limits for commodity derivatives defined under point (c) of Article 4(1)(44) of Directive 2014/65/EU by calculating 25 % of the number of securities issued. The baseline figure shall be specified in number of securities.

3. By way of derogation to Articles 9 and 11, where a commodity derivative provides that the underlying is delivered constantly over a specified period of time, the baseline figures calculated pursuant to Articles 9 and 11 shall apply to related commodity derivatives for the same underlying to the extent that their delivery periods overlap. The baseline figure shall be specified in units of the underlying.

SECTION II

Factors relevant for the calculation of position limits

Article 14

Assessment of factors

(Article 57(3) of Directive 2014/65/EU)

Competent authorities shall set the spot month and other months' position limits for a commodity derivative by taking the baseline figure determined in accordance with Articles 9, 11 and 13 and adjusting it according to the potential impact of the factors referred to in Articles 16 to 20 on the integrity of the market for that derivative and for its underlying commodity to a limit:

(a) between 5 % and 35 %; or

(b) between 2,5 % and 35 %, for any derivative contract with an underlying that qualifies as food intended for human consumption with a total combined open interest in spot and other months' contracts exceeding 50 000 lots over a consecutive three month period.

Article 15

New and illiquid contracts

(Article 57(3)(g) of Directive 2014/65/EU)

1. By way of derogation to Article 14,

(a) for commodity derivatives traded on a trading venue with a total combined open interest in spot and other months' contracts not exceeding 10 000 lots over a consecutive three month period, competent authorities shall set the limit of positions held in those commodity derivatives at 2 500 lots;

(b) for commodity derivatives traded on a trading venue with a total combined open interest in spot and other months' contracts in excess of 10 000 but not exceeding 20 000 lots over a consecutive three month period, competent authorities shall set the spot and other months' position limit between 5 % and 40 %;

(c) for commodity derivatives as defined in point (c) of Article 4(1)(44) of Directive 2014/65/EU with a total number of securities in issue not exceeding 10 million over a consecutive three month period, the competent authority shall set the limit of positions held in those commodity derivatives at 2,5 million securities;

(d) for commodity derivatives as defined in point (c) of Article 4(1)(44) of Directive 2014/65/EU with a total number of securities in issue in excess of 10 million but not exceeding 20 million over a consecutive three month period, the competent authority shall set the spot and other months' position limit between 5 % and 40 %.

2. The trading venue shall notify the competent authority when the total open interest of any such commodity derivative reaches any of the amounts of lots or number of securities in issue mentioned in the previous paragraph over a consecutive three month period. Competent authorities shall review the position limit upon receiving such notifications.

Article 16

The maturity of the commodity derivatives contracts

(Article 57(3)(a) of Directive 2014/65/EU)

1. For spot month position limits, if the commodity derivative has a short maturity, competent authorities shall adjust the position limit downwards.

2. For other months' position limits, where the commodity derivative has a large number of separate expiries, competent authorities shall adjust the position limit upwards.

Article 17

Deliverable supply in the underlying commodity

(Article 57(3)(b) of Directive 2014/65/EU)

Where the deliverable supply in the underlying commodity can be restricted or controlled or if the level of deliverable supply is low relative to the amount required for orderly settlement competent authorities shall adjust the position limit downwards. Competent authorities shall assess the extent to which this deliverable supply is used also as the deliverable supply for other commodity derivatives.

Article 18

The overall open interest

(Article 57(3)(c) of Directive 2014/65/EU)

1. Where there is a large volume of overall open interest, competent authorities shall adjust the position limit downwards.

2. Where the open interest is significantly higher than the deliverable supply, competent authorities shall adjust the position limit downwards.

3. Where the open interest is significantly lower than the deliverable supply, competent authorities shall adjust the position limit upwards.

Article 19

The number of market participants

(Article 57(3)(e) of Directive 2014/65/EU)

1. Where the daily average number of market participants holding a position in the commodity derivative over a period of one year is high the competent authority shall adjust the position limit downwards.

2. By way of derogation to Article 14, competent authorities shall set the spot month and other months' position limit between 5 % and 50 % if:

(a) the average number of market participants holding a position in the commodity derivative in the period leading up to the setting of the position limit is lower than 10; or

(b) the number of investment firms acting as a market maker in accordance with Article 4(1)(7) of Directive 2014/65/EU in the commodity derivative at the time the position limit is set or reviewed is lower than 3.

For the purposes of the first subparagraph, competent authorities may establish different position limits for different times within the spot month period, the other months' period or for both periods.

Article 20

Characteristics of the underlying commodity market

(Article 57(3)(f) of Directive 2014/65/EU)

1. Competent authorities shall take into account how the characteristics of the underlying market impact on the functioning and trading of the commodity derivative and on the size of the positions held by market participants, including having regard to the ease and speed of access which market participants have to the underlying commodity.

2. The assessment of the underlying commodity market referred to in paragraph 1 shall take into account:

(a) whether there are restrictions on the supply of the commodity, including the perishability of the deliverable commodity;

(b) the method of transportation and delivery of the physical commodity, including the following:

  (i) whether the commodity can be delivered to specified delivery points only;

  (ii) the capacity constraints of specified delivery points.

(c) the structure, organisation and the operation of the market, including the seasonality present in extractive and agricultural commodity markets whereby physical supply fluctuates over the calendar year;

(d) the composition and role of market participants in the underlying commodity market, including consideration of the number of market participants which provide specific services that enable the functioning of the underlying commodity market such as risk management, delivery, storage, or settlement services;

(e) macroeconomic or other related factors that influence the operation of the underlying commodity market including the delivery, storage, and settlement of the commodity;

(f) the characteristics, physical properties and lifecycles of the underlying commodity.

Article 21

Volatility of the relevant markets

(Article 57(3)(d)) of Directive 2014/65/EU)

After having applied the factors referred to in Articles 16 to 20 which are relevant to set the position limit for each contract in commodity derivatives referred to in Article 57(4) of Directive 2014/65/EU, competent authorities shall further adjust that position limit where the following conditions are met:

(a) there is excessive volatility in the price of commodity derivative or in the underlying commodity;

(b) a further adjustment of the position limit would effectively reduce the excessive volatility in the price of that commodity derivative or in the underlying commodity.

Article 22

Entry into force and application

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

It shall apply from 3 January 2018.

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

Done at Brussels, 1 December 2016.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION DELEGATED REGULATION (EU) 2017/592

of 1 December 2016

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments ([1]), and in particular Article 2(4) thereof,

Whereas:

(1) The assessment whether persons are dealing on own account or are providing investment services in commodity derivatives, emission allowances and derivatives thereof in the Union as an activity ancillary to their main business should be performed at a group level. In line with Article 2(11) of Directive 2013/34/EU of the European Parliament and of the Council ([2]), a group is considered to comprise the parent undertaking and all its subsidiary undertakings and includes entities domiciled in the Union and in third countries regardless of whether the group is headquartered inside or outside the Union.

(2) The assessment should be performed in the form of two tests, which are both based on the trading activity of the persons within the group and should be calculated on a per-asset-class basis. The first test should determine whether the persons within the group are large participants relative to the size of the financial market in that asset class and as a consequence should be required to obtain authorisation as an investment firm. The second test should determine whether the persons within the group trade on own account or provide investment services in commodity derivatives, emission allowances or derivatives thereof to such a large extent relative to the main business of the group that those activities cannot be considered to be ancillary at group level and that therefore the persons should be required to obtain authorisation as an investment firm.

(3) The first test compares the size of a person's trading activity against the overall trading activity in the Union on an asset class basis to determine that person's market share. The size of the trading activity should be determined by deducting the sum of the volume of the transactions for the purposes of intra-group liquidity or risk management purposes, objectively measurable reduction of risks directly relating to commercial or treasury financing activity or fulfilling obligations to provide liquidity on a trading venue ('privileged transactions') from the volume of the overall trading activity undertaken by the person.

(4) The volume of the trading activity should be determined by the gross notional value of contracts in commodity derivatives, emission allowances and derivatives thereof on the basis of a rolling average of the preceding three annual periods. The overall market size should be determined on the basis of trading activity undertaken in the Union in relation to each asset class for which the exemption is sought, including contracts which are traded on and outside trading venues in the Union.

(5) As commodity markets differ significantly in terms of size, number of market participants, level of liquidity and other characteristics, different thresholds shall apply for different asset classes in relation to the test on the size of the trading activity.

(6) The second test provides two methods for determining the size of the trading activity in order to compare it to the size of the main activity undertaken by the group. That test takes two forms in order to better reflect the

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

([2]) Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

underlying activities of the persons intending to use the exemption whilst minimising the regulatory burden and complexity of implementing the test. The capital test is provided as an alternative to the trading test in order to take into account of the economic reality of the very heterogeneous groups that need to undertake the assessment whether their trading is ancillary to their main business activities, including groups that undertake significant capital investments, relative to their size, in the creation of infrastructure transportation and production facilities, as well as investments which cannot be easily hedged in financial markets. As both forms of the second test cater for the different underlying economic realities of various groups both tests constitute equally suitable methods to determine whether the trading activity is ancillary to the main business of a particular group.

(7) The size of the trading activity as used under the first method of the second test is taken as a proxy for the commercial activity that the person or group engages in as its main business. This proxy should be easy and cost efficient for persons to apply as it builds on data already required to be collected for the first test while at the same time establishing a meaningful test.

(8) This proxy is appropriate because a rational risk-averse entity, such as a producer, processor or consumer of commodities or emission allowances, is deemed to hedge the volume of the commercial activity of its main business with an equivalent volume of commodity derivatives, emission allowances or derivatives thereof. Therefore the volume of all its trading activity in commodity derivatives, emission allowances or derivatives thereof measured in the gross notional value of the underlying is an appropriate proxy for the size of the main business of the group. As groups whose main business activities are not related to commodities or emission allowances would not use commodity or emission allowances derivatives as a risk-reducing tool, their trading in commodity derivatives, emission allowances or derivatives thereof would not qualify as hedging.

(9) The use of commodity derivatives as a risk-reducing tool however cannot be considered a perfect proxy for all the commercial activity that the person or group conducts as its main business since it may not take into account other investments in fixed assets unrelated to derivative markets. In order to correct the potential mismatch between a group's trading in commodity derivatives and the actual size of its main business with regard, in particular, to small groups the first method of the second test should contain a backstop which recognises that the trading activity undertaken by the persons within the group should also not exceed a certain percentage of any of the thresholds set under the first test for each relevant asset class to be deemed ancillary. The higher the percentage of speculative activity within all trading activity of a group, the lower the threshold set under the first test.

(10) The backstop based on a group not exceeding a certain percentage of any of the thresholds set under the first test for each relevant asset class is particularly relevant for very small groups with negligible overall footprint in the relevant commodity derivative trading. On the one hand, those groups may be required to undertake a costly analysis of their trading activities to determine whether that trading reduces risk or not without the result being conclusive on the ancillary nature of the trading activity. On the other hand, those groups are usually not equipped to engage in the capital test as an alternative to the test based on trading. In order to avoid disproportionate burdens on those groups, it is appropriate that groups whose trading activity for each relevant asset class accounts for less than one-fifth of the threshold set under the first test be considered as carrying out that trading as an ancillary activity to their main business. The first method under the second test, however, may not adequately measure the main activity of persons who have significant capital investments, relative to their size, in the creation of infrastructure, transportation and production facilities. Neither does it recognise investments which cannot be hedged in financial markets. Therefore it is necessary for the second test to contain a second method that uses a capital based metric to measure that that trading activity is ancillary to the main business of the group.

(11) The second method under the second test uses the estimated capital that a non-financial group would be required to hold against the market risk inherent in its positions arising from trading in commodity derivatives, emission allowances and derivatives thereof, other than those from privileged transactions, as a proxy for the amount of ancillary activities undertaken by the persons in a group. The framework developed under the auspices of the Basel Committee and implemented in the Union through the Capital Requirements Directive is used to apply a proportionate notional capital weighting to positions. Within this framework, the net position in a commodity

derivative, emission allowance or derivative thereof shall be determined by netting long and short positions in a particular type of commodity derivative contract, emission allowance or derivative contract thereof, such as a future, option, forward or warrants. In determining the net position, netting should take place irrespective of where the contract is traded, the contract's counterparty or its maturity. The gross position in a relevant commodity derivative, emission allowance contract or a derivative contract thereof should, on the other hand, be calculated by adding the net positions of types of contracts that relate to a particular commodity or, emission allowance or derivative thereof. In this context, net positons in a particular type of commodity derivative contract, emission allowance contract or derivative contract thereof should not be netted against each other.

(12) Under the second method of the second test, the amount of the estimated capital of a group is then compared to the actual amount of capital employed of that group that should reflect the size of its main activity. The capital employed is calculated on the basis of the total assets of the group minus its current debt. Current debt should comprise debt that is due to be settled within 12 months.

(13) The rationale of the ancillary activity tests is to check whether persons within a group that are not authorised in accordance with Directive 2014/65/EU should apply for an authorisation due to the relative or absolute size of their activity in commodity derivatives, emission allowances and derivatives thereof. The ancillary activity tests thus determine the size of activities in commodity derivatives, emission allowances and derivatives thereof which persons within a group may carry out without authorisation under Directive 2014/65/EU due to those activities being ancillary to the group's main business. It is therefore appropriate to calculate the size of the ancillary activity of the group by using criteria which exclude the activity carried out by group members which are authorised in accordance with that Directive in order to assess the size of genuine ancillary activity carried out by unauthorised group members.

(14) In order to allow for market participants to plan and operate their business in a reasonable way and to take into account seasonal patterns of activity, the calculation of the tests determining when an activity is considered to be ancillary to the main business should be based on a period of three years. Therefore, entities should perform the assessment whether they breach one of the two thresholds on an annual basis by calculating a simple average of three years on a rolling basis in order to be able to submit their annual notification to the competent authority. This obligation should be without prejudice to the right of the competent authority to request at any time a report from a person about the basis on which that person considers its activity under points (i) and (ii) of Article 2(1)(j) of Directive 2014/65/EU to be ancillary to its main business.

(15) Transactions objectively measurable as reducing risks directly relating to commercial activity or treasury financing activity and intra-group transactions should be considered in a way consistent with Regulation (EU) No 648/2012 of the European Parliament and of the Council [1]. However, in relation to transactions in derivatives which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity Commission Delegated Regulation (EU) No 149/2013 [2] only refers to derivatives not traded on regulated markets while Article 2(4) of Directive 2014/65/EU covers derivatives traded on trading venues. Therefore, this Regulation should also take into account derivatives traded on regulated markets in relation to transactions that are deemed to be objectively measurable as reducing risks directly related to commercial or treasury financing activity.

(16) In some circumstances, it may not be possible to hedge a commercial risk by using a directly related commodity derivative contract: a contract with exactly the same underlying and settlement date as the risk being covered. In such case, the person may use proxy hedging through a closely correlated instrument to cover its exposure such as an instrument with a different but very close underlying in terms of economic behaviour. Additionally, macro

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

[2] 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).

or portfolio hedging may be used by persons, which enter into commodity derivative contracts to hedge a risk in relation to their overall risks or the overall risks of the group. Those macro, portfolio or proxy hedging commodity derivative contracts may constitute hedging for the purpose of this Regulation.

(17) When a person applying the ancillary activity test uses portfolio or macro hedging, it may not be able to establish a one-to-one link between a specific transaction in a commodity derivative and a specific risk directly related to the commercial and treasury financing activities entered into to hedge it. The risks directly related to the commercial and treasury financing activities may be of a complex nature e.g. several geographic markets, several products, time horizons or entities. The portfolio of commodity derivative contracts entered into to mitigate those risks may derive from complex risk management systems. In such cases the risk management systems should prevent non-hedging transactions from being categorised as hedging and provide for a sufficiently disaggregate view of the hedging portfolio so that speculative components are identified and counted towards the thresholds. Positions should not qualify as reducing risks related to commercial activity solely on the grounds that they form part of a risk-reducing portfolio on an overall basis.

(18) A risk may evolve over time and, in order to adapt to the evolution of the risk, commodity or emission allowance derivatives initially executed for reducing risk related to commercial activity, may have to be offset through the use of additional commodity or emission allowance derivative contracts. As a result, hedging of a risk may be achieved by a combination of commodity or emission allowance derivative contracts including offsetting commodity derivative contracts that close out those commodity derivative contracts that have become unrelated to the commercial risk. Additionally the evolution of a risk that has been addressed by the entering into of a position in a commodity or emission allowance derivative for the purpose of reducing that risk should not subsequently give rise to the re-evaluation of that position as being not a privileged transaction ab initio.

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

(20) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council ([1]).

(21) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the related national provisions transposing Directive 2014/65/EU apply from the same date,

HAS ADOPTED THIS REGULATION:

Article 1

Application of thresholds

The activities of persons referred to in points (i) and (ii) of Article 2(1)(j) of Directive 2014/65/EU shall be considered to be ancillary to the main business of the group if those activities meet the conditions set out in Article 2 and constitute a minority of activities at group level in accordance with Article 3.

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

Article 2

Overall market threshold

1. The size of the activities referred to in Article 1 calculated in accordance with paragraph 2 divided by the overall market trading activity calculated in accordance with paragraph 3 shall, in each of the following asset classes, account for less than the following values:

(a) 4 % in relation to derivatives on metals;

(b) 3 % in relation to derivatives on oil and oil products;

(c) 10 % in relation to derivatives on coal;

(d) 3 % in relation to derivatives on gas;

(e) 6 % in relation to derivatives on power;

(f) 4 % in relation to derivatives on agricultural products;

(g) 15 % in relation to derivatives on other commodities, including freight and commodities referred to in Section C 10 of Annex I to Directive 2014/65/EU;

(h) 20 % in relation to emission allowances or derivatives thereof.

2. The size of the activities referred to in Article 1 undertaken in the Union by a person within a group in each of the asset classes referred to in paragraph 1 shall be calculated by aggregating the gross notional value of all contracts within the relevant asset class to which that person is a party.

The aggregation referred to in the first subparagraph shall not include contracts resulting from transactions referred to in points (a), (b) and (c) of the fifth subparagraph of Article 2(4) of Directive 2014/65/EU or contracts where the person within the group that is a party to any of them is authorised in accordance with Directive 2014/65/EU or Directive 2013/36/EU of the European Parliament and of the Council [1].

3. The overall market trading activity in each of the asset classes referred to in paragraph 1 shall be calculated by aggregating the gross notional value of all contracts that are not traded on a trading venue within the relevant asset class to which any person located in the Union is a party and of any other contract within that asset class that is traded on a trading venue located in the Union during the relevant annual accounting period referred to in Article 4(2).

4. The aggregate values referred to in paragraphs 2 and 3 shall be denominated in EUR.

Article 3

Main business threshold

1. The activities referred to in Article 1 shall be considered to constitute a minority of activities at group level where they comply with any of the following conditions:

(a) the size of those activities calculated in accordance with the first subparagraph of paragraph 3 does not account for more than 10 % of the total size of the trading activity of the group calculated in accordance with the second subparagraph of paragraph 3;

(b) the estimated capital employed for carrying out those activities calculated in accordance with paragraphs 5 to 7 does not account for more than 10 % of the capital employed at group level for carrying out the main business calculated in accordance with paragraph 9.

2. The following derogations from paragraph 1(a) shall apply:

(a) where the size of the activities referred to in Article 1 calculated in accordance with the first subparagraph of paragraph 3 accounts for more than 10 % but less than 50 % of the total size of the trading activity of the group calculated in accordance with the second subparagraph of paragraph 3, ancillary activities shall be considered to constitute a minority of activities at group level only where the size of the trading activity for each of the asset classes referred to in Article 2(1) accounts for less than 50 % of the threshold established by Article 2(1) for each relevant asset class;

[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).

(b) where the size of the trading activities calculated in accordance with the first subparagraph of paragraph 3 accounts for equal to or more than 50 % of the total size of the trading activity of the group calculated in accordance with the second subparagraph of paragraph 3, ancillary activities shall be considered to constitute a minority of activities at group level only where the size of the trading activity for each of the asset classes referred to in Article 2(1) accounts for less than 20 % of the threshold established by Article 2(1) for each relevant asset class.

3. The size of the activities referred to in Article 1 undertaken by a person within a group shall be calculated by aggregating the size of the activities undertaken by that person with respect to all of the asset classes referred to in Article 2(1) in accordance with the same calculation criteria as that referred to in Article 2(2).

The total size of the trading activity of the group shall be calculated by aggregating the gross notional value of all contracts in commodity derivatives, emission allowances and derivatives thereof to which persons within that group are a party to.

4. The aggregation referred to in the first subparagraph of paragraph 3 shall not include contracts where the person within the group that is a party to any of those contracts is authorised in accordance with Directive 2014/65/EU or Directive 2013/36/EU.

5. The estimated capital employed for carrying out the activities referred to in Article 1 shall be the sum of the following:

(a) 15 % of each net position, long or short, multiplied by the price for the commodity derivative, emission allowance or derivatives thereof;

(b) 3 % of the gross position, long plus short, multiplied by the price for the commodity derivative, emission allowance or derivatives thereof.

6. For the purposes of paragraph 5, point (a), the net position in a commodity derivative, an emission allowance or derivative thereof shall be determined by netting long and short positions:

(a) in each type of commodity derivative contract with a particular commodity as underlying in order to calculate the net position per type of contract with that commodity as underlying;

(b) in an emission allowance contract in order to calculate the net position in that emission allowances contract; or

(c) in each type of emission allowance derivative contract in order to calculate the net position per type of emission allowance derivative contract.

For the purposes of paragraph 5, point (a), net positions in different types of contracts with the same commodity as underlying or different types of derivative contracts with the same emission allowance as underlying can be netted against each other.

7. For the purposes of paragraph 5, point (b), the gross position in a commodity derivative, an emission allowance or a derivative contract thereof, shall be determined by computing the sum of the absolute values of the net positions per type of contract with a particular commodity as the underlying, per emission allowance contract or per type of contract with a particular emission allowance as the underlying.

For the purposes of paragraph 5, point (b), net positions in different types of derivative contracts with the same commodity as underlying or different types of derivative contracts with the same emission allowance as underlying cannot be netted against each other.

8. The calculation of the estimated capital shall not include positions resulting from transactions referred to in points (a), (b) and (c) of subparagraph 5 of Article 2(4) of Directive 2014/65/EU.

9. The capital employed for carrying out the main business of a group shall be the sum of the total assets of the group minus its short-term debt as recorded in its consolidated financial statements of the group at the end of the relevant annual calculation period. For the purposes of the first sentence, short-term debt means debt with a maturity of less than 12 months.

10. The values resulting from the calculations referred to in this Article shall be denominated in EUR.

Article 4

Procedure for calculation

1. The calculation of the size of the trading activities and capital referred to in Articles 2 and 3 shall be based on a simple average of the daily trading activities or estimated capital allocated to such trading activities, during three annual calculation periods that precede the date of calculation. The calculations shall be carried out annually in the first quarter of the calendar year that follows an annual calculation period.

2. For the purpose of paragraph 1, an annual calculation period means a period which starts on 1 January of a given year and ends on 31 December of that year.

3. For the purpose of paragraph 1, the calculation of the size of trading activities or estimated capital allocated to trading activities taking place in 2018 shall take into account the three preceding annual calculation periods, starting on 1 January 2015, 1 January 2016 and 1 January 2017, and the calculation taking place in 2019 shall take into account the three preceding annual calculation periods, starting on 1 January 2016, 1 January 2017 and 1 January 2018.

4. By derogation to paragraph 3, the reference period for the calculation of daily trading activities or estimated capital allocated to such trading activities shall comprise only the most recent annual calculation period when the following conditions are met:

(a) daily trading activities or estimated capital allocated to such trading activities declines by more than 10 %, when comparing the earliest of the three preceding annual calculation periods with the most recent annual calculation period; and

(b) daily trading activities or estimated capital allocated to such trading activities in the most recent of the three annual calculation periods is lower than in the two preceding calculation periods.

Article 5

Transactions qualifying as reducing risks

1. For the purposes of point (b) of the fifth subparagraph of Article 2(4) of Directive 2014/65/EU, a transaction in derivatives shall be considered objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity when one or more of the following criteria is met:

(a) the transaction reduces the risks arising from the potential change in the value of assets, services, inputs, products, commodities or liabilities that the person or its group owns, produces, manufactures, processes, provides, purchases, merchandises, leases, sells, or incurs or reasonably anticipates owning, producing, manufacturing, processing, providing, purchasing, merchandising, leasing, selling or incurring in the normal course of its business;

(b) the transaction covers the risks arising from the potential indirect impact on the value of assets, services, inputs, products, commodities or liabilities referred to in point (a), resulting from fluctuation of interest rates, inflation rates, foreign exchange rates or credit risk;

(c) the transaction qualifies as a hedging contract pursuant to International Financial Reporting Standards adopted in accordance with Article 3 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council [1].

2. For the purposes of paragraph 1, a qualifying risk-reducing transaction taken on its own or in combination with other derivatives is one for which a non-financial entity:

(a) describes the following in its internal policies:

   (i) the types of commodity derivative, emission allowance or derivative thereof contracts included in the portfolios used to reduce risks directly relating to commercial activity or treasury financing activity and their eligibility criteria;

[1] Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p. 1).

(ii) the link between the portfolio and the risks that the portfolio is mitigating;

(iii) the measures adopted to ensure that the transactions concerning those contracts serve no other purpose than covering risks directly related to the commercial activity or the treasury financing activity of the non-financial entity, and that any transaction serving a different purpose can be clearly identified;

(b) is able to provide a sufficiently disaggregate view of the portfolios in terms of class of commodity derivative, emission allowance or derivative thereof, underlying commodity, time horizon and any other relevant factors.

Article 6

Entry into force and application

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

This Regulation shall apply from 3 January 2018.

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

Done at Brussels, 1 December 2016.

For the Commission

The President

Jean-Claude JUNCKER

DIRECTIVES

COMMISSION DELEGATED DIRECTIVE (EU) 2017/593

of 7 April 2016

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU [1], and in particular Articles 16(12) and 24(13) thereof,

Whereas:

(1) Directive 2014/65/EU sets out comprehensive regime aiming to ensure investor protection.

(2) The protection of client financial instruments and funds is an important part of that regime, investment firms being subject to an obligation to make adequate arrangements to safeguard investor's ownership and rights in respect of securities and funds entrusted to an investment firm. Investment firms should have in place proper and specific arrangements to ensure the safeguarding of client financial instruments and funds.

(3) In order to further specify the regulatory framework for the protection of investors and increased clarity to clients, and in line with the overall strategy to foster jobs and growth in the Union through an integrated legal and economic framework that is efficient and treats all actors fairly, the Commission has been empowered to adopt detailed rules to address specific risks to investor protection or to market integrity.

(4) Where an investment firm deposits funds it holds on behalf of a client with a qualifying money market fund, the units or shares in that money market fund should be held in accordance with the requirements for holding financial instruments belonging to clients. Clients should be required to explicitly consent to the depositing of those funds. When assessing the quality of money market instrument there should be no mechanistic reliance on external ratings. However a downgrade below the two highest short-term credit ratings by any agency registered and supervised by ESMA that has rated the instrument should lead the manager to undertake a new assessment of the credit quality of the money market instrument to ensure it continues to be of high quality.

(5) A single officer with overall responsibility for the safeguarding of client instruments and funds should be appointed in order to reduce risks of fragmented responsibility across diverse departments, especially in large and complex firms, and to remedy unsatisfactory situations where firms do not have overarching sight of their means of meeting their obligations. The single officer should possess sufficient skills and authority in order to discharge duties effectively and without impediment, including the duty to report to the firm's senior management in respect of oversight of the effectiveness of the firm's compliance with the safeguarding of client assets requirements. The appointment of a single officer should not preclude that officer from carrying out additional roles where this does not prevent the officer from discharging the duties for safeguarding client financial instruments and funds effectively.

(6) Directive 2014/65/EU requires investment firms to safeguard client assets. Article 16(10) of Directive 2014/65/EU prohibits firms from concluding title transfer collateral arrangements (TTCAs) with retail clients for

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

the purpose of securing or covering present or future, actual or contingent or prospective obligations. Investment firms are, however, not prohibited from concluding TTCA with non-retail clients. There is therefore a risk that without further guidance investment firms could use TTCA more often than reasonably justified when dealing with non-retail clients, undermining the overall regime put in place to protect client assets. Therefore, in light of the effects of TTCAs on firms' duties towards clients and in order to ensure the safeguarding and segregation rules pursuant to Directive 2014/65/EU are not undermined, investment firms should consider the appropriateness of title transfer collateral arrangements used with non-retail clients by means of the relationship between the client's obligations to the firm and the client assets subject to TTCA. Firms should be allowed to use TTCA with non-retail client only if they demonstrate the appropriateness of TTCA in relation to that client and disclose the risks involved as well as the effect of the TTCA on his assets. Firms should have a documented process of their use TTCA. The ability of firms to enter into TTCAs with non-retail clients should not reduce the need to obtain clients' prior express consent to use client assets.

(7) Demonstrating a robust link between collateral transferred under a TTCA and client's liability should not preclude taking appropriate security against a client's obligation. Investment firms could thus continue to require a sufficient collateral and where appropriate, to do so by a TTCA. That obligation should not prevent compliance with requirements under Regulation (EU) No 648/2012 of the European Parliament and of the Council ([1]) and should not prohibit the appropriate use of TTCAs in the context of contingent liability transactions or repos for non-retail clients.

(8) While some securities financing transactions may require the transfer of title of clients' assets, in that context investment firms should not be able to effect arrangements prohibited under Article 16(10) of Directive 2014/65/EU.

(9) In order to ensure appropriate protection for clients in relation to securities financing transactions (SFTs), investment firms should adopt specific arrangements to ensure that the borrower of client assets provides the appropriate collateral and that the firm monitors the continued appropriateness of such collateral. Investment firms' duty to monitor collateral should apply where they are party to an SFT agreement, including when acting as an agent for the conclusion of a SFT or in cases of tripartite agreement between the external borrower, the client and the investment firm.

(10) Prior express consent by clients should be given and recorded by investment firms in order to allow the investment firm to demonstrate clearly what the client agreed to and to help clarify the status of client assets. However, no legal requirement should be set out in respect of the form in which consent may be given, and a record should be understood as any evidence permissible under national law. Client's consent may be given once at the start of the commercial relationship, as long as it is sufficiently clear that the client has consented to use of their securities. Where an investment firm is acting on a client instruction to lend financial instruments and where this constitutes consent to entering into the transaction, the investment firms should hold evidence to demonstrate this.

(11) To maintain a high standard of investor protection, investment firms depositing financial instruments held on behalf of their clients into an account or accounts opened with a third party should exercise all due skill, care and diligence in the selection, appointment and periodic review of the third party and of the arrangements for the holding and safekeeping of those financial instruments. To ensure that financial instruments are subject to due care and protection at all times, investment firms should, as part of their due diligence, also take into account the expertise and market reputation of the other third parties to which the initial third-party, with whom they might deposit financial instruments, may have delegated functions concerning the holding and safekeeping of financial instruments.

(12) Where investment firms place client funds with a third party, the investment firm should exercise all due skill, care and diligence in the selection, appointment and periodic review of the third party and of the arrangements

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

for holding and safekeeping client funds, and should consider the need for diversification and mitigation of risks, where appropriate, by placing client funds with more than one third party in order to safeguard clients' rights and minimise the risk of loss and misuse. Investment firms should not circumvent their duty to consider diversification by requiring clients to waive protection. Diversification requirement should apply to client funds deposited in accordance with Article 4 of this Directive. Diversification requirements should not apply to client funds placed with the third party merely for the purpose of executing a transaction for the client. Therefore where an investment firm has transferred client funds to a transaction account in order to make a specific transaction for the client, such funds should not be subject to a requirement to diversify, for example where a firm has transferred funds to a central counterparty (CCP) or exchange in order to pay a margin call.

(13) In order to ensure that client funds are adequately protected, as required by Article 16(9) of Directive 2014/65/EU, it is necessary to set a specific limit on the percentage of client funds that can be deposited at an intra-group credit institution. This should significantly reduce any potential conflicts with due diligence requirements and address the contagion risk inherent in depositing all client funds with a credit institution in the same group as the investment firm. While in certain circumstances it may be proportionate and appropriate for investment firms to deposit, after proper consideration, client funds with entities within their own group, national authorities should closely monitor the reasons for not diversifying client funds outside of the investment firm's group in order to avoid creating loopholes where the general intragroup limit is applied.

(14) In order to protect client financial instruments or funds from appropriation by third parties seeking to recover debts or charges which are not client's debts or charges, investment firms should be able to agree to security interests, liens or rights of set-off over client assets only where this is required by the applicable law in a third country. Sufficiently tailored risk disclosures should be made to clients in order to alert them to the specific risks they face in such cases.

(15) In order to avoid and reduce from an early stage potential risks of failure to comply with investor protection rules, investment firms manufacturing and distributing financial instruments should comply with product governance requirements. For the purpose of product governance requirements, investment firms that create, develop, issue and/or design financial instruments, including when advising corporate issuers on the launch of new financial instruments, should be considered as manufacturers while investment firms that offer or sell financial instrument and services to clients should be considered distributors.

(16) Entities which are not subject to the requirements of Directive 2014/65/EU but which may be authorised to perform investment services under that Directive, should also comply, as regards such services, with the product governance requirements set out under Directive 2014/65/EU.

(17) Where an investment firm that creates, develops, issues or designs financial instruments is also involved in the distribution of those products, both the product governance rules for manufacturers and distributors should apply. While there is no need to duplicate the target market assessment and distribution strategy exercise, firms should ensure the single target market assessment and distribution strategy exercise is sufficiently detailed to meet the relevant manufacturer and distributor obligations in this area.

(18) In light of the requirements set out in Directive 2014/65/EU and in the interest of investor protection, product governance rules should apply to all products sold on primary and secondary markets, irrespective of the type of product or service provided and of the requirements applicable at point of sale. However, those rules may be applied in a proportionate manner, depending on the complexity of the product and the degree to which publicly available information can be obtained, taking into account the nature of the instrument, the investment service and the target market. Proportionality means that these rules could be relatively simple for certain simple, products distributed on an execution-only basis where such products would be compatible with the needs and characteristics of the mass retail market.

(19) The level of granularity of the target market and the criteria used to define the target market and determine the appropriate distribution strategy should be relevant for the product and should make it possible to assess which clients fall within the target market, for example to assist the ongoing reviews after the financial instrument is

launched. For simpler, more common products, the target market could be identified with less detail while for more complicated products such as bail-inable instruments or less common products, the target market should be identified with more detail.

(20) For the efficient functioning of product governance obligations, distributors should periodically inform the manufacturers about their experience with the products. While distributors should not be required to report every sale to manufacturers, they should provide the data that is necessary for the manufacturer to review the product and check that it remains consistent with the needs, characteristics and objectives of the target market defined by the manufacturer. Relevant information could include data about the amount of sales outside the manufacturer's target market, summary information of the types of clients, a summary of complaints received or by posing questions suggested by the manufacturer to a sample of clients for feedback.

(21) In order to strengthen the protection of investors and increase clarity to clients as to the quality of services they receive, Directive 2014/65/EU further restricted the possibility for firms to receive or pay inducements. For those purposes, detailed conditions for the reception or payment of inducements should be laid down. In particular, the condition that inducements should enhance the quality of the service to the client should be further specified and framed. For that purpose, and subject to certain other conditions, a non-exhaustive list of situations deemed relevant for the condition that inducements enhance the quality of the service to the relevant client should be provided for.

(22) A fee, commission or non-monetary benefit should only be paid or received where justified by the provision of an additional or higher level service to the relevant client. That may include the provision of investment advice on and access to a wide range of suitable financial instruments including an appropriate number of instruments from third party product providers, or the provision of non-independent advice combined with either an offer to the client, at least on an annual basis, to assess the continuing suitability of the financial instruments in which the client has invested or with another ongoing service that is likely to be of value to the client. This could also be the case, in the area of non-advisory services, where investment firms provide access, at a competitive price, to a wide range of financial instruments that are likely to meet the needs of the client, including an appropriate number of instruments from third party product providers having no close links with the investment firm, together with, for instance, the provision of added-value tools, such as objective information tools, helping the relevant client to take investment decisions or enabling the relevant client to monitor, model and adjust the range of financial instruments in which they have invested. The value of the above-mentioned quality enhancements that the investment firm provides to the clients receiving the relevant service has to be proportional to the inducements received by the investment firm.

(23) While investment firms should, once they have fulfilled the quality enhancement criterion, maintain the enhanced level of quality, this should not imply that they are required to provide for a continuously increasing quality of services over time.

(24) Investment firms' obligations to pass on to clients all fees, commissions or monetary benefits received from third-parties in relation to investment advice on an independent basis or portfolio management services should also be further specified. While firms should pass on inducements as soon as possible, a specific timeframe should not be imposed since third party payments may be received by the investment firm at various points in time and for several clients at once.

(25) In order to ensure clients receive a comprehensive overview of the relevant information in respect of the services provided, investment firms should inform clients about the fees, commissions or any monetary benefits transferred to them.

(26) Investment firms providing both execution and research services should price and supply them separately in order to enable investment firms established in the Union to comply with the requirement to not accept and retain fees, commissions or any monetary or non-monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients set out in Article 24(7) and (8) of Directive 2014/65/EU.

(27) In order to provide legal certainty concerning the application of new rules for the reception or payment of inducements, in particular with respect to investment firms providing investment advice on an independent basis or portfolio management services, further clarifications in relation to the payment or reception of research should be provided. In particular, where research is not paid directly by the investment firm out of its own resources but in return for payments from a separate research payment account certain essential conditions should be ensured. The research payment account should only be funded by a specific research charge to the

client which should only be based on a research budget set by the investment firm and not linked to the volume and/or value of transactions executed on behalf of clients. Any operational arrangements for the collection of the client's research charge should fully comply with those conditions. When using such arrangements, an investment firm should ensure that the cost of research funded by client charges is not linked to the volume or value of other services or benefits or used to cover any other purposes, such as charges for execution.

(28) In order to ensure that portfolio managers and independent investment advisers properly monitor the amounts paid for research and to ensure that research costs are incurred in the best interests of the client, it is appropriate to specify detailed governance requirements on research spending. Investment firms should retain sufficient control over the overall spending for research, the collection of client research charges and the determination of payments. Research in this context should be understood as covering research material or services concerning one or several financial instruments or other assets, or the issuers or potential issuers of financial instruments, or be closely related to a specific industry or market such that it informs views on financial instruments, assets or issuers within that sector. That type of material or services explicitly or implicitly recommends or suggests an investment strategy and provides a substantiated opinion as to the present or future value or price of such instruments or assets, or otherwise contains analysis and original insights and reach conclusions based on new or existing information that could be used to inform an investment strategy and be relevant and capable of adding value to the investment firm's decisions on behalf of clients being charged for that research.

(29) For further clarity concerning the restriction on the receipt of inducements by investment firms in relation to independent investment advice or portfolio management and the application of research rules, it is also appropriate to indicate how the minor non-monetary benefit exemption may be applied in relation to certain other types of information or material received from third parties. In particular, written material from a third party that is commissioned and paid for by a corporate issuer or potential issuer to promote a new issuance by that company, or where the third party is contractually engaged and paid by the issuer to produce such material on an ongoing basis, should be deemed acceptable as a minor non-monetary benefit subject to disclosure and the open availability of that material. In addition, non-substantive material or services consisting of short term market commentary on the latest economic statistics or company results for example or information on upcoming releases or events, which is provided by a third party and contains only a brief summary of its own opinion on such information that is not substantiated nor includes any substantive analysis such as where they simply reiterate a view based on an existing recommendation or substantive research material or services, can be deemed to be information relating to a financial instrument or investment service of a scale and nature such so that it constitutes an acceptable minor non-monetary benefit.

(30) In particular, any non-monetary benefit that involves a third party allocating valuable resources to the investment firm shall not be considered as minor and shall be judged to impair compliance with the investment firm's duty to act in their client's best interest.

(31) This Directive respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union and in particular the right to the protection of personal data, the freedom to conduct a business, the right to consumer protection, the right to an effective remedy and to a fair trial and has to be applied in accordance with those rights and principles.

(32) The European Securities and Markets Authority, established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council ([1]), has been consulted for technical advice on the rules laid down in this Directive.

(33) In order to allow competent authorities and investment firms to adapt to the new requirements contained in this Directive so that they can be applied in an efficient and effective manner, the date of transposition as well as date of application of this Directive should be aligned respectively with the transposition and entry into application dates of Directive 2014/65/EU,

(34) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments,

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

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

SCOPE

Article 1

Scope and definitions

1. This Directive shall apply to investment firms, to management companies in accordance with Article 6(4) of Directive 2009/65/EC of the European Parliament and of the Council ([1]) and to alternative investment fund managers in accordance with Article 6(6) of Directive 2011/61/EU of the European Parliament and of the Council ([2]).

2. For the purposes of Chapters II, III and IV of this Directive, references to investment firms and financial instruments shall include credit institutions and structured deposits in relation to all the requirements referred to in Article 1(3) and (4) of Directive 2014/65/EU.

3. 'securities financing transaction' means transactions as defined in Article 3 point (11) of Regulation (EU) 2015/2365 of the European Parliament and of the Council ([3]) on transparency of securities financing transactions and of reuse.

4. 'qualifying money market fund' means a collective investment undertaking authorised under Directive 2009/65/EC, or which is subject to supervision and, if applicable, authorised by an authority under the national law of the authorising Member State, and which satisfies all of the following conditions:

(a) its primary investment objective must be to maintain the net asset value of the undertaking either constant at par (net of earnings), or at the value of the investors' initial capital plus earnings;

(b) it must, with a view to achieving that primary investment objective, invest exclusively in high quality money market instruments with a maturity or residual maturity of no more than 397 days, or regular yield adjustments consistent with such a maturity, and with a weighted average maturity of 60 days. It may also achieve this objective by investing on an ancillary basis in deposits with credit institutions;

(c) it must provide liquidity through same day or next day settlement.

For the purposes of point (b), a money market instrument shall be considered to be of high quality if the management/investment company performs its own documented assessment of the credit quality of money market instruments that allows it to consider a money market instrument as high quality. Where one or more credit rating agencies registered and supervised by ESMA have provided a rating of the instrument, the management/investment company's internal assessment should have regard to, inter alia, those credit ratings.

CHAPTER II

SAFEGUARDING OF CLIENT FINANCIAL INSTRUMENTS AND FUNDS

Article 2

Safeguarding of client financial instruments and funds

1. Member States shall require that investment firms comply with the following requirements:

(a) they must keep records and accounts enabling them at any time and without delay to distinguish assets held for one client from assets held for any other client and from their own assets;

(b) they must maintain their records and accounts in a way that ensures their accuracy, and in particular their correspondence to the financial instruments and funds held for clients and that they may be used as an audit trail;

([1]) 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).

([2]) 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).

([3]) 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).

(c) they must conduct, on a regular basis, reconciliations between their internal accounts and records and those of any third parties by whom those assets are held;

(d) they must take the necessary steps to ensure that any client financial instruments deposited with a third party, in accordance with Article 3, are identifiable separately from the financial instruments belonging to the investment firm and from financial instruments belonging to that third party, by means of differently titled accounts on the books of the third party or other equivalent measures that achieve the same level of protection;

(e) they must take the necessary steps to ensure that client funds deposited, in accordance with Article 4, in a central bank, a credit institution or a bank authorised in a third country or a qualifying money market fund are held in an account or accounts identified separately from any accounts used to hold funds belonging to the investment firm;

(f) they must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of client assets, or of rights in connection with those assets, as a result of misuse of the assets, fraud, poor administration, inadequate record-keeping or negligence.

2. If, for reasons of the applicable law, including in particular the law relating to property or insolvency, investment firms cannot comply with paragraph 1 of this Article to safeguard clients' rights to satisfy the requirements of Article 16(8) and (9) of Directive 2014/65/EU, Member States shall require that investment firms put in place arrangements to ensure that clients' assets are safeguarded to meet the objectives of paragraph 1 of this Article.

3. If the applicable law of the jurisdiction in which the client funds or financial instruments are held prevents investment firms from complying with points (d) or (e) of paragraph 1, Member States shall prescribe requirements which have an equivalent effect in terms of safeguarding clients' rights.

When relying on such equivalent requirements under Article 2(1)(d) or (e), Member States shall ensure that investment firms inform clients that in such instances they do not benefit from the provisions envisaged under Directive 2014/65/EU and this Directive.

4. Member States shall ensure that security interests, liens or rights of set-off over client financial instruments or funds enabling a third party to dispose of client's financial instruments or funds in order to recover debts that do not relate to the client or provision of services to the client are not permitted except where this is required by applicable law in a third country jurisdiction in which the client funds or financial instruments are held

Member States shall require investment firms, where the firm is obliged to enter into agreements that create such security interests, liens or rights of set-off, to disclose that information to clients indicating to them the risks associated with those arrangements.

Where security interests, liens or rights of set-off are granted by the firm over client financial instruments or funds, or where the firm has been informed that they are granted, they shall be recorded in client contracts and the firm's own accounts to make the ownership status of client assets clear, such as in the event of an insolvency.

5. Member States shall require that investment firms make information pertaining to clients' financial instruments and funds readily available to the following entities: competent authorities, appointed insolvency practitioners and those responsible for the resolution of failed institutions. The information to be made available shall include the following:

(a) related internal accounts and records that readily identify the balances of funds and financial instruments held for each client;

(b) where client funds are held by investment firms in accordance with Article 4, details on the accounts in which client funds are held and on the relevant agreements with those firms;

(c) where financial instruments are held by investment firms in accordance with Article 3, details on the accounts opened with third parties and on the relevant agreements with those third parties, as well as details on the relevant agreements with those investment firms;

(d) details of third parties carrying out any related (outsourced) tasks and details of any outsourced tasks

(e) key individuals of the firm involved in related processes, including those responsible for oversight of the firm's requirements in relation to the safeguarding of client assets; and

(f) agreements relevant to establish client ownership over assets.

Article 3

Depositing client financial instruments

1. Member States shall allow investment firms to deposit financial instruments held by them on behalf of their clients into an account or accounts opened with a third party provided that the firms exercise all due skill, care and diligence in the selection, appointment and periodic review of the third party and of the arrangements for the holding and safekeeping of those financial instruments.

In particular, Member States shall require investment firms to take into account the expertise and market reputation of the third party as well as any legal requirements related to the holding of those financial instruments that could adversely affect clients' rights.

2. Where an investment firm proposes to deposit client financial instruments with a third party, Member States shall ensure that this investment firm only deposits financial instruments with a third party in a jurisdiction where the safekeeping of financial instruments for the account of another person is subject to specific regulation and supervision and that third party is subject to this specific regulation and supervision.

3. Member States shall ensure that investment firms do not deposit financial instruments held on behalf of clients with a third party in a third country that does not regulate the holding and safekeeping of financial instruments for the account of another person unless one of the following conditions is met:

(a) the nature of the financial instruments or of the investment services connected with those instruments requires them to be deposited with a third party in that third country;

(b) where the financial instruments are held on behalf of a professional client, that client requests the firm in writing to deposit them with a third party in that third country.

4. Member States shall ensure the requirements under paragraph 2 and 3 shall also apply when the third-party has delegated any of its functions concerning the holding and safekeeping of financial instruments to another third-party.

Article 4

Depositing client funds

1. Member States shall require investment firms, on receiving any client funds, promptly to place those funds into one or more accounts opened with any of the following:

(a) a central bank;

(b) a credit institution authorised in accordance with Directive 2013/36/EU of the European Parliament and of the Council ([1]);

(c) a bank authorised in a third country;

(d) a qualifying money market fund.

The first subparagraph shall not apply to a credit institution authorised under Directive 2013/36/EU in relation to deposits within the meaning of that Directive held by that institution.

2. Member States shall require that, where investment firms do not deposit client funds with a central bank, they exercise all due skill, care and diligence in the selection, appointment and periodic review of the credit institution, bank or money market fund where the funds are placed and the arrangements for the holding of those funds and they consider the need for diversification of these funds as part of their due diligence.

Member States shall ensure, in particular, that investment firms take into account the expertise and market reputation of such institutions or money market funds with a view to ensuring the protection of clients' rights, as well as any legal or regulatory requirements or market practices related to the holding of client funds that could adversely affect clients' rights.

([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).

Member States shall require that investment firms ensure that clients give their explicit consent to the placement of their funds in a qualifying money market fund. In order to ensure this right to consent is effective, investment firms shall inform clients that funds placed with a qualifying money market fund will not be held in accordance with the requirements for safeguarding client funds set out in this Directive.

3. Member States shall require that, where investment firms deposit client funds with a credit institution, bank or money market fund of the same group as the investment firm, they limit the funds that they deposit with any such group entity or combination of any such group entities so that funds do not exceed 20 % of all such funds.

An investment firm may not comply with this limit where it is able to demonstrate that, in view of the nature, scale and complexity of its business, and also the safety offered by the third parties considered in the previous subparagraph, and including in any case the small balance of client funds the investment firm holds the requirement under the previous paragraph is not proportionate. Investment firms shall periodically review the assessment made in accordance with this subparagraph and shall notify their initial and reviewed assessments to NCAs.

Article 5

Use of client financial instruments

1. Member States shall not allow investment firms to enter into arrangements for securities financing transactions in respect of financial instruments held by them on behalf of a client, or otherwise use such financial instruments for their own account or the account of any other person or client of the firm, unless both of the following conditions are met:

(a) the client has given his prior express consent to the use of the instruments on specified terms, as clearly evidenced in writing and affirmatively executed by signature or equivalent, and

(b) the use of that client's financial instruments is restricted to the specified terms to which the client consents.

2. Member States shall not allow investment firms to enter into arrangements for securities financing transactions in respect of financial instruments which are held on behalf of a client in an omnibus account maintained by a third party, or otherwise use financial instruments held in such an account for their own account or for the account of any other person unless, in addition to the conditions set out in paragraph 1, at least one of the following conditions is met:

(a) each client whose financial instruments are held together in an omnibus account must have given prior express consent in accordance with point (a) of paragraph 1;

(b) the investment firm must have in place systems and controls which ensure that only financial instruments belonging to clients who have given prior express consent in accordance with point (a) of paragraph 1 are so used.

The records of the investment firm shall include details of the client on whose instructions the use of the financial instruments has been effected, as well as the number of financial instruments used belonging to each client who has given his consent, so as to enable the correct allocation of any loss.

3. Member States shall ensure that investment firms take appropriate measures to prevent the unauthorised use of client financial instruments for their own account or the account of any other person such as:

(a) the conclusion of agreements with clients on measures to be taken by the investment firms in case the client does not have enough provision on its account on the settlement date, such as borrowing of the corresponding securities on behalf of the client or unwinding the position;

(b) the close monitoring by the investment firm of its projected ability to deliver on the settlement date and the putting in place of remedial measures if this cannot be done; and

(c) the close monitoring and prompt requesting of undelivered securities outstanding on the settlement day and beyond.

4. Member States shall ensure that investment firms adopt specific arrangements for all clients to ensure that the borrower of client financial instruments provides the appropriate collateral and that the firm monitors the continued appropriateness of such collateral and takes the necessary steps to maintain the balance with the value of client instruments.

5. Member States shall ensure that investment firms do not enter into arrangements which are prohibited under Article 16(10) of Directive 2014/65/EU.

Article 6

Inappropriate use of title transfer collateral arrangements

1. Member States shall require that investment firms properly consider, and are able to demonstrate that they have done so, the use of title transfer collateral arrangements in the context of the relationship between the client's obligation to the firm and the client assets subjected to title transfer collateral arrangements by the firm.

2. When considering, and documenting, the appropriateness of the use of title transfer collateral arrangements, investment firms shall take into account all of the following factors:

(a) whether there is only a very weak connection between the client's obligation to the firm and the use of title transfer collateral arrangements, including whether the likelihood of a clients' liability to the firm is low or negligible;

(b) whether the amount of client funds or financial instruments subject to title transfer collateral arrangements far exceeds the client's obligation, or is even unlimited if the client has any obligation at all to the firm; and

(c) whether all clients' financial instruments or funds are made subject to title transfer collateral arrangements, without consideration of what obligation each client has to the firm.

3. Where using title transfer collateral arrangements, investment firms shall highlight to professional clients and eligible counterparties the risks involved and the effect of any title transfer collateral arrangement on the client's financial instruments and funds.

Article 7

Governance arrangements concerning the safeguarding of client assets

Member States shall ensure that investment firms appoint a single officer of sufficient skill and authority with specific responsibility for matters relating to the compliance by firms with their obligations regarding the safeguarding of client financial instruments and funds.

Member States shall allow investment firms to decide, ensuring full compliance with this Directive, whether the appointed officer is to be dedicated solely to this task or whether the officer can discharge responsibilities effectively whilst having additional responsibilities.

Article 8

Reports by external auditors

Member States shall require investment firms to ensure that their external auditors report at least annually to the competent authority of the home Member State of the firm on the adequacy of the firm's arrangements under Article 16(8), (9) and (10) of Directive 2014/65/EU and this Chapter.

CHAPTER III

PRODUCT GOVERNANCE REQUIREMENTS

Article 9

Product governance obligations for investment firms manufacturing financial instruments

1. Member States shall require investment firms to comply with this Article when manufacturing financial instruments, which encompasses the creation, development, issuance and/or design of financial instruments.

Member States shall require investment firms manufacturing financial instruments to comply, in a way that is appropriate and proportionate, with the relevant requirements in paragraphs 2 to 15, taking into account the nature of the financial instrument, the investment service and the target market for the product.

2. Member States shall require investment firms to establish, implement and maintain procedures and measures to ensure the manufacturing of financial instruments complies with the requirements on proper management of conflicts of interest, including remuneration. In particular, investment firms manufacturing financial instruments shall ensure that the design of the financial instrument, including its features, does not adversely affect end clients or does not lead to problems with market integrity by enabling the firm to mitigate and/or dispose of its own risks or exposure to the underlying assets of the product, where the investment firm already holds the underlying assets on own account.

3. Member States shall require investment firms to analyse potential conflicts of interests each time a financial instrument is manufactured. In particular, firms shall assess whether the financial instrument creates a situation where end clients may be adversely affected if they take:

(a) an exposure opposite to the one previously held by the firm itself; or

(b) an exposure opposite to the one that the firm wants to hold after the sale of the product.

4. Member States shall ensure that investment firms consider whether the financial instrument may represent a threat to the orderly functioning or to the stability of financial markets before deciding to proceed with the launch of the product.

5. Member States shall require investment firms to ensure that relevant staff involved in the manufacturing of financial instruments possess the necessary expertise to understand the characteristics and risks of the financial instruments they intend to manufacture.

6. Member States shall require investment firms to ensure that the management body has effective control over the firm's product governance process. Investment firms shall ensure that the compliance reports to the management body systematically include information about the financial instruments manufactured by the firm, including information on the distribution strategy. Investment firms shall make the reports available to their competent authority on request.

7. Member States shall require investment firms to ensure that the compliance function monitors the development and periodic review of product governance arrangements in order to detect any risk of failure by the firm to comply with the obligations set out in this Article.

8. Member States shall require investment firms, where they collaborate, including with entities which are not authorised and supervised in accordance with Directive 2014/65/EU or third-country firms, to create, develop, issue and/or design a product, to outline their mutual responsibilities in a written agreement.

9. Member States shall require investment firms to identify at a sufficiently granular level the potential target market for each financial instrument and specify the type(s) of client for whose needs, characteristics and objectives the financial instrument is compatible. As part of this process, the firm shall identify any group(s) of clients for whose needs, characteristics and objectives the financial instrument is not compatible. Where investment firms collaborate to manufacture a financial instrument, only one target market needs to be identified.

Investment firms manufacturing financial instruments that are distributed through other investment firms shall determine the needs and characteristics of clients for whom the product is compatible based on their theoretical knowledge of and past experience with the financial instrument or similar financial instruments, the financial markets and the needs, characteristics and objectives of potential end clients.

10. Member States shall require investment firms to undertake a scenario analysis of their financial instruments which shall assess the risks of poor outcomes for end clients posed by the product and in which circumstances these outcomes may occur. Investment firms shall assess the financial instrument under negative conditions covering what would happen if, for example:

(a) the market environment deteriorated;

(b) the manufacturer or a third party involved in manufacturing and or functioning of the financial instrument experiences financial difficulties or other counterparty risk materialises;

(c) the financial instrument fails to become commercially viable; or

(d) demand for the financial instrument is much higher than anticipated, putting a strain on the firm's resources and/or on the market of the underlying instrument.

11. Member States shall require investment firms to determine whether a financial instrument meets the identified needs, characteristics and objectives of the target market, including by examining the following elements:

(a) the financial instrument's risk/reward profile is consistent with the target market; and

(b) financial instrument design is driven by features that benefit the client and not by a business model that relies on poor client outcomes to be profitable.

12. Member States shall ensure that investment firms consider the charging structure proposed for the financial instrument, including by examining the following:

(a) financial instrument's costs and charges are compatible with the needs, objectives and characteristics of the target market;

(b) charges do not undermine the financial instrument's return expectations, such as where the costs or charges equal, exceed or remove almost all the expected tax advantages linked to a financial instrument; and

(c) the charging structure of the financial instrument is appropriately transparent for the target market, such as that it does not disguise charges or is too complex to understand.

13. Member States shall require investment firms to ensure that the provision of information about a financial instrument to distributors includes information about the appropriate channels for distribution of the financial instrument, the product approval process and the target market assessment and is of an adequate standard to enable distributors to understand and recommend or sell the financial instrument properly.

14. Member States shall require investment firms to review the financial instruments they manufacture on a regular basis, taking into account any event that could materially affect the potential risk to the identified target market. Investment firms shall consider if the financial instrument remains consistent with the needs, characteristics and objectives of the target market and if it is being distributed to the target market, or is reaching clients for whose needs, characteristics and objectives the financial instrument is not compatible.

15. Member States shall require investment firms to review financial instruments prior to any further issue or re-launch, if they are aware of any event that could materially affect the potential risk to investors and at regular intervals to assess whether the financial instruments function as intended. Investment firms shall determine how regularly to review their financial instruments based on relevant factors, including factors linked to the complexity or the innovative nature of the investment strategies pursued. Firms shall also identify crucial events that would affect the potential risk or return expectations of the financial instrument, such as:

(a) the crossing of a threshold that will affect the return profile of the financial instrument; or

(b) the solvency of certain issuers whose securities or guarantees may impact the performance of the financial instrument.

Member States shall ensure that, when such events occur, investment firms take appropriate action which may consist of:

(a) the provision of any relevant information on the event and its consequences on the financial instrument to the clients or the distributors of the financial instrument if the investment firm does not offer or sell the financial instrument directly to the clients;

(b) changing the product approval process;

(c) stopping further issuance of the financial instrument;

(d) changing the financial instrument to avoid unfair contract terms;

(e) considering whether the sales channels through which the financial instruments are sold are appropriate where firms become aware that the financial instrument is not being sold as envisaged;

(f) contacting the distributor to discuss a modification of the distribution process;

(g) terminating the relationship with the distributor; or

(h) informing the relevant competent authority.

Article 10

Product governance obligations for distributors

1. Member States shall require investment firms, when deciding the range of financial instruments issued by themselves or other firms and services they intend to offer or recommend to clients, to comply, in a way that is appropriate and proportionate, with the relevant requirements laid down in paragraphs 2 to 10, taking into account the nature of the financial instrument, the investment service and the target market for the product.

Member States shall ensure that investment firms also comply with the requirements of Directive 2014/65/EU when offering or recommending financial instruments manufactured by entities that are not subject to Directive 2014/65/EU. As part of this process, such investment firms shall have in place effective arrangements to ensure that they obtain sufficient information about these financial instruments from these manufacturers.

Investment firms shall determine the target market for the respective financial instrument, even if the target market was not defined by the manufacturer.

2. Member States shall require investment firms to have in place adequate product governance arrangements to ensure that products and services they intend to offer or recommend are compatible with the needs, characteristics, and objectives of an identified target market and that the intended distribution strategy is consistent with the identified target market. Investment firms shall appropriately identify and assess the circumstances and needs of the clients they intend to focus on, so as to ensure that clients' interests are not compromised as a result of commercial or funding pressures. As part of this process, firms shall identify any groups of clients for whose needs, characteristics and objectives the product or service is not compatible.

Member States shall ensure that investment firms obtain from manufactures that are subject to Directive 2014/65/EU information to gain the necessary understanding and knowledge of the products they intend to recommend or sell in order to ensure that these products will be distributed in accordance with the needs, characteristics and objectives of the identified target market,

Member States shall require investment firms to take all reasonable steps to ensure they also obtain adequate and reliable information from manufacturers not subject to Directive 2014/65/EU to ensure that products will be distributed in accordance with the characteristics, objectives and needs of the target market. Where relevant information is not publicly available, the distributor shall take all reasonable steps to obtain such relevant information from the manufacturer or its agent. Acceptable publicly available information is information which is clear, reliable and produced to meet regulatory requirements, such as disclosure requirements under Directive 2003/71/EC ([1]) or 2004/109/EC ([2]) of the European Parliament and of the Council. This obligation is relevant for products sold on primary and secondary markets and shall apply in a proportionate manner, depending on the degree to which publicly available information is obtainable and the complexity of the product.

Investment firms shall use the information obtained from manufacturers and information on their own clients to identify the target market and distribution strategy. When an investment firm acts both as a manufacturer and a distributor, only one target market assessment shall be required.

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

([2]) Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).

3. Member States shall require investment firms, when deciding the range of financial instrument and services that they offer or recommend and the respective target markets, to maintain procedures and measures to ensure compliance with all applicable requirements under Directive 2014/65/EU including those relating to disclosure, assessment of suitability or appropriateness, inducements and proper management of conflicts of interest. In this context, particular care shall be taken when distributors intend to offer or recommend new products or there are variations to the services they provide.

4. Member States shall require investment firms to periodically review and update their product governance arrangements in order to ensure that they remain robust and fit for their purpose, and take appropriate actions where necessary.

5. Member States shall require investment firms to review the investment products they offer or recommend and the services they provide on a regular basis, taking into account any event that could materially affect the potential risk to the identified target market. Firms shall assess at least whether the product or service remains consistent with the needs, characteristics and objectives of the identified target market and whether the intended distribution strategy remains appropriate. Firms shall reconsider the target market and/or update the product governance arrangements if they become aware that they have wrongly identified the target market for a specific product or service or that the product or service no longer meets the circumstances of the identified target market, such as where the product becomes illiquid or very volatile due to market changes.

6. Member States shall require investment firms to ensure their compliance function oversee the development and periodic review of product governance arrangements in order to detect any risk of failure to comply with the obligations set out in this Article.

7. Member States shall require investment firms to ensure that relevant staff possess the necessary expertise to understand the characteristics and risks of the products that intend to offer or recommend and the services provided as well as the needs, characteristics and objectives of the identified target market.

8. Member States shall require investment firms to ensure that the management body has effective control over the firm's product governance process to determine the range of investment products that they offer or recommend and the services provided to the respective target markets. Investment firms shall ensure that the compliance reports to the management body systematically include information about the products they offer or recommend and the services provided. The compliance reports shall be made available to competent authorities on request.

9. Member States shall ensure distributors provide manufacturers with information on sales and, where appropriate, information on the above reviews to support product reviews carried out by manufacturers.

10. Where different firms work together in the distribution of a product or service, Member States shall ensure the investment firm with the direct client relationship has ultimate responsibility to meet the product governance obligations set out in this Article. However, intermediary investment firms shall:

(a) ensure that relevant product information is passed from the manufacturer to the final distributor in the chain;

(b) if the manufacturer requires information on product sales in order to comply with their own product governance obligations, enable them to obtain it; and

(c) apply the product governance obligations for manufacturers, as relevant, in relation to the service they provide.

CHAPTER IV

INDUCEMENTS

Article 11

Inducements

1. Member States shall require investment firms paying or being paid any fee or commission or providing or being provided with any non-monetary benefit in connection with the provision of an investment service or ancillary service to the client to ensure that all the conditions set out in Article 24(9) of Directive 2014/65/EU and requirements set out in paragraphs 2-5 are met at all times.

2. A fee, commission or non-monetary benefit shall be considered to be designed to enhance the quality of the relevant service to the client if all of the following conditions are met:

(a) it is justified by the provision of an additional or higher level service to the relevant client, proportional to the level of inducements received, such as:

(i) the provision of non-independent investment advice on and access to a wide range of suitable financial instruments including an appropriate number of instruments from third party product providers having no close links with the investment firm;

(ii) the provision of non-independent investment advice combined with either: an offer to the client, at least on an annual basis, to assess the continuing suitability of the financial instruments in which the client has invested; or with another on-going service that is likely to be of value to the client such as advice about the suggested optimal asset allocation of the client; or

(iii) the provision of access, at a competitive price, to a wide range of financial instruments that are likely to meet the needs of the client, including an appropriate number of instruments from third party product providers having no close links with the investment firm, together with either the provision of added-value tools, such as objective information tools helping the relevant client to take investment decisions or enabling the relevant client to monitor, model and adjust the range of financial instruments in which they have invested, or providing periodic reports of the performance and costs and charges associated with the financial instruments

(b) it does not directly benefit the recipient firm, its shareholders or employees without tangible benefit to the relevant client;

(c) it is justified by the provision of an on-going benefit to the relevant client in relation to an on-going inducement.

A fee, commission, or non-monetary benefit shall not be considered acceptable if the provision of relevant services to the client is biased or distorted as a result of the fee, commission or non-monetary benefit.

3. Investment firms shall fulfil the requirements set out in paragraph 2 on an ongoing basis as long as they continue to pay or receive the fee, commission or non-monetary benefit.

4. Investment firms shall hold evidence that any fees, commissions or non-monetary benefits paid or received by the firm are designed to enhance the quality of the relevant service to the client:

(a) by keeping an internal list of all fees, commissions and non-monetary benefits received by the investment firm from a third party in relation to the provision of investment or ancillary services; and

(b) by recording how the fees, commissions and non-monetary benefits paid or received by the investment firm, or that it intends to use, enhance the quality of the services provided to the relevant clients and the steps taken in order not to impair the firm's duty to act honestly, fairly and professionally in accordance with the best interests of the client.

5. In relation to any payment or benefit received from or paid to third parties, investment firms shall disclose to the client the following information:

(a) prior to the provision of the relevant investment or ancillary service, the investment firm shall disclose to the client information on the payment or benefit concerned in accordance with the second subparagraph of Article 24(9) of Directive 2014/65/EU. Minor non-monetary benefits may be described in a generic way. Other non-monetary benefits received or paid by the investment firm in connection with the investment service provided to a client shall be priced and disclosed separately;

(b) where an investment firm was unable to ascertain on an ex-ante basis the amount of any payment or benefit to be received or paid, and instead disclosed to the client the method of calculating that amount, the firm shall also provide its clients with information of the exact amount of the payment or benefit received or paid on an ex-post basis; and

(c) at least once a year, as long as (on-going) inducements are received by the investment firm in relation to the investment services provided to the relevant clients, the investment firm shall inform its clients on an individual basis about the actual amount of payments or benefits received or paid. Minor non-monetary benefits may be described in a generic way.

In implementing these requirements, investment firms shall take into account the rules on costs and charges set out in Article 24(4)(c) of Directive 2014/65/EU and in Article 50 of Commission Delegated Regulation (EU) 2017/565 [1].

When more firms are involved in a distribution channel, each investment firm providing an investment or ancillary service shall comply with its obligations to make disclosures to its clients.

Article 12

Inducements in respect of investment advice on an independent basis or portfolio management services

1. Member States shall ensure that investment firms providing investment advice on an independent basis or portfolio management return to clients any fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the services provided to that client as soon as reasonably possible after receipt. All fees, commissions or monetary benefits received from third parties in relation to the provision of independent investment advice and portfolio management shall be transferred in full to the client.

Investment firms shall set up and implement a policy to ensure that any fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of independent investment advice and portfolio management are allocated and transferred to each individual client.

Investment firms shall inform clients about the fees, commissions or any monetary benefits transferred to them, such as through the periodic reporting statements provided to the client.

2. Investment firms providing investment advice on an independent basis or portfolio management shall not accept non-monetary benefits that do not qualify as acceptable minor non-monetary benefits in accordance with paragraph 3.

3. The following benefits shall qualify as acceptable minor non-monetary benefits only if they are:

(a) information or documentation relating to a financial instrument or an investment service, is generic in nature or personalised to reflect the circumstances of an individual client;

(b) written material from a third party that is commissioned and paid for by an corporate issuer or potential issuer to promote a new issuance by the company, or where the third party firm is contractually engaged and paid by the issuer to produce such material on an ongoing basis, provided that the relationship is clearly disclosed in the material and that the material is made available at the same time to any investment firms wishing to receive it or to the general public;

(c) participation in conferences, seminars and other training events on the benefits and features of a specific financial instrument or an investment service;

(d) hospitality of a reasonable *de minimis* value, such as food and drink during a business meeting or a conference, seminar or other training events mentioned under point (c); and

(e) other minor non-monetary benefits which a Member States deems capable of enhancing the quality of service provided to a client and, having regard to the total level of benefits provided by one entity or group of entities, are of a scale and nature that are unlikely to impair compliance with an investment firm's duty to act in the best interest of the client.

Acceptable minor non-monetary benefits shall be reasonable and proportionate and of such a scale that they are unlikely to influence the investment firm's behaviour in any way that is detrimental to the interests of the relevant client.

Disclosure of minor non-monetary benefits shall be made prior to the provision of the relevant investment or ancillary services to clients. In accordance with Article 11(5) (a) minor non-monetary benefits may be described in a generic way.

[1] Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (see page 1 of this Official Journal).

Article 13

Inducements in relation *to research*

1. Member States shall ensure that the provision of research by third parties to investment firms providing portfolio management or other investment or ancillary services to clients shall not be regarded as an inducement if it is received in return for either of the following:

(a) direct payments by the investment firm out of its own resources;

(b) payments from a separate research payment account controlled by the investment firm, provided the following conditions relating to the operation of the account are met:

(i) the research payment account is funded by a specific research charge to the client;

(ii) as part of establishing a research payment account and agreeing the research charge with their clients, investment firms set and regularly assess a research budget as an internal administrative measure;

(iii) the investment firm is held responsible for the research payment account;

(iv) the investment firm regularly assesses the quality of the research purchased based on robust quality criteria and its ability to contribute to better investment decisions.

With regard to point (b) of the first subparagraph, where an investment firm makes use of the research payment account, it shall provide the following information to clients:

(a) before the provision of an investment service to clients, information about the budgeted amount for research and the amount of the estimated research charge for each of them;

(b) annual information on the total costs that each of them has incurred for third party research.

2. Where an investment firm operates a research payment account, Member States shall ensure that the investment firm shall also be required, upon request by their clients or by competent authorities, to provide a summary of the providers paid from this account, the total amount they were paid over a defined period, the benefits and services received by the investment firm, and how the total amount spent from the account compares to the budget set by the firm for that period, noting any rebate or carry-over if residual funds remain in the account. For the purposes of point (b)(i) of paragraph 1, the specific research charge shall:

(a) only be based on a research budget set by the investment firm for the purpose of establishing the need for third party research in respect of investment services rendered to its clients; and

(b) not be linked to the volume and/or value of transactions executed on behalf of the clients.

3. Every operational arrangement for the collection of the client research charge, where it is not collected separately but alongside a transaction commission, shall indicate a separately identifiable research charge and shall fully comply with the conditions set out in point (b) of the first subparagraph of paragraph 1 and in the second subparagraph of paragraph 1.

4. The total amount of research charges received may not exceed the research budget.

5. The investment firm shall agree with clients, in the firm's investment management agreement or general terms of business, the research charge as budgeted by the firm and the frequency with which the specific research charge will be deducted from the resources of the client over the year. Increases in the research budget shall only take place after the provision of clear information to clients about such intended increases. If there is a surplus in the research payment account at the end of a period, the firm should have a process to rebate those funds to the client or to offset it against the research budget and charge calculated for the following period.

6. For the purposes of point (b)(ii) of the first subparagraph of paragraph 1, the research budget shall be managed solely by the investment firm and shall be based on a reasonable assessment of the need for third party research. The allocation of the research budget to purchase third party research shall be subject to appropriate controls and senior management oversight to ensure it is managed and used in the best interests of the firm's clients. Those controls include a clear audit trail of payments made to research providers and how the amounts paid were determined with reference to the quality criteria referred to in paragraph 1 (b) (iv). Investment firms shall not use the research budget and research payment account to fund internal research.

7. For the purposes of point (b)(iii) of paragraph 1, the investment firm may delegate the administration of the research payment ac-count to a third party, provided that the arrangement facilitates the purchase of third party research and payments to research providers in the name of the investment firm without any undue delay in accordance with the investment firm's instruction.

8. For the purposes of point (b) (iv) of paragraph 1, investment firms shall establish all necessary elements in a written policy and provide it to their clients. It shall also address the extent to which research purchased through the research payment account may benefit clients' portfolios, including, where relevant, by taking into account investment strategies applicable to various types of portfolios, and the approach the firm will take to allocate such costs fairly to the various clients' portfolios.

9. An investment firm providing execution services shall identify separate charges for these services that only reflect the cost of executing the transaction. The provision of each other benefit or service by the same investment firm to investment firms, established in the Union shall be subject to a separately identifiable charge; the supply of and charges for those benefits or services shall not be influenced or conditioned by levels of payment for execution services.

CHAPTER V

FINAL PROVISIONS

Article 14

Entry into force and application

1. Member States shall adopt and publish, by 3 July 2017 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from 3 January 2018.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 15

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

Article 16

This Directive is addressed to the Member States.

Done at Brussels, 7 April 2016.

For the Commission
The President
Jean-Claude JUNCKER

ISSN 1977-0677 (electronic edition)
ISSN 1725-2555 (paper edition)

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

EN