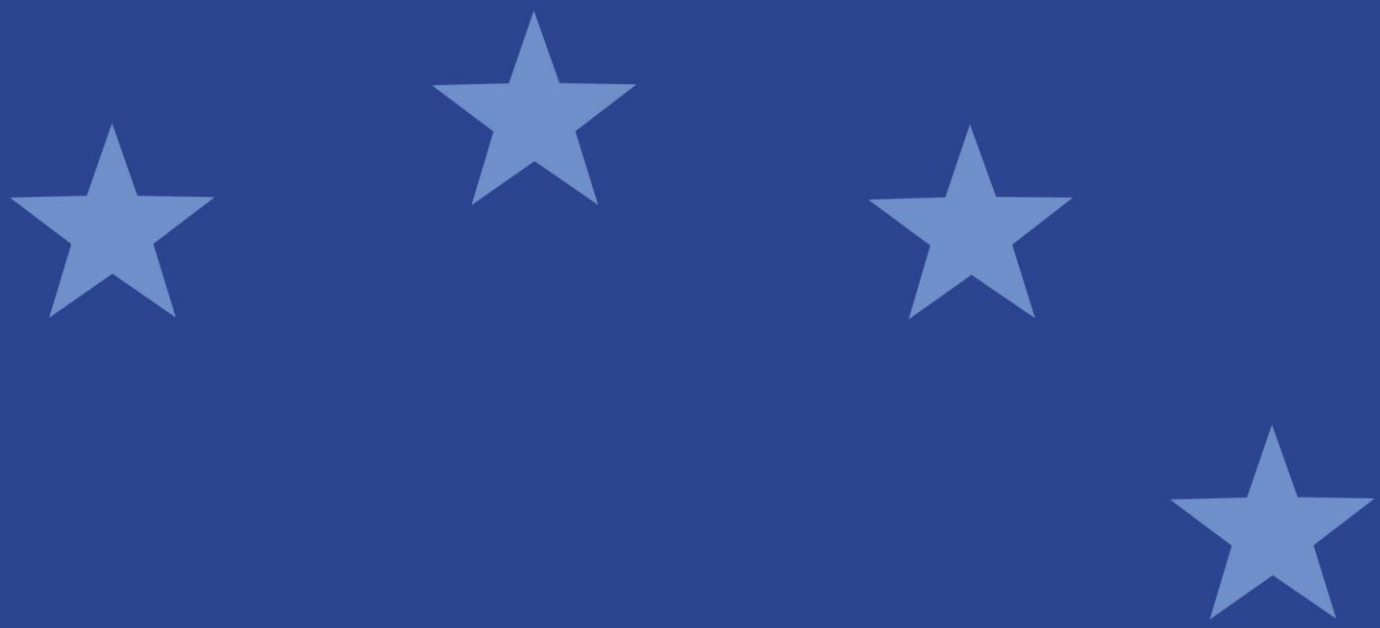
esma European Securities and Markets Authority

Consultation Paper – Annex B

Regulatory technical standards on MiFID II/MiFIR



19 December 2014 | ESMA/2014/1570

Table of Contents

CHAPTER 2: INVESTOR PROTECTION 6

RTS 1: Draft regulatory technical standards under Article 7(4) of MiFID II 6

ITS 2: Draft implementing technical standards under Article 7(5) of Directive 2014/65/EC ...17

Annex I: Application Form for an Investment Firm.....20

Annex II: List of members of the management body 23

Annex III: Notification of information on changes to the membership of the management body.....26

RTS 3: Draft regulatory technical standards under Articles 34(8) and 35(11) of MiFID II 30

ITS 4: Draft implementing technical standards under Articles 34(9) and 35(12) of MiFID II ..36

Annex I: Format for the notification on the investment services and activities passport notification and change of investment services and activities particular notification.....46

Annex II: Form for the communication of the investment services and activities passport notification from the competent authority of the home Member State to the competent authority of the host Member State 49

Annex III: Form for the communication of the change of investment services and activities particulars notification from the competent authority of the home Member State to the competent authority of the host Member State.....51

Annex IV: Format for the notification for the provision of arrangements to facilitate access to an MTF or OTF 53

Annex V: Form for the communication notification for the provision of arrangements to facilitate access to an MTF or OTF from the competent authority of the home Member State to the competent authority of the host Member State.....55

Annex VI: Format for the notification of the branch passport notification and change of branch particulars notification 57

Annex VII:Format for the notification of the tied agent passport notification under the right of establishment and change of tied agent particulars notification under the right of establishment.....61

Annex VIII: Form for the communication of the branch passport notification from the competent authority of the home Member State to the competent authority of the host Member State 65

Annex IX: Form for the communication of the tied agent passport notification under the right of establishment from the competent authority of the home Member State to the competent authority of the host Member State.....67

Annex X: Format for notification on the termination of the operation of a branch or of the cessation of the use of a tied agent established in another Member State 69

Annex XI: Form for the communication on the change of branch particulars notification from the competent authority of the home Member State to the competent authority of the host Member State.....71

Annex XII: Form for the communication on the change of tied agent particulars notification under the right of establishment from the competent authority of the home Member State to the competent authority of the host Member State 73

Annex XIII: Form for the communication the termination of the operation of a branch or of the cessation of the use of a tied agent established in a Member State outside its home Member State 75

RTS 5: Draft regulatory technical standards under Article 46(7) of MiFIR 77

RTS 6: Draft regulatory technical standards under Article 27(10)(a) of MiFID II.....80

Annex I 92

RTS 7: Draft regulatory technical standards under Article 27(10)(b) of MiFID II.....97

Annex I: Information required under Article 5 106

CHAPTER 3: TRANSPARENCY 107

RTS 8: Draft regulatory technical standards on transparency requirements in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments and on the trading obligation for investment firms 107

Annex I: information to be made public 122

Annex II: Standard market sizes, orders large in scale compared with normal market size and deferred publication thresholds and delays 127

RTS 9: Draft regulatory technical standards on transparency requirements in respect of bonds, structured finance products, emission allowances and derivatives.....131

Annex I: Information to be made public in accordance with article 2 146

Annex II: Details of transaction to be made available to the public.....147

Annex III: Liquidity assessment, LIS and SSTI thresholds for non-equity financial instruments.....153

RTS 10: Draft regulatory technical standards on the double volume cap mechanism and the provision of information for the purposes of transparency and other calculations 189

RTS 11: Draft regulatory technical standards on criteria for determining whether derivatives should be subject to the trading obligation (Article 32(6) of MiFIR) 196

RTS 12: Draft regulatory technical standards on criteria for determining whether derivatives have a direct, substantial and foreseeable effect within the EU (Article 28(5) of MiFIR).....201

CHAPTER 4: MICROSTRUCTURAL ISSUES 207

RTS 13: Draft regulatory technical standards on organisational requirements of investment firms engaged in algorithmic trading 207

Annex I: Parameters that, as a minimum, have to be considered in the investment firm's self-assessment 231

RTS 14: Draft regulatory technical standards on organisational requirements of regulated markets, multilateral trading facilities and organised trading facilities 234

Annex I: parameters that, as a minimum, have to be considered in the trading venues' self-assessment 263

RTS 15: Draft regulatory technical standards on market making, market making agreements and marking making schemes 265

RTS 16: Draft regulatory technical standards on orders to transactions ratio 276

RTS 17: Draft regulatory technical standards on co-location and fee structures 281

RTS 18: Draft regulatory technical standards on the tick size regime for shares, depositary receipts, exchange traded funds and certificates 287

Annex I: Tick size table 293

RTS 19: Draft regulatory technical standards on material market in terms of liquidity 294

CHAPTER 5: DATA PUBLICATION AND ACCESS 296

RTS 20: Draft regulatory technical standards on authorisation and organisational requirements for data reporting services providers 296

RTS 21: Draft regulatory technical standards on the publication of transactions by APAs and CTPs 317

RTS 22: Draft regulatory technical standards on data disaggregation 322

RTS 23: Draft regulatory technical standards on identification of the investment firm responsible for making public the volume and price transparency of a transaction 325

RTS 24: Draft regulatory technical standards on access in respect of trading venues, central counterparties and benchmarks 328

Annex I 350

CHAPTER 6: REQUIREMENTS APPLYING ON AND TO TRADING VENUES 353

RTS 25: Draft regulatory technical standards on the admission of financial instruments to trading on regulated markets 353

RTS 26: Draft regulatory technical standards on suspension and removal of financial instruments from trading 361

ITS 27 : Draft implementing technical standards description of MTFs and OTFs 364

Annex I 372

CHAPTER 7: COMMODITY DERIVATIVES 373

RTS 28: Draft regulatory technical standards on criteria for establishing when an activity is to be considered to be ancillary to the main business 373

RTS 29: Draft regulatory technical standards on methodology for calculating position limits for commodity derivatives traded on trading venues and economically equivalent OTC contracts 381

RTS 30: Draft regulatory technical standards on the application of position limits for commodity derivatives traded on trading venues and economically equivalent OTC contracts 390

ITS 31: Draft implementing technical standards on position reporting 400

Annex I: Tables of fields to be reported as referred to in Article 1 404

Annex II: Tables of fields to be reported as referred to in Article 2 405

CHAPTER 8: MARKET DATA REPORTING 406

RTS 32: Draft regulatory technical standards on reporting obligations under Article 26 of MiFIR 406

Annex I 426

Annex II 443

RTS 33: Draft RTS on obligation to supply financial instrument reference data 445

Annex I 452

RTS 34: Draft regulatory technical standards on obligation to maintain records of orders 464

Annex I 474

RTS 35: Draft RTS on the requirement to maintain records of orders for firms engaging in high-frequency algorithmic trading techniques 485

Annex I 488

RTS 36: Draft regulatory technical standards on clock synchronisation 503

Annex I 508

CHAPTER 9: POST-TRADING ISSUES 509

RTS 37: Draft regulatory technical standards on the obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing (STP) 509

RTS 38: Draft regulatory technical standards on indirect clearing 515

CHAPTER 2: INVESTOR PROTECTION

RTS 1: Draft regulatory technical standards under Article 7(4) of MiFID II

DRAFT COMMISSION DELEGATED REGULATION (EU) No …/..

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards pursuant to Article 7(4) of Directive 2014/65/EU

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council (recast), and in particular Article 7(4) thereof,

Whereas:

(1) An exhaustive list of information should be required from the applicant firm at the time of the initial request for authorisation to enable competent authorities to carry out the authorisation process. This is without prejudice to the right of the competent authority to request additional information from the applicant firm during the assessment process in accordance with the criteria and timelines set out in Directive 2014/65/EU.

(2) It is important to require applicant firms to provide information in order to enable competent authorities to assess the reputation of any person who will direct the business of the investment firm, of the proposed shareholders and members with qualifying holdings.

(3) The information relevant to the assessment of reputation should include details of criminal proceedings, historical or on-going, as well as civil or administrative cases. Similarly information should be required in relation to all open investigations and proceedings and any investigations or proceedings that resulted in a sanction or another enforcement decision, as well as other information such as refusal of registration or dismissal from employment or a position of trust which is deemed relevant.

(4) In order to assess the experience of any person who will direct the business of the investment firm, it is important to ask the applicant firm to submit information which includes details on the relevant education and professional training, professional experience of the members of the management body and persons effectively directing the business and their related powers and any proxies.

(5) Financial information concerning the applicant firm should be required in order to assess the financial soundness of that applicant firm.

(6) It is important for the applicant firms to provide competent authorities with information that will help limit the practice of 'jurisdiction shopping' for the purpose of regulatory arbitrage, as per Recital 46 of Directive 2014/65/EC.

(7) Investment firms that are natural persons or investment firms that are legal persons managed by a single natural person, in order to comply with Article 9(6), letter b) of Directive 2014/65/EC, will have to consider the guidelines required under Article 9(1) of Directive 2014/65/EC.

(8) Directive 2014/65/EU requires any investment firm which is a legal person to have its head office in the same Member State as its registered office, and any investment firm which is not a legal person or any investment firm which is a legal person but under its national law has no registered office, to have its head office in the Member State in which it actually carries out its business.

(9) 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 applies to the processing of personal data by the Member States in the application of this Regulation.

(10) 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 applies to the processing of personal data by the European Securities and Markets Authority (ESMA) in the application of this Regulation.

(11) It is important to require applicant firms to submit information on the identity of each shareholder or member with qualifying holdings of the applicant, and on the management body and persons directing the business. This information is relevant in order to assess their reputation and the experience of those who will effectively direct the business.

(12) In order to identify obstacles that could prevent effective exercise of the supervisory functions, competent authorities should consider all circumstances, including those of legal, geographical, financial and technical nature.

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

(14) In accordance with Article 10 of 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), ESMA has

conducted open public consultations on such draft implementing technical standards, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation.

HAS ADOPTED THIS REGULATION:

Article 1

General information to be provided as part of the authorisation process

As part of its authorisation process, the applicant investment firm shall provide to the competent authority the following general information:

(1) Name of the investment firm (including its legal name and any other trading name to be used by it); legal structure (including information on whether the investment firm will be a legal person or, where allowed by national legislation, a natural person), address of the head office and, for existing companies, registered office; contact details; its national identification number, where available; and, where relevant, the following information on domestic branches and tied agents:

   (a) for domestic branches: information on where the branches will operate; and

   (b) for tied agents: the firm shall inform the competent authority of the home Member State of its intention to use tied agents.

(2) The list of investment services and activities for which authorisation is required as well as ancillary services and financial instruments, and whether customers' assets and/or money will be held (even on a temporary basis or without bearing risks).

(3) Corporate documents and evidence of registration with the Register of Companies (e.g. authenticated copy of the instrument of incorporation, by-laws and the articles of association; copy of registration of the company in the Register of Companies), where applicable.

Article 2

Information on the capital to be provided as part of the authorisation process

1. As part of its authorisation process, the applicant investment firm shall provide to the competent authority information and, when available, evidence on the sources of capital available to the firm. The information shall include:

   (a) details on the use of private financial resources including the origin and availability of these funds;

   (b) details on access to capital sources and financial markets including details of financial instruments issued or to be issued;

(c) any relevant agreements and contracts regarding the capital raised;

(d) information on the use or expected use of borrowed funds including the name of relevant lenders and details of the facilities granted or expected to be granted, including maturities, terms, pledges and guarantees, along with information on the origin of the borrowed funds (or funds expected to be borrowed) where the lender is not a supervised financial institution;

(e) details on the means of transferring financial resources to the firm including the network used to transfer such funds; and

(f) any relevant documentary support to give evidence to the financial supervisor that no money laundering or terrorist financing is attempted (e.g. description of the money flow).

2. At time of application, it could be that newly established entities may only be in a position to provide information on how capital will be raised and the types and amount of capital that will be raised. However, evidence of paid-up share capital and other types of capital raised, together with information on the sources of capital, must be provided before authorisation is granted. Such evidence may include copies of relevant capital instruments and corresponding bank statements. Information on types of capital raised shall refer, where relevant, to the types of capital specified under Regulation (EU) No 575/2013, specifically whether the capital comprises Common Equity Tier 1 items, Additional Tier 1 items or Tier 2 items.

Article 3

Information on shareholders to be provided as part of the authorisation process

As part of its authorisation process, the applicant investment firm shall provide to the competent authority the following information on shareholders:

1. List of persons with a direct or indirect qualifying holding in the applicant firm, with an indication of the relevant amount. For indirect holdings, the name of the person through which the stake is held and the name of the final holder.

2. Additional documentation (including statements) relating to the suitability of any person with a qualifying holding (direct or indirect) in the applicant firm. Where the holder of a qualifying holding is not a natural person, the documentation shall also relate to all members of the management body and the general manager, or any other person performing equivalent duties. The information to be provided shall be consistent with the information required under Regulation [xx – ESMA draft RTS on information requirements for assessment of acquisitions and increases in holdings in investment firms].

3. For corporate shareholders that are members of a group, an organisational chart of the group indicating the main activities of each firm within the group, identification of any

regulated entities within the group and the names of the relevant supervisory authorities as well as the relationship between the financial entities of the group and other non-financial group entities.

Article 4

Information on the management body and persons who direct the business to be provided as part of the authorisation process

As part of its authorisation process, the applicant investment firm shall provide to the competent authority the following information:

1. Personal details and curricula vitae of the members of the management body and persons effectively directing the business and their related powers and any proxies. The investment firm will provide all written information necessary to assess their suitability including the following:

(a) personal details including the person's name, date and place of birth, personal national identification number, where available, address and contact details;

(b) the position for which the person is/will be appointed;

(c) a detailed curriculum vitae stating relevant education and professional training, professional experience, including the names of all organisations for which the person has worked and nature and duration of the functions performed, in particular for any activities within the scope of the position sought. For positions held in the last 10 years, when describing these activities, the person shall specify his or her delegated powers, internal decision-making powers and the areas of operations under his or her control. If the curriculum vitae includes other relevant experiences, including management body representation, this shall be stated;

(d) documentation relating to person's reputation and experience (e.g. list of reference persons including contact information, letters of recommendation);

(e) criminal records and information on criminal investigations and proceedings, relevant civil and administrative cases, and disciplinary actions (including disqualification as a company director, bankruptcy, insolvency and similar procedures), notably through an official certificate (if available within the relevant Member State or third country), or through another equivalent document;

(f) information on:

(i) open investigations, enforcement proceedings, or sanctions and enforcement proceedings that resulted in a sanction or another enforcement decision against the person;

(ii) refusal of registration, authorisation, membership or licence to carry out a trade, business or profession; or the withdrawal, revocation or termination of such a registration, authorisation, membership or licence; or expulsion by a regulatory or government body or by a professional body or association; and

(iii) dismissal from employment or a position of trust, fiduciary relationship, or similar situation;

(iv) whether an assessment of reputation as an acquirer or as a person who directs the business has already been conducted by another competent authority (including the identity of that authority and evidence of the outcome of this assessment);

(v) description of any financial (e.g. loans, shareholdings, guarantees and pledges) and non-financial interests or relationships (e.g. close relations, such as a spouse, registered partner, cohabitant, child, parent or other relation with whom the person shares living accommodations) of the person and his/her close relatives to members of the management body and key function holders in the same institution, the parent institution and subsidiaries and shareholders;

(vi) details of the applicant firm's suitability assessment results, for existing companies;

(vii) the minimum time that will be devoted to the performance of the person's functions within the firm (annual and monthly indications);

(viii) human and financial resources devoted to the induction and training of the members (annual indications); and

(ix) the list of executive and non-executive directorships currently held by the person.

2. The headcount of the internal (management and control) bodies, if known.

Article 5

Financial information to be provided as part of the authorisation process

As part of its authorisation process, the applicant investment firm shall provide to the competent authority the following information on its financial situation:

1. Forecast information at an individual and, where applicable, at consolidated group and sub-consolidated levels, including:

(a) forecast accounting plans for the first three business years including :

(i) forecast balance sheets;

(ii) forecast profit and loss accounts or income statements; and

(iii) forecast cash flow statements, if applicable;

(b) planning assumptions for the above forecasts as well as explanations of the figures (i.e. expected number and type of customers, expected volume of transactions/orders, expected assets under management); and

(c) where applicable, forecast calculations of the firm's capital requirements under the CRR and forecast solvency ratio for the first year.

2. In addition, for companies already active, statutory financial statements, at an individual and, where applicable, at consolidated group and sub-consolidated levels for the last three financial periods, approved, where the financial statements are audited, by the external auditor, including:

(a) the balance sheet;

(b) the profit and loss accounts or income statement;

(c) cash flow statements, if applicable; and

(d) the annual reports and financial annexes and any other documents registered with the relevant registry or authority in the particular territory relevant to the company financial statements and, where applicable, a report by the company's auditor of the last three years or since the beginning of the activity.

3. An analysis of the perimeter of consolidated supervision under the CRR. Specifically this shall include which group entities will be included in the scope of consolidated supervision requirements post-authorisation and at which level within the group these requirements will apply on a full or sub-consolidated basis.

Article 6

Information on the organisation of the firm to be provided as part of the authorisation process

1. As part of its authorisation process, the applicant investment firm shall provide to the competent authority the following information on its organisation:

(a) A programme of initial operations for the next three years, drafted according to the provisions and standard template of the implementing technical standard to be drafted under Article 7(5) of Directive 2014/65/EC. This shall include information on planned regulated and unregulated activities. In order to enable competent authorities to assess, after consultation with other relevant competent authorities and ESMA (where appropriate), the extent to which activities will be carried out in each Member State, the programme of operations shall:

(i) provide detailed information on the geographical distribution and activities to be carried out by the investment firm in the EEA; and

(ii) assess whether the investment firm may have opted for the regulatory system of one Member State for the purpose of evading the stricter standards in force in another Member State within the territory of which it intends to carry on or does carry on the greater part of its activities.

Relevant information in the programme of operations shall include:

(iii) the domicile of prospective customers/targeted investors (in order to assess whether they are mostly present in another Member State);

(iv) the marketing and promotional activity and arrangements, including languages of the offering and promotional documents; identification of the Member States where advertisements are most visible and frequent; type of promotional documents (in order to assess where effective marketing will be mostly developed); and

(v) the identity of direct marketers, financial investment advisers and distributors, geographical localisation of their activity.

(b) Details of the firm's auditors, when available at time of application for authorisation.

(c) Information on the organisational structure and internal control systems of the company, comprising:

(i) the personal details of the heads of internal functions (management and supervisory), including a detailed curriculum vitae, stating relevant education and professional training, professional experience;

(ii) the description of the resources (human, technical, legal resources) allocated to the various planned activities;

(iii) in relation to holding client assets, the information drafted according to the provisions and template of the implementing technical standard to be endorsed under Article 7(5) of Directive 2014/65/EC, specifying, inter alia, any client asset safeguarding arrangements (in particular, where assets are held in a custodian, the name of the custodian, and relevant contracts); and

(iv) and explanation of how the firm will satisfy its prudential and conduct requirements.

(d) Statement of the intention of the investment firm to be a member of the investor compensation scheme of the Home Member State or evidence of membership to the investor compensation scheme, where possible.

(e) List of the outsourced functions, services or activities (or those intended to be outsourced); list of the contracts concluded or foreseen with external providers and resources (in particular, human, technical, legal resources, and the internal control system) allocated to the control of the outsourced functions, services or activities.

(f) Measures to detect conflicts of interest that arise in the course of providing investment and ancillary services and a description of product governance arrangements.

(g) Description of systems for monitoring the activities of the firm, including back–up systems, where available, and systems and risk controls where the firm wishes to engage in algorithmic trading and/or provide direct electronic access.

(h) The compliance, internal control, and, where relevant, risk management systems (a monitoring system, internal audits and the advice and assistance functions). This may be provided through a set of internal policies or procedures and shall take into account all aspects of the programme of operations.

(i) Systems for assessing and managing the risks of money laundering and terrorist financing.

(j) Information on business continuity plans, including systems and human resources (i.e. key personnel).

(k) Record management, record-keeping and record retention policies.

(l) Description of the firm's manual of procedures.

Article 7

General requirements of the information provided for the application process

1. The information to be provided to the competent authority of the home Member State as detailed in Articles 1, 2, 3, 4, 5 and 6, shall refer to both the head office of the firm and its branches and tied agents in the home Member State.

2. The competent authority may, during the authorisation process, if necessary, request any further information that is necessary to verify if the applicant firm complies with all relevant requirements set out by Directive 2014/65/EU.

Article 8

Requirements applicable to the management of investment firms that are natural persons or investment firms that are legal persons managed by a single natural person

1. Pursuant to the Article 9(6) of the Directive 2014/65/EU, investment firms that are natural persons or investment firms that are legal persons managed by a single natural person can be authorised under the following conditions:

(a) the constitutive rules and national laws of the Member State permit it

(b) the natural person appointed to manage the investment firm, or the natural person investment firm, must be easily contactable at short notice by the competent authorities and have sufficient time dedicated to this function;

(c) the governing bodies or bylaws of the investment firm empower a person to substitute the manager immediately and perform all his duties if the latter is unable to perform them; and

(d) the person empowered pursuant to the previous point shall be of sufficiently good repute and have sufficient experience to carry out the function of manager for the time of absence of the manager, or until a new manager is appointed, so as to ensure sound and prudent management of the investment firm. The person empowered for investment firms that are natural persons, shall be also available to assist insolvency practitioners and relevant authorities in the liquidation of the firm. This person shall have the necessary availability for this function.

2. As part of its authorisation process, an applicant investment firm which is a natural person, or a legal person managed by a single natural person, shall provide to the competent authority the information listed in Article 4(1)(a), 4(1)(c), 4(1)(d), 4(1)(e), 4(1)(f), 4(1)(g) and 4(1)(h) in relation to the person empowered under paragraph 1(c).

Article 9

Requirements applicable to shareholders and members with qualifying holdings

An applicant investment firm's proposed shareholders and members with qualifying holdings and having regard to the likely influence of each proposed shareholder or member with qualifying holdings, shall be assessed for their suitability and their financial soundness, by the competent authority, in order the latter to ensure the sound and prudent management of the investment firm, against all of the following criteria:

(a) the reputation and experience of any person who will direct the business of the investment firm;

(b) the reputation of the proposed shareholders and members with qualifying holdings;

(c) the financial soundness of the proposed shareholder and members with qualifying holding, in particular in relation to the type of business pursued and envisaged in the investment firm;

(d) whether the investment firm will be able to comply and continue to comply with the prudential requirements based on Directive 2014/65/EC and, where applicable, other Directives, in particular Directives 2002/87/EC and 2013/36/EU, in particular, whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities;

(e) whether there are reasonable grounds to suspect that, in connection with the authorisation of the investment firm, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC is being or has been committed or attempted, or that the authorisation of the investment firm could increase the risk thereof.

Article 10

Obstacles which may prevent effective exercise of the supervisory functions of the competent authority

Any information or situation that may prevent the competent authority to effectively appraise the suitability of the shareholder or member with qualifying holding or the influence of close links with the applicant firm shall be considered to be an obstacle to the exercise of the supervisory function of the competent authority.

Article 11

Entry into force

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

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

Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]

ITS 2: Draft implementing technical standards under Article 7(5) of Directive 2014/65/EC

DRAFT COMMISSION IMPLEMENTING REGULATION (EU) No …/...

of [dd mm yyyy]

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to implementing technical standards pursuant to Article 7(5) of Directive 2014/65/EU (Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council (recast), and in particular Article 7(5) thereof,

Whereas:

(1) It is appropriate to set out common standard forms, templates and procedures to ensure the common understanding and enforcement among Member States' competent authorities of the authorisation process regarding the provision of investment services or the performance of activities and, when relevant, of ancillary services.

(2) 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[1] applies to the processing of personal data by the Member States in the application of this Regulation.

(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 applies to the processing of personal data by ESMA in the application of this Regulation.

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

(5) In accordance with Article 15 of 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), ESMA has conducted open public consultations on such draft implementing technical standards,

[1] OJ L 281, 23/11/1995, p. 31.

analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation.

HAS ADOPTED THIS REGULATION:

Article 1
Designated contact point

Competent authorities shall designate a contact point for purposes of this Regulation. Updated information on the contact point shall be made public on the competent authorities' websites.

Article 2
Submission of the application

1. An applicant firm shall submit, to the competent authority, its application to receive authorisation to provide investment services and/or perform investment activities by filling in the template set out in Annex I.

2. An applicant firm shall notify information on the members of the management body by filling in the template set out in Annex II.

3. The applicant firm shall submit the information required for the assessment of the authorisation application, in paper or by electronic means, if accepted by the competent authority.

Article 3
Receipt of the application form and aknowledgement of receipt

Upon receipt of the application, the competent authority shall send in paper or by electronic means an acknowledgement of receipt to the applicant firm, including the contact details of the department or section or person within the competent authority.

Article 4
Notification of changes to the membership of the management body

1. An investment firm shall notify the competent authority in paper or by electronic means of any change to the membership of its management body, within 10 days from the change, or where required by national law, before such change takes effect.

2. When providing information in accordance with paragraph 1, the investment firm shall use the format set out in Annex III.

Article 5
Request of additional information

1. When additional information is required to proceed with assessment of the application, the competent authority shall send a request to the applicant firm, in paper or by electronic means.

2. The six month period referred to in Article 7(3) of Directive 2014/65/EU shall begin only upon receipt of an application containing information that is assessed to be complete and correct.

Article 6
Communication of the decision

The competent authority shall inform the applicant firm of its decision to grant or not the authorisation in paper or by electronic means, within the six month period of Article 7(3) of Directive 2014/65/EC.

Article 7
Entry into force

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

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

Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]

Annex I: Application Form for an Investment Firm

[Article 2 of the Commission Implementing Regulation (EU) No …/…]

Reference number: ……...
Date: ……

FROM:
Name of the applicant:
Address:

(Contact details of the designated contact person)
Name:
Telephone:
Email:

TO:
Member State:
Competent Authority:
Address:

(Contact details of the designated contact point)
Address:
Telephone:
Email:

Dear [insert appropriate name]

In accordance with Article 2 of the Commission Implementing Regulation (EU) No …/... laying down implementing technical standards with regard to standard forms, templates and procedures for notification or provision of information provided for in Article 7(5) of Directive xxxx/xx/EC to ensure uniform conditions of application of Article 7(2), kindly find attached the authorisation application.

• Person in charge of preparing the application:
Name:
Status/position:
Telephone:
Fax:
E-mail:

• Nature of the application (tick the relevant box):
□ Authorisation
□ Change to the authorisation already obtained

CONTENT

General information on the applicant

……
[please insert the information referred to under Articles 1 of [RTS]. Please set out that information here or provide an explanation of how it will be provided, or make reference to the relevant annexes containing the information]

Information on the capital

……
[please insert the information referred to under Article 2 of [RTS]. Please set out that information here or provide an explanation of how it will be provided, or make reference to the relevant annexes containing the information]

Information on the shareholders

……
[please insert the information referred to under Article 3 of [RTS]. Please set out that information here or provide an explanation of how it will be provided, or make reference to the relevant annexes containing the information]

Information on the management body and persons directing the business

……
[please insert the information referred to under Article 4 of [RTS]. Please set out that information here or provide an explanation of how it will be provided, or make reference to the relevant annexes containing the information]

Financial information

……

[please insert the information referred to under Article 5 of [RTS]. Please set out that information here or provide an explanation of how it will be provided, or make reference to the relevant annexes containing the information]

Information on the organisation

……

[please insert the information referred to under Article 6 of [RTS]. Please set out that information here or provide an explanation of how it will be provided, or make reference to the relevant annexes containing the information]

Annex II: List of members of the management body

[Article 2 of the Commission Implementing Regulation (EU) No …/…]

Reference number: ……...
Date: ……

FROM:
Name of the applicant:
Address:

(Contact details of the designated contact person)
Name:
Telephone:
Email:

TO:
Competent Authority:
Address:

(Contact details of the designated contact point if relevant)
Address:
Telephone:
Email:

Dear [insert appropriate name]

In accordance with Article 2 of the Commission Implementing Regulation (EU) No …/... laying down implementing technical standards with regard to standard forms, templates and procedures for notification or provision of information provided for in Article 7(5) of Directive 2014/65/EC to ensure uniform conditions of application of Article 9 (5), kindly find attached the notification request.

• Person in charge of preparing the application:
Name:
Status/position:
Telephone:
Fax:
E-mail:

Date:

Signature:

List of members of the management body

Member 1

Name ……

Contact details (Telephone, email, address)……

Position……

Professional experience and other relevant experience……

Educational qualification……..

Relevant training…….

List of executive and non-executive directorships in other entities……

……
Effective date ……..
[Please set out that information here or provide an explanation of how it will be provided, or make reference to the relevant annexes containing the information]

Member n

Name
……..

Contact details (Telephone, email, address)……

Position……

Professional experience and other relevant experience……

Educational qualification……

Relevant training……

List of executive and non-executive directorships in other entities……..

……
Effective date ……..
[Please set out that information here or provide an explanation of how it will be provided, or make reference to the relevant annexes containing the information]

Please provide:
Minutes of the general meeting acting the nomination of the new member of the management body
Minutes of the general meeting of the management body acting the nomination of the new members.

Annex III: Notification of information on changes to the membership of the management body

[Article 4 of the Commission Implementing Regulation (EU) No …/…]

Reference number: ……...
Date: ……

FROM:
Name of the applicant:
Address:

(Contact details of the designated contact person)
Name:
Telephone:
Email:

TO:
Competent Authority:
Address:

(Contact details of the designated contact point if relevant)
Address:
Telephone:
Email:

Dear [insert appropriate name]

In accordance with Article 4 of the Commission Implementing Regulation (EU) No …/... laying down implementing technical standards with regard to standard forms, templates and procedures for notification or provision of information provided for in Article 7(5) of Directive xxxx/xx/EC to ensure uniform conditions of application of Article 9 (5), kindly find attached the notification request.

• Person in charge of preparing the application:
Name:
Status/position:
Telephone:
Fax:
E-mail:

Information on member(s) leaving the management body

Member 1

Name …….

Contact details (Telephone, email, address)……..

Position……

Effective date of departure from management body…….

Reasons for the departure from management body……

Member 2

Name …….

Contact details (Telephone, email, address)……..

Position……

Effective date of departure from management body…….

Reasons for the departure from management body……

Member n

Name …….

Contact details (Telephone, email, address)……..

Position……

Effective date of departure from management body…….

Reasons for the departure from management body……

Information on new member(s) of the management body

Member 1

Name ……

Contact details (Telephone, email, address)……

Position……

Professional experience and other relevant experience……..

Educational qualification……

Relevant training……

List of executive and non-executive directorships in other entities……

……

Effective date ……

[Please set out that information here or provide an explanation of how it will be provided, or make reference to the relevant annexes containing the information]

Member n

Name ……

Contact details (Telephone, email, address)……

Position……

Professional experience and other relevant experience……

Educational qualification……..

Relevant training……

List of executive and non-executive directorships in other entities……..

……

Effective date ……

[Please set out that information here or provide an explanation of how it will be provided, or make reference to the relevant annexes containing the information]

Complete updated list of members of the management body

Name	Position	Effective date

Please provide:
Minutes of the general meeting acting the nomination of the new member of the management body
Minutes of the general meeting of the management body acting the nomination of the new member.

RTS 3: Draft regulatory technical standards under Articles 34(8) and 35(11) of MiFID II

DRAFT COMMISSION DELEGATED REGULATION (EU) No …/..

of [dd.mm.yyyy]

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards pursuant to Articles 34(8) and 35(11) of Directive 2014/65/EU

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council (recast), and in particular Articles 34(8) and 35(11) thereof,

Whereas:

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council (recast), and in particular Articles 34(8) and 35(11) thereof,

Whereas:

(1) It is important to specify the information to be notified when investment firms and, where foreseen, credit institutions, wish to provide investment services and /or perform investment activities as well as ancillary services in another Member State under the freedom to provide investment services and activities or under the right of establishment.

(2) It is also important to specify the information to be notified when credit institutions wish to provide, through the use of a tied agent, investment services and /or perform investment activities in another Member State under the freedom to provide investment services or under the right of establishment.

(3) It is important to provide clarity on the content of the information to be submitted when an investment firm or a market operator, operating an MTF or OTF, wishes to provide within the territory of another Member State appropriate arrangements in order to

facilitate access to and trading on those systems by remote users, members or participants established in that Member State.

(4) It is important for competent authorities of home and host Member States to receive updated information in case of any change in the particulars of a passport notification under the right of the freedom to provide investment services or under the right of establishment, in order to be in an appropriate position to make an informed decision that is consistent with their powers and respective responsibilities.

(5) The provisions in this Regulation are closely linked, since they deal with notifications related to the exercise of the freedom to provide investment services and activities and the exercise of the right of establishment that apply to the same entities (i.e. investment firms and credit institutions). To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view and compact access to them by persons subject to those obligations, it is desirable to include certain regulatory technical standards required by Directive 2014/65/EU in a single Regulation.

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

(7) In accordance with Article 10 of 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), ESMA has conducted open public consultations on such draft implementing technical standards, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation.

HAS ADOPTED THIS REGULATION:

Article 1
Scope

(1) The following provisions of this Regulation shall also apply to credit institutions authorised under Directive 2013/36/EU:

(a) Articles 2 and 3 when a credit institution, providing one or more investment services and/or performing investment activities, wishes to use tied agents under the right of freedom to provide investment services and activities in accordance with Article 34(5) of Directive 2014/65/EU;

(b) Articles 6 and 7 when a credit institution, providing one or more investment services and/or performing investment activities, wishes to use tied agents under the right of establishment in accordance with Article 35(7) of Directive 2014/65/EU.

Article 2

Information to be notified on the investment services and activities passport notification

The information to be notified in an investment services and activities passport notification shall include the following:

(a) the name, address and contact details of the investment firm, or where applicable the credit institution along with the name of a specified contact person at the investment firm or credit institution;

(b) the particular investment services, activities and ancillary services which will be provided in the host Member State and the respective financial instruments; and

(c) whether the investment firm or credit institution intends to use any tied agent, established in the home Member State, in the territory of the host Member State and, if so the name, address, contact details of such tied agent and the investment services or activities to be provided by the latter.

Article 3

Information to be notified on the change of investment services and activities particulars notification

1. The information to be notified in a change in investment services and activities particulars notification shall include the applicable details of any change in the particulars of the investment services and activities passport notification.

2. The withdrawal or cancellation of the authorisation of an investment firm, that provides investment services or activities under the right of freedom to provide investment services in another Member State, shall considered to be a change of its investment services and activities particulars notification.

Article 4

Information to be notified on the notification for the provision of arrangements to facilitate access to an MTF or OTF

The information to be notified in a notification for the provision of arrangements to facilitate access to an MTF or OTF shall include the following:

(a) the name, address and contact details of the investment firm or the market operator, along with the name of a specified contact person at the investment firm or the market operator;

(b) a short description of the appropriate arrangements to be in place and the date from which these arrangements will be provided in the host Member State; and

(c) a short description of the business model of the MTF or the OTF, including the type of the traded financial instruments, the type of participants, and the marketing approach of the MTF or OTF to target remote users, members or participants.

Article 5

Information to be notified in a branch passport notification or in a tied agent passport notification under the right of establishment

1. The information to be notified in a branch passport notification or a tied agent passport notification under the right of establishment shall include the following:

(a) the name, address and contact details of the investment firm, or where applicable of the credit institution in the home Member State, along with the name of a specified contact person at the investment firm, or credit institution;

(b) the name, address and contact details in the host Member State of the branch or of the tied agent or from which documents may be obtained;

(c) the name of those responsible for the management of the branch or of the tied agent; and

(d) a programme of operations as specified in paragraph 2.

2. The programme of operations referred to in point (d) of paragraph 1 shall comprise the following items:

(a) The list of investment services, activities, ancillary services and financial instruments to be provided.

(b) A high level strategy, explaining how the branch or the tied agent will contribute to the firm's or group's strategy, if the investment firm or credit institution is a member of a group, and what the main functions of the branch or tied agent will be.

(c) A description of the type of the clients or counterparties the branch or tied agent will be dealing with and how the firm will obtain and deal with those clients.

(d) A high-level summary of:

(i) the organisational structure of the branch or tied agent, showing functional, geographical and legal reporting lines (if a matrix management structure is in operation);

(ii) how the branch or the tied agent fits into the corporate structure of the investment firm or credit institution, or of the group, if the investment firm or the credit institution is a member of a group; and

(iii) how the branch or the tied agent reports to the head office;

(e) Details of individuals performing key functions with the branch or the tied agent, including the individuals responsible for day-to-day branch or tied agent operations, compliance and dealing with complaints; and

(f) Details of any outsourcing arrangements critical to the operations of the branch or the tied agent.

(g) Summary details of the systems and controls that will be put in place, including:

(i) arrangements that will be put in place to safeguard client money and customer assets;

(ii) arrangements for the compliance with the conduct of business and other obligations that fall under the responsibility of the competent authority of the host Member State according to Article 35(8) and record keeping under Article 16(6) of Directive 2014/65/EU;

(iii) an internal Staff Code of Conduct, which shall include controls over personal account dealing;

(iv) anti-money laundering arrangements;

(v) controls over outsourcing and other arrangements with third parties in connection with the investment services and/ or activities carried on by the branch or the tied agent; and

(vi) details of the accredited compensation scheme of which the investment firm or credit institution is a member.

(h) Forecast statements for both profit and loss and cash flow, over an initial thirty six month period.

(i) When a branch is to be established in a host Member State and intends to use tied agents in this host Member State, in accordance with Article 35(2)(c) of Directive 2014/65/EU, then the programme of operation referred to in point (d) of paragraph 1 shall also comprise information regarding the identity, address and contact details of each such tied agent.

Article 6

Information to be notified on the change of branch particulars notification or the change of tied agent particulars notification under the right of establishment

1. The information to be notified in a change of branch particulars notification or a change of tied agent particulars notification under the right of establishment shall include any change in the particulars of the initial passport notification.

2. Changes to the name, address and contact details of the investment firm, or where applicable of the credit institution in the home Member State shall also be notified as a change of branch particulars notification or as a change of tied agent particulars notification under the right of establishment.

3. Changes to the passport notification concerning the termination of the operation of the branch, or the cessation of the use of a tied agent, shall be notified in accordance with Article 35(10) of Directive 2014/65/EU and shall include the following information:

(a) the name of the person(s) who will be responsible for the process of terminating the operation of the branch or the tied agent;

(b) the schedule of the planned termination; and

(c) the details and processes of how it is proposed to wind down the business operations, including details of how client interests are to be protected, complaints resolved and any outstanding liabilities discharged.

Article 7

Entry into force

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

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

Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]

ITS 4: Draft implementing technical standards under Articles 34(9) and 35(12) of MiFID II

DRAFT COMMISSION IMPLEMENTING REGULATION (EU) No …/..

of [dd.mm.yyyy]

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to implementing technical standards pursuant to Articles 34(9) and 35(12) of Directive 2014/65/EU

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council (recast), and in particular Articles 34(9) and 35(12) thereof

Whereas:

(1) It is appropriate to set out common standard forms, procedures and standard templates for the submission of information required when investment firms and, where foreseen, credit institutions wish to provide investment services and perform activities in another Member State under the right of freedom to provide investment services and activities or under the right of establishment.

(2) The provisions in this Regulation are closely linked, since they deal with the transmission of information related to the exercise of the freedom to provide investment services and activities and of the right of establishment. To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view and compact access to them by persons subject to those obligations, it is desirable to include certain implementing technical standards required by Directive 2014/65/EU in a single Regulation.

(3) It is important to establish standard procedures covering the language and means of communication of passport notifications which can be used by the investment firms and the competent authorities of home and host Member States in order to facilitate the unhindered exercise of the provision of investment services and activities across Member States and the efficiency of the performance of the respective tasks and responsibilities of the competent authorities.

(4) Technical standards should require the assessment of the accuracy and completeness of the submitted notification from the competent authority of the home Member State in order to clarify the responsibilities of the respective authority and to ensure the quality of

the submitted information both from the investment firm to the competent authority of the home Member State and from the competent authority of the home Member State to the competent authority of the host Member State.

(5) Provisions requiring the competent authority of the home Member State to indicate the particular respects in which the passport notification is assessed to be incomplete or incorrect are necessary to ensure clarity in the identification and communication of the missing or incorrect elements and to facilitate the process of addressing these issues and resubmitting the complete and correct information.

(6) Acknowledgement of receipt of a submitted branch passport notification is necessary to ensure clarity of the date of receipt of the relevant notification and regarding the exact date on which the investment firm may establish the branch or make use of a tied agent established in the host Member State.

(7) Nothing in this Regulation should impede the competent authority of the host Member State to assess the adequacy and supervise the compliance of the systems and controls for money laundering and terrorist financing of a branch established in its territory, including the skill, knowledge and good character of its money laundering reporting officer.

(8) For ensuring coherence, specific templates shall be used when an investment firm or a market operator, operating an MTF or OTF, wishes to provide within the territory of another Member State appropriate arrangements so as to facilitate access to and trading on those systems by remote users, members or participants established in that Member State, in order to ensure the adequacy of the submitted information both from the investment firm or market operator to the competent authority of the home Member State and from the competent authority of the home Member State to the competent authority of the host Member State.

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

(10) In accordance with Article 15 of 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), ESMA has conducted open public consultations on such draft implementing technical standards, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation.

HAS ADOPTED THIS REGULATION:

Article 1
Scope

The following provisions of this Regulation shall also apply to credit institutions authorised under Directive 2013/36/EU:

(a) articles 3, 4, 5, 6 and7 when a credit institution, providing one or more investment services and/or performing investment activities, wishes to use tied agents under the right of freedom to provide investment services and activities in accordance with Article 34(5) of Directive 2014/65/EU;

(b) articles 11, 12, 14, 16 and 18 when a credit institution, providing one or more investment services and/or performing investment activities, wishes to use tied agents under the right of establishment in accordance with Article 35(7) of Directive 2014/65/EU.

Article 2
Passport notifications and other communications

1. Passport notifications and other communications submitted under this Regulation:

(a) shall be provided in any European Union language accepted by both the competent authority of the home Member State and by the competent authority of the host Member State;

(b) shall be submitted in paper form, or by electronic means, if accepted by the relevant competent authority;

2. The competent authorities shall make publicly available information on the accepted language(s) and means of submission, including contact details for passport notifications.

Article 3
Submission of the investment services and activities passport notification

1. The investment firm shall submit to the competent authority of the home Member State an investment services and activities passport notification by filling in the form set out in Annex I.

2. The investment firm shall submit a separate passport notification to the competent authority of the home Member State for each Member State into which the investment firm intends to passport.

3. A credit institution wishing to provide investment services or activities through a tied agent shall submit to the competent authority of the home Member State the information required, by filling in the form set out in Annex I by completing only those parts relevant to the tied agent.

Article 4

Assessment of completeness and accuracy of the investment services and activities passport notification

1. On receipt of a notification, the competent authority of the home Member State shall assess the completeness and accuracy of the information provided.

2. If the information provided is assessed to be incomplete or incorrect, the competent authority of the home Member State shall inform the investment firm or, where relevant, the credit institution without undue delay, indicating in which particulars respect the information has been assessed to be incomplete or incorrect.

3. The one month period referred to in Article 34(3) and 34(5) of Directive 2014/65/EU shall begin only upon receipt of the notification containing information that is assessed to be complete and correct.

Article 5

Communication of the investment services and activities passport notification

1. The competent authority of the home Member State shall communicate, within the one month period referred to in Article 34(3) and 34(5) of Directive 2014/65/EU, the investment services and activities passport notification to the competent authority of the host Member State, by filling in the form set out in Annex II, together with a copy of the investment services and activities passport notification received from the investment firm or credit institution.

2. The competent authority of the home Member State shall inform, without undue delay, the investment firm or, where relevant, the credit institution, about the onward communication of the passport notification to the competent authority of the host Member State including the date of the submission.

Article 6

Submission of the change of investment services and activities particulars notification

1. For any changes to the particulars of an investment services and activities passport notification, the investment firm or, where relevant the credit institution, shall submit to the competent authority of the home Member State the information required, by filling in the form set out in Annex I.

2. The investment firm, or where relevant the credit institution, shall complete only those parts relevant to the changes in the particulars of the investment services and activities passport notification.

3. When changes have to be made to the investment services, activities, ancillary services or financial instruments, the investment firm or credit institution, shall list all the investment services, activities, ancillary services or financial instruments that currently provides or intends to provide in the future.

Article 7

Communication of the change of investment services and activities particulars notification

1. The competent authority of the home Member State shall communicate, without undue delay, the changes in the particulars of the investment services and activities passport notification to the competent authority of the host Member State, by filling in the form set out in Annex III, together with a copy of the change of investment services and activities particulars notification received from the investment firm or credit institution.

2. In the event that the authorisation of an investment firm is withdrawn or cancelled, the competent authority of the home Member State shall notify to the competent authority of the host Member State, where the investment firm exercised the right to freely provide investment services or activities, the withdrawal or cancellation, by filling in the form set out in Annex III.

Article 8

Submission of the notification for the provision of arrangements to facilitate access to an MTF or OTF

The investment firm or the market operator operating an MTF or OTF that wishes to provide, within the territory of another Member State, appropriate arrangements so as to facilitate access to and trading on those systems by remote users, members or participants established in this Member State, shall submit to the competent authority of its home Member State the information required according to Article 34(7) of Directive 2014/65/EU, by filling in the form set out in Annex IV.

Article 9

Communication of the notification for the provision of arrangements to facilitate access to an MTF or an OTF

1. The competent authority of the home Member State shall communicate, within the one month period referred to in Article 34(7) of Directive 2014/65/EU, the notification for the provision of arrangements to the competent authority of the host Member State, by filling in the form set out in Annex V, together with a copy of the notification received from the investment firm or market operator.

2. The competent authority of the home Member State shall inform, without undue delay, the investment firm or the market operator about the onward communication of the notification to the competent authority of the host Member State including the date of the submission.

Article 10

Submission of the change of the notification for the provision of arrangements to facilitate access to an MTF or an OTF

1. For any changes to the particulars of the notification for the provision of arrangements to facilitate access to an MTF or an OTF, the investment firm or the market operator, shall submit to the competent authority of the home Member State the information required, by filling in the form set out in Annex IV.

2. The investment firm or the market operator shall complete only those parts relevant to the changes in the particulars of the passport notification.

Article 11

Communication of the change of the notification for the provision of arrangements to facilitate access to an MTF or an OTF

The competent authority of the home Member State shall communicate, without undue delay, the changes in the particulars of the notification for the provision of arrangements to facilitate access to an MTF or an OTF to the competent authority of the host Member State, by filling in the form set out in Annex III, together with a copy of the notification received according to article 11 of this Regulation from the investment firm or market operator.

Article 12

Submission of the branch passport notification

1. The investment firm wishing to establish a branch within the territory of another Member State shall submit to the competent authority of the home Member State the information as required by Article 35(2) of Directive 2014/65/EU, by filling in the form set out in Annex VI.

2. When an investment firm intends to establish a branch which in turn intends to use tied agents, in accordance with Article 35(2)(c) of Directive 2014/65/EU, then the investment firm shall also submit to the competent authority of the home Member State a separate passport notification in respect of each tied agent, by filling in the form set out in Annex VII.

Article 13

Submission of the tied agent passport notification under the right of establishment

1. The investment firm or credit institution wishing to use a tied agent established in another Member State shall submit the information in accordance with Article 35(2) of Directive 2014/65/EU, by filling in the form set out in Annex VII.

2. A separate passport notification shall be notified in respect of each tied agent, established in another Member State, the investment firm or credit institution intends to use in this Member State.

Article 14

Assessment of completeness and accuracy of the branch passport notification or a tied agent passport notification under the right of establishment

1. Upon receipt of a notification, the competent authority of the home Member State shall assess the completeness and accuracy of the information provided.

2. If the information provided is assessed to be incomplete or incorrect, the competent authority of the home Member State shall inform the investment firm or, where relevant, the credit institution, without undue delay, indicating in which particulars respect the information has been assessed to be incomplete or incorrect.

3. The three month period provided in Article 35(3) of the Directive 2014/65/EU shall start to run only upon receipt of the notification containing information that is assessed to be complete and correct.

Article 15

Communication of the branch passport notification

1. The competent authority of the home Member State shall communicate, within the three month period referred to in Article 35(3) of the Directive 2014/65/EU, the branch passport notification to the competent authority of the host Member State, by filling in the form set out in Annex VIII, together with a copy of the branch passport notification received from the investment firm.

2. The competent authority of the home Member State shall inform, without undue delay, the investment firm about the onward communication of the passport notification to the competent authority of the host Member State, including the date of the submission.

3. The competent authority of the host Member State shall acknowledge receipt of the notification both to the competent authority of the home Member State and the investment firm.

Article 16

Communication of the tied agent passport notificaton under the right of establishment

1. The competent authority of the home Member State shall communicate, within the three month period referred to in Article 35(3) of the Directive 2014/65/EU, the tied agent passport notification under the right of establishment to the competent authority of the host Member State, by filling in the form set out in Annex IX, together with a copy of the tied agent passport notification under the right of establishment received from the investment firm or credit institution.

2. The competent authority of the home Member State shall inform, without undue delay, the investment firm, or where relevant the credit institution, about the onward communication of the passport notification to the competent authority of the host Member State, including the date of the submission.

3. The competent authority of the host Member State shall acknowledge receipt of the notification both to the competent authority of the home Member State and the investment firm or credit institution.

4. The tied agent can only commence its proposed investment services or activities, once it has been registered in the public register in the host Member State in accordance with Article 29(3) of Directive 2014/65/EU.

Article 17

Submission of the change of branch particulars notification

1. For any changes to the particulars of a branch passport notification, the investment firm shall submit to the competent authority of the home Member State the information required, by filling in the form set out in Annex VI.

2. The investment firm shall complete only those parts relevant to the changes in the particulars of the branch passport notification.

3. When changes have to be made to the investment services, activities, ancillary services or financial instruments provided by the branch, the investment firm shall list all the investment services, activities, ancillary services or financial instruments the branch currently provides or intends to provide in the future.

4. Changes to the particulars of a branch passport notification concerning the termination of the operation of the branch shall be notified, by filling in the form set out in Annex X.

Article 18

Submission of the change of the tied agent particulars notification under the right of establishment

1. For any changes to the particulars of a tied agent passport notification under the right of establishment, the investment firm or credit institution shall submit to the competent authority of the home Member State the information required, by filling in the form set out in Annex VII.

2. Only those parts relevant to the changes in the particulars of the tied agent passport notification under the right of establishment shall be completed.

3. When changes have to be made to the investment services, activities or financial instruments, provided by the tied agent, the investment firm, or credit institution, shall list all the investment services, activities or financial instruments that the tied agent currently provides or intends to provide in the future.

4. Changes to the particulars of a tied agent passport notification under the right of establishment concerning the cessation of the use of a tied agent established in another Member State shall be notified, by filling in the form set out in Annex X.

Article 19

Communication of the change of branch particulars notification

1. The competent authority of the home Member State shall communicate, without undue delay, the changes to the particulars of the branch passport notification to the competent authority of the host Member State, by filling in the form set out in Annex XI, together with a copy of the branch passport notification received from the investment firm.

2. The competent authority of the home Member State shall communicate, without undue delay, the changes to the particulars of the branch passport notification concerning the termination of the operation of the branch to the competent authority of the host Member State, by filling in the form set out in Annex XIII, together with a copy of the notification on the termination of the operation of the branch received from the investment firm.

Article 20

Communication of the change of tied agent particulars notification under the right of establishment

1. The competent authority of the home Member State shall communicate, without undue delay, the changes to the particulars of the tied agent passport notification under the right of establishment to the competent authority of the host Member State, by filling in the form set out in Annex XII, together with a copy of the tied agent notification under the right of establishment received from the investment firm or credit institution.

2. The competent authority of the home Member State shall communicate, without undue delay, the changes to the particulars of the tied agent passport notification under the right of establishment concerning the cessation of the use of a tied agent established in another Member State to the competent authority of the host Member State, by filling in the form set out in Annex XIII, together with a copy of the notification on the cessation of the use of the tied agent received from the investment firm or credit institution.

Article 21

Entry into force

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

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

Done at Brussels, Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]

Annex I: Format for the notification on the investment services and activities passport notification and change of investment services and activities particular notification[2]

[Article 34(2) of Directive 2014/65/EU]

Reference number:……..
Date:…….

Part 1 – Contact Information

Type of notification:	Investment services and activities passport notification/ change of investment services and activities particulars notification
Member State in which the investment firm/credit institution intends to operate:	
Name of investment firm/credit institution:	
Trading name	
Address:	
Telephone number:	
E-mail:	
Name of the contact person at the investment firm / credit institution:	
Home Member State	
Authorisation Status:	Authorised by [Home Member State Competent Authority]
Authorisation Date:	

[2] For change of investment services and activities particulars notification only the parts of the forms which contain new information shall be completed. When changes have been made to the investment services, activities, ancillary services or financial instruments the firm shall list all investment services, activities, ancillary services or financial instruments to be provided by the firm.

Part 2 – Intended investment services, activities and ancillary services*

		Investment Services and activities									Ancillary services						
		A1	A2	A3	A4	A5	A6	A7	A8	A9	B1	B2	B3	B4	B5	B6	B7
Financial Instruments	C1	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□
	C2	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□
	C3	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□
	C4	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□
	C5	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□
	C6	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□
	C7	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□
	C8	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□
	C9	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□
	C10	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□
	C11	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□

*Please place an (x) in the appropriate boxes.

Details of Tied Agent located in the home Member State*

Name of tied agent	Address	Telephone	E-mail	Contact

*If the investment firm/ credit institution wishes to use more than one tied agent who will provide different investment services or activities or financial instruments, then separate matrixes with the intended investment services provided by each tied agent need to be submitted.

Intended investment services provided by the tied agent*:

		Investment services and activities									Ancillary services						
		A1	A2	A3	A4	A5	A6	A7	A8	A9	B1	B2	B3	B4	B5	B6	B7
Financial Instruments	C1	☐				☐		☐									
	C2	☐				☐		☐									
	C3	☐				☐		☐									
	C4	☐				☐		☐									
	C5	☐				☐		☐									
	C6	☐				☐		☐									
	C7	☐				☐		☐									
	C8	☐				☐		☐									
	C9	☐				☐		☐									
	C10	☐				☐		☐									
	C11	☐				☐		☐									

* Please place an (x) in the appropriate boxes. When changes have been made to the investment services, activities or financial instruments provided by the tied agent, the firm shall list all investment services, activities or financial instruments to be provided by the tied agent.

Annex II: Form for the communication of the investment services and activities passport notification from the competent authority of the home Member State to the competent authority of the host Member State

[Article 34(3) of Directive 2014/65/EU]

Reference number:…...……..
Date:……..

Notification in accordance with Article 34(3) of the Directive2014/65/EU*

FROM:

Member State:
Competent authority of the home Member State:
Address:
Designated contact point:
Telephone number:
E-mail:

TO:

Member State:
Competent Authority of the host Member State:
Address:
Designated contact point:
Telephone number:
E-mail:

In accordance with Article 34(2) of the Directive 2014/65/EU, we wish to notify you that **[Name of firm],** (1) an investment firm authorised by [name of the competent authority of the home Member State], intends to provide the investment services and / or investment activities as well as ancillary services listed in the attached passport notification for the first time under the exercise of the right of freedom to provide investment services or activities or (2) a credit institution authorised by [name of the competent authority of the home Member State] intends to provide, through the use of a tied agent, the investment services or activities listed in the attached passport notification for the first time, under the provision of freedom to provide investment services and activities.

If you have any queries, please do not hesitate to contact us.

Yours sincerely,

[Signature]

* Please amend accordingly

Annex III: Form for the communication of the change of investment services and activities particulars notification from the competent authority of the home Member State to the competent authority of the host Member State

[Article 34(4)of Directive 2014/65/EU]

Reference number:…...……..
Date:……..

Notification in accordance with Article 34(4) of the Directive 2014/65/EU*

FROM:
Member State:
Competent authority of the home Member State:
Address:
Designated contact point:
Telephone number:
E-mail:

TO:
Member State:
Competent Authority of the host Member State:
Address:
Designated contact point:
Telephone number:
E-mail:

In accordance with Article 34(4) of the Directive 2014/65/EU, we wish to notify you that **[Name of firm]**, an investment firm / credit institution / market operator authorised / supervised by [name of the competent authority of the home Member State], has:

(a) amended the investment services and activities/ancillary services/ financial instruments that intends to carry on in your territory on a cross – border basis

(b) changed its name from [old name] to [new name] with effect [date of change]

(c) moved to the following address with effect [date of change]

(d) changed its other contact information to as follows [add any changes made to the contact information of Part 1 in Annex 1] with effect [date of change]

(e) engaged an additional in [name of the home Member State] registered tied agent in providing its investment services and activities in your territory on a cross-border basis

(f) amended the arrangements provided in [name of the host Member State] in order to facilitate the access to and trading of the [name of the MTF or OTF]

(g) ceased to provide investment services and / or perform investment activities due to the withdrawal / cancellation of its authorisation with effect [date of withdrawal / cancellation].

Please find attached a copy of the change of investment services and activities particulars notification with the relevant changes. If you have any queries, please do not hesitate to contact us.

Yours sincerely,

[Signature]

* Please amend accordingly to the changes to be notified

Annex IV: Format for the notification for the provision of arrangements to facilitate access to an MTF or OTF

[Article 34(7) of Directive 2014/65/EU]

Reference number:…….
Date:……

Part 1 – Contact Information:

Type of notification:	Provision of arrangements to facilitate access to an MTF / OTF
Member State(s) in which the investment firm/market operator intends to provide arrangements:	
Name of investment firm/market operator:	
Address:	
Telephone number:	
E-mail:	
Name of the contact person at the investment firm / market operator:	
Home Member State	
Authorisation Status (of the investment firm)/Applicable Law (of the market operator):	Authorised / Licensed /Supervised by [Home Member State Competent Authority]
Authorisation Date (for investment firms):	
Name of the MTF / OTF:	
Date from which the arrangements will be provided:	With immediate effect

Part 2 – Description of [name of the MTF/OTF] business model:
[The description shall include at least the following information]

Type of traded financial instruments:

[to be completed by investment firm / market operator]

Type of trading participants:

[to be completed by investment firm / market operator]

Type of appropriate arrangements:

[to be completed by investment firm / market operator]

Marketing:

[to be completed by investment firm / market operator]

Annex V: Form for the communication notification for the provision of arrangements to facilitate access to an MTF or OTF from the competent authority of the home Member State to the competent authority of the host Member State

[Article 34(7) of Directive 2014/65/EU]

Reference number:…...……..
Date:……..

Notification in accordance with Article 34(7) of the Directive 2014/65/EU*

FROM:

Member State:
Competent authority of the home Member State:
Address:
Designated contact point:
Telephone number:
E-mail:

TO:

Member State:
Competent Authority of the host Member State:
Address:
Designated contact point:
Telephone number:
E-mail:

In accordance with Article 34(7) of the Directive 2014/65/EU, we wish to notify you that the [name of the Market Operator/Investment Firm] which operates the [name of the MTF or OTF] under the [name of the applicable national law] in [name of the home Member State], intends to provide arrangements in [name of the Member State in which intends to provide arrangements] in order to facilitate access to and trading on [name of the MTF /OTF] by remote users, members or participants established in [name of the Member State in which intends to provide arrangements, according to the attached notification.

If you have any queries, do not hesitate to contact us.

Yours sincerely,

[Signature]

*Please amend accordingly

Annex VI: Format for the notification of the branch passport notification and change of branch particulars notification[3]

[Article 35(2) of Directive 2014/65/EU]

Reference number:……
Date:…….

Part 1 – Contact Information

Type of notification:	Branch passport notification/ change of branch particulars notification
Member State in which the investment firm intends to establish a branch[4]:	
Name of the investment firm:	
Address of the investment firm:	
Telephone number of the investment firm:	
E-mail of the investment firm:	
Name of the contact person at the investment firm :	
Name of the branch:	
Address of the branch:	
Telephone number of the branch:	
E-mail of the branch:	
Name(s) of those responsible for the management of the branch:	

[3] For changes of branch particulars notification only the parts of the forms which contain new information shall be completed. When changes have been made to the investment services, activities, ancillary services or financial instruments provided by the branch, the firm shall list all investment services, activities ancillary services or financial instruments to be provided by the branch.

[4] Please note that national corporate law may require the previous registration to a commercial registry prior to the commencement of operations by the branch.

Home Member State:

Authorisation Status: Authorised by [Home Member State Competent Authority]

Authorisation Date:

Part 2 – Programme of operations

Intended investment services, activities and ancillary services provided by the branch*

		Investment Services and activities									Ancillary services						
		A1	A2	A3	A4	A5	A6	A7	A8	A9	B1	B2	B3	B4	B5	B6	B7
Financial Instruments	C1	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
	C2	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
	C3	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
	C4	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
	C5	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
	C6	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
	C7	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
	C8	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
	C9	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
	C10	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
	C11	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐

* Please place an (x) in the appropriate boxes

Part 3 – Business Plan and structural organisation of the branch

1. Business plan

   (a) How will the branch contribute to the strategy of the firm/group?

(b) What will the main functions of the branch be? (c) Describe the main objectives of the branch;
2. Commercial Strategy (a) Describe the types of clients/counterparties the branch will be dealing with; (b) Describe how the firm will obtain and deal with these clients;
3. Organisational structure (a) Briefly describe how the branch fits into the corporate structure of the firm/group? (This may be facilitated by attaching an organisational chart) (b) Set out the organisational structure of the branch, showing functional, geographical and legal reporting lines; (c) Who will be responsible for the branch operations on a day to day basis? Provide details of professional experience of the persons responsible for the management of the branch (Please attach CV); (d) Who will be responsible for the internal control functions at the branch? (e) Who will be responsible for dealing with complaints in relation to the branch? (f) How will the branch report to the head office? (g) Detail any critical outsourcing arrangements
4. Tied Agents[5] (a) Will the branch use tied agent? (b) What is the identity of the tied agent? (i) Name (ii) Address (iii) Telephone

[5] The investment firm shall submit a separate passport notification in respect of each tied agent the branch intends to use.

(iv) E-mail (v) Contact point
5. Systems & Controls Provide a brief summary of arrangements for: (a) safeguarding client money and assets; (b) compliance with the conduct of business and other obligations that fall under the responsibility of the Competent Authority of the host Member State according to Art 35(8) and record keeping under Art 16(6); (c) staff code of Conduct, including personal account dealing; (d) anti-money laundering; (e) monitoring and control of critical outsourcing arrangements (if applicable); (f) details of the accredited compensation scheme of which the investment firm is a member;
6. Financial forecast Attach a forecast statement for profit and loss and cash flow, both over an initial period of thirty six month period;

Annex VII:Format for the notification of the tied agent passport notification under the right of establishment and change of tied agent particulars notification under the right of establishment[6]

[Article 35(2) of Directive 2014/65/EU]

Reference number:……
Date:…….

Part 1 – Contact Information

Type of notification:	Tied agent passport notification under the right of establishment/ change of tied agent particulars notification under the right of establishment
Member State in which the investment firm/credit institution intends to use a tied agent established in the host Member State(s):	
Name of investment firm/credit institution:	
Address of the investment firm/ credit institution:	
Name of the contact person at the investment firm / credit institution:	
Telephone number of the investment firm/ credit institution	
E-mail of the investment firm /credit institution	
Name of the tied agent:	
Address of the tied agent:	
Telephone number of the tied agent:	

[6] For change of tied agent particulars notification under the freedom of establishment only the parts of the forms which contain new information shall be completed. When changes have been made to the investment services, activities or financial instruments, the firm shall list all investment services, activities or financial instruments to be provided by the tied agent.

E-mail of the tied agent:

Name(s) of those responsible for the management of the tied agent:

Home Member State:

Authorisation Status: Authorised by [Home Member State Competent Authority]

Authorisation Date:

Part 2 – Programme of operations

Intended investment services or activities to be provided by the tied agent*:

	Investment services and activities										Ancillary services						
		A1	A2	A3	A4	A5	A6	A7	A8	A9	B1	B2	B3	B4	B5	B6	B7
Financial Instruments	C1	☐				☐		☐									
	C2	☐				☐		☐									
	C3	☐				☐		☐									
	C4	☐				☐		☐									
	C5	☐				☐		☐									
	C6	☐				☐		☐									
	C7	☐				☐		☐									
	C8	☐				☐		☐									
	C9	☐				☐		☐									
	C10	☐				☐		☐									
	C11	☐				☐		☐									

* Please place an (x) in the appropriate boxes

Part 3 – Business plan and structural organisation of the tied agent

1. Business plan

   (a) How will the tied agent contribute to the strategy of the firm/group?

   (b) What will the main functions of the tied agent be?

   (c) Describe the main objectives of the tied agent;

2. Commercial Strategy

   (a) Describe the types of clients/counterparties the tied agent will be dealing with;

   (b) Describe how the firm will obtain and deal with these clients;

3. Organisational structure

   (a) Briefly describe how the tied agent fits into the corporate structure of the firm/group? (This may be facilitated by attaching an organisational chart)

   (b) Set out the organisational structure of the tied agent, showing both functional and legal reporting lines;

   (c) Who will be responsible for the tied agent operations on a day to day basis? Provide details of professional experience of the persons responsible for the management of the tied agent (Please attach CV);

   (d) Who will be responsible for the internal control functions at the tied agent?

   (e) Who will be responsible for dealing with complaints in relation to the tied agent?

   (f) How will the tied agent report to the head office?

   (g) Detail any critical outsourcing arrangements;

4. Systems & Controls

Provide a brief summary of arrangements for:

   (a) safeguarding client money and assets (where applicable);

   (b) compliance with the conduct of business and other obligations that fall under the responsibility of the Competent Authority of the host Member State according to

Article 35(8) and record keeping under Article 16(6); (c) staff code of Conduct, including personal account dealing; (d) anti-money laundering; (e) monitoring and control of critical outsourcing arrangements (where applicable); (f) details of the accredited compensation scheme of which the investment firm or credit institution is a member;
5. Financial forecast Attach a forecast statement for profit and loss and cash flow, both over an initial period of thirty six month period;

Annex VIII: Form for the communication of the branch passport notification from the competent authority of the home Member State to the competent authority of the host Member State

[Article 35(3) of Directive 2014/65/EU]

Reference number:…...……..
Date:…….

Notification in accordance with Article 35(3) of the Directive 2014/65/EU*

FROM:

Member State:
Competent authority of the home Member State:
Address:
Designated contact point:
Telephone number:
E-mail:

TO:

Member State:
Competent Authority of the host Member State:
Address:
Designated contact point:
Telephone number:
E-mail:

In accordance with Article 34(2) of the Directive 2014/65/EU, we wish to notify you that **[Name of firm]**, an investment firm authorised by [Competent Authority of the home Member State], intends to establish a branch located in [name of the host Member State] to provide the investment services or activities as well as ancillary services listed in the attached passport notification.

[Name of investment firm] is a participant in the [name of the home Member State accredited compensation scheme], which provides cover for eligible investors as required by the [name of the home Member State] legislation in respect of investment services and

activities carried on by the firm from an establishment in [name of the home Member State] and through its branch in the European Economic Area.

If you have any queries, please do not hesitate to contact us.

Yours sincerely,

[Signature]

*Please amend accordingly

Annex IX: Form for the communication of the tied agent passport notification under the right of establishment from the competent authority of the home Member State to the competent authority of the host Member State

[Article 35(3) of Directive 2014/65/EU]

Reference number:…...……..
Date:…….

Notification in accordance with Article 35(3) of the Directive 2014/65/EU*

FROM:

Member State:
Competent authority of the home Member State:
Address:
Designated contact point:
Telephone number:
E-mail:

TO:

Member State:
Competent Authority of the host Member State:
Address:
Designated contact point:
Telephone number:
E-mail:

In accordance with Article 34(2) of the Directive 2014/65/EU, we wish to notify you that [Name of firm], an investment firm / credit institution authorised by [name of the competent authority of the home Member State], intends to use a tied agent located in [name of the host Member State] to provide the investment services or activities listed in the attached passport notification.

[Name of investment firm/ credit institution] is a participant in the [name of the home Member State accredited compensation scheme], which provides cover for eligible investors as required by the [name of the home Member State] legislation in respect of investment services and activities carried on by the firm from an establishment in [name of the home Member State] and through its tied agent in the European Economic Area.

If you have any queries, please do not hesitate to contact us.

Yours sincerely,

[Signature]

*Please amend accordingly

Annex X: Format for notification on the termination of the operation of a branch or of the cessation of the use of a tied agent established in another Member State

[Article 35(10) of Directive 2014/65/EU]

Reference number:…….
Date:……

Notification in accordance with Article 35(10) of Directive 2014/65/EU regarding the termination of the operation of a branch/ the cessation of the use of a tied agent established in another Member State*

Part 1 – Contact Information

Type of notification:	Termination of the operation of a branch / the use of a tied agent
Member State in which the branch/ tied agent is established:	
Name of the investment firm/credit institution:	
Address of the investment firm / credit institution:	
Telephone number of the investment firm / credit institution:	
E-mail of the investment firm / credit institution:	
Name of the contact person responsible for the termination of the operations of the branch / tied agent:	
Name of the branch /tied agent in the territory of the host Member State:	
Home Member State:	
Home Member State competent authority:	

Authorisation Status:

Authorised by [name of the home Member State competent authority]

Authorisation Date:

Date from which the termination will be effective:

Description of the schedule for the planned termination:

[to be completed by the investment firm/ credit institution]

Information on the process of winding down the business operations, including details of how client interests to be protected, complaints resolved and any outstanding liabilities discharged:

[to be completed by the investment firm/credit institution]

* Please amend accordingly

Annex XI: Form for the communication on the change of branch particulars notification from the competent authority of the home Member State to the competent authority of the host Member State

[Article 35(10) of Directive 2014/65/EU]

Reference number:…...……..
Date:…….

Notification in accordance with Article 35(10) of the Directive 2014/65/EU*

FROM:
Member State:
Competent authority of the home Member State:
Address:
Designated contact point:
Telephone number:
E-mail:

TO:
Member State:
Competent Authority of the host Member State:
Address:
Designated contact point:
Telephone number:
E-mail:

In accordance with Article 35(10) of the Directive 2014/65/EU , we wish to notify you that [Name of firm], an investment firm authorised by [Competent Authority of the home Member State], has:

(a) amended the investment services and activities/ancillary services being provided by the [name of the branch] established in [name of the host Member State].

(b) changed its branch name from [add old name of the branch]to [add new name] with effect [date of change]

(c) changed its branch other contact information to as follows [add any changes made to the contact information of Part 1 in Annex 6] with effect [date of change]

(d) engaged an additional tied agent located in [name of the host Member State] and provide an updated programme of operations

(e) changed its own name/ address /contact details from [old name /address / contact details of the investment firm] to [new name / address/ contact details of the investment firm] with effect [date of change].

Please find attached a copy of the change of investment services and activities particulars notification with the relevant changes. If you have any queries, please do not hesitate to contact us.

Yours sincerely,

[Signature]

* Please amend accordingly

Annex XII: Form for the communication on the change of tied agent particulars notification under the right of establishment from the competent authority of the home Member State to the competent authority of the host Member State

[Article 35(10) of Directive 2014/65/EU]

Reference number:…...……..
Date:……..

Notification in accordance with Article 35(10) of the Directive 2014/65/EU*

FROM:
Member State:
Competent authority of the home Member State:
Address:
Designated contact point:
Telephone number:
E-mail:

TO:
Member State:
Competent Authority of the host Member State:
Address:
Designated contact point:
Telephone number:
E-mail:

In accordance with Article 35(10) of the Directive 2014/65/EU, we wish to notify you that [Name of firm], an investment firm / credit institution authorised by [name of the competent authority of the home Member State], has:

(a) amended the investment services and activities being provided by [name of the tied agent].

(b) changed its tied agent name from [add old name of the tied agent] to [add new name] with effect [date of change]

(c) changed its tied agent's other contact information to as follows [add any changes made to the contact information of Part 1 in Annex 7] with effect [date of change]

(d) changed its own name/ address /contact details from [old name /address / contact details of the investment firm / credit institution] to [new name / address/ contact details of the investment firm /credit institution] with effect [date of change].

Please find attached a copy of the change of investment services and activities particulars notification with the relevant changes. If you have any queries, please do not hesitate to contact us.

Yours sincerely,

[Signature]

* Please amend accordingly

Annex XIII: Form for the communication the termination of the operation of a branch or of the cessation of the use of a tied agent established in a Member State outside its home Member State

[Article 35(10) of Directive 2014/65/EU]

Reference number:…...……..
Date:…….

Notification in accordance with Article 35(10) of the Directive 2014/65/EU regarding the termination of the operation of a branch/ the use of a tied agent established in a Member State outside its home Member State*

FROM:

Member State:
Competent authority of the home Member State:
Address:
Designated contact point:
Telephone number:
E-mail:

TO:

Member State:
Competent Authority of the host Member State:
Address:
Designated contact point:
Telephone number:
E-mail:

In accordance with Article 35(10) of the Directive 2014/65/EU, we wish to notify you that [Name of firm], an investment firm/ credit institution authorised by [name of the competent authority of the home Member State], has notified us the intention to terminate the operation of the branch/ the use of the tied agent established in your territory with effect [date of termination].

Please find attached a copy of the notification regarding the termination of the operation of [name of the branch] / the cessation of the use of the [name of the tied agent].

If you have any queries, please do not hesitate to contact us.

Yours sincerely,

[Signature]

* Please amend accordingly

RTS 5: Draft regulatory technical standards under Article 46(7) of MiFIR

DRAFT COMMISSION DELEGATED REGULATION (EU) No …/..

of [dd mm yyyy]

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to the regulatory technical standards pursuant to Article 46(7) of Regulation (EU) No 600/2014

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 600/2014 of 12 June 2014 on Markets in Financial Instruments Regulation, and in particular Article 46(7) thereof,

Whereas:

(1) It is appropriate to set out the information, to be provided with an application to European Securities and Markets Authority (ESMA) by a third-country firm as referred to in article 46(4) and the format of the information to clients as referred to in article 46(5) in order to establish uniform requirements relating to third-country firms and to benefit from the possibility to provide services throughout the Union.

(2) These standards apply to the application of third-country firms providing investment services or activities within the Union to professional clients within the meaning of Section 1 of Annex II to Directive 2014/65/EU or eligible counterparties. The application may only be submitted following an applicable equivalence decision adopted by the Commission according to Article 47 of Regulation (EU) No 600/2014.

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

(4) In accordance with Article 15 of 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), ESMA has conducted open public consultations on such draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation.

HAS ADOPTED THIS REGULATION:

Article 1
Information

(1) A third third-country firm applying for the provision of investment services or performance of activities under Article 46 of Regulation No 600/2014, shall submit the following information to ESMA:

(a) full name of the firm, including its legal name and any other trading name to be used by the firm;

(b) head office address;

(c) contact details of the firm, including address, telephone number and email address;

(d) contact details of the person in charge of the application, including telephone number and email address;

(e) website, where available;

(f) national identification number of the firm, where available;

(g) legal entity identifier of the firm (LEI), where available;

(h) BIC code of the firm, where available;

(i) name and address of the competent authority of the third country. Where more than one authority is responsible for supervision, the details of the respective areas of competence shall be provided;

(j) the link to the register of each competent authority of the third country, where available;

(k) a written declaration issued by the competent authority of the third country stating that the firm is subject to effective supervision and enforcement, specifying which investment services, activities, and ancillary services it is authorised to provide in its home jurisdiction;

(l) the investment services to be provided and activities to be performed in the Union, together with any ancillary services as defined in Article 4(1) points 2 and 3 of Directive 2014/65/EC.

Article 2
Documents

1. The applicant third-country firm shall apply for registration through the ESMA registration system or the appropriate form as supplied by ESMA.

2. The third country firm shall inform ESMA, within 30 days, of any change of the information provided.

3. The information provided to ESMA under Article 1 shall be in English, using the Latin alphabet. Any accompanying documents provided to ESMA under Article 1 shall be in English or, where they have been written in a different language, a certified English translation shall also be provided.

Article 3

Information concerning type of clients in the Union

1. A third-country firm shall provide the information referred to in Article 46(5) of Regulation No 600/2014 in a durable medium.

2. The information referred to in paragraph 1, shall be provided:

(a) in English or in the official language, or one of the official languages of the Member State where the services will be provided;

(b) laid out in a way that is easy to read, using characters of readable size;

(c) without using colours that may diminish the comprehensibility of the information.

Article 4

Entry into force

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

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

Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]

RTS 6: Draft regulatory technical standards under Article 27(10)(a) of MiFID II

DRAFT COMMISSION DELEGATED REGULATION (EU) No …/..

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the data to be provided on financial instruments subject to the trading obligation in Articles 23 and 28 Regulation (EU) No 600/2014 by each trading venue and systematic internaliser and for other financial instruments each execution venue on the quality of execution of transactions on that venue.

THE EUROPEAN COMMISSION,

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

Having regard to Having regard Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council (recast), and in particular Article 27.

Whereas:

(1) These regulatory technical standards (hereinafter referred to as RTS) establish the specific content, the format and the periodicity of data relating to the quality of execution to be published on financial instruments subject to the trading obligation in Articles 23 and 28 Regulation (EU) No 600/2014 by each trading venue and systematic internaliser and for other financial instruments by each execution venue, taking into account the type of execution venue and the type of financial instrument concerned. It shall provide investment firms with minimum statistics on execution quality to help them determine the best way to execute client orders.

(2) Differences in the type of execution venue and the financial instrument concerned require that the content of period reporting should vary depending on several factors, including the market mechanism, trading mode and transaction type. Data should be capable of aggregation and analysis which requires that reporting prevents inappropriate comparisons between different types of financial instrument, market mechanism or reporting periods.

(3) All execution venues should use standardised reporting conventions wherever possible to identify themselves, the financial instruments in which they transact, the currency or other essential characteristics of those instruments. The reports under this Regulation will be complemented by the output of a consolidated tape provider established under Article 65 of Directive 2014/65/EU which will allow for the development of enhanced measures of execution quality. Execution venues should also report on any disruptions to normal market operations that occur during the period of any report.

(4) In determining appropriate information for measuring price assessment of both average levels throughout a period and point-in-time levels is required. Execution venues should publish data average daily prices and on specific points in time in order to provide a more complete picture of price quality.

(5) It is necessary to capture all the relevant costs in the execution of a client order which are incurred by the execution venue on behalf of the client and for which the client pays. Costs for which the client pays which are not incurred by the execution venue on its behalf, such as clearing arrangement costs for instance, since they relate to some aspects of the order which are outside of the scope of the services provided by the execution venue, shall not be included.

(6) The market mechanism, trading mode and transaction type of any reported transaction shall be identified using a standard taxonomy in order to facilitate comparisons between data from different execution venues. The market mechanism is required to capture the way in which an execution venue executes orders (e.g. central limit order book, quote driven market). The transaction type should include information such as the negotiated trade indicator; crossing trade indicator; modification indicator; benchmark indicator; ex/cum dividend indicator as defined under taxonomy developed for post-trade transparency purposes under Regulation (EU) No 600/2014. This taxonomy shall be harmonized with pre- and post-trade transparency and transaction reporting developed under Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments. In order to allow for the comparison of the price of a financial instrument it is necessary to specify the currency code of any reported transaction.

(7) Order driven execution venues permit the publication of additional measures of potential execution quality based on the availability of additional pre- and post-trade data. Therefore order driven markets shall report additional data on execution quality which will support the creation of supplementary execution quality metrics which rely on the existence of full pre and post-trade transparency data. For example, these execution venues shall report metrics on their average effective and realised spreads, best bids and offers, depth weighted spreads, book depths or order to trade ratios when applicable.

(8) Likelihood means measurements related to the probability of execution of a particular type of order. It is supported by details on trading volumes in a particular instrument, the order size, cancellation and fill ratios. Likelihood of execution shall also be assessed with data on transaction volumes and values, average trade sizes, the volume of order cancellations and the number of failed trades when relevant. This data will allow for the calculation of metrics such as the market share held by any one execution venue in a particular financial instrument or class of financial instruments, and cancellation and fill ratios.

(9) Speed of execution has the meaning set out in Article 4 for order driven execution venues and Article 5 for quote driven execution venues given that the measurement of speed varies by both market mechanism and order type. It excludes the latency of any connection to execution venue which is outside of the control of the execution venue.

(10) The speed of execution will be measured differently depending on the market mechanism and order type and these differences will be reflected in the reporting. The measurement of the speed of execution for order driven markets shall be the time elapsed between receipt of an order and its execution. Flags for different order and transaction types will provide sufficient context for the assessment of speed of execution. To provide a viable benchmark, execution venues operating order driven markets will also be required to publish the average speed of execution for unmodified passive orders at first limit A different measure of the speed of execution is required in quote driven markets to reflect the time between a client submitting a request for quote and the execution venue providing it, as well as the time elapsed between the client's acceptance of that quote and the subsequent execution. The provision of mean and median time elapsed between a request for quote and execution may help, diminishing the impact of client behaviour on the speed of execution in quote driven markets as well as give some useful information on market stress periods.

(11) In order to compare the quality of executions of different sized orders, execution venues will be required to report on transactions within several size ranges. The thresholds for these ranges will be determined for each class of financial instrument to ensure that they provide an adequate sample of executions of a size that is typical in that class of instrument. There shall be different ranges for equities and their derivatives, bonds and their derivatives, commodity and foreign exchange derivatives as well as money market instruments, ETFs and Certificates to reflect differing trading sizes in those instruments. In order to minimize the reporting complexity and granularity derivatives based on existing MIFID cash financial instruments such as shares or bonds shall be assessed in term of the ultimate underlying notional amount. For equities, ETF's and Certificates deemed to be illiquid under Regulation (EU) No 600/2014 Standard Market Size threshold will be the minimum available one.

(12) It is important that execution venues collect data throughout the normal hours of the execution venue operation. Reporting shall be made in electronic format via an internet website that is free and readily accessible to the public to enable users to search, sort and analyse provided data.

(13) Terms not defined in this RTS should be considered under any definitions that occur in Regulation (EU) No 600/2014 or in any RTS developed under it.

HAS ADOPTED THIS REGULATION:

CHAPTER I
General

Article 1
Subject matter

This Regulation lays down the specific content, the format and the periodicity of data relating to the quality of execution to be published in accordance with Article 27(3) of Directive 2014/65/EU, taking into account the type of execution venue and the type of financial instrument concerned for the purposes of Article 27(10)(a) of Directive 2014/65/EU.

Article 2
Definitions

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

1. Execution quality means assessment of price, costs, speed, likelihood of execution and settlement or any other relevant consideration.

2. Best bid and offer (BBO) means the best bid price and the best offer price provided by an execution venue for those looking to buy and sell, respectively, a specific financial instrument for at a given time.

3. Execution venue means a regulated market, multilateral trading facility, organised trading facility, systematic internaliser, and market maker or other liquidity provider.

4. Costs mean all fees, commissions, taxes and regulatory levies imposed or incurred by the execution venue on behalf of the client.

5. Identifier means International Securities Identification Number (ISIN) as defined by ISO6166, AII (Alternative Instrument Identifier) or a Unique Product Identifier available under an alternative taxonomy as defined by RTS under Article 25(2) of Regulation (EU) No 600/2014.

6. Venue identifier means the Market Identifier Code (MIC) or where unavailable the Legal Entity Identifier (LEI).

7. Market mechanism means the way in which an execution venue executes orders.

8. Trading mode means continuous trading, scheduled or unscheduled auction, trading at close, trading out of main session.

9. Transaction type means transaction category as defined under taxonomy developed for post-trade transparency purposes under Article 25(2) of Regulation (EU) No 600/2014.

10. Trading systems means the type of platform the execution venue operates: electronic, voice or outcry.

11. Average effective spread means execution price compared with midpoint of BBO at time of receipt.

12. Average realised spread means execution price compared with midpoint of BBO five minutes after the time of execution (if the execution time is less than five minutes before the close or a halt, the last quote before the close or the halt is used).

13. Time weighted average price (TWAP) means the average price of a security over the course of a specified period of time.

14. Volume weighted average price (VWAP) means the average price weighted by volume, it is measured by the currency value of all trading periods divided by the total trading volume for a specified period of time.

15. Average speed of execution for unmodified passive orders at first limit means the time elapsed between a limit order (that matches the BBO) being received by the execution venue, and the subsequent execution of this order, calculation shall exclude modified orders.

16. LIS is the minimum qualifying transaction size in accordance with Art 4 of the Regulation (EU) No 600/2014.

17. Standard Market Size means the Standard Market size defined in accordance with Article 14 of the Regulation (EU) No 600/2014.

Article 3

Content of information to be published by all execution venues

1. The information to be published shall include for each execution venue the following information:

(a) the name, identifier and country of location of the venue;

(b) the date for which the information relates, ISO 8601 date format. UTC time shall be used;

(c) the nature and duration of any outage or trading suspension or scheduled auctions on that day; and

(d) the duration of trading interruptions as the result of any volatility auction or circuit breaker which occurred in relation to any instrument on that day;

2. The information to be published shall include for each financial instrument available to trade on each execution venue the following information relevant to the each financial instrument:

(a) name and financial instrument identifier;

(b) where (a) is unavailable the instrument identification type and classification;

(c) name and ultimate underlying instrument identifier;

(d) ultimate underlying instrument identification type and classification (when applicable);

(e) price multiplier (number of units of the underlying instrument represented by a single derivative contract);

(f) put/call identifier;

(g) strike price;

(h) option style (exercise);

(i) maturity date;

(j) early termination date;

(k) delivery type;

(l) currency 1 (ISO 4217);

(m) currency 2 (currency in which the reference price of the ultimate underlying is expressed);

(n) price notation (indication as to whether the price is expressed in monetary value, in percentage or in yield);

(o) quantity notation whether the quantity is expressed in number of units or in nominal value; and

(p) classification of equity, where applicable, as defined in Article 4 of the regulatory technical standards under Article 27(10)(b) of MiFID II.

3. The information to be published shall include for each financial instrument available to trade on each execution venue the following information relevant to the likelihood of execution, when applicable:

(a) the number of orders or requests for quotes, both in terms of volume and value, that were received on that day;

(b) the number of transactions, both in terms of volume and value, that were executed on that day;

(c) the number of orders or accepted/released quotes, both in terms of volume and value, that were cancelled on that day;

(d) the number of orders, both in terms of volume and value, that were modified on that day;

(e) the mean and median transaction size on that day;

(f) the mean and median transaction price on that day;

(g) Volume weighted average price on that day; and

(h) Market makers shall also indicate the daily total value of exchange-traded product units created and redeemed at their request.

4. The information to be published shall include for each financial instrument available to trade on each execution venue the following information relevant to the execution price:

(a) the price excluding commission and where relevant accrued interest executed for a purchase immediately after each of 9.00.00, 11.00.00, 13.00.00 and 15.00.00 UTC each day for order sizes in the ranges set out in Article 6 for each financial instrument;

(b) the price excluding commission and where relevant accrued interest executed for a sale immediately after each of the reference times in (a) for order sizes in the ranges set out in Article 6 for each financial instrument;

(c) the execution time for each executed transaction referred to in (a) and (b);

(d) the transaction size for each executed transaction referred to in (a) and (b);

(e) whether the order was a market or a limit order for each executed transaction referred to in (a) and (b);

(f) the time the order was received or quote released by the execution venue for each executed transaction referred to in (a) and (b);

(g) the time elapsed (to the mili-second) between a market order being received by the execution venue and the subsequent execution for an order driven execution venue for each executed transaction referred to in (a) and (b);

(h) the time elapsed between the acceptance/release of a quote and the subsequent execution when applicable for a quote driven execution venue for each executed transaction referred to in (a) and (b);

(i) the market mechanism and, where applicable, the trading mode under which the transactions were executed;

(j) the trading system under which the transactions were executed;

(k) the transaction type; and

(l) the benchmark price applicable for each executed transaction referred to in (a) and (b).

5. The information to be published shall include for each financial instrument available to trade on each execution venue the following information for the reporting period relevant to the execution costs:

(a) a description of each component of the costs imposed by the execution venue;

(b) the total value of any costs;

(c) the total value of any rebate, discounts or other payment offered to the parties; and

(d) the existence of any non-monetary benefit received by the execution venue in connection with the order.

Article 4

Additional data to be published by order driven execution venues

1. Order driven execution venues shall submit the following additional information for each executed transaction as reported in Article 3 (4)(a) and (b) at the reference times as specified in Article 3(4)(a):

(a) the best bid and offer price (BBO) and corresponding volumes;

(b) depth weighted spread at the top end of each range specified in Article 6; and

(c) book depth, representing the total available liquidity, expressed as the product of price and volume of all bids and offers during a 30 second period after the reporting time that are within 50 basis points of the mid-point of the best bid and offer.

2. For each financial instrument available to trade on each order driven execution venue in for each trading day:

(a) average effective spread;

(b) average realised spread;

(c) volume-weighted average effective spread;

(d) volume weighted average realised spread;

(e) time weighted average price (TWAP);

(f) average volume at BBO;

(g) average spread at BBO;

(h) book depth at 3 ticks, representing the total available liquidity, expressed as the product of price and volume of all bids and offers for 3 price increments (ticks) for each financial instrument from the BBO;

(i) book depth at 5 ticks, representing the total available liquidity, expressed as the product of price and volume of all bids and offers for 5 price increments (ticks) for each financial instrument from the BBO;

(j) previous day closing price;

(k) opening price;

(l) highest executed price of the day;

(m) lowest executed price of the day;

(n) last price before closing;

(o) the mean and median time elapsed (to the mili-second) between a market order being received, by the execution venue and the subsequent execution; and

(p) average speed of execution for unmodified passive orders at first limit.

Article 5

Additional data to be published by quote driven execution venues

1. Quote driven execution venues shall submit the following additional information for each executed transaction as reported in Article 3 (4)(a) and (b) at the reference times as specified in Article 3(4)(a), when applicable, the time elapsed between a request for quote and provision of that quote.

2. For each financial instrument available to trade on each quote driven execution venue for each trading day:

(a) the mean and median time elapsed between acceptance/release of a quote and execution, for all transactions in a given financial instrument; and

(b) the mean and median time elapsed between a request for a quote and provision of that quote, for all quotes in a given financial instrument when applicable.

Article 6

Determination of reporting ranges by execution venues

1. Execution venues shall categorise their reporting by financial instrument.

2. Derivatives based on existing MIFID cash financial instruments such as shares or bonds shall be assessed in term of the ultimate underlying notional amount.

3. Execution venues shall report the execution of purchases and sales specified in Article 3 (4)(a) and (b) in below specified ranges.

(a) For shares and depositary receipts, options, futures and any other derivatives contracts relating to shares or depositary receipts:

(i) range 1: Greater than zero and less than or equal to Standard Market Size;

(ii) range 2: Greater than Standard Market Size and less than or equal to LIS; and

(iii) range 3: Greater than LIS.

(b) For ETF's

(i) range 1: Greater than zero and less than or equal to Standard Market Size;

(ii) range 2: Greater than Standard Market Size and less than or equal to LIS; and

(iii) range 3: Greater than LIS.

(c) For certificates

(i) range 1: Greater than zero and less than or equal to Standard Market Size;

(ii) range 2: Greater than Standard Market Size and less than or equal to LIS; and

(iii) range 3: Greater than LIS.

(d) For debt securities, options, futures, swaps, forward rate agreements and any other derivative contracts relating to debt securities trading size:

(i) range 1 is greater than €0 and less than or equal to €1M;

(ii) range 2 is greater than €1M and less than or equal to €5M;

(iii) range 3 is greater than €5M and less than or equal to €10M;

(iv) range 4 is greater than €10M and less than or equal to €25M;

(v) range 5 is greater than €25M and less than or equal to €50M;

(vi) range 6 is greater than €50 and less than or equal to €100M; and

(vii) range 7 is greater than €100M.

(e) For commodity derivatives

(i) range 1 expressed in value of the derivative instrument is greater than €0 and less than or equal to €50,000;

(ii) range 2 is greater than €50,000 and less than or equal to €500,000; and

(iii) range 3 is greater than €500,000.

(f) For foreign exchange derivatives

(i) range 1 expressed in value of the derivative instrument is greater than €0 and less than or equal to €50,000;

(ii) range 2 is greater than €50,000 and less than or equal to €500,000; and

(iii) range 3 is greater than €500,000.

(g) For money market instruments

(i) range 1 is greater than €0 and less than or equal to €1M;

(ii) range 2 is greater than €1M and less than or equal to €5M;,

(iii) range 3 is greater than €5M and less than or equal to €10M;

(iv) range 4 is greater than €10M and less than or equal to €25M;

(v) range 5 is greater than €25M and less than or equal to €50M;

(vi) range 6 is greater than €50 and less than or equal to €100M; and

(vii) range 7 is greater than €100M.

Article 7

Format of the information to be published

1. The content set out in this Annex shall be recorded for each trading day that the execution venue is open for trading. The tables attached sets out the prescribed format for the publication of this information.

2. Execution venues shall make available the data in a consistent, usable, and machine-readable electronic format and make such reports available for downloading from an internet web site that is free and readily accessible to the public.

Article 8

Frequency of the information to be published

The reporting period shall commence on the first of each calendar month to the last day of that month for each month of the year. This data shall be published without charge within one month at each quarter end.

Article 9

Entry into force

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

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

Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]

Annex I

Information required under Article 3(1)

Date		
Venue	Name	Identifier
Country	Name	
Scheduled Auction	Number	Aggregate duration
Outages	Number	Aggregate duration
Circuit Breakers	Number	Aggregate duration
Trading suspensions	Number	Aggregate duration

Information required under Article 3(2)

Financial Instrument	Name	Identifier
Currency 1	Name	
Currency 2	Name	
Country		
Ultimate underlying financial instrument	Name	Identifier
Classification of equity		
Price multiplier		
Put/call identifier		
Strike price		
Option style		

Maturity date	
Early termination date	
Delivery type	
Price notation	
Quantity notation	

Information required under Article 3(3)

Orders or request for quotes received for that day	Volume	Value
Orders executed for that day	Volume	Value
Orders or accepted quotes cancelled for that day	Volume	Value
Orders modified for that day	Volume	Value
Mean transaction for that day	Size	Price
Median transaction for that day	Size	Price
Volume weighted average price for that day	Volume	Value
Daily total value of exchange-traded product units created and redeemed by market makers for that day	Volume	Value

Information required under Article 3(4) and Article 6

		First Buy/Sell Order after time T											
Time (T)	Category of order size	Executed price (excluding commissions)	Executed time	Time order received or quote released	Time elapsed between order and execution (miliseconds) or time elapsed between acceptance /release of a quote and the subsequent execution	Transaction size	Order type	Notional value (for derivatives) under Article 6(2)	Range as defined under Article 6	Market mechanism and trading mode	Trading system	Transaction type	Benchmark price
09.00.00													
11.00.00													
13.00.00													
15.00.00													

Information required under Article 3(5)

Each component of cost	Description
Total value of any costs	Value
Total value of all rebates, discounts, or other payments offered	Value
Non-monetary benefits offered	Description

Information required under Article 4(1)

Time	Best Bid Price	Best Offer Price	Bid Size	Offer Size	Depth-weighted Spread at the top end of each range	Book depth within 50bps liquidity
9.00.00						
11.00.00						
13.00.00						
15.00.00						

Information required under Article 4(2)

Average effective spread		
Average realised spread		
Volume-weighted average effective spread		
Volume-weighted average realised spread		
Time weighted average price		
Average volume at BBO		
Average spread at BBO		

Book depth at 3 ticks		
Book depth at 5 ticks		
Previous day closing price		
Opening price		
Highest executed price of the day		
Lowest executed price of the day		
Last price before closing		
Mean time elapsed (to the mili-second) between a market order being received by the execution venue and the subsequent execution		
median time elapsed (to the mili-second) between a market order being received by the execution venue and the subsequent execution		
Average speed of execution for unmodified passive orders at first limit price		

Information required under Article 5

Time	Time elapsed between acceptance/release and execution		Time elapsed between request and provision of quote	
	Mean	Median	Mean	Median
9.00.00				
11.00.00				
13.00.00				
15.00.00				

RTS 7: Draft regulatory technical standards under Article 27(10)(b) of MiFID II

DRAFT COMMISSION DELEGATED REGULATION (EU) No …/..

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 the identity of execution venues to which they execute client orders and information on the quality of execution obtained.

THE EUROPEAN COMMISSION,

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

Having regard to Having regard Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council (recast), and in particular Article 27.

Whereas:

(1) These regulatory technical standards (hereinafter referred to as RTS) establish the specific content and format of information to be published by investment firms in accordance with Article 27(6) of Directive 2014/65/EU. This information shall indicate the top five execution venues in terms of trading volumes where firms have executed client orders in the preceding year. It also includes information on the quality of execution obtained as undertaken pursuant to Article 27(3) and (6) of Directive 2014/65/EU and based on internal monitoring of execution quality pursuant to Article 27(7) 2014/65/EU. It shall provide clients with tools to help them evaluate the quality of an investment firm's execution practices and compliance with its execution policy.

(2) The information published under this RTS shall be provided in respect of each class of financial instrument. It is necessary to define a class of financial instrument so that the characteristics of instruments within that class, and the execution venues on which they are traded, are comparable. A class of financial instrument needs to be small enough to reveal differences in order execution behavior between classes but large enough to ensure that the reporting obligation on investment firms is proportionate. Class of financial instrument is therefore set with reference to the liquidity characteristics of financial instruments, in accordance with the financial instruments taxonomy developed under Article 9(5) of Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments. Given the breadth of the equity class of financial instruments, it is appropriate to further sub-divide this class based on average daily turnover (ADT) which reflect the differing liquidity of equity like instruments. Money market instruments as defined in the technical advice provided to the Commission in respect of Directive 2014/65/EU MiFID II on "Delineation between bonds, structured

finance products and money markets instruments" are not included in that taxonomy as they are not subject to transparency rules. They are added to these RTS in order to cover the entire range of financial instruments as defined in Annex I, Section C of the Directive 2014/65/EU.

(3) When publishing the identity of the top five execution venues on which they execute client orders it is appropriate for investment firms to report the volume and number of orders executed on each execution venue to provide adequate context for investors. To prevent potentially market sensitive disclosures, the volume of execution and the number of executed orders shall be expressed as a percentage of the investment firm's total execution volumes and number of trades rather than as an absolute value.

(4) It is appropriate to require investment firms to publish additional information which is relevant to their order execution behaviour, including a breakdown of orders executed on each of the top five execution venues by the category of client originating the order. In order to ensure that investment firms are not held accountable for order execution decisions for which they are not responsible it is appropriate 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.

(5) There are several factors which may potentially influence the order execution behavior of investment firms. These include the existence of close links between investment firms and execution venues; the value of any rebate or other third party payment or non-monetary benefit from an execution venue to an investment firm; the costs incurred by an investment firm in executing an order on a particular execution venue and the existence of any other conflict of interest pursuant to Article 23 and 24 of Directive 2014/65/EU. Given the potential materiality of these factors it is appropriate to require their disclosure alongside the identity of the top five execution venues.

(6) Where client orders, that are executed OTC are trade reported to an execution venue, the identity of the firm submitting the trade report (which is the firm executing the order OTC) should be included as a venue in the list of top five venues, where relevant.

(7) Investment firms within the Union have diverse business models and activities that vary widely in scope and scale. For this reason it is not proportionate to require standardised measures of execution quality which do not take account of the individual characteristics of client order execution over which investment firms exercise their judgment. Instead it is proportionate to require investment firms to summarise the order execution monitoring for all execution venues on which orders were executed, that they are required to undertake pursuant to Article 27(7) of Directive 2014/65/EU.

(8) It is appropriate to specify minimum standards for the annual publication of execution quality assessment by investment firms. These minimum standards shall cover the scope of the publication and its essential features, including the use that investment

firms make of the data on execution quality available from execution venues under Regulation **(RTS under 27(10)(a).

(9) Information under this Regulation shall be published annually and shall refer to order execution behaviour for each class of instrument per calendar month in order to capture relevant changes within the preceding calendar year, and any corrective actions taken.

(10) Terms not defined in this RTS should be considered under any definitions that occur in Regulation (EU) No 600/2014 or in any RTS developed under it.

HAS ADOPTED THIS REGULATION:

CHAPTER I
General

Article 1
Subject matter

This Regulation lays down the content and the format of information to be published by investment firms who execute client orders.

Article 2
Definitions

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

1. Execution venue means regulated markets, multilateral trading facilities, organised trading facilities, systematic internalisers, and market makers or other liquidity providers or entities that perform a similar function in a third country to the functions performed by any of the foregoing;

2. Class of financial instrument means the categories of financial instrument set out in Article 4;

3. Costs means all expenses incurred by the client which are directly related to the execution of the order, including execution venue fees, clearing and settlement fees and any other fees paid to third parties involved in the execution of the order;

4. Total consideration means the price of the financial instrument and the costs directly related to the order execution such as venue fees, clearing or settlement and any other fees paid to third parties involved in the order execution;

5. Directed orders means that the firm executed an order where a specific execution venue was specified by the client prior to the execution of the order;

6. Venue identifier means Market Identifier Code (MIC) or where unavailable the Legal Entity Identifier (LEI);

7. Close links is as defined by Directive 2014/65/EU.

Article 3
Scope

1. Investment firms shall publish the information set out in this Regulation for the top five execution venues, in terms of annual trading volumes, of all client orders of each class of financial instrument executed by the investment firm.

2. Investment firms shall publish a summary of execution quality assessments they have undertaken on behalf of their clients.

Article 4
Classes of financial instrument

1. Investment firms shall publish the information set out in this Regulation based on an aggregation of all executions in all instruments within each class of financial instrument.

2. The classes of financial instrument are:

(a) Equities – Shares & Depositary Receipts:

(i) Average Daily Turnover less than or equal to €100,000 (“Equity Category A”);

(ii) Average Daily Turnover greater than €100,000 and less than or equal to €50,000,000, (“Equity Category B”); and

(iii) Average Daily Turnover greater than €50,000,000 (“Equity Category C”).

(b) Bonds:

(i) Corporate Bond & Covered Bonds;

(ii) Sovereign Bond; and

(iii) Convertible Bonds.

3. Structured Finance Products (MBS, ABS).

4. Emission Allowances.

5. Securitised derivatives (including equity rights):

(a) Covered Warrants;

(b) Certificates derivatives;

(c) Negotiated rights;

(d) Structures MTNs; and

(e) Others.

6. Interest Derivatives:

(a) Futures & Options;

(b) Interest swaps & Forward Rate Agreements; and

(c) Others

7. Foreign Exchanges derivatives:

(a) Futures & Options;

(b) Forwards & FX Swaps; and

(c) Others

8. Equity Derivatives:

(a) Futures & Options;

(b) Swaps & Forwards;

(c) Portfolio swaps; and

(d) Others

9. Commodity derivatives:

(a) Precious Metals;

(b) Non-Precious Metals;

(c) Energy;

(d) Index and

(e) Agricultural

10. Credit derivatives.

11. Other derivatives:

    (a) Environmental;

    (b) Freights; and

    (c) Exotic

12. Contracts for difference.

13. Exchange traded funds.

14. Money Market Instruments:

    (a) Treasury Bills;

    (b) Certificates of Deposits and Commercial papers; and

    (c) Others.

15. Certificates.

Article 5

Content of information on the top five execution venues

1. The information to be published for all client orders of each class of financial instrument executed by the investment firm in each month of the year shall include the following:

2. The name of the class of financial instrument executed;

3. For the class of financial instrument referenced under (1), the top five execution venues by trading volume expressed as a percentage of all client orders in that class of instrument;

4. For each of the top five execution venues the number of orders executed on that execution venue in numbers and in percentage of total executed orders in that class of instrument;

5. For each of the top five execution venues the percentage of passive and aggressive orders executed on that execution venue;

6. For each of the top five execution venues the breakdown of the percentage of client orders between retail clients, professional clients and eligible counterparties respectively;

7. For each of the top five execution venues the percentage of client orders that was directed by the client to be executed on that execution venue;

8. For each of the top five execution venues the existence of close links;

9. For each of the top five execution venues the existence and monthly value of any payments, discounts or rebates received from the execution venue together with a description of the nature of any non-monetary benefits;

10. For each of the top five execution venues the monthly value of fees and charges paid to that execution venue expressed as a percentage of the firm's total costs as defined in this Regulation;

11. For each of the top five execution venues the existence and nature of any conflicts of interest pursuant to Article 23 and 24 of Directive 2014/65/EU;

12. For each of the five execution venues whether they operate an electronic, voice or an open outcry trading platform; and

13. For each of the top five execution venues, where the investment firm executes retail client orders, a link to the relevant section of the official website of the execution venue containing the most recent execution quality published pursuant to Article 27(10)(a) of Directive 2014/65/EU.

Article 6

Content of information on the quality of execution obtained

1. Investment firms shall publish the following information:

   (a) A summary of the analysis and conclusions drawn by the investment firm, on the quality of execution obtained on the execution venues on which it executes client orders for each class of financial instrument as identified under Article 4 addressing the execution factors of price, cost, speed, likelihood of execution, and any other relevant factor.

   (b) Additional quantitative data to be published shall include, information on:

      (i) For each execution venue the percentage of passive and aggressive orders executed on that execution venue;

      (ii) For each execution venue the breakdown of the percentage of client orders between retail clients, professional clients and eligible counterparties respectively;

      (iii) For each execution venue the percentage of client orders that was directed by the client to be executed on that execution venue;

      (iv) For each execution venue the existence of close links;

(v) For each execution venue the monthly value of fees and charges paid to that execution venue expressed as a percentage of the firm's total costs as defined in this Regulation;

(vi) For each execution venue the existence and monthly value of any payments, discounts or rebates received from the execution venue together with a description of the nature of any non-monetary benefits;

(vii) For each execution venue the existence and nature of any conflicts of interest identified and recorded by the investment firm pursuant to Article 23 of Directive 2014/65/EU; and

(viii) For each execution venue if they operate an electronic, voice or an open outcry trading platform.

(c) A summary of how the investment firm has used data on execution costs, including rebates, third party payments and other incentives to assess execution quality for retail clients for whom best execution is based on total consideration.

(d) A summary of how the investment firm has used the most recent publication of execution venue execution quality monitoring that will be implemented under Article 27(10)(a) of Directive 2014/65/EU.

(e) A summary of how the investment firm has used, if applicable, output of a consolidated tape provider established under Article 65 of Directive 2014/65/EU which will allow for the development of enhanced measures of execution quality or any other algorithms used to optimize and assess execution performances.

Article 7

Format of the information to be published

The Annex attached to this Regulation sets out the prescribed format for the publication of the information under Article 5.

Article 8

Frequency of the information to be published

1. The information to be published by each investment firm under Article 5 and 6 should relate to client orders executed from the first day to the last day of each calendar year for the previous calendar year and the data should be aggregated for each month of the financial year.

2. The information required under Articles 5 and 6 shall be published without charge within one month of the previous year end.

Article 9

Entry into force

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

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

Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]

Annex I: Information required under Article 5

Class of instrument														
Top 5 venues	Volume of orders executed on this as percentage of total	Numbers of orders executed on this execution venue	Percentage of passive orders executed on execution venue	Percentage of aggressive orders executed on execution venue	Retail as percentage of total on execution venue	Professional as percentage of total on execution venue	ECP as percentage of total on execution venue	Percentage of orders at execution venue that are directed orders	Disclosure of close links	Payments, discounts, rebates and non-monetary benefits received from execution venue	Execution costs incurred on execution venue as percentage of total executions costs incurred by the investment firm	Disclosure of conflicts of interest	Trading systems operated	Execution venue website lin
Name and Venue Identifier														
Name and Venue identifier														
Name and venue identifier														
Name and venue identifier														
Name and venue identifier														

CHAPTER 3: TRANSPARENCY

RTS 8: Draft regulatory technical standards on transparency requirements in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments and on the trading obligation for investment firms

COMMISSION DELEGATED REGULATION (EU) No …/..

of [date]

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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, and in particular Article 4(6), Article 7(2), Article 14(7), Article 20(3) and Article 23(3) thereof,

Whereas:

(1) The provisions in this Regulation are closely linked, since they deal with the transparency requirements applicable to trading venues and investment firms in regard 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 and in particular those subject to the obligations it is desirable to include most of the regulatory technical standards in a single Regulation.

(2) The transparency requirements aim to ensure that investors have reliable and timely information about the level of trading interest in financial instruments. Information on

securities financing transactions, primary market transactions and other technical transactions such as give-ups and give-ins would not provide meaningful information to investors in regard to the level of genuine trading interest in a financial instrument. Requiring investment firms to report those transactions would cause significant operational challenges and costs without improving the price formation process. Given the wide scope of Regulation (EU) No 600/2014, it is hence appropriate to extend the list of transactions which are neither considered transactions for the purposes of the transparency regime nor for the purposes of the definition of systematic internaliser in shares, depositary receipts, ETFs, certificates and other similar financial instruments.

(3) Regulation 600/2014 brings within the scope of the transparency regime equity-like instruments such as ETFs as well as shares not admitted to trading on a regulated market. It is necessary, in order to establish a comprehensive and harmonised transparency regime, to update Table 3 of Annex I of the Regulation (EU) No 1287/2006 by calibrating the content of the pre-trade information to be made public by trading venues operating request for quote trading systems. Any reference to prices, orders, bids and offers in this Regulation in respect to pre-trade transparency requirements extends to actionable indication of interests which are, according to Article 2(1)(33) of Regulation (EU) No 600/2014, messages between members or participants of a trading venues containing all the necessary information to agree to a trade. An actionable indication of interest would normally consist of a binding expression to buy or sell a given quantity of a financial instrument at a given price. It is not the intention of this Regulation to require regulated markets and multilateral trading facilities to operate any particular trading system provided that the functionality that brings together buying and selling trading interest is capable of providing adequate information as to the level of trading interest in the system.

(4) Order management facilities, which include reserve orders and stop orders are technical functionalities commonly operated by trading venues to facilitate order handling and execution by market participants. Those orders may benefit from a waiver from pre-trade transparency provided that those orders comply with the principles established in this regulation which aims at avoiding the use of those functionalities to circumvent transparency and other requirements established by Regulation (EU) No 600/2014.

(5) This regulation should provide clarity about which investment firm should make the information of a transaction public when both the buyer and the seller are EEA investment firms. When the transaction is executed between an EEA investment firm and a counterparty outside EEA, the former should make the transaction public.

(6) Information which is required to be made available as close to real time as possible should be made available as close to 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 maximum time limit

specified under Article 17(1) of this Regulation in exceptional cases where the systems available do not allow for a publication in a shorter period of time.

(7) Transactions should only be published under Article 20 of Regulation (EU) 600/2014 in the cases of the purchase and sale of a share, depositary receipt, ETF, certificate and other similar financial instrument. If transactions involve 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, such transactions should not be published as they do not contribute to the price discovery process and would only blur the picture for investors and be a hindrance to achieving best execution.

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

(9) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and the Council establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC [7], in developing the draft regulatory technical standards on which this Regulation is based, ESMA has conducted open public consultations, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of that Regulation.

HAS ADOPTED THIS REGULATION:

Section 1
Definitions and scope

Article 1
Definitions

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

(1) ’reserve order‘ means 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;

(2) ‘market order’ means an order to buy or sell a financial instrument without any specified price limit that is immediately executable at prevailing market conditions;

[7] OJ L 331, 15.12.2010, p. 84.

(3) ’stop order‘ means a non-disclosed order that is released to the order book for disclosure once an event of a specified kind occurs in the order book;

(4) ’portfolio trade‘ means a transaction in more than one financial instrument where those financial instruments are grouped together and traded as a single lot against a specific reference price;

(5) ’normal trading hours‘ for a trading venue or an investment firm means those hours which the trading venue or investment firm establishes in advance and makes public as the trading hours;

(6) ’securities financing transactions‘ means an instance of stock lending or stock borrowing or the lending or borrowing of other financial instruments, a repurchase or reverse repurchase transaction, or a buy-sell or sell-buy back transaction;

(7) ’turnover‘, in relation to a financial instrument, means the sum of the results of multiplying the number of units of that instrument exchanged between the buyers and sellers in a defined period of time, pursuant to transactions taking place on a trading venue or otherwise, by the unit price applicable to each such transaction;

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

Article 2

Transactions not contributing to the price discovery process

[Article 23(3) of Regulation (EU) No 600/2014]

For the purposes of Article 23 of Regulation (EU) No 600/2014 a transaction in shares admitted to trading or traded on a trading venue does not contribute to the price discovery process where:

(a) the transaction is 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;

(b) the transaction is part of a portfolio trade that involves the execution of 10 or more shares from the same client and at the same time and the single components of the trade are meant to be executed only as a single lot;

(c) the transaction is contingent on a derivative contract having the same underlying and where all the components of the trade are meant to be executed only as a single lot;

(d) the transaction is executed in the context of an investment firm that provides portfolio management services and transfers the beneficial ownership of a share from one fund to another and where no other investment firm is involved;

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

(f) the transaction is for the purpose of transferring financial instruments as segregated collateral in bilateral transactions or in the context of a CCP margin and collateral requirements;

(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; or

(h) the transaction is a securities financing transaction.

Section 2
Pre-trade transparency for trading venues

Article 3
Pre-trade transparency obligations

[Article 4(6)(a) of Regulation (EU) No 600/2014]

1. For the purposes of Article 3 of Regulation (EU) No 600/2014, market operators and investment firms operating a trading venue shall, in accordance with the trading system they operate, make public information in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments that are admitted to trading or traded under their systems as specified in Annex I Table 3.

2. The transparency requirements set in this article shall also apply to actionable indication of interest as defined in Article 2(1)(33) of Regulation (EU) No 600/2014.

Article 4
Most relevant market in terms of liquidity

[Article 4(6)(b) 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 is the trading venue with the highest turnover within the Union for that share, depositary receipt, ETF, certificate or other similar financial instrument.

2. Competent authorities shall calculate for each financial instrument for which they are the compentent authority and for every trading venue in the Union, the total turnover executed in that financial instrument on those venues for a period between 1 January and 31 December.

3. The turnover shall be calculated by each competent authority on the basis of all the transactions executed under the rules of the trading venues for which they are the relevant competent authority for the period between 1 January and 31 December of the preceding year and for each financial instrument referred to in paragraph 1.

4. The calculation of the turnover shall exclude all transactions executed in accordance with one of the pre-trade transparency waivers specified in Article 4(1) paragraphs (a) to (c) of Regulation (EU) No 600/2014.

5. In accordance with paragraph 1, competent authorities shall maintain a list of the most relevant markets in terms of liquidity in respect of each financial instrument for which they are the competent authority and make it public not later than on the first trading day of March of each year.

Article 5

Specific characteristics of negotiated transactions

[Article 4(6)(c) of Regulation (EU) No 600/2014]

For the purpose of Article 4(1)(b) of Regulation (EU) No 600/2014 a negotiated transaction in a share, depositary receipt, ETF, certificate or other similar financial instrument means a transaction involving members or participants of a regulated market or a MTF which is negotiated privately but reported under the rules of a regulated market or an MTF and where those members or participants in doing so undertakes one of the following tasks:

(a) dealing on own account with another member or participant who acts for the account of a client;

(b) dealing with another member or participant, where both are executing orders on own account;

(c) acting for the account of both the buyer and the seller;

(d) acting for the account of the buyer, where another member or participant acts for the account of the seller; or

(e) trading on own account against a client order.

Article 6

Negotiated transactions subject to conditions other than the current market price

[Article 4(6)(d) of Regulation (EU) No 600/2014]

For the purposes of Article 4(1)(b) of Regulation (EU) No 600/2014 a negotiated transaction in a share, depositary receipt, ETF, certificate or other similar financial instrument does not contribute to the price formation process where:

(a) the transaction is 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;

(b) the transaction is part of a portfolio trade that involves the execution of 10 or more financial instruments from the same client and at the same time and the components of the trade are meant to be executed only as a single lot;

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

(d) the transaction is contingent on a derivative contract having the same underlying and where all the components of the trade are meant to be executed only as a single lot; or

(e) the transaction is contingent on technical characteristics which are unrelated to the current market valuation of that financial instrument.

Article 7

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

[Article 4(6)(e) of Regulation (EU) No 600/2014]

1. For the purposes of Article 4(1)(d) of Regulation (EU) No 600/2014 competent authorities may waive orders held in an order management facility of the trading venue from pre-trade transparency obligations where:

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

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

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

2. Reserve orders, stop orders and other orders that comply with the first paragraph shall be considered as orders held in an order management facility.

3. Market operators or the Investment firm operating a trading venue shall ensure that all orders held in an order management facility are at the point of entry and following any amendment not smaller than the minimum tradable quantity set in advance by the system's operator under its rules and protocols. The minimum size of a reserve order shall be, at the point of entry and following any amendment, not smaller than EUR 10 000.

Article 8

Size of orders which are large in scale

[Article 4(6)(e) of Regulation (EU) No 600/2014]

1. For the purposes of Article 4(1)(c) of Regulation (EU) No 600/2014 an order shall be considered to be large in scale compared with normal market size if, at the point of entry or following any amendment, it is equal to or larger than the minimum size of orders specified in Annex II, Tables 2 to Table 4 as applicable.

2. Competent authorities shall calculate the average daily turnover in respect of each share, depositary receipt, ETF, certificate and other similar financial instrument for which they are the competent authority. The calculation shall take into account all the transactions executed in the Union in respect of the financial instrument between 1 January and 31 December of the preceding year, or, where applicable, that part of the year during which the financial instrument was admitted or traded on a trading venue and was not suspended from trading. This paragraph shall not apply to a share, depositary receipt, ETF, certificate and other similar financial instrument which was first admitted to trading or traded on a trading venue four weeks or less before the end of the preceding year, in which case the average daily turnover specified in paragraph 4 shall apply.

In the calculations of the average daily turnover, non-trading days in the Member State of the relevant competent authority for that financial instrument shall be excluded.

3. Competent authorities shall ensure the publication of the average daily turnover referred to in paragraph 2 not later than on the first trading day of March of each year and this new average daily turnover shall apply from the first trading day of the following month.

4. Before a share, depositary receipt, ETF, certificate or other similar financial instrument is first admitted to trading or traded on a trading venue, competent authorities shall provide estimates of the average daily turnover for this financial instrument.

The estimate shall apply during the six-week period following the share, depositary receipt, ETF, certificate or other similar financial instrument is admitted to trading or traded on a

trading venue, or the end of that period, as applicable, and shall take into account any previous trading history of that financial instrument, as well as that of other financial instruments that are considered to have the similar characteristics.

Before the end of the six-week period, the average daily turnover shall be calculated on the basis of the first four weeks of trading.

5. During the course of a calendar year updated calculations of the average daily turnover and the average value of transactions shall be provided whenever there is a change in relation to a share, depositary receipt, ETF, certificate and other similar financial instrument which significantly affects the previous calculations on an ongoing basis.

6. Unless the price or other relevant conditions for the execution of an order are amended, the waiver from the obligation referred to in Article 3(1) of Regulation (EU) No 600/2014 shall continue to apply in respect of orders that are large in scale compared with normal market size when entered into an order book but that fall below the relevant thresholds following partial execution.

Section 3

Pre-trade transparency for investment firms

Article 9

Arrangements for the publication of a firm quote

[Article 14(7) of Regulation (EU) No 600/2014]

For the purposes of 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) it must include all reasonable steps necessary to ensure that the information to be published is reliable, monitored continuously for errors, and corrected as soon as errors are detected;

(b) it must comply with the technical arrangements equivalent to those specified in [Standard regarding the publication of transactions by APAs and CTPs] that facilitate the consolidation of the data with similar data from other sources; and

(c) it must make the information available to the public on a non-discriminatory basis.

Article 10

Prices reflecting prevailing market conditions

[Article 14(7) of Regulation (EU) No 600/2014]

For the purposes of Article 14(3) of Regulation (EU) No 600/2014 the prices published by a systematic internaliser reflect prevailing market conditions where they are close in price to comparable quotes for the same share, depositary receipt, ETF, certificate or other similar financial instrument on trading venues.

Article 11
Standard market size

[Article 14(7) of Regulation (EU) 600/2014]

1. For the purposes of Article 14 (2) and (4) of Regulation (EU) No 600/2014, the standard market size for shares, depositary receipts, ETFs, certificates or other similar financial instruments for which there is a liquid market, shall be determined on the basis of the average value of transactions for each financial instrument and in accordance with Table 1 in Annex II.

2. Competent authorities shall calculate the average value of transactions in respect of each share, depositary receipt, ETF, certificate and other similar financial instrument that is admitted to trading or traded on a trading venue for which there is a liquid market and for which they are the competent authority. The calculation of the average value of transactions shall take into account all the transactions executed in the Union in respect of the financial instrument in question between 1 January and 31 December of the preceding year, 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. The calculation of the average value of transactions shall exclude transactions that are large in scale compared with the normal market size for that share, depositary receipt, ETF, certificate or other similar financial instrument. This paragraph shall not apply to a share, depositary receipt, ETF, certificate and other similar financial instrument which was first admitted to trading or traded on a trading venue four weeks or less before the end of the preceding year and in this case the average value of transactions specified in paragraph 4 shall apply.

3. Competent authorities shall ensure the publication of the average value of transactions referred to in paragraph 2 not later than on the first trading day of March of each year and this new average value of transactions shall apply from the first trading day of following month.

4. Before a share, depositary receipt, ETF, certificate or other similar financial instrument is first admitted to trading or traded on a trading venue, competent authorities shall provide estimates of the average value of transactions for this financial instrument.

The estimate shall apply during the six-week period following the share, depositary receipt, ETF, certificate or other similar financial instrument is admitted to trading or traded on a trading venue, or the end of that period, as applicable, and shall take into account any

previous trading history of that financial instrument, as well as that of other financial instruments that are considered to have the similar characteristics.

Before the end of the six-week period, the average value of transactions shall be calculated on the basis of the first four weeks of trading.

5. During the course of a calendar year updated calculations of the average value of transactions shall be provided whenever there is a change in relation to a share, depositary receipt, ETF, certificate and other similar financial instrument which significantly affects the previous calculations on an ongoing basis.

Section 4

Post-trade transparency for trading venues and investment firms

Article 12

Post-trade transparency obligations

[Articles 7(2)(a) and 20(3)(a) of Regulation (EU) No 600/2014]

1. Investment firms trading outside a trading venue and market operators and investment firms operating a trading venue shall, with regard to transactions executed in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments, make public the details of a transaction specified in Table 1 in Annex I and, for that purpose, use the appropriate flags listed in Table 2 in Annex I.

2. The details and flags specified under paragraph 1 shall be made public either by reference to each transaction or in a form aggregating the volume and the price of all transactions in the same share, depositary receipt, ETF, certificate and other similar financial instrument taking place at the same price and at the same time.

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

4. Where an amendment of a previously published trade report has to be made, investment firms trading outside a trading venue and market operators and investment firms operating a trading venue shall:

(a) make public a new trade report which contains all the details of the original trade report and the cancellation flag as specified in Table 2 in Annex I; and

(b) make public a new trade report which contains all the details of the original trade report except for those details that are corrected and the amendment flag as specified in Table 2 in Annex I.

Article 13
Application of OTC post-trade transparency to certain transactions

[Article 20(3)(b) of Regulation (EU) No 600/2014)]

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

(a) transactions included under Article 12(2) of Regulation (EU) No xxx/20xx [Transaction Reporting RTS] where applicable;

(b) securities financing transactions;

(c) the exercise of options, covered warrants or convertible bonds;

(d) primary markets transactions (such as the issuance, allotment or subscription, placements and the exercise of pre-emption rights);

(e) give-ups and give-ins;

(f) transfers of financial instruments as segregated collateral in bilateral transactions or in the context of a CCP margin and collateral requirements.

Article 14
Transactions between investment firms

[Articles 20(3)(c) of Regulation (EU) No 600/2014]

1. 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, the investment firm that sells the financial instrument concerned shall be responsible for making the transaction public through an APA.

2. By way of derogation to the previous paragraph, if only one of the investment firms party to the transaction is a systematic internaliser in the given instrument, that firm shall report the transaction, informing the seller of the action taken.

3. Investment firms shall take all reasonable steps to ensure that the transaction is made public as a single transaction. For those purposes 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 15
Deferred publication of large transactions

[Article 7(2)(c) and 7(2)(d) of Regulation (EU) No 600/2014]

1. The deferred publication of information specified in Article 12 in respect of a transaction may be authorised by competent authorities in accordance with Article 7(1) of Regulation (EU) No 600/2014, for a period no longer than the relevant period specified in Tables 5 to 7 in Annex II for the corresponding class of share, depositary receipt, ETF, certificate or other similar financial instrument, provided that the following criteria are satisfied:

(a) the transaction is 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

(b) the size of the transaction is equal to or exceeds the relevant minimum qualifying size, as specified in Tables 5 to 7 in Annex II as appropriate.

2. In order to determine the relevant minimum qualifying size for the purposes of point (b) of paragraph 1, all shares, depositary receipts, ETFs, certificates and other similar financial instruments shall be classified in accordance with their average daily turnover to be calculated in accordance with Article 8.

3. For transactions for which, in accordance with paragraph 1, deferred publication is permitted until the end of the trading day, investment firms trading outside a trading venue and market operators and investment firms operating a trading venue shall make public the details of those transactions:

(a) as close to real-time as possible after the end of the closing auction; or

(b) before the opening of the next trading day for transactions executed within 2 hours before the end of the trading day.

Article 16
References to trading day

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

2. A reference to the opening of the trading day shall be a reference to the commencement of the normal trading hours of the trading venue.

3. A reference to the end of the trading day shall be a reference to the end of its normal trading hours.

Article 17
Real time publication of transactions

[Article 7(2)(b) of Regulation (EU) No 600/2014]

1. For the purposes of Article 6(1) and Article 20(1) of Regulation (EU) No 600/2014 post-trade information relating to transactions shall be made available as close to real-time as is technically possible and in any case within one minute of the relevant transaction.

2. Information relating to a portfolio trade shall be made available with respect to each constituent transaction as close to real-time as is technically possible, having regard to the need to allocate prices to particular shares, depositary receipts, ETFs, certificates and other similar financial instruments. Each constituent transaction shall be assessed separately for the purposes of determining whether deferred publication in respect of that transaction is available under Article 15.

3. Post-trade information relating to transactions taking place on a trading venue but outside its normal trading hours shall be made public before the opening of the next trading day of the trading venue on which the transaction took place.

4. For transactions that take place outside a trading venue, post-trade information shall be made public:

(a) if the transaction takes place during normal trading hours of the most relevant market in terms of liquidity in accordance with Article 4 for the share, depositary receipt, ETF, certificate or other similar financial instrument concerned, or during the investment firm's normal trading hours, as close to real time as possible.;

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

Article 18
Entry into force

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

It shall apply from 3 January 2017.

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

Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]

Annex I: information to be made public

Table 1

List of fields for the purpose of post-trade transparency

Field identifier	Description	Format to be populated by MDRWG
Trading day	Date when the transaction was executed. For OTC transactions, the date when the parties agree the content of the following fields: quantity, quantity notation, price, price notation, currencies 1 and 2, price multiplier, instrument identification, instrument classification and underlying instrument, where applicable	ISO 8601 date format: YYYY-MM-DD UTC time
Trading time	Time when the transaction was executed. For OTC transactions, the time when the parties agree the content of the following fields: quantity, quantity notation, price, price notation, currencies 1 and 2, price multiplier, instrument identification, instrument classification and underlying instrument, where applicable	ISO 8601 time format hh:mm:ss.0Z where the number of zeros after the 'seconds' is determined by the Article 50 MiFID II requirements UTC time
Instrument identification code type	Code type used to identify the financial instrument	I = ISIN, A = AII
Instrument identification	Code used to identify the financial instrument	Where Instrument identification code type is I, ISO 6166 ISIN Where Instrument identification code type is A, AII venue + Exchange Product Code (16 alphanumerical characters)
Unit price	Traded price of the transaction excluding, where applicable, commission and accrued interest unless the instrument is traded with a dirty price Where no price is available, a default value shall be used If the agreed price is zero a price of zero should be used.	Up to 20 numerical digits with a decimal separator Where price reported in monetary terms, it shall be provided in the major currency unit Where applicable, values should be rounded and not truncated
Currency	Currency in which the price is expressed.	ISO 4217 Currency Code, 3 alphabetical characters
Quantity	Number of units of the financial instruments.	Up to 20 numerical digits with a decimal separator No negative or nil values Where applicable, values should be rounded and not truncated

Venue of execution	Identification of the venue by a unique code.	MiFID trading venue or non-EEA valid trading market: ISO 10383 segment MIC (4 characters) For financial instruments admitted to trading or traded on a trading venue, where the transaction on that financial instrument is executed over-the-counter: XOFF 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: SI Where an investment firm does not know it is trading with another investment firm acting as a SI: XOFF For financial instruments where the underlying is a financial instrument admitted to trading or traded on a trading venue and where the transaction on the main financial instrument is executed over-the-counter: XXXX For financial instruments traded on a non-EEA valid trading venue for which a valid MIC is not assigned: NEEA

Table 2

List of flags for the purpose of post-trade transparency

Flag	Name	Type of execution venue	Definition
'B'	Benchmark trade	RM, MTF, OTC	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.
'X'	Agency cross trade	RM, MTF, OTC	Transactions where an investment firm has brought together clients' orders with the purchase and sale conducted as one transaction and involving the same volume and price.
'G'	Non-price forming trades	RM, MTF	All types of transactions listed under Article 2 of this Regulation and which do not contribute to the price formation.
'S'	Special dividend trades	RM, MTF, OTC	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.
'T'	Technical trade	RM, MTF, OTC	Transactions not contributing to the price formation process as per Article 2.
'L'	Large in scale	RM, MTF	Transactions executed under a pre-trade transparency waiver in accordance with Article 4(1)(c) of Regulation (EU) 600/2014.
'D'	Deferred publication	RM, MTF, OTC	Transactions that are large in scale compared with normal market size for which deferred publication is

			permitted under Article 14.
‘R’	Reference price	RM, MTF	Transactions which are executed under systems operating in accordance with Article 4(1)(a) of Regulation (EU) 600/2014.
‘N’	Negotiated transactions in liquid financial instruments	RM, MTF	Transactions executed in accordance with Article 4(1)(b)(i) of Regulation (EU) 600/2014.
‘O’	Negotiated trades in illiquid financial instruments	RM, MTF	Transactions executed in accordance with Article 4(1)(b)(ii) of Regulation (EU) 600/2014.
‘P’	Negotiated trades subject to conditions other than the current market price	RM, MTF	Transactions executed in accordance with Article 4(1)(b)(iii) of Regulation (EU) 600/2014.
‘H’	Algorithmic trades	RM, MTF	Transactions executed as a result of an investment firm engaging in algorithmic trading as defined in Article 4(1)(49) of Directive (EU) 65/2014.
‘C’	Cancellations	RM, MTF, OTC	When a previously published transaction is cancelled. The cancellation shall be effected by submitting a new trade report (which must include all the original trade report details).
‘A’	Amendments	RM, MTF, OTC	When a previously published transaction is amended. The amendment shall be effected by submitting a new trade report (which must include all the original trade report details) as well as a new trade report (which must include all the original trade report details except for the amended details).

Table 3

Information to be made public in accordance with Article 3

Type of system	**Description of system**	**Summary of 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 matching 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 they represent at each price level, for at least the five best bid and offer price levels continuously throughout normal trading hours.
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 that share, together with the volumes attaching to those prices continuously throughout normal trading hours. 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 and the volume that would potentially be executable at that price by participants in that system continuously throughout normal trading hours.
Request for quote trading system	A trading system where a quote or quotes are published 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 market participant. The requesting member or market participant may conclude a transaction by accepting the quote or quotes provided to it on request.	The bids and offers together with the volumes submitted by each responding entity during normal trading hours.
Trading system not covered by first 4 rows	A hybrid system falling into two or more of the first four 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 three 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 share, if the characteristics of the price discovery mechanism so permit.

Annex II: Standard market sizes, orders large in scale compared with normal market size and deferred publication thresholds and delays

Table 1
Standard market sizes (in EUR)

Class in terms of average value of transactions (AVT)	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 2
Orders large in scale compared with normal market size

Shares and depositary receipts (in EUR)

Class in terms of average daily turnover (ADT)	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	30 000	60 000	100 000	200 000	300 000	400 000	500 000	650 000

Table 3

Orders large in scale compared with normal market size

ETFs (in EUR)

Class in terms of average daily turnover (ADT)	ADT < 50 000	50 000 ≤ ADT < 200 000	200 000 ≤ ADT < 500 000	500 000 ≤ ADT < 2 000 000	ADT ≥ 2 000 000
Minimum size of orders qualifying as large in scale compared with normal market size	260 000	550 000	750 000	850 000	1 200 000

Table 4

Orders large in scale compared with normal market size

Certificates (in EUR)

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

Table 5

Deferred publication thresholds and delays

The table below shows, for each permitted delay for publication and each class of shares and depositary receipts in terms of average daily turnover (ADT), the minimum qualifying size of transaction that will qualify for that delay in respect of a share or depositary receipt of that type.

Shares and depositary receipts

Class of shares and depositary receipts in terms of the average daily turnover (ADT) in EUR	**Minimum qualifying size of transaction for permitted delay**	**Permitted delay for publication**
> 100m	10,000,000	60 minutes
	20,000,000	120 minutes
	35,000,000	End of the trading day
50m – 100m	7,000,000	60 minutes
	15,000,000	120 minutes
	25,000,000	End of the trading day
25m – 50m	5,000,000	60 minutes

	10,000,000	120 minutes
	12,000,000	End of the trading day
5m – 25m	2,500,000	60 minutes
	4,000,000	120 minutes
	5,000,000	End of the trading day
1m – 5m	450,000	60 minutes
	750,000	120 minutes
	1,000,000	End of the trading day
500,000 – 1m	75,000	60 minutes
	150,000	120 minutes
	225,000	End of the trading day
100,000 – 500,000	30,000	60 minutes
	80,000	120 minutes
	120,000	End of the trading day
< 100 k	15,000	60 minutes
	30,000	120 minutes
	50,000	End of the trading day

Table 6

Deferred publication thresholds and delays

ETFs

The table below shows, for each permitted delay for publication and each class of ETF in terms of average daily turnover (ADT), the minimum qualifying size of transaction that will qualify for that delay in respect of an ETF of that type.

Average daily turnover (ADT) in EUR	**Minimum qualifying size of transaction for permitted delay**	**Timing of publication**
ADT < 50 000	500 000	60 minutes
	1 000 000	120 minutes
	2 000 000	End of the day
50 000 ≤ ADT < 200 000	1 000 000	60 minutes
	2 000 000	120 minutes
	3 000 000	End of the day
200 000 ≤ ADT < 500 000	2 000 000	60 minutes
	3 000 000	120 minutes
	5 000 000	End of the day
500 000 ≤ ADT < 2 000 000	3 000 000	60 minutes
	5 000 000	120 minutes
	7 000 000	End of the day
ADT ≥ 2 000 000	5 000 000	60 minutes
	7 500 000	120 minutes
	10 000 000	End of the day

Table 7

Deferred publication thresholds and delays

Certificates

The table below shows, for each permitted delay for publication and each class of certificate in terms of average daily turnover (ADT), the minimum qualifying size of transaction that will qualify for that delay in respect of a certificate of that type.

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

RTS 9: Draft regulatory technical standards on transparency requirements in respect of bonds, structured finance products, emission allowances and derivatives

COMMISSION DELEGATED REGULATION (EU) No …/..

of [date]

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on transparency requirements for trading venues and investment firms with respect to 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[8], and in particular Article 1(8), Article 9(5), Article 11(4) and Article 21(5) thereof,

Whereas:

(1) The regime established by Regulation (EU) No 600/2014 governing transparency requirements in respect of transactions in bonds, structured finance products, emission allowances and derivatives aims to ensure that investors are adequately informed as to the true level of actual and potential transactions in such financial instruments, whether those transactions take place on regulated markets, multilateral trading facilities, organized trading facilities, systematic internalisers, or outside those facilities. A high degree of transparency is essential to ensure a level playing field between trading venues so that the price discovery mechanism in respect of particular financial instruments is not impaired by the fragmentation of liquidity, and investors are not thereby penalised. On the other hand, this Regulation recognises that there may be circumstances where exemptions from pre-trade transparency obligations, or deferral of post-trade transparency obligations, may be necessary. This Regulation sets out details of those circumstances, bearing in mind the need both to ensure a high level of transparency, and to ensure that liquidity on trading venues and elsewhere is not

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

impaired as an unintended consequence of obligations to disclose transactions and thereby to make public risk positions.

(2) If granting waivers in relation to pre-trade transparency requirements, or authorising the deferral of post-trade transparency obligations, competent authorities should treat all regulated markets, multilateral trading facilities and organised trading facilities equally and in a non-discriminatory manner, so that a waiver or deferral is granted either to all trading venues that they authorise under Directive 2014/65/EU and Regulation (EU) No 600/2014, or to none.

(3) Information which is required to be made available as close to real time as possible should be made available as close to 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 maximum time limit specified under Article 7(5) of this Regulation in exceptional cases where the systems available do not allow for a publication in a shorter period of time.

(4) Regulation (EU) No 600/2014 provides in Article 9(1)(c) for a pre-trade transparency waiver for "derivatives which are not subject to the trading obligation specified in Article 28 and other financial instruments for which there is not a liquid market". This means that the following instruments are eligible under this waiver: (i) derivatives subject to the clearing obligation but for which ESMA has determined that they shall not be subject to the trading obligation; and (ii) bonds, derivatives, structured finance products and emission allowances deemed illiquid as per Annex III.

(5) Directive 2014/65/EU and Regulation (EU) No 600/2014 do not apply to primary markets and only regulate secondary markets except in some specific cases as specified for instance in Recital 45 of the Directive 2014/65/EU. By extension, this Implementing Regulation only applies to secondary markets and primary market transactions should be excluded from the provisions in this Regulation, unless otherwise specified.

(6) Transactions should only be published under Article 21 of Regulation (EU) No 600/2014 in the cases of the purchase or sale of a bond, structured finance product, emission allowance or derivative. If transactions involve 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, such transactions should not be published as they do not contribute to the price discovery process and would only blur the picture for investors and be a hindrance to achieving best execution.

(7) Article 1(6) of Regulation (EU) No 600/2014 provides an exemption for the non-equity transparency requirements in Articles 8, 10, 18 and 21 of that Regulation. It provides that those requirements should not apply to regulated markets, market operators and investment firms in respect of a transaction where the counterparty is a member of the

European System of Central Banks (ESCB) and where that transaction is entered into in performance of monetary, foreign exchange and financial stability policy which that member of the ESCB is legally empowered to pursue and where that member has given prior notification to its counterparty that the transaction is exempt.

(8) Article 1(7) of Regulation (EU) No 600/2014 provides that this exemption 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 which include transactions conducted in the capacity as an administrator of a pension scheme in accordance with Article 24 of the Statute of the European System of Central Banks and of the European Central Bank (the Statute).

(9) Chapter II (Monetary Policy) of Title VIII (Economic and Monetary Policy) of the Treaty on the Functioning of the EU (TFEU) as well as Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank annexed to the Treaty on European Union and the TFEU set out the legal basis for a broad range of operations in pursuance of the basic tasks of the ESCB. The purpose of the exemption in Regulation (EU) No 600/2014 is to ensure that the effectiveness of operations conducted by members of the ESCB in the performance of these primary tasks under the Statute, and under equivalent national provisions for members of the ESCB in Member States whose currency is not the euro, which relies on the timeliness and confidentiality of transactions, should not be compromised by disclosure of information on such transactions. It is crucial for central banks to be able to control whether, when and how information about their actions is disclosed so as to maximise the intended impact and limit any unintended impact on the market. Therefore the regulatory technical standards should provide legal certainty for the members of the ESCB and their respective counterparties as to the application of or exemption from transparency requirements.

(10) The primary ESCB tasks to define and implement the monetary policy of the Union, to conduct foreign exchange operations and to hold and manage the official foreign reserves of the Member States as well as to promote the smooth operation of payment systems are tasks conducted in accordance with Article 127(2) TFEU and Article 3(1) of the Statute. In particular, the primary task under the TFEU and the Statute, and under equivalent national provisions for members of the ESCB in Member States whose currency is not the euro, to hold and manage the official foreign reserves of the Member States, is an essential part of the performance of foreign exchange policy. The main purpose of central banks holding and managing foreign reserves is to ensure that, whenever needed, there is a sufficient amount of liquid resources available for its foreign exchange policy operations involving foreign currencies. Due to this interconnection, 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, foreign exchange and financial stability policy on a case-by-case basis.

(11) For the purpose of this Regulation, plain vanilla covered warrants, leverage certificates, exotic covered warrants, exchange-traded-commodities, exchange-traded notes, negotiable rights and structured medium-term-notes should be considered securitised derivatives. This is not meant to be an exhaustive list of securitised derivatives.

(12) This Regulation should provide clarity about which investment firm should make the information of a transaction public when both the buyer and the seller are EEA investment firms. When the transaction is executed between an EEA investment firm and a counterparty outside the EEA, the former should make the transaction public.

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

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

(15) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and the Council establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC [9], in developing the draft regulatory technical standards on which this Regulation is based, ESMA has conducted open public consultations, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of that Regulation.

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

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

[9] OJ L 331, 15.12.2010, p.84.

(1) ‘reserve order’ means a reserve order as defined in Article 1 of Regulation (EC) No XXX/XXX [Transparency for equity and equity-like instruments];

(2) ‘stop order’ means a stop order as defined in Article 1 of Regulation (EC) No XXX/XXX [Transparency for equity and equity-like instruments];

(3) ‘portfolio trade’ means a portfolio trade as defined in Article 1 of Regulation (EC) No XXX/XXX [Transparency for equity and equity-like instruments];

(4) ‘securities financing transactions’ means securities financing transactions as defined in Article 1 of Regulation (EC) No XXX/XXX [Transparency for equity and equity-like instruments];

(5) ‘give-up' or 'give-in’ means ‘give-up' or 'give-in’ transactions as defined in Article 1 of Regulation (EC) No xxx/xxx Transparency for equity and equity-like instruments];

(6) ‘request-for-quote system’ means a trading system where a quote or quotes are published 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;

(7) ‘voice trading system’ means a trading system where transactions between members are arranged through voice negotiation.

TITLE I
TRANSPARENCY FOR TRADING VENUES AND INVESTMENT FIRMS

CHAPTER 1
Pre-trade transparency for regulated markets, MTFs and OTFs

Article 2
Pre-trade transparency obligations

[Article 9(5)(b) of Regulation (EU) No 600/2014]

For the purpose of Article 8 of Regulation (EU) No 600/2014, market operators and investment firms operating a trading venue shall, in accordance with the trading system they operate, make public information in respect of bonds, structured finance products, emission allowances and derivatives as specified in Annex I.

Article 3
Waiver for large in scale orders

[Article 9(5)(c) of Regulation (EU) No 600/2014]

For the purpose of Article 9(1)(a) of Regulation (EU) No 600/2014, an order shall be considered to be large in scale compared with the normal market size if, at the point of entry or following any amendment, it is equal to or greater than the relevant large in scale size:

(a) as specified in Annex III until 30 April 2018;

(b) as determined according to the methodology specified in Article 11 starting on 1 May 2018.

Article 4

Waiver for orders held in an order management facility

[Article 9(5)(c) of Regulation (EU) No 600/2014]

1. For the purposes of Article 9(1)(a) of Regulation (EU) No 600/2014 competent authorities may waive orders held in an order management facility of a trading venue from pre-trade transparency obligations where:

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

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

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

2. Reserve orders, stop orders and other orders that comply with the first paragraph shall be considered as orders held in an order management facility.

3. Market operators or the investment firms operating a trading venue shall ensure that all orders held in an order management facility are at the point of entry and following any amendment not smaller than the minimum tradable quantity set in advance by the system's operator under its rules and protocols. The minimum size for reserve orders shall be, at the point of entry and following any amendment, not smaller than €10,000.

Article 5

Waiver for orders which are above the size specific to the financial instrument

[Article 9(5)(d) of Regulation (EU) No 600/2014]

1. For the purposes of Article 9(1)(b) of Regulation (EU) No 600/2014 competent authorities may grant to market operators and investment firms operating a trading venue a waiver for actionable indications of interest in request-for-quote and voice-trading systems, which are equal to or larger than the relevant size specific to the financial instrument:

(a) as specified in Annex III until 30 April 2018;

(b) as determined according to the methodology specified in Article 11 starting on 1 May 2018.

2. Market operators or investment firms operating a trading venue shall make public at least an indicative pre-trade price that is close to the price of the trading interest advertised through their systems, with the use of a clear methodology, which shall be made transparent to the public through the rules of the trading venue.

Article 6

Waiver for financial instruments for which there is not a liquid market

[Article 9(5)(e) of Regulation (EU) No 600/2014]

For the purpose of Article 9(1)(c) of Regulation (EU) No 600/2014, financial instruments for which there is not a liquid market are specified in Annex III.

CHAPTER 2

Post-trade transparency for regulated markets, MTFs, OTFs and investment firms

Article 7

Post-trade transparency obligations

[Article 11(4)(a) & (b) and Article 21(5) (a) & (c) of Regulation (EU) No 600/2014]

1. Investment firms trading outside a trading venue and market operators and investment firms operating a trading venue shall, with regard to transactions executed in respect of bonds, structured finance products, emission allowances and derivatives, make public the details specified in Table 1 of Annex II and use the appropriate flags listed in Table 2 of Annex II.

2. The details and flags specified under paragraph 1 shall be made public either by reference to each transaction or in a form aggregating the volume and price of all transactions in the same bond, structured finance product, emission allowance and derivative taking place at the same price at the same time.

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

4. Where an amendment of a previously published trade report has to be made, investment firms trading outside a trading venue and market operators and investment firms operating a trading venue shall:

(a) make public a new trade report which contains all the details of the original trade report and the cancellation flag as specified in Table 2 of Annex II; and

(b) make public a new trade report which contains all the details of the original trade report except for those details that are corrected and the amendment flag as specified in Table 2 of Annex II.

5. Post-trade information shall be made available as close to real time as possible and in any case within 15 minutes after the execution of the relevant transaction from 3 January 2017 until 1 January 2020 and within 5 minutes thereafter.

6. 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, the investment firm that sells the financial instrument concerned shall be responsible for making the transaction public through an Approved Publication Arrangement (APA).

7. By way of derogation to the previous paragraph, if only one of the investment firms party to the transaction is a systematic internaliser in the given instrument, that firm shall report the transaction, informing the seller of the action taken.

8. Investment firms shall take all reasonable steps to ensure that the transaction is made public as a single transaction. For those purposes 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 8

Deferred publication of transactions

[Article 11(4)(c) of Regulation (EU) No 600/2014]

1. The deferred publication of information in respect of transactions may be authorised by the competent authority in accordance with Article 11(1) of Regulation (EU) No 600/2014, for a period of no longer than 48 hours for bonds, structured finance products, derivatives and emission allowances, provided that one of the following criteria is satisfied:

(a) The size of the transaction is equal to or exceeds the relevant large in scale size

(i) as specified in Annex III until 30 April 2018;

(ii) as determined according to the methodology defined in Article 11 of this Regulation starting on 1 May 2018.

(b) The instrument belongs to a class of bonds, structured finance products, derivatives or emission allowances for which there is not a liquid market as specified in Annex III.

(c) The size of the transaction 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 is equal to or exceeds the relevant size specific to the instrument:

(i) as specified in Annex III until 30 April 2018;

(ii) as determined according to the methodology defined in Article 11 of this Regulation starting on 1 May 2018.

2. When the time period of deferral in accordance with paragraph 1 lapses, all the details of the transaction on an individual basis shall be published immediately unless an extended or an indefinite time period of deferral is granted in accordance with Article 10 of this Regulation.

Article 9

Application of OTC post-trade transparency to certain transactions

[Article 21(5)(b) of Regulation (EU) No 600/2014]

The obligation in Article 21(1) of Regulation (EU) No 600/2014 shall not be applied to the following:

(a) transactions included under Article 3(3) of Regulation (EU) No xxx/20xx [Obligation to report transactions] where applicable;

(b) securities financing transactions;

(c) the exercise of options, of covered warrants or convertible bonds;

(d) primary markets transactions (such as the issuance, allotment or subscription, placements and the exercise of pre-emption rights);

(e) give-ups or give-ins; or

(f) transfers of financial instruments such as segregated collateral in bilateral transactions or in the context of a CCP margin and collateral requirements.

Article 10

Transparency requirements in conjunction with deferred publication at the discretion of the CA

[Article 11(4)(d) of Regulation (EU) No 600/2014]

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

(a) If exercising the right pursuant to Article 11(3)(a) of Regulation (EU) No 600/2014, competent authorities shall request during the 48 hour time period of deferral the publication of:

(i) all the details of a transaction listed in Table 1 of Annex II except for those relating to volume, namely quantity and quantity notation; or

(ii) the publication the next working day before 09.00 CET of transactions in a daily aggregated form for a minimum number of 5 transactions executed on the same calendar day.

(b) If exercising the right pursuant to Article 11(3)(b) of Regulation (EU) No 600/2014 the publication of the volume of an individual transaction shall be omitted during an extended time period of deferral of four weeks following the transaction.

(c) Regarding non-equity instruments that are not sovereign debt, competent authorities shall request the aggregation of several transactions executed over the course of one calendar week to be published on the following Tuesday before 09.00 CET, ahead of the extended period of deferral of the publication of all the details of the transactions on an individual basis of four weeks if exercising the right pursuant to Article 11(3)(c) of Regulation (EU) No 600/2014.

(d) Regarding sovereign debt instruments, competent authorities shall request the aggregation of several transactions executed over the course of one calendar week to be published on the following Tuesday before 09.00 CET if exercising the right pursuant to Article 11(3)(d) of Regulation (EU) No 600/2014.

2. In relation to all instruments that are not sovereign debt, when the extended time period in accordance with paragraph 1(b) lapses, the outstanding details of all the transactions shall

be published on the next working day before 09.00 CET. For sovereign debt instruments the same shall apply if competent authorities decide not to use the options 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.

In relation to sovereign debt instruments, if competent authorities apply the options 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, competent authorities shall request for several transactions to be aggregated over the course of one calendar week and for the total volume traded per sovereign debt instrument in that calendar week to be published on the Tuesday following the expiry of the extended period of deferral of four weeks counting from the last day of the calendar week.

3. In relation to all instruments that are not sovereign debt, when the extended time period in accordance with paragraph 1(c) lapses, all the details of the transactions on an individual basis shall be published four weeks after the publication of the aggregated details in accordance with paragraph 1(c) before 09.00 CET.

4. The aggregated daily or weekly data referred to in paragraph 1 shall contain the following information for the 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 3 of Annex II; and

(c) The total number of transactions

5. Transactions shall be aggregated per ISIN for bonds, structured finance products, emission allowances and securitised derivatives and at contract level for other derivatives.

6. If the weekday foreseen for the publications required under paragraph 1 (c) and (d) and paragraphs 2 and 3 is a not a working day, the publications shall be effected on the following working day before 09.00 CET.

7. 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 purpose of this Article shall be the competent authority of the investment firm responsible for making the trade public through an APA in accordance with Article 7 paragraphs 6 to 8.

CHAPTER 3
Provisions common to pre-trade and post-trade transparency

Article 11

Size of orders that are large in scale compared with the normal market size, orders that are above the size specific to a financial instrument, relevant minimum large in scale size of transactions and size of the transactions that are above the size specific to a financial instrument

[Article 9(5) letters (c) and (d) and Article 11(4)(c) of Regulation (EU) No 600/2014]

1. In respect of each class of financial instruments for which there is a liquid market and each class of financial instruments for which there is not a liquid market as specified in Annex III, competent authorities shall ensure that the calculations to determine the following measures are made promptly after the end of each calendar year:

(a) the large in scale size referred to in Articles 3(b) and 8(1)(a)(ii);

(b) the size specific to the financial instrument referred to in Articles 5(1)(b) and 8(1)(c)(ii).

2. The large in scale size referred to in paragraph 1(a) of this Article, shall be determined as the greater of:

(a) the trade size corresponding to the trade below which lies 90% of all the transactions executed for this class of financial instruments; and

(b) the trade size corresponding to the trade below which lies 70% of the total volume of the transactions executed for this class of financial instruments; and

(c) the large in scale threshold floor as provided for in Table 47 of Section 11 of Annex III for the corresponding class.

3. The threshold determined in accordance to paragraph (2) shall be rounded up to the next:

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

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

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

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

4. The calculation of the large in scale size referred to in paragraph 2, shall take into account all the transactions executed in the Union in respect of all the financial instruments belonging to the class in question between 1 January and 31 December of the preceding year.

5. The trade size and the total volume of the transactions referred to in paragraph 2(a) and (b) should be determined for the class in question as specified in Table 3 of Annex II of this Regulation.

6. The size specific to the financial instrument referred to in paragraph 1(b), shall be calculated as 50% of the corresponding large in scale size as determined in accordance with paragraphs 2, 3, 4 and 5.

7. On the first trading day of April of each year, competent authorities shall, in relation to each class of financial instruments as specified in Annex III, ensure publication of the thresholds in paragraph (1)(a) and (b) of this Article.

8. The thresholds in paragraph 1(a) and (b) shall apply for the 12-month period starting on 1 May following publication and ending on the following 30 April.

9. All competent authorities shall ensure the first publication of the thresholds referred to in paragraph 1(a) and (b) on the first working day of April 2018, based on the reference period 1 January 2017 to 31 December 2017.

Article 12

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

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

A transaction is considered to be entered into by a member of the ESCB in performance of monetary, foreign exchange and financial stability policy if it is:

(a) 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 ESCB and the ECB or an operation carried out under equivalent national provisions for members of the ESCB in Member States whose currency is not the euro;

(b) 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; or

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

Article 13

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

[Article 1(8) of Regulation (EU) No 600/2014]

The exemption in Article 1(6) of Regulation (EU) No 600/2014 shall not apply in respect of a transaction entered into with a member of the ESCB where that member has entered into the transaction for the performance of an operation that is unconnected with that member's performance of one of the tasks referred to in Article 12, including a transaction entered into by that member of the ESCB:

(a) for the management of its own funds;

(b) conducted 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; or

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

Article 14

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 Annex III of this Regulation, a competent authority may temporarily suspend the obligations referred to in Articles 8 and 10 Regulation (EU) No 600/2014 when for a class of bonds, structured finance products, emission allowances or derivatives, the total volume as defined in Table 3 of Annex II calculated for the previous 30 days represents less than 40% of the average monthly volume calculated for the 12 full calendar months preceding those 30 days.

2. For financial instruments for which there is not a liquid market in accordance with Annex III, 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 3 of Annex II calculated for the previous 30 days represents less than 20% of the average monthly volume calculated for the 12 full calendar months preceding those 30 days.

3. To perform these calculations, competent authorities shall take into account all the transactions executed on all venues in the Union for the class of bonds, structured finance

products, emission allowances or derivatives concerned. The calculations shall be performed on the basis of the classes defined in Annex III of this Regulation.

4. Before the competent authorities exercise the power of suspending transparency, 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 15
Entry into force

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

It shall apply from 3 January 2017.

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

Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]

Annex I: Information to be made public in accordance with article 2

Table 1

Description of the type of system and the related information to be made public

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 matching 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 published 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 bids and offers and attaching volumes submitted by each responding party.
Voice trading system	A trading system where transactions between members are arranged through voice negotiation.	The bids and offers and attaching volumes from any member or participant which, if accepted, would lead to a transaction in the system.
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 transaction to be made available to the public

Table 1

List of details of public information under the post-trade transparency regime in respect of non-equity financial instruments

Details	**Financial instruments**	**Description**	**Format**
Trading day	For all financial instruments, including emission allowances	Date when the transaction was executed. For OTC transactions, the date when the parties agree the content of the following fields: quantity, quantity notation, price, price notation, currencies 1 and 2, price multiplier, instrument identification, instrument classification and underlying instrument, where applicable	ISO 8601 date format: YYYY-MM-DD UTC time
Trading time	For all financial instruments, including emission allowances	Time when the transaction was executed. For OTC transactions, the time when the parties agree the content of the following fields: quantity, quantity notation, price, price notation, currencies 1 and 2, price multiplier, instrument identification, instrument classification and underlying instrument, where applicable	ISO 8601 time format hh:mm:ss.0Z where the number of zeros after the 'seconds' is determined by the Article 50 MiFID II requirements UTC time
Instrument identification code type	For all financial instruments, including emission allowances	Code type used to identify the financial instrument	I = ISIN, A = AII
Identifier of the financial instrument	For all financial instruments, including emission allowances	Code used to identify the financial instrument	Where Instrument identification code type is I, ISO 6166 ISIN Where Instrument identification code type is A, AII venue + Exchange Product Code (16 alphanumerical characters)
Price at which the transaction was concluded	For all financial instruments, including emission allowances.	Traded price of the transaction excluding, where applicable, commission and accrued interest unless the instrument is traded with a dirty price In the case of option contracts, it is the premium of the derivative contract per underlying security or index In the case of spread bets it should be	Up to 20 numerical digits with a decimal separator Where price reported in monetary terms, it shall be provided in the major currency unit Where applicable, values should be rounded and not truncated

		the reference price of the underlying instrument. Where no price is available, a default value shall be used If the agreed price is zero a price of zero should be used.	
Venue identification	For all financial instruments, including emission allowances	Identification of the venue where the transaction was executed	MiFID trading venue or non-EEA valid trading market: ISO 10383 segment MIC (4 characters) For financial instruments admitted to trading or traded on a trading venue, where the transaction on that financial instrument is executed over-the-counter: XOFF 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: SI Where an investment firm does not know it is trading with another investment firm acting as a SI: XOFF For financial instruments where the underlying is a financial instrument admitted to trading or traded on a trading venue and where the transaction on the main financial instrument is executed over-the-counter: XXXX For financial instruments traded on a non-EEA valid trading venue for which a valid MIC is not assigned: NEEA
Price notation	For all financial instruments, including emission allowances.	Indication as to whether the price and the strike price is expressed in monetary value, in percentage or in yield	Monetary value: M Percentage: P Yield: Y Where no price is available, the price notation shall be populated with N
Currency	For all financial instruments, including emission allowances	Currency in which the price is expressed (where price notation is M) or in which the quantity is expressed (where quantity notation is V)	ISO 4217 Currency Code, 3 alphabetical characters
Quantity notation	For all financial instruments, including emission allowances except in the cases described under Article 10(1) letters (a) and (b)	Indication as to whether the quantity reported is expressed in number of units, in nominal value or in monetary value	Number of units: U Nominal value: N Monetary value: V

	of the Regulation.		
Quantity	For all financial instruments, including emission allowances except in the cases described under Article 10(1) letters (a) and (b) of the Regulation.	Number of units of the financial instrument, the nominal value of bonds or number of lots on derivative contracts in the transaction	Up to 20 numerical digits with a decimal separator No negative or nil values Where applicable, values should be rounded and not truncated For spread bets, the quantity shall be the monetary value wagered per point movement in the ultimate underlying financial instrument
Reference period	For emission allowances	This field is only applicable for emission allowances.	The period specified in the Directive 2003/87/CE (e.g. 2013-2020 or subsequent trading periods)
Type	For emission allowances	This field is only applicable for emission allowances.	EUA, CER, ERU, EUAA

Table 2

Flags for post-trade transparency in respect of non-equity financial instruments

Identifier	Name of Trade Flag	Venue/Publication arrangement	Definition
"B"	Benchmark trade flag	RM, MTF, OTF, APA	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.
"X"	Agency cross trade flag	RM, MTF, OTF, APA	Trades 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.
"G"	Non-price forming trades flag	RM, MTF, OTF	All types of transactions listed under Article 9 of this Regulation and which do not contribute to the price formation.
"T"	Technical trade flag	RM, MTF, OTF, APA	Category covering trades which represent non-addressable liquidity or trades where the exchange of financial instrument is determined by factors other than the current market valuation of the instrument. Non-exhaustive examples of such trades may include OTC hedges of a derivative, inter-fund transfers, non-equity hedge trades related to the creation/redemption of ETFs and Exchange for Physical trades.
"L"	Post-trade LIS flag	RM, MTF, OTF, APA	Transactions executed under the post-trade large in scale deferral.
"I"	Illiquid instrument trade flag	RM, MTF, OTF, APA	Transactions executed under the deferral for instruments for which there is not a liquid market.
"S"	Post-trade size specific flag	RM, MTF, OTF, APA	Transactions executed under the post-trade size specific deferral.
'H'	Algorithmic trades	RM, MTF,OTF	Transactions executed as a result of an investment firm engaging in algorithmic trading as defined in Article 4(1)(49) of Directive (EU) 65/2014.
"C"	Cancellation flag	RM, MTF, OTF, APA	Transaction cancelled.
"A"	Amendment flag	RM, MTF, OTF, APA	Transaction amended.
"U"	Update flag	RM, MTF, OTF, APA	Transaction for which limited details have been previously published in accordance with Article 10(1)(a)(i).
"G"	Daily aggregated transaction flag	RM, MTF, OTF, APA	Publication of daily aggregated transaction in accordance with Article 10(1)(a)(ii).

“V”	Volume publication flag	RM, MTF, OTF, APA	Transaction for which limited details have been previously published in accordance with Article 10(1)(b).
“J”	Four weeks aggregation flag	RM, MTF, OTF, APA	Publication of aggregated transactions in accordance with Article 10(1)(c) and transactions which have previously benefited from aggregated publication in accordance with Article 10(1)(c).
“K”	Indefinite aggregation flag	RM, MTF, OTF, APA	Transactions for which the publication of several transactions in aggregated form for an indefinite period of time has been allowed in accordance with Article 10(1)(d).
“W”	Consecutive volume masking flag	RM, MTF, OTF, APA	Transactions for which limited details have been previously published in accordance with Article 10(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 10(2).

Table 3
Measure of volume

Type of instrument	Volume
Bonds and structured finance products	Total nominal value of debt instruments traded
Securitized derivatives	Number of units traded * price per unit
Interest rate derivatives	Notional amount of traded contracts
Foreign Exange Derivatives	Notional amount of traded contracts
Equity derivatives	Number of contracts * contract size* strike (options) or future price (futures)
Commodity derivatives	Notional amount of traded contracts
Credit derivatives	Notional amount of traded contracts
Contract for diferences	Notional amount of traded contracts
Other derivatives	Notional amount of traded contracts
Emission allowances	Tons of Carbon Dioxide

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

Section 1

Bonds and structured finance products

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

(1) 'Bond' means a transferable security that is constituted by an order, promise, engagement or acknowledgement to pay on demand, or at a determinable future time, a sum in money to, or to the order of, the holder of one or more units of the security. It includes depositary receipts representative of bonds.

(2) 'European Sovereign bond' means a bond issued by a sovereign issuer which is either:

(a) The Union; or

(b) A Member State

(3) 'Other European Public bond' means a bond issued by a sovereign issuer which is either:

(a) A government department, an agency or a special purpose vehicle of the Member State;

(b) In the case of a Federal Member State, a member of the federation;

(c) A special purpose vehicle for several Member States;

(d) A European financial institution established by two or more Member States which has 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; or

(e) The European Investment Bank

(4) 'Non-European Sovereign bond' means a bond issued by a sovereign entity which is not listed under article Article 4(1)(60) of Directive 2014/65/EU.

(5) 'Convertible bond' means an instrument consisting of a bond or a securitised debt instrument with an imbedded derivative, such as an option to buy the underlying equity.

(6) 'Covered bonds' means bonds as referred to in Article 52(4) of Directive 2009/65/EC.

(7) ‘Corporate bond’ means a bond that is issued by a type of company listed in Article 1 of Directive 2009/101/EC or equivalent in third countries.

(8) ‘Senior bond’ means a bond which in the case of repayment of investment by the issuer is ranked above subordinated debt and other similar instruments.

(9) ‘Subordinated bond’ means a bond which in the case of repayment of investment by the issuer is ranked above certificates but below senior debt and other similar instruments.

(10) ‘Financial issuer’ means any issuer registered in the list of monetary financial institutions maintained and regularly updated by the ECB in accordance with Regulation ECB/2013/33. For issuers outside the EU, financial issuer means any issuer the business of which is to receive deposits and/or close substitutes for deposits from entities other than monetary financial institutions and, for their own account (at least in economic terms), to grant credits and/or make investments in securities.

(11) ‘Non-financial issuer’ means any issuer not covered by the definition of financial issuer.

(12) ‘Bond liquid class’ means a bond characterised by a specific combination of bond type, debt seniority, issuer sub-type and issuance size as specified in each row of Table 1 Bonds – liquid classes.

(13) ‘Bond class not having a liquid market’ means a bond which is not a bond liquid class.

Table 1

Bonds – liquid classes

BOND - LIQUID CLASSES					
BOND TYPE	**DEBT SENIORITY**	**ISSUER SUB-TYPE**	**ISSUANCE SIZE**	**LIS (€)**	**SSTI (€)**
European Sovereign Bond			greater or equal to € 2,000,000,000	10,000,000	5,000,000
Non-European Sovereign Bond			greater or equal to € 2,000,000,000	10,000,000	5,000,000
Other European Public Bond			greater or equal to € 1,000,000,000	5,000,000	2,500,000
Convertible Bond		Financial	greater or equal to € 750,000,000	1,000,000	500,000
Covered Bond			greater or equal to € 750,000,000	5,500,000	2,750,000
Corporate Bond	Senior	Financial	greater or equal to € 500,000,000	2,500,000	1,250,000
Corporate Bond	Senior	Non-financial	greater or equal to € 750,000,000	1,500,000	750,000
Corporate Bond	Subordinated	Financial	greater or equal to € 500,000,000	2,000,000	1,000,000
Corporate Bond	Subordinated	Non-financial	greater or equal to € 500,000,000	5,000,000	2,500,000

Table 2

Bonds – classes not having a liquid market

BOND - CLASSES NOT HAVING A LIQUID MARKET						
BOND TYPE	**DEBT SENIORITY**	**ISSUER SUB-TYPE**	**ISSUANCE SIZE**		**LIS (€)**	**SSTI (€)**
European Sovereign Bond			smaller than €	2,000,000,000	10,000,000	5,000,000
Non-European Sovereign Bond			smaller than €	2,000,000,000	10,000,000	5,000,000
Other European Public Bond			smaller than €	1,000,000,000	5,000,000	2,500,000
Convertible Bond		Financial	smaller than €	750,000,000	1,000,000	500,000
Covered Bond			smaller than €	750,000,000	5,500,000	2,750,000
Corporate Bond	Senior	Financial	smaller than €	500,000,000	2,500,000	1,250,000
Corporate Bond	Senior	Non-financial	smaller than €	750,000,000	1,500,000	750,000
Corporate Bond	Subordinated	Financial	smaller than €	500,000,000	2,000,000	1,000,000
Corporate Bond	Subordinated	Non-financial	smaller than €	500,000,000	5,000,000	2,500,000
Convertible Bond		Non-financial			2,500,000	1,250,000
Others					1,000,000	500,000

Table 3

SFPs – classes not having a liquid market

SFP - CLASSES NOT HAVING A LIQUID MARKET	LIS (€)	SSTI (€)
SFP	5,500,000	2,750,000

Section 2

Securitised derivatives

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

(a) ‘Securitised derivatives’ means a transferable security as defined in Article 4(1)(44)(c) of Directive 2014/65/EU different from structured finance products.

Table 4

Securitised derivatives – liquid classes

SECURITISED DERIVATIVES - LIQUID CLASSES	LIS (€)	SSTI (€)
	100,000	50,000

Section 3

Contract types definitions

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

(1) ‘Futures’ 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.

(2) ‘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.

(3) ‘Swap’ means a contract in which two parties agree to exchange cash flows in one financial instrument for another at a certain future date.

(4) ‘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.

(5) ‘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.

Section 4

Interest rate derivatives

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

(1) ‘Interest rate derivatives’ means any contract as defined in Annex I, Section C(4) of Directive 2014/65/EU whose underlying is an interest rate, a bond, a loan, a swapnote, any basket, portfolio or index including an interest rate, a bond, a loan, a swapnote or any other product representing the performance of an interest rate, a bond, a loan, a swapnote.

(2) ‘Bond futures liquid class’ means a bond futures characterised by a specific combination of underlying type, underlying and time to maturity as specified in each row of Table 5 Bond futures – liquid classes.

(3) ‘Bond futures class not having a liquid market’ means a bond futures which is not a bond futures liquid class;

Table 5

Bond futures – liquid classes

BOND FUTURES - LIQUID CLASSES					
UNDERLYING TYPE	**UNDERLYING**	**TIME TO MATURITY**		**LIS (€)**	**SSTI (€)**
Bond	Ultra long bund (buxl)	equal or longer than	3 months	10,000,000	5,000,000
Bond	Long bund	equal or longer than	3 months	50,000,000	25,000,000
Bond	Long gilt	up to	3 months	10,000,000	5,000,000
Bond	Long gilt	equal or longer than	3 months	10,000,000	5,000,000
Bond	Long spanish government bond	up to	3 months	10,000,000	5,000,000
Bond	Long spanish government bond	equal or longer than	3 months	10,000,000	5,000,000
Bond	Long swiss confederation bond	equal or longer than	3 months	10,000,000	5,000,000
Bond	Long btp	up to	3 months	10,000,000	5,000,000
Bond	Long btp	equal or longer than	3 months	15,000,000	7,500,000
Bond	Medium bund (bobl)	equal or longer than	3 months	50,000,000	25,000,000
Bond	Medium gilt	equal or longer than	3 months	10,000,000	5,000,000
Bond	Medium oat	equal or longer than	3 months	15,000,000	7,500,000
Bond	Short btp	equal or longer than	3 months	12,500,000	6,250,000
Bond	Short bund (schatz)	equal or longer than	3 months	75,000,000	37,500,000
Bond	Short gilt	equal or longer than	3 months	10,000,000	5,000,000
Bond	Ultra long gilt	equal or longer than	3 months	10,000,000	5,000,000
Swapnote	10yr euro swapnote	equal or longer than	3 months	10,000,000	5,000,000
Swapnote	2yr euro swapnote	up to	3 months	10,000,000	5,000,000
Swapnote	2yr euro swapnote	equal or longer than	3 months	10,000,000	5,000,000
Swapnote	5yr euro swapnote	up to	3 months	10,000,000	5,000,000
Swapnote	5yr euro swapnote	equal or longer than	3 months	10,000,000	5,000,000

Table 6

Bond futures – classes not having a liquid market

BOND FUTURES - CLASSES NOT HAVING A LIQUID MARKET	LIS (€)	SSTI (€)
OTHERS	10,000,000	5,000,000

(1) ‘Interest rate futures liquid class’ means an interest rate futures characterised by a specific combination of underlying type, underlying and time to maturity as specified in each row of Table 7 Interest rate futures – liquid classes.

(2) ‘Interest rate futures class not having a liquid market’ means any interest rate futures which is not an interest rate futures liquid class.

Table 7

Interest rate futures – liquid classes

INTEREST RATE FUTURES - LIQUID CLASSES					
UNDERLYING TYPE	UNDERLYING	TIME TO MATURITY		LIS (€)	SSTI (€)
Interest rate	Three month euro (euribor)	up to	3 months	10,000,000	5,000,000
Interest rate	Three month euro (euribor)	equal or longer than	3 months	10,000,000	5,000,000
Interest rate	Three month euroswiss	up to	3 months	10,000,000	5,000,000
Interest rate	Three month euroswiss	equal or longer than	3 months	10,000,000	5,000,000
Interest rate	Three month sterling	up to	3 months	10,000,000	5,000,000
Interest rate	Three month sterling	equal or longer than	3 months	10,000,000	5,000,000

Table 8

Interest rate futures – classes not having a liquid market

INTEREST RATE FUTURES - CLASSES NOT HAVING A LIQUID MARKET	LIS (€)	SSTI (€)
OTHERS	10,000,000	5,000,000

(1) ‘Bond option liquid class’ means a bond option characterised by a specific combination of underlying type, underlying, and time to maturity as specified in each row of Table 9 Bond options – liquid classes.

(2) ‘Bond option class not having a liquid market’ means a bond option which is not a bond option liquid class.

Table 9

Bond options – liquid classes

BOND OPTIONS - LIQUID CLASSES					
UNDERLYING TYPE	UNDERLYING	TIME TO MATURITY		LIS (€)	SSTI (€)
Bond	Long bund future	up to	3 months	10,000,000	5,000,000
Bond	Long bund future	equal or longer than	3 months	10,000,000	5,000,000
Bond	Medium bund (bobl) future	up to	3 months	20,000,000	10,000,000
Bond	Medium bund (bobl) future	equal or longer than	3 months	20,000,000	10,000,000
Bond	Oat futures	equal or longer than	3 months	10,000,000	5,000,000
Bond	Short bund (schatz) future	up to	3 months	50,000,000	25,000,000
Bond	Short bund (schatz) future	equal or longer than	3 months	50,000,000	25,000,000

Table 10

Bond options – classes not having a liquid market

BOND OPTIONS - CLASSES NOT HAVING A LIQUID MARKET	LIS (€)	SSTI (€)
OTHERS	10,000,000	5,000,000

(1) ‘Interest rate option liquid class’ means an interest rate option characterised by a specific combination of underlying type, underlying, and time to maturity as specified in each row of Table 11 Interest rate options – liquid classes.

(2) ‘Interest rate option class not having a liquid market’ means an interest rate option which is not an interest rate option liquid class.

Table 11

Interest rate options – liquid classes

INTEREST RATE OPTIONS - LIQUID CLASSES					
UNDERLYING TYPE	UNDERLYING	TIME TO MATURITY		LIS (€)	SSTI (€)
Interest rate	Three month euro (euribor)	up to	3 months	15,000,000,000	7,500,000,000
Interest rate	Three month euro (euribor)	equal or longer than	3 months	15,000,000,000	7,500,000,000
Interest rate	Three month euro (euribor) 2 year mid-curve	up to	3 months	15,000,000,000	7,500,000,000
Interest rate	Three month euro (euribor) 2 year mid-curve	equal or longer than	3 months	20,000,000,000	10,000,000,000
Interest rate	Three month euro (euribor) 3 year mid-curve	up to	3 months	10,000,000,000	5,000,000,000
Interest rate	Three month euro (euribor) 3 year mid-curve	equal or longer than	3 months	20,000,000,000	10,000,000,000
Interest rate	Three month euro (euribor) mid-curve	up to	3 months	75,000,000	37,500,000
Interest rate	Three month euro (euribor) mid-curve	equal or longer than	3 months	125,000,000	62,500,000
Interest rate	Three month sterling	equal or longer than	3 months	15,000,000,000	7,500,000,000
Interest rate	Three month sterling 2 year mid-curve	up to	3 months	20,000,000,000	10,000,000,000
Interest rate	Three month sterling 2 year mid-curve	equal or longer than	3 months	15,000,000,000	7,500,000,000
Interest rate	Three month sterling 3 year mid-curve	equal or longer than	3 months	15,000,000,000	7,500,000,000
Interest rate	Three month sterling mid-curve	up to	3 months	15,000,000,000	7,500,000,000
Interest rate	Three month sterling mid-curve	equal or longer than	3 months	15,000,000,000	7,500,000,000

Table 12

Interest rate options – classes not having a liquid market

INTEREST RATE OPTIONS - CLASSES NOT HAVING A LIQUID MARKET	LIS (€)	SSTI (€)
OTHERS	10,000,000	5,000,000

(1) ‘Swaption liquid class’ means a swaption contract whose notional amount is denominated in one of the currencies specified in each row of Table 13 Swaptions – liquid classes.

(2) ‘Swaption class not having a liquid market’ means a swaption which is not a swaption liquid class.

Table 13

Swaptions – liquid classes

SWAPTIONS - LIQUID CLASSES		
NOTIONAL CURRENCY	LIS (€)	SSTI (€)
USD	375,000,000	187,500,000
EUR	250,000,000	125,000,000
JPY	175,000,000	87,500,000
GBP	300,000,000	150,000,000
AUD	325,000,000	162,500,000

Table 14

Swaptions – classes not having a liquid market

SWAPTIONS - CLASSES NOT HAVING A LIQUID MARKET	LIS (€)	SSTI (€)
OTHERS	50,000,000	25,000,000

(1) ‘Forward rate agreement (FRA)’ means a forward agreement contract on an interest rate.

(2) ‘Forward rate agreement (FRA) liquid class’ means a forward rate agreement characterised by a specific combination of underlying interest rate, currency in which the nominal amount is denominated and tenor as specified in each row of Table 15 FRA – liquid classes.

(3) ‘Forward rate agreement (FRA) class not having a liquid market’ means a forward rate agreement which is not a FRA liquid class;

(4) ‘LIBOR’ means London Interbank Offered Rate.

(5) ‘EURIBOR’ means Euro Interbank Offer Rate.

(6) ‘STIBOR’ means Stockholm Interbank Offered Rate.

(7) ‘BBSW’ means Bank Bill Swap.

(8) ‘JIBAR’ means Johannesburg Interbank Agreed Rate.

Table 15

FRA – liquid classes

FRA-LIQUID CLASSES							
INTEREST RATE	**NOTIONAL CURRENCY**	**TENOR**				**LIS (€)**	**SSTI (€)**
EURIBOR	EUR	from	1 day	to	1.5 months	1,000,000,000	500,000,000
EURIBOR	EUR	from	1.5 months	to	3 months	650,000,000	325,000,000
EURIBOR	EUR	from	3 months	to	6 months	600,000,000	300,000,000
EURIBOR	EUR	from	6 months	to	1 year	525,000,000	262,500,000
EURIBOR	EUR	from	1 year	to	2 years	525,000,000	262,500,000
LIBOR	USD	from	1 day	to	1.5 months	725,000,000	362,500,000
LIBOR	USD	from	1.5 months	to	3 months	725,000,000	362,500,000
LIBOR	USD	from	3 months	to	6 months	725,000,000	362,500,000
LIBOR	USD	from	6 months	to	1 year	725,000,000	362,500,000
LIBOR	USD	from	1 year	to	2 years	725,000,000	362,500,000
LIBOR	GBP	from	1 day	to	1.5 months	575,000,000	287,500,000
LIBOR	GBP	from	1.5 months	to	3 months	450,000,000	225,000,000
LIBOR	GBP	from	3 months	to	6 months	475,000,000	237,500,000
LIBOR	GBP	from	6 months	to	1 year	450,000,000	225,000,000
LIBOR	GBP	from	1 year	to	2 years	700,000,000	350,000,000
STIBOR	SEK	from	1 day	to	1.5 months	450,000,000	225,000,000
STIBOR	SEK	from	1.5 months	to	3 months	550,000,000	275,000,000
STIBOR	SEK	from	3 months	to	6 months	450,000,000	225,000,000
STIBOR	SEK	from	6 months	to	1 year	550,000,000	275,000,000
STIBOR	SEK	from	1 year	to	2 years	725,000,000	362,500,000
BBSW	AUD	from	1 day	to	1.5 months	325,000,000	162,500,000
BBSW	AUD	from	1.5 months	to	3 months	275,000,000	137,500,000
BBSW	AUD	from	3 months	to	6 months	250,000,000	125,000,000
BBSW	AUD	from	6 months	to	1 year	225,000,000	112,500,000
JIBAR	ZAR	from	1 day	to	1.5 months	225,000,000	112,500,000
JIBAR	ZAR	from	1.5 months	to	3 months	275,000,000	137,500,000
JIBAR	ZAR	from	3 months	to	6 months	250,000,000	125,000,000
JIBAR	ZAR	from	6 months	to	1 year	225,000,000	112,500,000

Table 16

FRA – classes not having a liquid market

FRA - CLASSES NOT HAVING A LIQUID MARKET	LIS (€)	SSTI (€)
OTHERS	150,000,000	75,000,000

(1) ‘Multi-currency swaps’ or ‘cross-currency swaps’ means a swap where two parties exchange cash flows denominated in different currencies.

(2) ‘Fixed to float multi-currency swap’ means a multi-currency swap where 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.

(3) ‘Fixed to float multi-currency swap liquid class’ means a fixed to float multi-currency swap characterised by a specific combination of tenor and currency-pair in which the notional amount of the two legs are denominated as specified in each row of Table 17 Fixed to Float Multi-currency swaps – liquid classes.

(4) ‘Fixed to float multi-currency swap class not having a liquid market’ means a fixed to float multi-currency swap which is not a fixed to float multi-currency swap liquid class.

Table 17

Fixed to Float Multi-currency swaps – liquid classes

FIXED TO FLOAT MULTI-CURRENCY SWAPS - LIQUID CLASSES						
NOTIONAL CURRENCY PAIR	TENOR				LIS (€)	SSTI (€)
TRY-USD	from	3 months	to	6 months	155,000,000	77,500,000
TRY-USD	from	6 months	to	1 year	80,000,000	40,000,000
TRY-USD	from	1 year	to	2 years	60,000,000	30,000,000
TRY-USD	from	2 years	to	3 years	40,000,000	20,000,000
TRY-USD	from	3 years	to	4 years	30,000,000	15,000,000
TRY-USD	from	4 years	to	5 years	25,000,000	12,500,000
TRY-USD	from	5 years	to	6 years	20,000,000	10,000,000
TRY-USD	from	6 years	to	7 years	55,000,000	27,500,000
TRY-USD	from	7 years	to	8 years	20,000,000	10,000,000
CNY-USD	from	6 months	to	1 year	30,000,000	15,000,000
CNY-USD	from	1 year	to	2 years	50,000,000	25,000,000
CNY-USD	from	2 years	to	3 years	25,000,000	12,500,000
CNY-USD	from	3 years	to	4 years	35,000,000	17,500,000
CNY-USD	from	4 years	to	5 years	15,000,000	7,500,000
CNY-USD	from	5 years	to	6 years	15,000,000	7,500,000
RUB-USD	from	3 months	to	6 months	45,000,000	22,500,000
RUB-USD	from	6 months	to	1 year	35,000,000	17,500,000
RUB-USD	from	1 year	to	2 years	25,000,000	12,500,000
RUB-USD	from	2 years	to	3 years	20,000,000	10,000,000
RUB-USD	from	3 years	to	4 years	15,000,000	7,500,000
RUB-USD	from	4 years	to	5 years	15,000,000	7,500,000
RUB-USD	from	5 years	to	6 years	15,000,000	7,500,000

Table 18

Fixed to Float Multi-currency swaps – classes not having a liquid market

FIXED TO FLOAT MULTI-CURRENCY SWAPS - CLASSES NOT HAVING A LIQUID MARKET	LIS (€)	SSTI (€)
OTHERS	10,000,000	5,000,000

(1) ‘Float to float multi-currency swap’ means a multi-currency swap where the cash flows of both legs are determined by floating interest rates.

(2) ‘Float to float multi-currency swap liquid class’ means a float to float multi-currency swap characterised by a specific combination of tenor and currency-pair in which the notional amount of the two legs are denominated as specified in each row of Table 19 Float to Float Multi-currency swaps – liquid classes.

(3) ‘Float -to-float multi -currency swap class not having a liquid market’ means a float-to-float multi -currency swap which is not a float-to-float multi -currency swap liquid class.

Table 19

Float to Float Multi-currency swaps – liquid classes

FLOAT TO FLOAT MULTI-CURRENCY SWAPS - LIQUID CLASSES						
NOTIONAL CURRENCY PAIR	**TENOR**				**LIS (€)**	**SSTI (€)**
EUR-USD	from	3 months	to	6 months	325,000,000	162,500,000
EUR-USD	from	6 months	to	1 year	300,000,000	150,000,000
EUR-USD	from	1 year	to	2 years	275,000,000	137,500,000
EUR-USD	from	2 years	to	3 years	250,000,000	125,000,000
EUR-USD	from	3 years	to	4 years	225,000,000	112,500,000
EUR-USD	from	4 years	to	5 years	175,000,000	87,500,000
EUR-USD	from	5 years	to	6 years	200,000,000	100,000,000
EUR-USD	from	6 years	to	7 years	150,000,000	75,000,000
EUR-USD	from	7 years	to	8 years	175,000,000	87,500,000
EUR-USD	from	8 years	to	9 years	150,000,000	75,000,000
EUR-USD	from	9 years	to	10 years	125,000,000	62,500,000
EUR-USD	from	10 years	to	11 years	100,000,000	50,000,000
JPY-USD	from	3 months	to	6 months	300,000,000	150,000,000
JPY-USD	from	6 months	to	1 year	275,000,000	137,500,000
JPY-USD	from	1 year	to	2 years	175,000,000	87,500,000
JPY-USD	from	2 years	to	3 years	150,000,000	75,000,000
JPY-USD	from	3 years	to	4 years	150,000,000	75,000,000
JPY-USD	from	4 years	to	5 years	100,000,000	50,000,000
JPY-USD	from	5 years	to	6 years	75,000,000	37,500,000
JPY-USD	from	6 years	to	7 years	75,000,000	37,500,000
JPY-USD	from	7 years	to	8 years	75,000,000	37,500,000
GBP-USD	from	3 months	to	6 months	350,000,000	175,000,000
GBP-USD	from	6 months	to	1 year	300,000,000	150,000,000
GBP-USD	from	1 year	to	2 years	300,000,000	150,000,000
GBP-USD	from	2 years	to	3 years	250,000,000	125,000,000
GBP-USD	from	3 years	to	4 years	250,000,000	125,000,000
GBP-USD	from	4 years	to	5 years	250,000,000	125,000,000
GBP-USD	from	5 years	to	6 years	150,000,000	75,000,000
GBP-USD	from	6 years	to	7 years	200,000,000	100,000,000
GBP-USD	from	7 years	to	8 years	150,000,000	75,000,000
AUD-USD	from	3 months	to	6 months	325,000,000	162,500,000
AUD-USD	from	6 months	to	1 year	225,000,000	112,500,000
AUD-USD	from	1 year	to	2 years	150,000,000	75,000,000
AUD-USD	from	2 years	to	3 years	150,000,000	75,000,000
AUD-USD	from	3 years	to	4 years	125,000,000	62,500,000
AUD-USD	from	4 years	to	5 years	125,000,000	62,500,000
AUD-USD	from	5 years	to	6 years	125,000,000	62,500,000
AUD-USD	from	6 years	to	7 years	75,000,000	37,500,000
AUD-USD	from	7 years	to	8 years	75,000,000	37,500,000

Table 20

Float to Float Multi-currency swaps –classes not having a liquid market

FLOAT TO FLOAT MULTI-CURRENCY SWAPS - CLASSES NOT HAVING A LIQUID MARKET	LIS (€)	SSTI (€)
OTHERS	50,000,000	25,000,000

(1) 'Fixed to fixed multi-currency swap means a multi-currency swap where the cash flows of both legs are determined by fixed interest rates.

Table 21

Fixed to Fixed Multi-currency swaps – classes not having a liquid market

FIXED TO FIXED MULTI-CURRENCY SWAPS - CLASSES NOT HAVING A LIQUID MARKET	LIS (€)	SSTI (€)
OTHERS	50,000,000	25,000,000

(1) 'Overnight Index Swap (OIS)' means a swap related to a published index of a daily overnight reference rate.

(2) 'OIS multi-currency swap' means a multi-currency swap where the cash flows of at least one leg are determined by an Overnight Index Swap (OIS) rate.

Table 22

OIS Multi-currency swaps – classes not having a liquid market

OIS MULTI-CURRENCY SWAPS - CLASSES NOT HAVING A LIQUID MARKET	LIS (€)	SSTI (€)
OTHERS	150,000,000	75,000,000

(1) 'Inflation multi-currency swap' means a multi-currency swap where the cash flows of at least one leg are determined by an inflation rate.

(2) 'Single-currency swap' means a swap where two parties exchange cash flows denominated in the same currency.

(3) 'Fixed to float single-currency swap' means a single-currency swap where 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.

(4) 'Fixed to float single-currency swap liquid class' means a fixed to float single-currency swap characterised by a specific combination of tenor and currency in which the notional amount is denominated as specified in each row of Table 23 Fixed to Float Single-currency swaps – liquid classes.

(5) 'Fixed to float single-currency swap class not having a liquid market' means a fixed to float single-currency swap which is not a fixed to float single-currency swap liquid class.

Table 23

Fixed to Float Single-currency swaps – liquid classes

FIXED TO FLOAT SINGLE CURRENCY SWAPS - LIQUID CLASSES						
NOTIONAL CURRENCY	TENOR				LIS (€)	SSTI (€)
EUR	from	1 day	to	1.5 months	200,000,000	100,000,000
EUR	from	1.5 months	to	3 months	250,000,000	125,000,000
EUR	from	3 months	to	6 months	500,000,000	250,000,000
EUR	from	6 months	to	1 year	405,000,000	202,500,000
EUR	from	1 year	to	2 years	395,000,000	197,500,000
EUR	from	2 years	to	3 years	310,000,000	155,000,000
EUR	from	3 years	to	4 years	250,000,000	125,000,000
EUR	from	4 years	to	5 years	220,000,000	110,000,000
EUR	from	5 years	to	6 years	160,000,000	80,000,000
EUR	from	6 years	to	7 years	210,000,000	105,000,000
EUR	from	7 years	to	8 years	215,000,000	107,500,000
EUR	from	8 years	to	9 years	150,000,000	75,000,000
EUR	from	9 years	to	10 years	165,000,000	82,500,000
EUR	from	10 years	to	11 years	105,000,000	52,500,000
EUR	from	11 years	to	12 years	230,000,000	115,000,000
EUR	from	12 years	to	13 years	215,000,000	107,500,000
EUR	from	13 years	to	14 years	140,000,000	70,000,000
EUR	from	14 years	to	15 years	130,000,000	65,000,000
EUR	from	15 years	to	16 years	125,000,000	62,500,000
EUR	from	16 years	to	17 years	145,000,000	72,500,000
EUR	from	17 years	to	18 years	100,000,000	50,000,000
EUR	from	18 years	to	19 years	95,000,000	47,500,000
EUR	from	19 years	to	20 years	110,000,000	55,000,000
EUR	from	20 years	to	21 years	100,000,000	50,000,000
EUR	from	21 years	to	22 years	115,000,000	57,500,000
EUR	from	22 years	to	23 years	100,000,000	50,000,000
EUR	from	23 years	to	24 years	100,000,000	50,000,000
EUR	from	24 years	to	25 years	100,000,000	50,000,000
EUR	from	25 years	to	26 years	100,000,000	50,000,000
EUR	from	26 years	to	27 years	100,000,000	50,000,000
EUR	from	27 years	to	28 years	100,000,000	50,000,000
EUR	from	28 years	to	29 years	75,000,000	37,500,000
EUR	from	29 years	to	30 years	55,000,000	27,500,000
EUR	from	30 years	to	31 years	50,000,000	25,000,000
USD	from	1 day	to	1.5 months	125,000,000	62,500,000
USD	from	1.5 months	to	3 months	290,000,000	145,000,000
USD	from	3 months	to	6 months	365,000,000	182,500,000
USD	from	6 months	to	1 year	365,000,000	182,500,000
USD	from	1 year	to	2 years	365,000,000	182,500,000
USD	from	2 years	to	3 years	270,000,000	135,000,000
USD	from	3 years	to	4 years	235,000,000	117,500,000
USD	from	4 years	to	5 years	190,000,000	95,000,000
USD	from	5 years	to	6 years	145,000,000	72,500,000
USD	from	6 years	to	7 years	165,000,000	82,500,000
USD	from	7 years	to	8 years	145,000,000	72,500,000
USD	from	8 years	to	9 years	145,000,000	72,500,000
USD	from	9 years	to	10 years	90,000,000	45,000,000
USD	from	10 years	to	11 years	80,000,000	40,000,000
USD	from	11 years	to	12 years	130,000,000	65,000,000
USD	from	12 years	to	13 years	145,000,000	72,500,000

FIXED TO FLOAT SINGLE CURRENCY SWAPS - LIQUID CLASSES						
NOTIONAL CURRENCY	TENOR				LIS (€)	SSTI (€)
USD	from	13 years	to	14 years	110,000,000	55,000,000
USD	from	14 years	to	15 years	135,000,000	67,500,000
USD	from	15 years	to	16 years	80,000,000	40,000,000
USD	from	16 years	to	17 years	110,000,000	55,000,000
USD	from	17 years	to	18 years	75,000,000	37,500,000
USD	from	18 years	to	19 years	105,000,000	52,500,000
USD	from	19 years	to	20 years	110,000,000	55,000,000
USD	from	20 years	to	21 years	75,000,000	37,500,000
USD	from	21 years	to	22 years	80,000,000	40,000,000
USD	from	22 years	to	23 years	120,000,000	60,000,000
USD	from	23 years	to	24 years	110,000,000	55,000,000
USD	from	24 years	to	25 years	80,000,000	40,000,000
USD	from	25 years	to	26 years	75,000,000	37,500,000
USD	from	26 years	to	27 years	75,000,000	37,500,000
USD	from	27 years	to	28 years	70,000,000	35,000,000
USD	from	28 years	to	29 years	75,000,000	37,500,000
USD	from	29 years	to	30 years	50,000,000	25,000,000
USD	from	30 years	to	31 years	35,000,000	17,500,000
GBP	from	1 day	to	1.5 months	95,000,000	47,500,000
GBP	from	1.5 months	to	3 months	245,000,000	122,500,000
GBP	from	3 months	to	6 months	225,000,000	112,500,000
GBP	from	6 months	to	1 year	290,000,000	145,000,000
GBP	from	1 year	to	2 years	280,000,000	140,000,000
GBP	from	2 years	to	3 years	245,000,000	122,500,000
GBP	from	3 years	to	4 years	195,000,000	97,500,000
GBP	from	4 years	to	5 years	160,000,000	80,000,000
GBP	from	5 years	to	6 years	120,000,000	60,000,000
GBP	from	6 years	to	7 years	120,000,000	60,000,000
GBP	from	7 years	to	8 years	135,000,000	67,500,000
GBP	from	8 years	to	9 years	135,000,000	67,500,000
GBP	from	9 years	to	10 years	90,000,000	45,000,000
GBP	from	10 years	to	11 years	70,000,000	35,000,000
GBP	from	11 years	to	12 years	85,000,000	42,500,000
GBP	from	12 years	to	13 years	180,000,000	90,000,000
GBP	from	13 years	to	14 years	90,000,000	45,000,000
GBP	from	14 years	to	15 years	125,000,000	62,500,000
GBP	from	15 years	to	16 years	75,000,000	37,500,000
GBP	from	16 years	to	17 years	75,000,000	37,500,000
GBP	from	17 years	to	18 years	65,000,000	32,500,000
GBP	from	18 years	to	19 years	85,000,000	42,500,000
GBP	from	19 years	to	20 years	115,000,000	57,500,000
GBP	from	20 years	to	21 years	60,000,000	30,000,000
GBP	from	21 years	to	22 years	65,000,000	32,500,000
GBP	from	22 years	to	23 years	120,000,000	60,000,000
GBP	from	23 years	to	24 years	80,000,000	40,000,000
GBP	from	24 years	to	25 years	110,000,000	55,000,000
GBP	from	25 years	to	26 years	60,000,000	30,000,000
GBP	from	26 years	to	27 years	60,000,000	30,000,000
GBP	from	27 years	to	28 years	60,000,000	30,000,000
GBP	from	28 years	to	29 years	60,000,000	30,000,000

FIXED TO FLOAT SINGLE CURRENCY SWAPS - LIQUID CLASSES						
NOTIONAL CURRENCY	TENOR				LIS (€)	SSTI (€)
GBP	from	29 years	to	30 years	55,000,000	27,500,000
GBP	from	30 years	to	31 years	35,000,000	17,500,000
JPY	from	1 day	to	1.5 months	215,000,000	107,500,000
JPY	from	1.5 months	to	3 months	105,000,000	52,500,000
JPY	from	3 months	to	6 months	270,000,000	135,000,000
JPY	from	6 months	to	1 year	385,000,000	192,500,000
JPY	from	1 year	to	2 years	355,000,000	177,500,000
JPY	from	2 years	to	3 years	215,000,000	107,500,000
JPY	from	3 years	to	4 years	145,000,000	72,500,000
JPY	from	4 years	to	5 years	140,000,000	70,000,000
JPY	from	5 years	to	6 years	140,000,000	70,000,000
JPY	from	6 years	to	7 years	125,000,000	62,500,000
JPY	from	7 years	to	8 years	105,000,000	52,500,000
JPY	from	8 years	to	9 years	120,000,000	60,000,000
JPY	from	9 years	to	10 years	80,000,000	40,000,000
JPY	from	10 years	to	11 years	70,000,000	35,000,000
JPY	from	11 years	to	12 years	140,000,000	70,000,000
JPY	from	12 years	to	13 years	95,000,000	47,500,000
JPY	from	13 years	to	14 years	50,000,000	25,000,000
JPY	from	14 years	to	15 years	65,000,000	32,500,000
JPY	from	15 years	to	16 years	55,000,000	27,500,000
JPY	from	16 years	to	17 years	45,000,000	22,500,000
JPY	from	17 years	to	18 years	50,000,000	25,000,000
JPY	from	18 years	to	19 years	40,000,000	20,000,000
JPY	from	19 years	to	20 years	35,000,000	17,500,000
JPY	from	20 years	to	21 years	35,000,000	17,500,000
KRW	from	3 months	to	6 months	50,000,000	25,000,000
KRW	from	6 months	to	1 year	75,000,000	37,500,000
KRW	from	1 year	to	2 years	70,000,000	35,000,000
KRW	from	2 years	to	3 years	40,000,000	20,000,000
KRW	from	3 years	to	4 years	35,000,000	17,500,000
KRW	from	4 years	to	5 years	35,000,000	17,500,000
KRW	from	5 years	to	6 years	30,000,000	15,000,000
DKK	from	6 months	to	1 year	150,000,000	75,000,000
DKK	from	1 year	to	2 years	200,000,000	100,000,000
DKK	from	2 years	to	3 years	135,000,000	67,500,000
DKK	from	3 years	to	4 years	100,000,000	50,000,000
DKK	from	4 years	to	5 years	105,000,000	52,500,000
DKK	from	5 years	to	6 years	100,000,000	50,000,000
HKD	from	6 months	to	1 year	125,000,000	62,500,000
HKD	from	1 year	to	2 years	100,000,000	50,000,000
HKD	from	2 years	to	3 years	75,000,000	37,500,000
HKD	from	3 years	to	4 years	55,000,000	27,500,000
HKD	from	4 years	to	5 years	40,000,000	20,000,000
HKD	from	5 years	to	6 years	35,000,000	17,500,000
MYR	from	6 months	to	1 year	150,000,000	75,000,000
MYR	from	1 year	to	2 years	95,000,000	47,500,000
MYR	from	2 years	to	3 years	55,000,000	27,500,000
MYR	from	3 years	to	4 years	35,000,000	17,500,000
MYR	from	4 years	to	5 years	30,000,000	15,000,000

FIXED TO FLOAT SINGLE CURRENCY SWAPS - LIQUID CLASSES						
NOTIONAL CURRENCY	TENOR				LIS (€)	SSTI (€)
MYR	from	5 years	to	6 years	25,000,000	12,500,000
PLN	from	6 months	to	1 year	120,000,000	60,000,000
PLN	from	1 year	to	2 years	115,000,000	57,500,000
PLN	from	2 years	to	3 years	55,000,000	27,500,000
PLN	from	3 years	to	4 years	60,000,000	30,000,000
PLN	from	4 years	to	5 years	40,000,000	20,000,000
PLN	from	5 years	to	6 years	25,000,000	12,500,000
SGD	from	6 months	to	1 year	85,000,000	42,500,000
SGD	from	1 year	to	2 years	120,000,000	60,000,000
SGD	from	2 years	to	3 years	90,000,000	45,000,000
SGD	from	3 years	to	4 years	60,000,000	30,000,000
SGD	from	4 years	to	5 years	55,000,000	27,500,000
SGD	from	5 years	to	6 years	35,000,000	17,500,000
ZAR	from	6 months	to	1 year	80,000,000	40,000,000
ZAR	from	1 year	to	2 years	55,000,000	27,500,000
ZAR	from	2 years	to	3 years	40,000,000	20,000,000
ZAR	from	3 years	to	4 years	25,000,000	12,500,000
ZAR	from	4 years	to	5 years	35,000,000	17,500,000
ZAR	from	5 years	to	6 years	20,000,000	10,000,000
NZD	from	3 months	to	6 months	150,000,000	75,000,000
NZD	from	6 months	to	1 year	195,000,000	97,500,000
NZD	from	1 year	to	2 years	105,000,000	52,500,000
NZD	from	2 years	to	3 years	95,000,000	47,500,000
NZD	from	3 years	to	4 years	80,000,000	40,000,000
NZD	from	4 years	to	5 years	65,000,000	32,500,000
NZD	from	5 years	to	6 years	55,000,000	27,500,000
NZD	from	6 years	to	7 years	55,000,000	27,500,000
NZD	from	7 years	to	8 years	55,000,000	27,500,000
NZD	from	8 years	to	9 years	40,000,000	20,000,000
AUD	from	3 months	to	6 months	670,000,000	335,000,000
AUD	from	6 months	to	1 year	170,000,000	85,000,000
AUD	from	1 year	to	2 years	195,000,000	97,500,000
AUD	from	2 years	to	3 years	180,000,000	90,000,000
AUD	from	3 years	to	4 years	115,000,000	57,500,000
AUD	from	4 years	to	5 years	90,000,000	45,000,000
AUD	from	5 years	to	6 years	65,000,000	32,500,000
AUD	from	6 years	to	7 years	65,000,000	32,500,000
AUD	from	7 years	to	8 years	60,000,000	30,000,000
AUD	from	8 years	to	9 years	40,000,000	20,000,000
AUD	from	9 years	to	10 years	50,000,000	25,000,000
AUD	from	10 years	to	11 years	40,000,000	20,000,000
CAD	from	3 months	to	6 months	495,000,000	247,500,000
CAD	from	6 months	to	1 year	330,000,000	165,000,000
CAD	from	1 year	to	2 years	230,000,000	115,000,000
CAD	from	2 years	to	3 years	190,000,000	95,000,000
CAD	from	3 years	to	4 years	175,000,000	87,500,000
CAD	from	4 years	to	5 years	135,000,000	67,500,000
CAD	from	5 years	to	6 years	125,000,000	62,500,000
CAD	from	6 years	to	7 years	100,000,000	50,000,000
CAD	from	7 years	to	8 years	130,000,000	65,000,000

FIXED TO FLOAT SINGLE CURRENCY SWAPS - LIQUID CLASSES						
NOTIONAL CURRENCY	TENOR				LIS (€)	SSTI (€)
CAD	from	8 years	to	9 years	65,000,000	32,500,000
CAD	from	9 years	to	10 years	60,000,000	30,000,000
CAD	from	10 years	to	11 years	50,000,000	25,000,000
SEK	from	3 months	to	6 months	110,000,000	55,000,000
SEK	from	6 months	to	1 year	165,000,000	82,500,000
SEK	from	1 year	to	2 years	165,000,000	82,500,000
SEK	from	2 years	to	3 years	110,000,000	55,000,000
SEK	from	3 years	to	4 years	110,000,000	55,000,000
SEK	from	4 years	to	5 years	95,000,000	47,500,000
SEK	from	5 years	to	6 years	55,000,000	27,500,000
SEK	from	6 years	to	7 years	60,000,000	30,000,000
SEK	from	7 years	to	8 years	55,000,000	27,500,000
SEK	from	8 years	to	9 years	50,000,000	25,000,000
SEK	from	9 years	to	10 years	40,000,000	20,000,000
SEK	from	10 years	to	11 years	30,000,000	15,000,000
CHF	from	6 months	to	1 year	165,000,000	82,500,000
CHF	from	1 year	to	2 years	205,000,000	102,500,000
CHF	from	2 years	to	3 years	205,000,000	102,500,000
CHF	from	3 years	to	4 years	125,000,000	62,500,000
CHF	from	4 years	to	5 years	105,000,000	52,500,000
CHF	from	5 years	to	6 years	115,000,000	57,500,000
CHF	from	6 years	to	7 years	120,000,000	60,000,000
CHF	from	7 years	to	8 years	105,000,000	52,500,000
CHF	from	8 years	to	9 years	45,000,000	22,500,000
CHF	from	9 years	to	10 years	40,000,000	20,000,000
CHF	from	10 years	to	11 years	60,000,000	30,000,000
NOK	from	6 months	to	1 year	75,000,000	37,500,000
NOK	from	1 year	to	2 years	90,000,000	45,000,000
NOK	from	2 years	to	3 years	100,000,000	50,000,000
NOK	from	3 years	to	4 years	60,000,000	30,000,000
NOK	from	4 years	to	5 years	50,000,000	25,000,000
NOK	from	5 years	to	6 years	60,000,000	30,000,000
NOK	from	6 years	to	7 years	60,000,000	30,000,000
NOK	from	7 years	to	8 years	50,000,000	25,000,000
NOK	from	8 years	to	9 years	15,000,000	7,500,000
NOK	from	9 years	to	10 years	50,000,000	25,000,000
NOK	from	10 years	to	11 years	35,000,000	17,500,000
MXN	from	1 day	to	1.5 months	70,000,000	35,000,000
MXN	from	1.5 months	to	3 months	155,000,000	77,500,000
MXN	from	3 months	to	6 months	165,000,000	82,500,000
MXN	from	6 months	to	1 year	120,000,000	60,000,000
MXN	from	1 year	to	2 years	65,000,000	32,500,000
MXN	from	2 years	to	3 years	40,000,000	20,000,000
MXN	from	3 years	to	4 years	20,000,000	10,000,000
MXN	from	4 years	to	5 years	20,000,000	10,000,000
MXN	from	5 years	to	6 years	25,000,000	12,500,000
MXN	from	6 years	to	7 years	15,000,000	7,500,000

Table 24

Fixed to Float Single-currency swaps – classes not having a liquid market

FIXED TO FLOAT SINGLE CURRENCY SWAPS - CLASSES NOT HAVING A LIQUID MARKET	LIS (€)	SSTI (€)
OTHERS	10,000,000	5,000,000

(1) 'Inflation single-currency swap' means a single-currency swap where the cash flows of at least one leg are determined by an inflation rate.

(2) 'Inflation single-currency swap liquid class' means an inflation single-currency swap characterised by a specific combination of tenor and currency in which the notional amount is denominated as specified in each row of Table 25 Inflation Single-currency swaps – liquid classes.

(3) 'Inflation single-currency swap class not having a liquid market' means an inflation single-currency swap which is not an inflation single-currency swap liquid class.

Table 25

Inflation Single-currency swaps – liquid classes

INFLATION SINGLE CURRENCY SWAPS - LIQUID CLASSES			
NOTIONAL CURRENCY	TENOR	LIS (€)	SSTI (€)
EUR	from 6 months to 1 year	100,000,000	50,000,000
EUR	from 1 year to 2 years	75,000,000	37,500,000
EUR	from 2 years to 3 years	65,000,000	32,500,000
EUR	from 3 years to 4 years	100,000,000	50,000,000
EUR	from 4 years to 5 years	100,000,000	50,000,000
EUR	from 5 years to 6 years	75,000,000	37,500,000

Table 26

Inflation Single-currency swaps – classes not having a liquid market

INFLATION SINGLE CURRENCY SWAPS - CLASSES NOT HAVING A LIQUID MARKET	LIS (€)	SSTI (€)
OTHERS	25,000,000	12,500,000

(1) 'OIS single-currency swap' means a single-currency swap where the cash flows of at least one leg are determined by an Overnight Index Swap (OIS) rate.

(2) 'OIS single-currency swap liquid class' means an OIS single-currency swap characterised by a specific combination of tenor and currency in which the notional amount is denominated as specified in each row of Table 27 OIS Single-currency swaps – liquid classes.

(3) ‘OIS single-currency swap class not having a liquid market’ means an OIS single-currency swap which is not an OIS single-currency swap liquid class.

Table 27

OIS Single-currency swaps – liquid classes

OIS SINGLE CURRENCY SWAPS - LIQUID CLASSES				
NOTIONAL CURRENCY	**TENOR**		**LIS (€)**	**SSTI (€)**
EUR	from 1 day	to 1.5 months	1,275,000,000	637,500,000
EUR	from 1.5 months	to 3 months	1,500,000,000	750,000,000
EUR	from 3 months	to 6 months	1,000,000,000	500,000,000
EUR	from 6 months	to 1 year	1,000,000,000	500,000,000
EUR	from 1 year	to 2 years	500,000,000	250,000,000
EUR	from 2 years	to 3 years	375,000,000	187,500,000
EUR	from 3 years	to 4 years	300,000,000	150,000,000
EUR	from 4 years	to 5 years	225,000,000	112,500,000
EUR	from 5 years	to 6 years	275,000,000	137,500,000
EUR	from 6 years	to 7 years	250,000,000	125,000,000
EUR	from 7 years	to 8 years	200,000,000	100,000,000
EUR	from 8 years	to 9 years	150,000,000	75,000,000
EUR	from 9 years	to 10 years	75,000,000	37,500,000
EUR	from 10 years	to 11 years	200,000,000	100,000,000
USD	from 1 day	to 1.5 months	1,450,000,000	725,000,000
USD	from 1.5 months	to 3 months	1,450,000,000	725,000,000
USD	from 3 months	to 6 months	1,450,000,000	725,000,000
USD	from 6 months	to 1 year	1,100,000,000	550,000,000
USD	from 1 year	to 2 years	725,000,000	362,500,000
USD	from 2 years	to 3 years	725,000,000	362,500,000
USD	from 3 years	to 4 years	175,000,000	87,500,000
USD	from 4 years	to 5 years	125,000,000	62,500,000
USD	from 5 years	to 6 years	150,000,000	75,000,000
GBP	from 1 day	to 1.5 months	1,325,000,000	662,500,000
GBP	from 1.5 months	to 3 months	1,225,000,000	612,500,000
GBP	from 3 months	to 6 months	1,225,000,000	612,500,000
GBP	from 6 months	to 1 year	1,225,000,000	612,500,000
GBP	from 1 year	to 2 years	1,225,000,000	612,500,000
GBP	from 2 years	to 3 years	600,000,000	300,000,000
GBP	from 3 years	to 4 years	600,000,000	300,000,000
GBP	from 4 years	to 5 years	125,000,000	62,500,000
GBP	from 5 years	to 6 years	175,000,000	87,500,000

Table 28

OIS Single-currency swaps – classes not having a liquid market

OIS SINGLE CURRENCY SWAPS - CLASSES NOT HAVING A LIQUID MARKET	LIS (€)	SSTI (€)
OTHERS	50,000,000	25,000,000

(1) ‘Float to float single-currency swap’ means a single-currency swap where the cash flows of both legs are determined by floating interest rates.

(2) ‘Float to float single-currency swap liquid class’ means a float to float single-currency swap characterised by a specific combination of tenor and currency in which the notional amount is denominated as specified in each row of Table 29 Float to Float Single-currency swaps – liquid classes .

(3) ‘Float to float single-currency swap class not having a liquid market’ means a float to float single-currency swap which is not a float to float single-currency swap liquid class.

Table 29

Float to Float Single-currency swaps – liquid classes

FLOAT TO FLOAT SINGLE CURRENCY SWAPS - LIQUID CLASSES						
NOTIONAL CURRENCY	**TENOR**				**LIS (€)**	**SSTI (€)**
USD	from	6 months	to	1 year	725,000,000	362,500,000
USD	from	1 year	to	2 years	725,000,000	362,500,000
USD	from	2 years	to	3 years	500,000,000	250,000,000
USD	from	3 years	to	4 years	375,000,000	187,500,000
USD	from	4 years	to	5 years	375,000,000	187,500,000
USD	from	5 years	to	6 years	225,000,000	112,500,000
USD	from	6 years	to	7 years	150,000,000	75,000,000
USD	from	7 years	to	8 years	175,000,000	87,500,000
USD	from	8 years	to	9 years	200,000,000	100,000,000
USD	from	9 years	to	10 years	175,000,000	87,500,000
USD	from	10 years	to	11 years	100,000,000	50,000,000
GBP	from	6 months	to	1 year	900,000,000	450,000,000
GBP	from	1 year	to	2 years	600,000,000	300,000,000
GBP	from	2 years	to	3 years	725,000,000	362,500,000
GBP	from	3 years	to	4 years	375,000,000	187,500,000
GBP	from	4 years	to	5 years	325,000,000	162,500,000
GBP	from	5 years	to	6 years	325,000,000	162,500,000
GBP	from	6 years	to	7 years	300,000,000	150,000,000
GBP	from	7 years	to	8 years	200,000,000	100,000,000
GBP	from	8 years	to	9 years	175,000,000	87,500,000
GBP	from	9 years	to	10 years	200,000,000	100,000,000
GBP	from	10 years	to	11 years	250,000,000	125,000,000
EUR	from	3 months	to	6 months	200,000,000	100,000,000
EUR	from	6 months	to	1 year	75,000,000	37,500,000
EUR	from	1 year	to	2 years	100,000,000	50,000,000
EUR	from	2 years	to	3 years	100,000,000	50,000,000
EUR	from	3 years	to	4 years	75,000,000	37,500,000
EUR	from	4 years	to	5 years	100,000,000	50,000,000
EUR	from	5 years	to	6 years	75,000,000	37,500,000
EUR	from	6 years	to	7 years	50,000,000	25,000,000
EUR	from	7 years	to	8 years	200,000,000	100,000,000
EUR	from	8 years	to	9 years	200,000,000	100,000,000

FLOAT TO FLOAT SINGLE CURRENCY SWAPS - LIQUID CLASSES						
NOTIONAL CURRENCY	TENOR				LIS (€)	SSTI (€)
JPY	from	3 months	to	6 months	350,000,000	175,000,000
JPY	from	6 months	to	1 year	275,000,000	137,500,000
JPY	from	1 year	to	2 years	575,000,000	287,500,000
JPY	from	2 years	to	3 years	275,000,000	137,500,000
JPY	from	3 years	to	4 years	225,000,000	112,500,000
JPY	from	4 years	to	5 years	150,000,000	75,000,000
JPY	from	5 years	to	6 years	150,000,000	75,000,000
JPY	from	6 years	to	7 years	75,000,000	37,500,000
JPY	from	7 years	to	8 years	150,000,000	75,000,000
JPY	from	8 years	to	9 years	100,000,000	50,000,000
AUD	from	6 months	to	1 year	225,000,000	112,500,000
AUD	from	1 year	to	2 years	175,000,000	87,500,000
AUD	from	2 years	to	3 years	200,000,000	100,000,000
AUD	from	3 years	to	4 years	150,000,000	75,000,000
AUD	from	4 years	to	5 years	175,000,000	87,500,000
AUD	from	5 years	to	6 years	100,000,000	50,000,000

Table 30

Float to Float Single-currency swaps – classes not having a liquid market

FLOAT TO FLOAT SINGLE CURRENCY SWAPS - CLASSES NOT HAVING A LIQUID MARKET	LIS (€)	SSTI (€)
OTHERS	25,000,000	12,500,000

(1) ‘Fixed to fixed single-currency swap means a single-currency swap where the cash flows of both legs are determined by fixed interest rates.

Table 31

Fixed to Fixed Single-currency swaps – classes not having a liquid market

FIXED TO FIXED SINGLE CURRENCY SWAPS - CLASSES NOT HAVING A LIQUID MARKET	LIS (€)	SSTI (€)
OTHERS	25,000,000	12,500,000

Section 4

Equity derivatives

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

(1) ‘Equity derivatives’ means 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) a portfolio or an index including 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.

(2) Index option’ means an option whose underlying is an index composed of shares.

(3) ‘Index futures’ means futures whose underlying is an index composed of shares.

(4) ‘Stock option’ means an option whose underlying is a share.

(5) ‘Stock futures’ means futures whose underlying is a share.

(6) ‘Stock dividend option’ means an option on the dividend of a specific share.

(7) ‘Stock dividend futures’ means futures on the dividend of a specific share.

(8) ‘Dividend index option’ means an option on an index composed of dividends of more than one share.

(9) ‘Dividend index futures’ means futures on an index composed of dividends of more than one share.

(10) ‘Option on a basket or portfolio of shares’ means an option whose underlying is a basket or a portfolio of shares.

(11) ‘Futures on a basket or portfolio of shares’ means futures whose underlying is a basket or a portfolio of shares.

(12) ‘Option on other underlying values’ means an option whose underlying is a volatility index or an ETF.

(13) ‘Futures on other underlying values’ means futures whose underlying is a volatility index or an ETF.

(14) ‘Equity derivatives liquid class’ means any of the contract types as specified in each row of Table 32 Equity derivatives – liquid classes.

(15) ‘Equity derivatives not having a liquid market’ means an equity derivative which is not an equity derivatives liquid class.

Table 32

Equity derivatives – liquid classes

EQUITY DERIVATIVES - LIQUID CLASSES	LIS (€)	SSTI (€)
Contract type		
Index options	1,500,000	750,000
Index futures	2,000,000	1,000,000
Stock options	900,000	450,000
Stock futures	800,000	400,000
Dividend index options	500,000	250,000
Dividend index futures	500,000	250,000
Stock dividend options	500,000	250,000
Stock dividend futures	500,000	250,000
Options on a basket or portfolio of shares	750,000	375,000
Futures on a basket or portfolio of shares	1,000,000	500,000
Options on other underlying values	750,000	375,000
Futures on other underlying values	1,000,000	500,000

Table 33

Equity derivatives – classes not having a liquid market

EQUITY DERIVATIVES - CLASSES NOT HAVING A LIQUID MARKET	LIS (€)	SSTI (€)
OTHERS	500,000	250,000

Section 5

Commodities derivatives

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

(1) ‘Metal commodity futures liquid class’ means a commodity futures characterised by a specific combination of underlying type, underlying and currency in which the contract is denominated as specified in each row of Table 34 Metal commodity futures – liquid classes.

(2) ‘Metal commodity futures class not having a liquid market’ means commodity futures which are not a metal commodity futures liquid class.

Table 34

Metal commodity futures – liquid classes

METAL COMMODITY FUTURES - LIQUID CLASSES				
UNDERLYING TYPE	**UNDERLYING**	**CURRENCY**	**LIS (€)**	**SSTI (€)**
Single Name	Aluminium	EUR	1,000,000	500,000
Single Name	Aluminium	GBP	1,000,000	500,000
Single Name	Aluminium	USD	1,000,000	500,000
Single Name	Aluminium Alloy	USD	1,000,000	500,000
Single Name	Aluminium Swap	USD	1,500,000	750,000
Single Name	Cobalt	USD	1,000,000	500,000
Single Name	Copper	EUR	1,000,000	500,000
Single Name	Copper	GBP	1,000,000	500,000
Single Name	Copper	USD	1,000,000	500,000
Single Name	Copper Swap	USD	7,500,000	3,750,000
Single Name	Gold	RON	1,000,000	500,000
Single Name	Lead	EUR	1,000,000	500,000
Single Name	Lead	GBP	1,000,000	500,000
Single Name	Lead	USD	1,000,000	500,000
Single Name	Lead Swap	USD	1,300,000	650,000
Single Name	Molybdenum	USD	1,000,000	500,000
Single Name	Nickel	EUR	1,000,000	500,000
Single Name	Nickel	GBP	1,000,000	500,000
Single Name	Nickel	USD	1,000,000	500,000
Single Name	Nickel Swap	USD	1,000,000	500,000
Single Name	North American Special Aluminium Alloy	EUR	1,000,000	500,000
Single Name	North American Special Aluminium Alloy	USD	1,500,000	750,000
Single Name	Steel Billet	USD	1,000,000	500,000
Single Name	Tin	EUR	1,000,000	500,000
Single Name	Tin	GBP	1,000,000	500,000
Single Name	Tin	USD	1,000,000	500,000
Single Name	Tin Swap	USD	1,000,000	500,000
Single Name	Zinc	EUR	1,000,000	500,000
Single Name	Zinc	USD	1,000,000	500,000
Index	Commodities	USD	2,000,000	1,000,000
Index	Gold	USD	1,000,000	500,000

Table 35

Metal commodity futures – classes not having a liquid market

METAL COMMODITY FUTURES - CLASSES NOT HAVING A LIQUID MARKET	LIS (€)	SSTI (€)
OTHERS	1,000,000	500,000

(1) ‘Metal commodity option liquid class’ means a commodity option characterised by a specific combination of underlying type, underlying and currency in which the contract is denominated as specified in each row of Table 36 Metal commodity options – liquid classes.

(2) ‘Metal commodity options class not having a liquid market’ means a commodity option which is not a metal commodity option liquid class.

Table 36
Metal commodity options – liquid classes

METAL COMMODITY OPTIONS - LIQUID CLASSES				
UNDERLYING TYPE	**UNDERLYING**	**CURRENCY**	**LIS (€)**	**SSTI (€)**
Single Name	Aluminium	EUR	1,000,000	500,000
Single Name	Aluminium	USD	17,500,000	8,750,000
Single Name	Copper	USD	20,000,000	10,000,000
Single Name	Lead	USD	5,000,000	2,500,000
Single Name	Nickel	USD	50,000,000	25,000,000
Single Name	North American Special Aluminium Alloy	USD	2,500,000	1,250,000
Single Name	Tin	USD	40,000,000	20,000,000
Single Name	Zinc	USD	7,500,000	3,750,000
Index	Gold	USD	1,000,000	500,000

Table 37
Metal commodity options – classes not having a liquid market

METAL COMMODITY OPTIONS - CLASSES NOT HAVING A LIQUID MARKET	LIS (€)	SSTI (€)
OTHERS	1,000,000	500,000

(1) ‘Energy commodity futures liquid class’ means a commodity futures characterised by a specific combination of underlying type, underlying, currency in which the contract is denominated and time to maturity as specified in each row of Table 38 Energy commodity futures – liquid classes.

(2) ‘Energy commodity futures class not having a liquid market’ means commodity futures which are not an energy commodity futures liquid class.

Table 38
Energy commodity futures – liquid classes

ENERGY COMMODITY FUTURES - LIQUID CLASSES					
UNDERLYING TYPE	**UNDERLYING**	**CURRENCY**	**TIME TO MATURITY**	**LIS (€)**	**SSTI (€)**
Index	Electricity	EUR	up to 3 months	1,000,000	500,000
Index	Electricity	EUR	equal or longer than 3 months	1,500,000	750,000
Single Name	Electricity	EUR	up to 3 months	1,000,000	500,000
Single Name	Electricity	EUR	equal or longer than 3 months	1,000,000	500,000
Single Name	Electricity	SEK	equal or longer than 3 months	1,000,000	500,000
Single Name	Natural Gas	EUR	equal or longer than 3 months	2,000,000	1,000,000
Single Name	Oil	RON	up to 3 months	1,000,000	500,000
Single Name	Oil	RON	equal or longer than 3 months	1,000,000	500,000

Table 39

Energy commodity futures –classes not having a liquid market

ENERGY COMMODITY FUTURES - CLASSES NOT HAVING A LIQUID MARKET	LIS (€)	SSTI (€)
OTHERS	1,000,000	500,000

Table 40

Energy commodity options – classes not having a liquid market

ENERGY COMMODITY OPTIONS - CLASSES NOT HAVING A LIQUID MARKET	LIS (€)	SSTI (€)
OTHERS	2,000,000	1,000,000

(1) 'Agricultural commodity futures liquid class' means a commodity futures whose underlying is one of those specified in each row of Table 41 Agricultural commodity futures – liquid classes.

(2) 'Agricultural commodity futures class not having a liquid market' means commodity futures which are not an agricultural commodity futures liquid class.

Table 41

Agricultural commodity futures – liquid classes

AGRICULTURAL COMMODITY FUTURES - LIQUID CLASSES		
UNDERLYING	LIS (€)	SSTI (€)
Cocoa	1,000,000	500,000
Coffee	1,000,000	500,000
Corn	1,000,000	500,000
Potatoe	1,000,000	500,000
Rapeseed	1,000,000	500,000
Sugar	1,000,000	500,000
Wheat (feed)	1,000,000	500,000
Wheat (milling)	1,000,000	500,000

Table 42

Agricultural commodity futures – classes not having a liquid market

AGRICULTURAL COMMODITY FUTURES - CLASSES NOT HAVING A LIQUID MARKET	LIS (€)	SSTI (€)
OTHERS	1,000,000	500,000

(1) 'Agricultural commodity option liquid class' means a commodity option whose underlying is one of those specified in each row of Table 43 Agricultural commodity options – liquid classes.

(2) ‘Agricultural commodity options class not having a liquid market’ means a commodity option which is not an agricultural commodity option liquid class.

Table 43

Agricultural commodity options – liquid classes

AGRICULTURAL COMMODITY OPTIONS - LIQUID CLASSES		
UNDERLYING	**LIS (€)**	**SSTI (€)**
Cocoa	13,000,000	6,500,000
Coffee	3,500,000	1,750,000
Corn	1,000,000	500,000
Rapeseed	19,000,000	9,500,000
Wheat (milling)	2,000,000	1,000,000

Table 44

Agricultural commodity options – classes not having a liquid market

AGRICULTURAL COMMODITY OPTIONS - CLASSES NOT HAVING A LIQUID MARKET	LIS (€)	SSTI (€)
OTHERS	1,000,000	500,000

Section 6

Foreign exchange derivatives

Section 7

Credit derivatives

Section 8

Other derivatives

Section 9

Contracts for difference

Section 10

Emission allowances

(1) ‘Certified Emission Reductions (CER)’ means any unit recognised for compliance with the requirements of Directive 2003/87/EC (Emissions Trading Scheme) which represents the emissions reduction equivalent to one tonne of carbon dioxide equivalent (tCO2e).

(2) ‘European Union Allowances (EUA)’ means any unit recognised for compliance with the requirements of Directive 2003/87/EC (Emissions Trading Scheme) which represents the right to emit the equivalent to one tonne of carbon dioxide equivalent (tCO2e).

(3) ‘European Union Aviation Allowance (EUAA)’ means any unit recognised for compliance with the requirements of Directive 2003/87/EC (Emissions Trading Scheme) which represents the right to emit the equivalent to one tonne of carbon dioxide equivalent (tCO2e) from aviation.

(4) ‘Emission Reduction Units (ERU)’ means any unit recognised for compliance with the requirements of Directive 2003/87/EC (Emissions Trading Scheme) which represents the emissions reduction equivalent to one tonne of carbon dioxide equivalent (tCO2e).

Table 45

Emission allowances –liquid classes

EMISSION ALLOWANCES - LIQUID CLASSES	**LIS** (Tons of Carbon Dioxide)	**SSTI** (Tons of Carbon Dioxide)
EUA	100,000	50,000

Table 46

Emission allowances – classes not having a liquid market

EMISSION ALLOWANCES - CLASSES NOT HAVING A LIQUID MARKET	**LIS** (Tons of Carbon Dioxide)	**SSTI** (Tons of Carbon Dioxide)
EUAA	50,000	25,000
CER	50,000	25,000
ERU	50,000	25,000
OTHERS	50,000	25,000

Section 11

LIS threshold floors

Table 47

LIS threshold floors

CLASS OF FINANCIAL INSTRUMENTS			LIS THRESHOLD FLOOR	
BOND TYPE	**DEBT SENIORITY**	**ISSUER SUB-TYPE**		
European Sovereign Bond			EUR	10,000,000
Non-European Sovereign Bond			EUR	10,000,000
Other European Public Bond			EUR	5,000,000
Convertible Bond		Financial	EUR	1,000,000
Covered Bond			EUR	5,500,000
Corporate Bond	Senior	Financial	EUR	2,500,000
Corporate Bond	Senior	Non-financial	EUR	1,500,000
Corporate Bond	Subordinated	Financial	EUR	2,000,000
Corporate Bond	Subordinated	Non-financial	EUR	5,000,000
Convertible Bond		Non-financial	EUR	2,500,000
Others			EUR	1,000,000
SFP				
SFP			EUR	5,500,000
SECURITISED DERIVATIVES				
Securitised Derivatives			EUR	100,000
EQUITY DERIVATIVES				
Equity Derivatives			EUR	500,000
COMMODITY DERIVATIVES				
Commodity Derivatives			EUR	1,000,000
INTEREST RATE DERIVATIVES				
Interest Rate Derivatives			EUR	10,000,000
EMISSION ALLOWANCES				
EUA			Tons of Carbon Dioxide	100,000
EUAA			Tons of Carbon Dioxide	50,000
CER			Tons of Carbon Dioxide	50,000
ERU			Tons of Carbon Dioxide	50,000
Others			Tons of Carbon Dioxide	50,000

RTS 10: Draft regulatory technical standards on the double volume cap mechanism and the provision of information for the purposes of transparency and other calculations

COMMISSION DELEGATED REGULATION (EU) No …/..

of [date]

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the double 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[10] (MiFIR), and in particular Articles 5(9) and 22(4),

Whereas:

(1) MiFIR requires competent authorities and the European Supervisory Authority (European Securities and Markets Authority)(ESMA) to perform a significant number of calculations in order to determine the extent to which financial instruments are subject to the transparency obligations in Titles II and III of MiFIR.

(2) In order to perform the necessary calculations, both competent authorities and ESMA must be able to obtain robust and high quality data for each asset class to which MiFIR applies. This will improve the availability and quality of data available to competent authorities and ESMA in accordance with Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU[11] (MiFID II) and MiFIR so that the classification of financial instruments, according to thresholds in regulatory technical standards, and, where necessary, re-calibrations of these thresholds, can be calculated

[10] OJ L 173, 12.06.2014, p. 84.
[11] OJ L 173, 12.06.2014, p. 349.

on a more informed basis after MiFID II and MiFIR have been in force for a certain period of time.

(3) The information to be provided to ESMA is for the purpose of its carrying out calculations for determining the requirements for the pre-trade and post-trade transparency and the trading obligation regimes imposed by Articles 3 to 11, Articles 14 to 21 and Article 32 of MiFIR which are applicable to financial instruments and determining whether an investment firm is a systematic internaliser. Therefore, the content, format, quality and frequency of the data submitted needs to be consistent with the methodology, the criteria and the periodicity to be applied when performing such calculations.

(4) Data needs to be collected from a variety of sources which may not always hold a complete data set for an asset class or even a particular instrument. Therefore, obtaining high quality data implies the collation of data from various sources and, thus, requires trading venues, APAs and CTPs to use pre-set templates so as to make the data collection easier and more cost efficient as well as to allow automating - to the extent possible - any future re-classifications of financial instruments and any recalibrations of thresholds.

(5) Particularly considering the sensitivity of the necessary calculations and the potential commercial consequences for venues, issuers and other market participants of publishing incorrect information which could lead to the suspension of the use of one waiver or of all waivers across the Union for one particular financial instrument, it is crucial to set up efficient IT structures of high quality in cooperation with trading venues and other stakeholders to ensure timely and correct publication of the required data. In addition, in order to provide competent authorities and ESMA with accurate data, transactions reported should be done on a single-counted basis so as to avoid double reporting.

(6) 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 Articles 5 and 22 of MiFIR. To ensure coherence between those provisions, which will enter into force at the same time, and to facilitate a comprehensive view for stakeholders and in particular those subject to the obligations it is desirable to include these regulatory technical standards in a single Regulation.

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

(8) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and the Council establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing

Commission Decision 2009/77/EC [12], in developing the draft regulatory technical standards on which this Regulation is based, ESMA has conducted open public consultations, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of that Regulation.

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

This Regulation lays down the rules for trading venues, APAs and CTPs in respect of the provision of information for the purposes of transparency and other calculations as well as rules for competent authorities and ESMA for processing that information in accordance with MiFIR. It establishes, in particular, uniform requirements in relation to:

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

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

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

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

(e) determining whether an investment firm deals on own account OTC on a systematic, frequent and substantial basis for the purposes of the systematic internaliser definition;

(f) setting 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) setting the method, including the flagging of transactions, by which ESMA will collate, calculate and publish undertaking calculations and publishing accurate measurements of the percentage of trading in a financial instrument carried out under both the negotiated trade and reference price waivers; and

[12] OJ L 331, 15.12.2010, p. 84.

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

Article 2

Content of the data requests

1. A trading venue, APA and CTP shall include in the reports referred to in Article 3 all data required to calculate, monitor or adjust the thresholds and parameters referred to in subparagraphs (a) to (h) of Article 1, taking into account the regulatory technical standards adopted by the Commission which specify the data necessary to calculate or determine those thresholds and parameters, including:

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

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

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

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

2. For non-equity financial instruments and with respect to subparagraphs (a) to (d) and (g) of Article 1, the reports referred to in paragraph 1 shall include the information ESMA is required to take into consideration in accordance with Regulation (EU) xx/xxxx [Trading obligation 32(6) TS] and at least information on:

(a) the average frequency of trades;

(b) the average size of trades;

(c) the number and type of market participants; and

(d) the average size of spreads.

Article 3

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

1. A trading venue, APA and CTP shall submit periodic reports to the competent authority at the times specified in the regulatory technical standards referred to in Articles 1 and as specified in Article 6 of this Regulation where those calculations occur at pre-set dates or in pre-defined frequencies.

2. A trading venue, APA and CTP shall submit its response to ad hoc requests to the competent authority of its home Member State within four weeks of receipt of the initial

request unless exceptional circumstances require a response within the shorter deadline specified in the request.

Article 4
Format of the data request

A competent authority shall request data in formats that are generally accepted and widely available in the market and, where appropriate, through the use of templates that facilitate an efficient and automated process of data delivery.

Article 5
Type of data that must be stored and the minimum period of time trading venues, APAs, CTPs shall store data

A trading venue, APA and CTP shall store the data referred to in Article 2 of this Regulation for at least two years.

Article 6
Reporting requirements for trading venues and CTPs for the purpose of the double volume cap mechanism

1. A trading venue shall submit to the competent authority for each financial instrument subject to the transparency requirements in Article 3 of MiFIR and for the period specified in paragraph 5 the following data:

(a) the total volume of trading; and

(b) the volume of trading executed under each reference price and negotiated trade waiver facility under Article 4(1)(a) or Article 4(1)(b)(i) of MiFIR separately.

2. A CTP shall submit to the competent authority for each financial instrument which is subject to the transparency requirements in Article 3 of MiFIR and for the period specified in paragraph 5 the respective volumes referred to in paragraph 1.

3. A trading venue and a CTP shall determine the trading volumes executed in accordance with paragraph 1 by aggregating the volumes reported under the flags ‘reference price’ and ‘negotiated transactions in liquid financial instruments’ in accordance with Table 2 of Annex I of Regulation (EU) No xx/xxxx [Equity transparency].

4. For the purpose of this Regulation, the volume of individual transactions shall be determined by multiplying the price of the financial instrument by the number of units and the total volume of trading for each financial instrument shall be obtained by collating the volume of all individual and single-counted transactions. Transactions executed in a currency other

than euro need to be converted prior to making the calculations in this paragraph using the End of Day conversion rate published by the European Central Bank on its website.

5. The total volume to be submitted in accordance with paragraphs 1 to 3 shall be in respect of the following time periods:

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

6. A trading venue and CTP shall submit the data referred to in paragraphs 1 to 3 on the first and the sixteenth day of each calendar month by 13.00 CET to the competent authority. If the first or the sixteenth day of the calendar month falls on a non-working day according to the trading venue's or CTP's home country calendar, the data should be reported to the competent authority on the following working day before the opening of the markets.

7. Notwithstanding paragraph 5, trading venues and CTPs shall submit the first report on 3 January 2017 and include trading volumes from 3 January 2016 to 31 December 2016. For this purpose, trading venues and CTPs shall report separately, for each calendar month:

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

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

8. A trading venue and a CTP shall respond to any ad hoc request 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 double volume cap mechanism and the trading obligation for derivatives

1. A competent authority shall forward the data received from a trading venue or a CTP in accordance with Article 6 to ESMA by 13.00 CET on the next working day following its receipt.

2. A competent authority shall forward the data received from a trading venue, APA or CTP in respect of the data reported in order to determine whether derivatives are sufficiently liquid in accordance with Article 1(h) to ESMA without undue delay and no later than three working days following its receipt.

Article 8

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

ESMA's publication of measurements of the total volume of trading for each financial instrument for the previous 12 months under both the negotiated trade and reference price waivers, and of the percentages of trading that use those waivers across the Union and on each trading venue in the previous 12 months, shall be made on the website of ESMA, free of charge and in a machine-readable format.

Article 9

Entry into force

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

It shall apply from 3 January 2017.

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

Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]

RTS 11: Draft regulatory technical standards on criteria for determining whether derivatives should be subject to the trading obligation (Article 32(6) of MiFIR)

COMMISSION DELEGATED REGULATION (EU) No …/..

of [date]

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards further specifying the criteria for the determination of classes of derivatives that should be considered as "sufficiently liquid" for the purposes of the trading obligation procedure of 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[13], and in particular Article 32(6) thereof,

Whereas:

(1) This Regulation contributes to the specification of the criteria for the determination of sufficient third-party buying and selling interest in a class of derivatives or a relevant subset of a class of derivatives.

(2) The wide range of instruments potentially affected by the trading obligation for derivatives and their specific characteristics determines that the specific criteria and the assessment of each of those criteria in this Regulation might be weighted differently when ESMA undertakes the analysis.

(3) Given the constant evolution of financial markets, the variety of national markets involved and the wide range of instruments potentially affected by the trading obligation for derivatives, it is not possible to determine for each and every derivative type an exhaustive list specifying each of the elements considered for the purposes of Article

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

32(2b) of Regulation (EU) No 600/2014 and their specific weight. This Regulation provides a degree of clarity with respect to the application of the criteria for the determination of a class of derivatives or relevant subset thereof which is sufficiently liquid.

(4) At this stage, this Regulation only specifies the criteria with respect to average frequency of trades, average size of trades, number and type of active market participants and average size of spreads. In this respect, this Regulation should benefit from the experience accrued by ESMA through the trading obligation procedure for the different types of derivatives with a view to amend these standards where appropriate.

(5) The regime established by Regulation (EU) No 600/2014 governing the trading obligation of a class of derivatives or a relevant subset thereof implements the agreement reached by the parties to the G20 Pittsburgh summit on 29 September 2009 that all standardized OTC derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate.

(6) Regulation (EU) No 600/2014 establishes a co-relation between the concepts of "sufficiently liquid" and the existence of sufficient third-party buying and selling interests in a class of derivatives or relevant subset thereof, which has to necessarily take into account other parameters described in the Regulation this being the average frequency and size of trades over a range of market conditions, the number and type of market participants and the average size of spreads.

(7) In particular, the observation period for the criteria described in these Technical Standards has to be sufficiently long so as to ensure that the data collected is not skewed by any type of events that may cause unusual trading patterns. However, it is not possible to determine a homogeneous observation period for all the derivatives that may be covered by the trading obligation.

(8) The assessment of the criteria described in these Technical Standards may include the comparison with other derivatives or classes of derivatives with similar characteristics. The identification of classes of derivatives with similar characteristics may include a number of features (depending on the type of derivative) elements such as the currency in which they are traded, maturity dates, the starting term of the contract (what is known as spot transactions, forward-starting transactions and back-starting transactions), tenor, whether they follow a standard convention or not, whether the derivative is based on an on-the-run or not).

(9) In its assessment, the European Supervisory Authority (European Securities and Markets Authority, established by Regulation (EU) No 1095/2010 of the European

Parliament and of the Council[14] ('ESMA') shall discount those trades which are clearly identifiable as non-price forming post-trade risk reduction trades which reduce non-market risks in derivatives portfolios in line with Recital 27 of Regulation 600/2014. Within that category should be considered intra-affiliate trades only for exclusively risk management purposes.

(10) ESMA should assess in particular cases where the same transaction involves several derivatives, and whether all the derivatives traded are liquid.

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

(12) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and the Council establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC[15], in developing the draft regulatory technical standards on which this Regulation is based, ESMA has conducted open public consultations, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of that Regulation.

HAS ADOPTED THIS REGULATION:

Article 1

Sufficient third party buying and selling interest

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

When establishing whether a class of derivatives or relevant subset thereof is sufficiently liquid, ESMA shall apply the criteria in Article 32(3) of Regulation (EU) No 600/2014 taking into consideration the elements specified in Articles 2 to 5 and whether the liquidity of each class of derivatives or a relevant subset thereof is subject to seasonal or structural factors, including historical data indicating shifts in liquidity.

Article 2

Average frequency of trades

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

[14] OJ L 331, 15.12.2010, p. 84.

[15] OJ L 331, 15.12.2010, p. 84.

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

(a) the number of days on which trading took place over a specified period of time;

(b) the number of trades over a specified period of time.

Article 3
Average size of trades

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

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

(a) the average daily turnover over a specified period of time whereby the notional size shall be divided by the number of trading days;

(b) the average value of transactions over a specified period of time whereby the notional size shall be divided by the number of trades.

Article 4
Number and type of active market participants

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

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

(a) the total number of market participants is not lower than two;

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

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

Article 5
Average size of spreads

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

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

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

(b) the size of volume weighted spreads over different periods of time;

(c) observed spreads at different periods of time of trading sessions.

2. Where spreads are not available, ESMA shall consider using a proxy for the assessment of this criterion.

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 from 3 January 2017.

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

Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]

RTS 12: Draft regulatory technical standards on criteria for determining whether derivatives have a direct, substantial and foreseeable effect within the EU (Article 28(5) of MiFIR)

COMMISSION DELEGATED REGULATION (EU) No …/..

of [date]

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on direct, substantial and foreseeable effect of contracts within the Union and to prevent 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 in particular Article 28(5) thereof,

Whereas:

(1) In line with the G20 Pittsburgh summit on 25 September 2009, Regulation (EU) No 600/2014 sets out a formal regulatory procedure to be defined for mandating trading in derivatives that have been considered to be clearing-eligible and which are sufficiently liquid to take place on a range of trading venues.

(2) To ensure that goal is effectively achieved, Article 28(3) of Regulation No 600/2014 prescribes that the trading obligation shall also apply to third-country entities that would be subject to the clearing obligation if they were established in the Union, which enter into derivatives transactions pertaining to a class of derivatives that has been declared subject to the trading obligation, provided that the contract has a direct, substantial and foreseeable effect within the Union or where such obligation is necessary or appropriate to prevent the evasion of such Regulation.

(3) Given the broad variety of OTC derivative contracts, in order to determine when an OTC derivative contract may be considered to have a direct, substantial and foreseeable effect within the Union and cases where it is necessary or appropriate to prevent the

evasion of rules and obligations arising from any provision of Regulation (EU) No 648/2012, a criteria-based approach should be adopted.

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

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

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

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

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

(9) OTC derivative contracts that are entered into by specific counterparties with the primary purpose of avoiding the application of the clearing obligation or of the risk mitigation

techniques applicable to entities that would have been the natural counterparties to the contract, should be considered as evading the rules and obligations laid down in Regulation (EU) No 600/2014 as they hinder the achievement of a purpose of that Regulation, namely mitigating counterparty credit risk.

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

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

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

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

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

(15) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council, the European Securities and Markets Authority has conducted open public consultations on the draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the

Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation,

HAS ADOPTED THIS REGULATION:

Article 1
Definitions

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

(a) “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 to the beneficiary where there is a default as defined in the guarantee or where no payment has been effected by the guaranteed entity.

Article 2
Contracts with a direct, substantial and foreseeable effect within the Union

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

(a) it covers the entire liability of a third country entity resulting from one or more OTC derivative contracts for an aggregated notional amount of at least €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, in OTC derivative contracts of the financial counterparty established in the Union issuing the guarantee.

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

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

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

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

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

Article 3

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

1. An OTC derivative contract shall be deemed to have been designed to circumvent the application of any provision of Regulation (EU) No 600/2014 if the way in which that contract has been concluded is considered, when viewed as a whole and having regard to all the circumstances, to have as its primary purpose the avoidance of the application of any provision of that Regulation.

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

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

Article 4

Entry into force

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

It shall apply from 3 January 2017.

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

Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]

CHAPTER 4: MICROSTRUCTURAL ISSUES

RTS 13: Draft regulatory technical standards on organisational requirements of investment firms engaged in algorithmic trading

COMMISSION DELEGATED REGULATION (EU) No …/..

of [date]

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying 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 [MiFID II] of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, and in particular Article 17(a) thereof.

Whereas:

(1) The potential impact of technological developments is one of the main drivers to determine the capacity and arrangements to manage the potential risks of an investment firm.

(2) The risks arising from algorithmic trading can be present in any trading model supported by electronic means. Therefore, this regulation applies to all investment firms who are engaged in algorithmic trading, independently of their business model, size or complexity.

(3) This Regulation addresses those risks with specific attention to those that may affect the core elements of a trading system, including the hardware, software and associated communication lines used by members or participants of trading venues including those falling under Article 1(5) of Directive 65/2014/EU to perform their activity and any type of execution systems or order management systems operated by investment firms, including matching algorithms.

(4) As a consequence, investment firms engaged in algorithmic trading should consider in particular the obligations set out in this Regulation with respect to:

(a) Upstream [connectivity, order submission capacity, throttling capacities and ability to balance customer order entrance through different gateways so as to avoid collapses];

(b) Trading engine [ability to match orders at an adequate latency];

(c) Downstream [connectivity, order and transaction edit and any other type of market data feed]; and

(d) Infrastructure to monitor the performance the abovementioned elements.

(5) In line with the ESMA Guidelines for Systems and Controls in an Automated Trading Environment (ESMA/2012/122) and Recital (63) of Directive 2014/65/EU, this Regulation makes reference to elements which are instrumental for the resilience and capacity of investment firms, such as staffing and outsourcing policies.

(6) This Regulation requires investment firms to segregate tasks and functions at different levels. This is required since it reduces the investment firm's dependency on single persons or units. Moreover, a second fresh view may find any kind of errors.

(7) The "kill functionality" requires the investment firm to be always in the position to know which algorithms, trader and clients are responsible for an order, and what is the interdependence between different algorithms. In order to comply with this requirement, the investment firms may use as a first step the schemes which it had established in order to be compliant with obligatory flagging requirements.

(8) The organisational requirements established in this Regulation constitute a minimum to be met by investment firms engaged in algorithmic trading, without prejudice to other regulatory requirements such as 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 or requirements for IT security.

(9) An investment firm providing direct electronic access services, denominated as direct electronic access [DEA] provider in this Regulation, should always retain responsibility for the trading that its DEA clients will carry out under its name. This responsibility governs the framework for pre- and post-trade controls and for assessing the suitability of prospective DEA clients. The investment firm should have sufficient knowledge about the intentions, capabilities, financial resources and trustiness of its clients, including

information about the prospective DEA client's disciplinary history with competent authorities and trading venues.

(10) The specific organisational requirements for investment firms have to be deter-mined according to a robust self-assessment where at least the parameters set out in this Regulation have to be assessed. This self-assessment should include any other circumstances not included in that list that might have an impact on their organisation. That self-assessment shall be one of the cornerstones of the supervision of investment firms carried out by national competent authorities.

(11) The periodic self-assessment should be used by firms to gain a full understanding of the trading systems and algorithms they use and the risks stemming from algorithmic trading. The investment firm's understanding should be irrespective of whether the systems and algorithms were developed by the investment firm itself, purchased from a third party, designed or developed in close cooperation with a client or a third party.

(12) A number of terms should be defined to clearly identify a limited number of concepts stemming from Directive 2014/65 EU on markets in financial instruments and Regulation (EU) No 600/2014 on markets in financial instruments.

(13) Where this Regulation requires investment firms to perform certain tasks in real-time, those tasks should be done as close to instantaneously as technically possible, assuming a reasonable level of efficiency and of expenditure on systems on the part of the persons concerned. In particular, real-time monitoring should take place with a time delay of no more than 5 seconds.

(14) Controlled deployment of algorithms should be used by investment firms on an algorithm regardless that it is new, that it is the same that was successfully deployed in another trading venue or that it has gone through a modification of a material change in its architecture. The controlled deployment of algorithms should ensure that the algorithms perform as expected in a live environment and to make appropriate changes to ensure that the intended outcome is obtained.

(15) Investment firms shall have an IT environment that at least meets relevant, inter-nationally recognised standards, which especially may include standards concerning IT security management, service management, or software development. Additionally firms may apply industry best practices in form of guidance which help investment firms to fulfill relevant standards or requirements.

(16) The conditions to consider a prospective client of a general clearing member should meet the requirements set out in this Regulation and be publicly available in line with the organisational requirements for general clearing members.

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

(18) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and the Council establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC , ESMA has conducted open public consultations on the draft regulatory technical Regulations, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of that Regulation.

HAS ADOPTED THIS REGULATION:

CHAPTER I
General

Article 1
Definitions

For the purpose of this Regulation:

(1) ‘investment firm’ means an investment firm engaged in algorithmic trading;

(2) ‘real time’ in relation to the monitoring by trading venues and investment firms of algorithmic order submission and execution means an optimally minimised delay between:

(a) the moment at which an order is submitted, acknowledged, modified, cancelled, rejected, or executed, and

(b) the generation of surveillance outputs or alerts by the monitoring system in relation to the same order such that, where necessary, immediate corrective action can be taken regarding on-going trading behaviour which is associated with this order;

(3) ‘kill functionality‘ means the ability to pull resting orders off the trading venue that shall include both:

(a) A functionality embedded in the investment firm’s own systems; and

(b) A functionality embedded in the trading venue’s systems;

(4) ‘disorderly trading conditions’ means a situation where the maintenance of fair, orderly and transparent execution of trades is compromised and stressed market conditions materialise in(for example):

(a) price formation being significantly disrupted;

(b) systems' performance is significantly affected by delays and interruptions;

(c) multiple erroneous orders and/or transactions are experienced; or

(d) capacity of trading venues requires to be increased;

(5) 'messages' refer to any kind of input such as entry of an order, modification or cancellation of an order, or output, including the system´s response to an input, display of order book data and dissemination of post trade flow that implies independent use of trading system´s capacity;

(6) 'stressed market conditions' means conditions where the price discovery process, orderly trading and market liquidity is affected by:

(a) an increase or decrease in the number of messages being sent to and received form the systems of a trading venue;

(b) a significant short-term changes in terms of market volume;

(c) a significant short-term changes in terms of price (volatility); or

(d) an impairment of the performance of the trading systems of a trading venue or of the members and participants

(7) 'business continuity plan' means the set of documents that formalises the principles, sets out the objectives, describes procedures and processes and identifies resources for business continuity management;

(8) 'disaster recovery plan' means the set of documents that sets out the technical and organizational measures to deal with events that impact the operation of the procedures and infrastructure;

(9) 'recovery time objective' means the targeted duration of time and service level within which a business process must be restored after a disruption in order to avoid unacceptable consequences associated with a break in business continuity;

(10) 'recovery point objective; means the maximum tolerable period in which data might be lost from an IT service due to a major incident and beyond which data has to be recovered;

(11) ’post-trade controls‘ refers to the assessment of credit risk in terms of effective exposure of the investment firm and comparison of drop copies against the firm’s trade execution records;

(12) ’remote members‘ means members and participants who are incorporated in a different jurisdiction to the trading venue and are not operating via a branch office in the trading venue’s jurisdiction.

CHAPTER II

Organisational requirements for investment firms

Article 2

Governance, and general requirements

Investment firms shall, within their overall governance and decision making framework, apply a clear and formalised governance process regarding the development, procurement, outsourcing, and monitoring of their algorithmic trading systems and trading algorithms. The governance process shall ensure the following:

(a) that commercial, technical and operational risk and compliance issues are considered when making key decisions. In particular, it must embed compliance and risk management principles;

(b) that the firm has clear lines of accountability, including procedures and processes for the sign-off for the development, deployment, subsequent updates of trading algorithms and for the resolution of problems identified through monitoring. This includes having effective procedures and processes for the communication of information within the investment firm, such that relevant issues can be escalated and instructions can be implemented in an efficient and timely manner; and

(c) that the firm ensures an appropriate segregation of trading functions and middle and back office functions and responsibilities in such a way that unauthorised trading activity cannot be concealed.

Article 3

Role of compliance staff in the governance process

1. Compliance staff shall be responsible for providing clarity on the investment firm’s regulatory obligations, and the policies and procedures to ensure that the use of the trading systems and algorithms complies with the investment firm’s obligations, and that any compliance failures are detected and corrected. Compliance staff shall have a general understanding of the way in which trading systems and algorithms operate. Compliance staff are not required to have detailed technical knowledge of the firm’s trading system or

algorithms operation but shall be in continuous contact with persons with such detailed technical knowledge. Investment firms shall also enable compliance staff to have, at all times, direct contact to the persons who may access the kill functionality and to those who are responsible for the trading system or single algorithm.

2. Where an investment firm outsources its compliance function, or elements thereof, to an external compliance consultant, the investment firm shall engage with, and provide information and access to, the external compliance consultant as it would with its own compliance staff. The investment firm shall reach an agreement with such compliance consultants, ensuring that:

(a) data privacy is guaranteed; and,

(b) auditing of the compliance function by internal and external auditors or by the firm's NCA is not constrained.

Article 4
Staff policies

1. An investment firm shall have procedures and arrangements, including recruitment and training, to determine its requirements regarding staff resources and to employ an adequate number of staff with the necessary skills to manage their trading systems and trading algorithms. This shall include employing staff who have knowledge of relevant trading systems and algorithms, the monitoring and testing of such systems and algorithms, the trading strategies that the firm deploys through its trading systems and algorithms, and the investment firm's legal and regulatory obligations.

2. An investment firm shall define the mix of skills and maintain procedures to ensure that recruitment and training provide staff with relevant skills. The investment firm shall ensure that, in addition to technical skills, critical functions, such as compliance, shall be represented by staff with an adequate seniority, offering appropriate challenge as necessary within the governance framework.

Article 5
Staff training on order entry

An investment firm shall ensure that staff involved in the process of order entry have adequate training on order entry procedures. These procedures shall be kept up-to-date so that the investment firm's trading activity does not affect fair and orderly trading on the trading venues it accesses, and so that it will comply with the requirements imposed by the relevant trading venues and the competent authority. This shall be achieved through at least one of the following: on-the-job training, classroom-based training, online training, written exams or a combination thereof. The training program shall set clear expectations of the

competencies to be mastered by staff involved in the process of order entry, notably to ensure that only duly authorised staff may enter orders into the investment firms' systems, and these competencies shall be appropriately evaluated.

Article 6
Staff understanding of market abuse and disorderly trading conditions

1. An investment firm shall provide initial and on-going refresher training on what constitutes market abuse, and attempts of market abuse, for all staff involved in the process of order entry. The training shall be tailored to the experience levels and responsibilities of the staff it is being delivered to. The training program shall set clear expectations of the knowledge level to be mastered by these staff, and this knowledge level shall be appropriately evaluated.

2. An investment firm shall have procedures to ensure that staff exercising the risk management and compliance functions have sufficient knowledge of trading and trading strategies, in addition to regulatory requirements, including relevant Union and national legislation, rules and guidance, and sufficient skill and authority in order to:

(a) follow up information provided by automatic alerts; and,

(b) challenge staff responsible for trading when the trading activity gives rise to suspicions of disorderly trading or market abuse including attempts of market abuse.

Article 7
IT outsourcing and procurement

1. When outsourcing or procuring any software or hardware which is used in trading activities, an investment firm shall ensure that its third-party provider enables the firm to fulfill its obligations set out in this Regulation, including IT security and IT continuity. Specifically, the investment firm shall ensure an effective governance process around any such outsourcing or procurement, including the monitoring and review of compliance by the third-party provider with the Service Level Agreements that the firm has agreed with its provider. Additionally:

(a) In the case of outsourcing, the firm shall ensure that the third-party provider grants audit rights to the firm and the relevant competent authority.

(b) In the case of procurement, the investment firm shall adopt appropriate testing and review measures to assess the security and reliability of the procured hardware or software. Additionally, the firm shall ensure that it and the relevant competent authority have the right to assess the development, maintenance, quality assurance

and testing procedures of the provider, as well as having access to relevant technical documentation.

2. An investment firm shall ensure that documentation regarding any procured or outsourced hardware and software is provided, which allows the investment firm to:

(a) understand its detailed functioning; and

(b) satisfy itself so as to enable the firm to comply with its regulatory and other obligations.

CHAPTER III
Resilience of trading systems of investment firms

Section 1
Testing of algorithms and systems and change management

Article 8
General

An investment firm shall ensure that software, hardware and network infrastructure which is critical to the separate and independent functioning of the production and testing environments is kept segregated at all times.

Article 9
Conformance testing

1. An investment firm shall pass conformance testing:

(a) with the trading venue where it is a direct member or participant; and

(b) with its DEA provider where the investment firms accesses the trading venue through direct electronic access.

2. Such conformance testing shall take place when implementing a new access to a trading venue's system or when there is a change in the trading venue's direct electronic access functionality. Investment firms shall be required to determine when they must re-certify due to a change within their system or substantial hardware changes.

Article 10
Initial testing

1. An investment firm shall, prior to the initial deployment or update of a trading system, algorithm or strategy, make use of clearly delineated development and testing

methodologies. These methodologies should address process design and execution, division of responsibilities, allocation of sufficient resources, escalation procedures, and sign-off by a responsible party within the investment firm.

2. The testing methodologies for algorithms and trading strategies, shall include performance simulations or back testing and, for members or participants of a trading venue, non-live testing within a trading venue testing environment. These methodologies shall ensure that:

(a) the operation of the trading system, algorithm or strategy is compatible with the investment firm's regulatory obligations as well as the rules of the trading venues they access;

(b) embedded compliance and risk management controls work as intended, including generating error reports automatically; and

(c) the trading system, algorithm or strategy does not contribute to disorderly trading, and can continue to work effectively in stressed market conditions.

3. Investment firms shall adapt algorithm tests, including non-live tests within the trading venue testing environments to the strategy the firm will use the algorithm for including the markets to which it will send orders and the structure of these markets. Investment firms shall undertake further testing if there are substantial changes to the venue in which the system, algorithm or strategy is to be used.

Article 11

Testing within a non-live environment

1. Members or participants of a trading venue and an investment firms accessing the trading venue through sponsored access shall test their trading strategies and algorithms in non-live trading venue's testing environments to prevent disorderly trading.

2. Investment firms that are not accessing a trading venue as a member or participant, but through direct market access service, shall make use of such non-live trading venue testing environments where this is appropriate to the nature, scale, and complexity of their business and the risks that their trading algorithms or systems may pose to the orderly trading on the relevant trading venue.

3. When testing their trading strategies, algorithms and systems in a non-live trading venue testing environment, the investment firm shall retain responsibility at all times for assessing the testing results and for making the required changes to the relevant algorithm, trading strategy or system as appropriate.

Article 12

Controlled deployment of algorithms

1. Investment firms shall deploy new trading algorithms, pre-existing algorithms that were successfully deployed on other trading venues, and material changes to previous architecture, in a live environment, in a controlled and cautious fashion by setting limits on the deployment.

2. Limits shall be placed on the number of financial instruments being traded, the price, value and number of orders, the strategy positions and the number of markets to which orders are sent.

Article 13
Annual stress testing

An investment firm shall test their systems, procedures and controls at least on an annual basis to ensure they are capable of withstanding significant and extraordinary market pressures or external events. Such on-going tests should be appropriate to the nature of the trading activity that the investment firm carries out, and shall at least consist of:

(a) initiating, running and stopping a large number of algorithms in parallel, and at least as many algorithms as the firm used on its most active day of trading over the previous 6 month period;

(b) running high messaging volume tests using at least twice the highest volume of messaging by the firm over the previous 6 month period;

(c) running high trade volume tests using at least twice the highest volume of trading by the firm over the previous 6 month period; and,

(d) performing penetration tests and vulnerability tests to safeguard their systems against cyber-attacks.

Article 14
Annual review and validation of systems

1. An investment firm shall run an annual validation process whereby it shall review and evaluate its trading systems and trading algorithms, and the associated governance, accountability and sign-off framework and associated business continuity arrangements.

2. The risk control function shall lead the elaboration of the validation report and shall include staff that have relevant technical knowledge. Compliance functions shall be made aware of the results of these validation reports. The validation report and the operational set-up stemming from it must be audited by the firm’s internal audit function or by an independent third party audit.

3. The validation report and supporting documents, approved by the investment firm's senior management, will be available to the relevant national competent authority upon request.

4. In this validation process, investment firms shall assess their compliance with Article 17 of Directive 2014/65/EU on markets in financial instruments taking into account the nature, scale and complexity of their business. Accordingly, they shall establish and maintain more stringent organisational requirements where appropriate.

5. In undertaking this self-assessment, investment firms shall at least take into account the elements provided in Annex I.

6. Investment firms shall act on the basis of these review processes and validation reports to remedy deficiencies identified. The review process, and validation reports, shall be produced independently and assessed through internal audits with the involvement of any other department whose responsible person is appointed and replaced by senior management or by outsourcing it to third parties. Reviews of trading strategy performance shall, in equal measure, include an assessment of the impact on market integrity and resilience as well as on profit and loss resulting from the deployment of the strategy.

Article 15
"Ad hoc" change management

1. Any "ad hoc" changes to the production environment shall be subject to review and sign-off by senior management within the investment firm. The depth of the review shall be appropriate to the magnitude of the proposed change. This review shall also establish whether further testing is needed and what type of testing shall be carried out.

2. Investment firms shall establish procedures for communicating requirements and changes in the functionality of their systems. Investment firms shall also keep records of any material changes made to their proprietary software, allowing them to accurately determine:

(a) when a change was made;

(b) who made the change;

(c) who approved the change; and,

(d) the nature of the change.

Section 2
Means to ensure resilience

Article 16

Real-time monitoring

1. Investment firms shall, during the hours they are sending orders to trading venues, monitor in real time all trading activity that takes place through their systems, including that of its clients, for signs of disorderly trading, including from a cross-market, cross-asset class, or cross-product perspective, in cases where the firm engages in such activities. This monitoring shall be conducted by staff who understand the firm's trading flow and who have the training, experience and tools that enable them to monitor and control the trading systems and troubleshoot and respond to operational and regulatory issues in a timely manner. These staff members shall have the authority to take remedial action when necessary, and shall be accessible to the firm's competent authority, and to the trading venues on which the firm is active, as well as, where applicable, to relevant staff at its DEA provider, clearing member, or central counterparty (CCP).

2. In addition to monitoring by the actual trader in charge of the algorithm, such monitoring shall be undertaken by one or more independent risk control functions within the firm.

3. Investment firms shall maintain real-time and accurate trade and account information which is complete, accurate and consistent, and they shall reconcile as soon as practicable, and in real time where it is possible, their own electronic trading logs with records regarding their current outstanding orders and risk exposures (drop copies) provided by the trading venue to which they send orders, by their broker or DEA provider, by their clearing member or CCP, by their data providers, or by other relevant business partners. An investment firm shall have the capability, especially in the case of intra-day trade of derivatives, to calculate the outstanding exposure of the traders and clients in real time at appropriate levels of aggregation.

4. The monitoring systems at investment firms shall have real-time alerts that assist staff in identifying which algorithm is not behaving as expected and when is that taking place. When alerts are made, the investment firm shall have a process in place to take prompt remedial action including, as necessary, an orderly withdrawal from the market. The monitoring systems shall also provide alerts in relation to algorithms and DEA orders triggering circuit breakers implemented by the trading venue.

Article 17
Kill functionality

1. Investment firms shall have the ability, as an emergency measure, to immediately cancel all of the firm's outstanding orders at all trading venues to which the firm is connected by means of a kill functionality.

2. Additionally, the investment firm shall separately have a capability to cancel outstanding orders at individual trading venues, or originating from individual traders, trading desks, or,

where applicable, clients. This implies that the investment firm shall be in the position to know which algorithms correspond to the traders and, if applicable, the clients.

Article 18

Monitoring for the prevention and identification of potential market abuse

1. An investment firm shall monitor all trading activity that takes place through its systems ,including that of its clients, for signs of potential market abuse. Investment firms shall implement alert systems to flag behaviour likely to give rise to suspicions of market abuse and in particular market manipulation, including activities on a cross-market, cross-asset class, or cross-product basis. Monitoring on a cross-market, cross-asset class and on cross-product basis should be undertaken where practicable in cases where the firm engages in such activities.

2. Such alert systems shall be in place for all orders transmitted, including orders that are executed, modified or cancelled. To this end, investment firms shall have in place adequate, sufficiently scalable systems, including having automated alert systems in relation to at least the indicators of manipulative behaviour relating to false or misleading signals and to price securing as specified by Annex 1.A of Regulation (EU) No. 596/2014 on market abuse[16] and, where appropriate given the nature, scale and complexity of the firm's trading activity, visualisation tools.

3. The investment firm's monitoring system shall be adaptable to changes in the firm's regulatory obligations and its trading behaviour, including its own trading strategy or that of its clients, the type and volume of instruments traded, the size and complexity of its order flow, and the markets accessed. The monitoring system shall be subject to regular review at least once a year, or more frequently if necessary in order to assess whether the monitoring system itself and the parameters and filters that it employs are still adequate to the firm's trading behaviour and regulatory obligations.

4. Using a sufficiently detailed level of time granularity, the monitoring system shall be able to generate operable alerts at the beginning of the next trading day or, only in cases where manual processes are involved, at the end of the next trading day. The monitoring system shall allow for setting or adjusting the scenario and filter parameters in order to minimize false positive and false negative results. In order to ensure adequate follow-up to alerts, the monitoring system shall be used in parallel with a workflow creation and management system.

5. Staff responsible for monitoring the firm's trading activities for the purposes of this Article shall report any trading activity which is potentially not compliant with their firm's policies and

[16] OJ L 173, 12.6.2014, p. 1–61

procedures or with the firm's regulatory obligations to the individual(s) responsible for such compliance.

6. Investment firms shall have arrangements to identify orders and transactions that require a Suspicious Transaction and Order Report to competent authorities in relation to market abuse (in particular market manipulation) and to submit these reports without delay. If initial enquiries are undertaken, a report shall be made as soon as possible if the enquiries fail to generate a satisfactory explanation for the observed behaviour.

7. An investment firm shall maintain accurate, complete, and consistent trade and account information by reconciling their own electronic trading logs with records provided by their brokers, clearing members, CCP, data providers, or other relevant business partners as soon as practicable.

8. If an investment firm uses DEA it shall be able to report to its DEA provider the name of the client and/or trader who is responsible for the order.

Article 19
Accessibility and competence of monitoring staff

1. An investment firm shall ensure that the staff involved in supporting electronic trading operations ,including back and middle office staff, have the necessary authorisations with the relevant trading venues, brokers, DEA providers, clearing members, CCPs, data providers, independent software vendors, and other relevant business partners to provide the appropriate level of support.

2. Investment firms shall have procedures in place to ensure accessibility to its competent authority, the relevant trading venues and, where applicable, DEA providers. Communication channels shall be identified and tested with the aim of ensuring that in an emergency, the adequate staff members with the adequate level of authority may reach each other in a timely fashion in order to ensure a fair and orderly market. In addition, an out-of-trading hours contact procedure shall also be put in place.

Article 20
Business continuity arrangements

1. Investment firms shall demonstrate that they have adequate and effective business continuity arrangements in relation to their trading systems to address disruptive incidents including, but not limited to, system failures.

2. Business continuity arrangements of investment firms shall be able to effectively deal with disruptive incidents and ensure a timely resumption of trading. The arrangements shall cover at least the following:

(a) governance for the development and deployment of the arrangements;

(b) consideration of an adequate range of robust, challenging, but credible scenarios relating to the operation of their trading systems which require specific continuity arrangements including at the minimum: system failures, communication disruptions and loss of key staff whether due to technical or operational problems, market or credit events, natural disasters or environmental emergencies, IT security issues or deliberate interference with trading systems, or human error;

(c) back-up of business critical data, including compliance, that flows through their trading systems;

(d) duplication of hardware components to permit continuous operation in case of a failover;

(e) procedures for relocating to, and operating the trading system from, a back-up site, where having such a site is appropriate to the nature, scale and complexity of the algorithmic trading activities of the investment firm;

(f) staff training on the operation of the business continuity arrangements and individuals' roles;

(g) business continuity arrangements that are bespoke to each of the venues that it accesses;

(h) kill functionality usage policy; and,

(i) arrangements for the investment firm to trade all existing orders manually.

3. Investment firms shall review their business continuity arrangements on an annual basis and modify the arrangements in light of the review.

Article 21

Pre-trade controls on order entry and post-trade controls

1. Investment firms shall have appropriate pre-trade controls on order entry, which shall be reinforced by appropriate, real time post-trade controls.

2. Investment firms' order management systems should prevent orders from being sent to trading venues that are outside of pre-determined parameters covering price and volume, and should have controls in place to prevent unintentional submission and repetition of orders.

3. Investment firms shall establish and enforce appropriately calibrated pre-trade risk limits that are appropriate for the investment firm's capital base, clearing arrangements, trading style, risk tolerance and experience, which includes, but is not limited to, variables such as length of time since being established and its reliance on third party vendors.

4. The pre-trade controls as referred to in paragraph (1) shall apply to all instrument types, and shall include as appropriate to the specific trading strategy and product:

(a) Price collars which automatically block or cancel orders that do not meet set price parameters ,differentiated as necessary for different financial instruments, both on an order-by-order basis and over a specified period of time;

(b) Maximum order value for shares and equity-like instruments which prevent orders with uncommonly large order values from entering order books. Limits should be set in notional value with the ability to be set per product;

(c) Maximum order volume which prevent orders with an uncommonly large order size from entering the order books. Limits shall be set in shares or lots;

(d) Repeated automated execution throttles which control the number of times a strategy was already applied. If a configurable number of repeated executions was applied, the system shall be disabled until a human re-enables it;

(e) Outbound message rates on a strategy specific basis, which monitor the number of order messages their trading systems send to a trading venue in a given period of time; and,

(f) Maximum messages limit which prevent sending an excessive number of messages to order books and prevent jeopardising the integrity of the trading system.

5. The post-trade controls as referred to in paragraph (1) shall include as a minimum and as appropriate to the specific trading strategy and product the maximum long and short positions and overall strategy for derivatives products, which restrict trading beyond a specified position threshold, with limits to be set in units appropriate to the asset class and product type.

6. Investment firms shall be able to automatically block or cancel orders from a trader if they are aware that a trader does not have permission to trade a particular financial instrument. Investment firms shall be able to automatically block or cancel orders where they risk compromising the firm's own risk thresholds. Controls shall be applied, where appropriate, on exposures to individual clients, financial instruments, traders, trading desks or the investment firm as a whole.

7. Investment firms shall have procedures and arrangements for dealing with orders which have been automatically blocked by the investment firm's pre-trade controls but which the firm nevertheless wishes to submit. Such procedures and arrangements shall be on a temporary and exceptional basis.

8. Where the pre-trade controls are overridden in relation to a specific trade, this shall only occur with the full knowledge and an active approval of relevant staff responsible in risk management.

9. Investment firms shall continuously monitor on a real time basis the post-trade controls it has in place. In cases where a post-trade control is triggered, the firm shall undertake appropriate action, including but not limited to, adjusting or shutting down the relevant trading algorithm or trading system.

Article 22
Security and limits to access

1. Investment firms shall have an appropriate IT strategy process which ensures that the in-vestment firm develops and implements an IT strategy with defined IT objectives and IT measures that are in line with:

(a) the business and risk strategy of the firm as well as its operational activities and the risks to which the firm is exposed,

(b) a reliable IT organisation, including IT service, IT production, and IT development; and,

(c) effective IT security management.

2. Investment firms shall set up and maintain appropriate arrangements for physical and electronic security that allows the minimisation of any risks related to the unsecure access to the working environment and loss of information confidentiality.

3. Investment firms shall promptly inform its competent authority of any material breaches in the physical and electronic security measures undertaken. An incident report shall be provided to its competent authority indicating the nature of the incident, the measures adopted to cope in an emergency and the initiatives taken to avoid similar incidents from recurring.

4. Investment firms shall develop and implement appropriate IT security measures to ensure the confidentiality, integrity, authenticity, and availability of data, and the reliability and robustness of systems, thus including arrangements that allow the minimization of the risks of attacks against the information systems.

5. Investment firms shall undertake adequate penetration tests and vulnerability scans to safeguard against cyber-attacks, which are to be at least every six months, or more frequently or on an ad-hoc basis as appropriate. The firm shall implement appropriate safeguards against internal attackers which may include effective identity and access management. Firms shall ensure that they are able to identify all persons who have critical user access rights to IT systems. Persons who have critical user access to IT systems may include systems administrators or traders with special privileges. The number of such persons is to be sufficiently restricted and their access to IT systems is to be monitored to ensure traceability at all times by means such as logging and two factor authentication.

CHAPTER IV
Direct electronic access

Article 23
General

Investment firms offering DEA to its own clients (DEA provider) shall be responsible for the trading of those clients. These investment firms shall establish policies and procedures to ensure the trading of those clients complies with the rules and procedures of the relevant trading venues to which the orders of such clients are submitted and to enable the investment firm to meet its regulatory obligations.

Article 24
Due diligence by DEA providers on prospective DEA clients

Investment firms offering DEA shall conduct due diligence on their prospective DEA clients, as appropriate to the risks posed by the nature of these clients, the scale and complexity of their prospective trading activities and the service being provided. Such a process shall include an assessment of the level of expected trading and order volume and the nature of connectivity to the relevant trading venues. At a minimum, the process shall cover such matters as:

(a) All the regular due diligence specified in the know-your-client and anti-money laundering requirements;

(b) The governance and ownership structure;

(c) Whether sponsored access or direct market access shall be provided;

(d) Overview of the types of strategies to be undertaken by the DEA user;

(e) Access controls over order entry. Where the DEA provider allows clients to use third-party trading software for accessing trading venues it shall ensure that the pre-

trade controls contained in this trading software are at least equivalent to the pre-trade controls set out in this Regulation;

(f) The operational set-up and the systems and controls of the DEA client;

(g) The allocation of responsibility for dealing with actions and errors;

(h) The financial standing of the DEA client;

(i) The historical trading pattern and behaviour of the DEA client;

(j) The ability of the client to meet their financial obligations to the firm; and,

(k) If sub-delegation is to be permitted, the DEA provider shall ensure that its DEA client has a due diligence framework in place which is at least equivalent to their own.

Article 25
On-going review of DEA clients

Investment firms acting as DEA providers shall review their due diligence assessment processes on at least an annual basis and shall carry out annual risk-based reassessment of the adequacy of their clients' systems and controls, in particular taking into account changes to the scale, nature or complexity of their trading activities or strategies, or changes to their staffing, ownership structure, trading or bank account, regulatory status, or financial position.

Article 26
Systems and controls of DEA providers

1. DEA providers shall monitor intraday on a real-time basis the credit and market risk to which they are exposed as a result of the clients' trading activity so that the DEA provider can adjust the pre-trade controls on orders, credit and risk limits as necessary.

2. DEA providers shall apply pre- and post-trade controls on the order flow of their clients in accordance with Article 21 of this Regulation. DEA clients shall not be able to send an order to a trading venue without the order passing through the pre-trade controls of the DEA provider.

3. The pre- and post-trade controls to be applied by DEA providers shall not be those of a DEA client. DEA providers may use its own proprietary pre- and post-trade controls , third-party controls bought in from a vendor, controls provided by an outsourcer, or controls offered by the trading venue. In each of these circumstances the DEA provider shall remain responsible for the effectiveness of those controls and shall ensure that at all time he is solely entitled to set or modify any parameters or limits that apply to these pre- and post-trade controls. DEA providers that allow clients to use third-party controls for accessing

trading venues shall determine pre-trade risk limits and ensure that those pre-trade and post-trade controls are at least equivalent to the obligations set out in this article. The DEA provider shall monitor the performance of the pre- and post-trade controls on an on-going basis.

4. The initial pre-trade controls on order submission , as well as the initial credit and risk limits, which the DEA provider applies to the trading activity of their DEA clients shall be based on their initial due diligence assessment, and periodic review of the client. The controls applied to these clients should be equivalent regardless of whether the type of access provided is direct market access or sponsored access.

5. DEA providers shall have in place the ability to:

(a) Monitor any orders sent to their systems by DEA users;

(b) Automatically block or cancel orders from a DEA client in financial instruments that a DEA client does not have permission to trade. The investment firm must use an internal flagging system to identify and to block single clients or a small group of clients;

(c) Automatically block or cancel orders of a DEA client when they breach the DEA provider's risk management thresholds. Controls shall be applied to exposures to individual clients, financial instruments or groups of clients.

(d) Stop order flow transmitted by their DEA users;

(e) Suspend or withdraw DEA services to any clients where the DEA provider is not satisfied that continued access would be consistent with their rules and procedures for fair and orderly trading and market integrity; and

(f) Carry out, whenever DEA provider deems it necessary, a review of the internal risk control systems of a DEA user.

6. DEA providers shall have procedures that monitor the trading systems and support staff in the event of a trading system error. The procedures shall aim at evaluating, managing and mitigating market disruption and firm-wide risk, and shall identify the persons to be notified in the event of an error resulting in violations of the risk profile, or potential violations of a trading venue's rules.

7. DEA providers shall at all times have the ability to identify the different clients that submit orders through their systems by assigning unique IDs.

8. DEA providers shall in accordance with Article 25 of Regulation (EU) No 600/2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, keep at the

disposal of the competent authority the relevant data relating to the orders submitted by their DEA clients, including modifications and cancellations, the alerts generated by their monitoring systems and the modifications made to their filtering process.

CHAPTER V
Firms acting as general clearing members

Article 27
Systems and controls of firms acting as general clearing members

1. Investment firms acting as a general clearing member (a 'clearing firm') for their clients shall have in place effective systems and controls to ensure clearing services are only provided where appropriate requirements are imposed on those persons by the clearing firm to minimise the risks to the firm and to the market. A clearing firm shall conclude a binding written agreement with its clients regarding the essential rights and obligations arising from the provision of a clearing service.

2. Any system used by the clearing firm to support the provision of a clearing service to its clients shall be subject to appropriate due diligence, controls, and monitoring.

Article 28
Determination of suitable persons

1. Investment firms acting as a clearing firm shall make an initial assessment of any prospective clearing client according to the nature, scale and complexity of the prospective client's business. Each potential client must be assessed against, at least, the following criteria:

(a) credit strength including consideration of any guarantees;

(b) internal risk control systems;

(c) intended trading strategy;

(d) payment systems and arrangements that enable clients to effect timely transfer of assets/cash (as margin) required by the clearing firm in relation to the clearing services it provides;

(e) systems and/or access to information that helps clients to respect any maximum trading limit agreed with the clearing firm;

(f) any collateral provided to the clearing firm by the client;

(g) operational resources including technological interfaces/connectivity; and,

(h) any involvement in any breach of financial markets integrity, including market abuse, financial crime and money laundering activities.

2. Investment firms acting as a clearing firm shall review their clients' on-going performance against the criteria listed above, and any additional criteria that the clearing firm has imposed, on an annual basis. Such a review shall be non-discriminatory, transparent and objective. The binding written agreement between the clearing firm and clients shall include the above criteria, including the frequency at which the clearing firm will review its clients' performance against these criteria and the consequences of clients not complying with them.

Article 29
Position limits and margining

1. Investment firms acting as a clearing firm shall set and communicate appropriate trading/position limits with their clients in order to mitigate and manage their own counterparty, liquidity, operational and any other risks.

2. Investment firms acting as a clearing firm shall monitor their clients' positions against these limits on real-time basis and have appropriate pre- and post- trade procedures for managing the risk of breaches.

3. Investment firms acting as a clearing firm shall document such procedures in writing and maintain records of compliance.

Article 30
Client disclosures

Investment firms acting as a clearing firm shall publicly disclose their general framework of fees and conditions applicable to clients to whom clearing services are provided. Clearing firms do not need to disclose the terms of their relationships with individual clients, or publically disclose any minimum criteria that a firm must meet to become a client. Clearing firms shall publicly disclose the levels of protection and the costs associated with the different levels of segregation that they provide and shall offer those services on reasonable commercial terms. Details of the different levels of segregation shall include a description of the main legal implications of the respective levels of segregation offered including information on the insolvency law applicable in the relevant jurisdiction.

Article 31
Entry into force

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

It shall apply from 3 January 2017.

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

Done at Brussels, […]

Annex I: Parameters that, as a minimum, have to be considered in the investment firm's self-assessment

1. When considering the nature of their business, investment firms shall consider at least the following:

(a) the regulatory status of the firm (and where applicable its DEA clients), including the regulatory requirements to which it is subject as an investment firm under MiFID, and to other regulatory requirements as relevant;

(b) the firm's roles in the market (e.g. as a market maker, whether it executes orders for clients, or whether it only trades on own account);

(c) the level of automation of trading and other processes or activities of the firm;

(d) the types and regulatory status of the instruments, products and asset classes that the firm trades in;

(e) the types of strategies the firm employs and the risks contained in these for the firm's own risk management and their potential impact on the fair and orderly functioning of the markets (e.g. the nature of these strategies (such as market making or statistical arbitrage) and whether these strategies are long-term, short-term, directional, or non-directional);

(f) the latency sensitivity of the firm's strategies and trading activities;

(g) the type and regulatory status of trading venues and other liquidity pools accessed (e.g. lit, dark, OTC);

(h) the connectivity solutions of the firm (i.e. as a member of trading venues and/or as a DEA client);

(i) the extent to which the firm relies on third parties for the development and maintenance of its algorithms or trading systems (i.e. whether these are self-developed, co-developed with a third party, or purchased from, or outsourced to, a third party);

(j) the firm's ownership and governance structure (how it is structured organisationally and operationally, and whether it is a partnership, subsidiary, publicly traded company, or otherwise);

(k) the firm's risk management, compliance, and audit structure and organisation; and,

(l) the maturity of the firm and level of experience and competency of its personnel (i.e. whether it is a start-up or incumbent).

2. When considering the scale of their business, investment firms shall consider at least the following:

(a) number of algorithms/strategies running in parallel;

(b) number of individual instruments, products, and asset classes traded;

(c) number of trading desks and individual trading IDs;

(d) messaging volumes capacities (e.g., number of orders submitted, adjusted, cancelled, executed);

(e) monetary value of gross and net positions intraday and overnight;

(f) number of markets accessed either as a member/participant or via DEA;

(g) number and size of the firm's clients (notably DEA clients);

(h) number of co-location or proximity hosting sites to which the firm has connectivity;

(i) throughput size of connectivity infrastructure (Gigabit/sec);

(j) number of clearing members or CCP memberships;

(k) the firm's size in terms of number of traders and front/mid/back office staff employed (Full-Time Equivalent);

(l) number of the firm's physical locations;

(m) number of countries and regions in which the firm is undertaking trading activities;

(n) the firm's annual earnings and profits; and,

(o) the number of clients involved (and trading volume).

3. When considering the complexity of their business, investment firms shall consider at least the following:

(a) the nature of the strategies carried out by the firm, in particular whether the strategies imply algorithms issuing orders on several trading venues;

(b) the firm's algorithms, in terms of coding, the inputs upon which the algorithms are reliant, the algorithms' interdependencies, and/or the rule exceptions contained in the algorithms, or otherwise;

(c) the firm's trading strategies (e.g. whether these strategies relate to correlated instruments/products in multiple trading venues or other liquidity pools);

(d) the firm's trading systems (in terms of diversity of trading systems employed, extent of the firm's control over setting, adjusting, testing, and reviewing of its trading systems);

(e) the structure of the firm (in terms of ownership and governance and its organisational, operational, technical, physical, or geographical set up);

(f) the diversity of the firm's connectivity, technology or clearing solutions;

(g) the diversity of the firm's physical trading infrastructure; and,

(h) the level of outsourcing (in particular where key functions are being outsourced).

(i) the firms provision of DEA (whether it is DMA or SA and the conditions under which DEA is offered to clients); and,

(j) the speed of trading by the firm.

RTS 14: Draft regulatory technical standards on organisational requirements of regulated markets, multilateral trading facilities and organised trading facilities

COMMISSION DELEGATED REGULATION (EU) No …/..

of [date]

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying organisational requirements of regulated markets, multilateral trading facilities and organised trading facilities

(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[17], and in particular Article 48(a)(c) and (g) thereof.

Whereas:

(1) Articles 18(5) and 48 of Directive 2014/65/EU determine the obligation of trading venues (regulated markets, multilateral trading facilities and organised trading venues) to have adequate arrangements and capacity so as to undertake their business appropriately. In this context, recitals (59) to (68) of Directive 2014/65/EU frame the obligations of trading venues permitting algorithmic trading through their systems under Article 48. Article 17 of Directive 2014/65/EU determines the organisational requirements for investment firms engaging in algorithmic trading.

(2) The potential impact of technological developments is one of the main drivers to determine the capacity and arrangements to manage the potential risks of a trading venue. The risks arising from algorithmic trading can be present in any trading model that is supported by electronic means. Therefore, these Standards apply regulated markets, multilateral trading facilities and organised trading facilities allowing for or enabling algorithmic trading through their systems considering as such those where algorithmic trading may take place as opposed to trading venues which do not permit algorithmic trading.

[17] OJ L 173.12.06.2014, p. 349.

(3) This Regulation addresses those risks with specific 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, members or participants of trading venues including those falling under Article 1(5) of Directive 2014/65/EU to perform their activity and any type of execution systems or order management systems operated by trading venues or investment firms, including matching algorithms.

(4) As a consequence, trading venues should consider in particular the obligations set out in this Regulation with respect to:

(a) Upstream [connectivity, order submission capacity, throttling capacities and ability to balance customer order entrance through different gateways so as to avoid collapses];

(b) Trading engine [ability to match orders at an adequate latency];

(c) Downstream [connectivity, order and transaction edit and any other type of market data feed]; and

(d) Infrastructure to monitor the performance the abovementioned elements.

(5) A number of terms should be defined for the purposes of this Regulation to clearly identify a limited number of concepts stemming Directive 2014/65/EU and Regulation (EU) No 600/2014.

(6) The specific organisational requirements for trading venues have to be determined according to a robust self-assessment where at least the parameters set out in this Regulation have to be assessed. This self-assessment should include any other circumstances not included in that list that might have an impact on their organisation. That self-assessment shall be one of the cornerstones of the supervision of trading venues to be undertaken by national competent authorities.

(7) This Regulation determine the minimum requirements that should be met by trading venues with respect to Article 48 of Directive 2014/65/EU but their specific implementation should take place in conjunction with the above mentioned self-assessment. Therefore, the application of this Regulation should lead to more demanding requirements where appropriate.

(8) In line with the ESMA Guidelines for Systems and Controls in an Automated Trading Environment (ESMA/2012/122) and Recital (63) of Directive 2014/65/EU, this Regulation makes reference to elements which are instrumental for the resilience of trading systems, such as staffing and outsourcing policies.

(9) Trading venues should have the ability to undertake additional revisions of the members' compliance with the standards on the basis of their yearly risk based assessment.

(10) Trading venues are fully responsible for the deployment of their trading systems and in line with that, fully responsible for ensuring that each and every trading system and any change to them has been appropriately tested. A trading system should not be deployed if there are reasonable doubts about its proper functioning. Additionally, trading venues should engage in a periodic assessment of the trading system in relation to its performance and capacity.

(11) Where this Regulation requires trading venues and investment firms to perform certain tasks in real-time, those tasks should be done as close to instantaneously as technically possible, assuming a reasonable level of efficiency and of expenditure on systems on the part of the persons concerned. In particular, real-time monitoring shall take place with a time delay of no more than 5 seconds.

(12) With respect to the outsourcing of functions, these technical standards establish that where the trading venue and the service provider are members of the same group, the trading venue shall, in monitoring the service provider's performance of the outsourced activity, take into account the extent to which the venue controls the service provider or has the ability to influence its actions. This provision should be read in conjunction with IOSCO Principles on Outsourcing by Markets.

(13) Testing their own venue's trading systems, the members´ and participants´ capacity to access trading systems and specifically their algorithms are part of the necessary measures to reduce the potential market disruptions. Alternative means are considered complementary but not substitutable to the necessary testing through the trading venue´s means.

(14) Article 47(1)(d) of Directive 2014/65/EU establishes that one of the organisational requirements for regulated markets is to have transparent and non-discretionary rules and procedures that provide for fair and orderly trading and establish objective criteria for the efficient execution of orders. The effective use of the pre-trade controls constitutes one of the key means to achieve that requirement in line with trading venues' responsibility to provide for orderly markets.

(15) Trading venues and their members or participants have to be adequately equipped to react in case unexpected circumstances arise. The use of a "kill functionality" will not only permit members or participants to react in case their algorithms do not operate as expected, but also the trading venue to pull off the order book unexecuted orders at their own initiative or at the member's or participant's initiative (for example, in case the firm's own systems are unable to do so).

(16) The provision of direct electronic access to an indeterminate number of person may pose a risk to the provider of that service and also for the trading venue where the orders are sent. To address those risks it is considered necessary that the provider of direct electronic access be aware of how many individuals (either physical or legal persons) may use its access to send orders to the market, regardless of the fact that the provider of direct electronic access may not know their identity.

(17) Trading venues may decide that the provision of DMA services by its market members or participants is also subject to a process of authorisation.

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

(19) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and the Council establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC[18], ESMA has conducted open public consultations on the draft regulatory technical Regulations, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of that Regulation.

HAS ADOPTED THIS REGULATION:

CHAPTER I
General

Article 1
Subject matter and scope

(1) This regulation lays down the detailed rules and requirements for trading venues allowing or enabling algorithmic trading through its systems, in relation to its resilience, capacity and to the controls concerning direct electronic access pursuant to Article 48(12) 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.

Article 2
Definitions

[18] OJ L 331, 15.12.2010, p. 84.

For the purpose of this Regulation:

1. ‘real time’ in relation to the monitoring by trading venues and investment firms of algorithmic order submission and execution means an optimally minimised delay between (i) the moment at which an order is submitted, acknowledged, modified, cancelled, rejected, or executed, and (ii) the generation of surveillance outputs (alerts) by the monitoring system in relation to the same order such that, where necessary, immediate corrective action can be taken regarding on-going trading behaviour which is associated with this order.

2. ‘kill functionality‘ means the ability to pull resting orders off the trading venue that shall include both:

(a) A functionality embedded in the investment firm’s own systems; and

(b) A functionality embedded in the trading venue’s systems.

3. ‘disorderly trading conditions’ means a situation where the maintenance of fair, orderly and transparent execution of trades is compromised by:

(a) A trading systems’ performance which is significantly affected by delays and interruptions; or

(b) multiple erroneous orders or transactions, including cases where orders are not resting for sufficient time to be executed; or

(c) a trading venue has insufficient capacity.

4. ‘messages’ for the purposes of the capacity of trading venues refer to any kind of input (such as but not limited to the submission of an order, each modification of the order, its cancellation) that implies independent use of the trading venue’s trading system´s capacity, including market orders and limit orders (including Immediate-and/or-Cancel orders or pegged orders) submitted to the trading venue by a member or participant and any quotes including any indications of interest (irrespective of whether or not they are actionable). Output by the trading venue (such as the response of its system to an input by a member or participant in the form of an acknowledgement and confirmation of receipt by the trading venue) as well as batched orders (which shall be broken down into each individual component) shall be included in this definition.

5. ‘stressed market conditions’ means conditions where the price discovery process and market liquidity is affected by:

(a) significant increase or decrease in the number of messages being sent to and received from the systems of a trading venue; and

(b) significant short-term changes in terms of market volume; and

(c) significant short-term changes in terms of price (volatility).

6. ‘business Continuity Plan’ means the set of documents that formalises the principles, sets out the objectives, describes procedures and processes and identifies resources for business continuity management.

7. ’disaster recovery Plan’ means the set of documents that sets out the technical and organizational measures to deal with events that severely impact the operation of the trading system.

8. ’operational functions’ refer to all direct and indirect activities related to the performance and surveillance of the trading systems and includes, where relevant, certain regulatory functions.

9. ‘recovery Time Objective’ means the targeted duration of time and service level within which a business process must be restored after a disruption in order to avoid unacceptable consequences associated with an interruption in business continuity.

10. ‘recovery Point Objective’ means the maximum tolerable amount of data that might be lost from an IT service due to a major incident and beyond which data has to be recovered.

11. ‘post-trade controls’ refer to the assessment of credit risk in terms of effective exposure of the investment firm and comparison of drop copies against the firm’s trade execution records.

12. ‘members’ refer to members and participants with a contractual arrangement with a trading venue to have direct access to its trading systems, excluding DEA users.

13. ’clients’ refer to any individual having a contractual arrangement with a trading venue who is not a member of that trading venue.

14. ’remote members’ means members and participants who are incorporated in a different jurisdiction to the trading venue and are not operating via a branch office in the trading venue’s jurisdiction.

15. ‘critical operational functions’ means any operational functions necessary for the continuation of the trading venue’s business or supporting orderly trading in it.

16. ‘user definition’ means that only pre-determined individuals may submit orders in a trading venue using direct electronic access.

17. ‘product definition’ means that certain individuals may only submit orders on pre-defined financial instruments using direct electronic access.

CHAPTER II
General organisational requirements for trading venues

Article 3
Organisational requirements for trading venues and the proportionality principle

1. Before the deployment of a trading system and at least once a year, trading venues shall elaborate a report to assess their degree of compliance with Article 48 of Directive 2014/65/EU, taking into account the nature, scale and complexity of their business.

2. Trading venues shall send the self-assessments referred to in paragraph 1 to their national competent authorities upon their approval by that trading venues’ senior management.

3. In undertaking this self-assessment, trading venues shall at least take into account the elements listed in Annex 1.

Article 4
Governance

1. Within its overall governance and decision making framework, a trading venue shall develop, procure, including through outsourcing, and monitor its trading systems through a clear and formalised governance procedure and process which ensures:

(a) that all relevant considerations including technical, risk and compliance issues are considered when taking the key decisions; in particular, by embedding compliance and risk management principles;

(b) that the trading venue has clear lines of accountability, including procedures to approve the development, initial deployment, subsequent updates and resolution of problems identified through monitoring the trading systems.

(c) that there are appropriate procedures and processes for the communication of information; and

(d) that the trading venue ensures an appropriate segregation of functions to ensure effective supervision of the venue’s compliance with its legal and regulatory obligations.

2. The senior management of the trading venue shall at least approve:

(a) the self-assessment of compliance with Article 48 of Directive 2014/65/EU to be undertaken in accordance with Article 3;

(b) the measures planned to expand the capacity of the trading venue following a historical peak of messages;

(c) the measures planned following an event described in Article 12(4) of this Regulation; and

(d) planned actions to remedy any shortcomings detected; in particular in the course of stress tests.

Article 5
Compliance function within the governance process

1. A trading venue shall ensure that its compliance function is responsible for providing:

(a) providing clarity about the trading venues' legal and regulatory obligations;

(b) developing and maintaining the policies and procedures to ensure that the use of the trading systems complies with those obligations; and

(c) ensuring that any failures to comply with those obligations are detected and remedied.

2. A trading venue shall ensure that its compliance function staff have a general understanding of the way in which the trading systems operate and, in respect of its more detailed technical properties of the trading systems' activities, systems and algorithms, that the compliance staff are in continuous contact with persons having that relevant technical knowledge

3. The trading venue shall enable compliance function staff to have, at all times, direct contact with the persons with responsibility for a trading system operated by it.

4. Where the trading venue uses external compliance consultants, it shall engage with and provide information to such external consultants as it would if those consultants were the venue's own compliance staff.

Article 6
Staffing

1. A trading venue shall have procedures and arrangements, including recruitment and training, to determine its staffing requirements and to ensure it employs a sufficient number of staff with the necessary skills and expertise to manage their trading systems.

2. The obligation in paragraph 1 will include employing staff with knowledge of:

(a) the trading venue's relevant trading systems;

(b) the monitoring and testing of those systems;

(c) the types of trading undertaken by its members, participants or other users of the trading venue; and

(d) the trading venue´s legal and regulatory obligations.

3. The obligation in paragraph 1 includes employing staff with sufficient seniority to represent its functions effectively within the trading venue, offering appropriate challenge as necessary within the governance framework.

Article 7
Outsourcing

1. If a trading venue outsources all or part of its operational functions, it shall ensure that:

(a) the outsourcing exclusively relate to operational functions and does not encompass the responsibilities of the senior management and the management body of their responsibilities;

(b) the relationship and obligations of the trading venue towards its members, participants, national competent authorities, or any third parties (such as clients of data feed services) under the terms of Directive 2014/65/EU and Regulation (EU) No 600/2014 is not altered;

(c) it meets the requirements with which the trading venue must comply in order to be authorised in accordance with Title III of Directive 2014/65/EU;

(d) none of the other requirements subject to which the trading venue's authorisation was granted shall be removed or modified.

2. A trading venue shall exercise due skill, care and diligence when entering into, managing, monitoring or terminating any arrangement for the outsourcing of all or part of their operational functions to a service provider. The selection process shall be documented.

3. A trading venue shall document the selection process and in particular take the necessary steps to ensure that the following conditions are at all times satisfied:

(a) the service provider shall have the ability, capacity, and any authorisation required by law to perform the outsourced functions, services or activities reliably and professionally;

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

(c) the service provider shall carry out the outsourced services effectively, and to this end the trading venue must establish methods for assessing the standard of performance of the service provider, including metrics to measure the service provided and specify the requirements that shall be met;

(d) appropriate action shall be taken by the trading venue if it appears that the service provider may not be carrying out the functions effectively and in compliance with applicable laws and regulatory requirements;

(e) the trading venue shall retain the necessary expertise to supervise the outsourced functions effectively and manage the risks associated with the outsourcing and must supervise those functions and manage those risks;

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

(g) the trading venue shall be able to terminate the arrangement for outsourcing where necessary without detriment to the continuity and quality of its provision of services to clients;

(h) the service provider shall cooperate with the competent authorities of the trading venue in connection with the outsourced activities;

(i) the trading venue, its auditors and the relevant competent authorities must have effective access to data related to the outsourced activities, as well as to the business premises of the service provider; and the competent authorities shall be able to exercise those rights of access;

(j) the trading venue shall set out requirements to be met by the service providers to protect confidential information relating to the trading venue and its members, participants or clients, and in particular the venue's proprietary information and software;

(k) the service provider shall protect any confidential information relating to the trading venue and its members, participants or clients, and in particular the venue's proprietary information and software;

(l) the trading venue and the service provider shall establish, implement and maintain a contingency plan for disaster recovery and periodic testing of backup facilities, where that is necessary having regard to the function, service or activity that has been outsourced.

4. A trading venue shall set out the respective rights and obligations of it and of its service provider in a legally binding written agreement which:

(a) Clearly allocates those rights and obligations;

(b) Provides for a clear description of:

(i) the operational functions that are outsourced;

(ii) the access of the outsourcing trading venue, of its national competent authority and of its auditors to the books and records of the service provider;

(iii) the way potential conflicts of interest are identified and addressed; and

(iv) the terms for the parties' responsibility, for the amendment and for the termination of the agreement.

(c) Ensures 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 without delay to their national competent authorities their intention to outsource all or part of their operational functions notably where:

(a) The service provider is providing the same service to other trading venues; and

(b) Where the trading venue intends to outsource critical operational functions in which case prior authorisation of the competent authority is required.

6. A trading venue shall make available, upon request, to the competent authority all information necessary to enable the authority to supervise the compliance of the performance of the outsourced activities with the requirements of this Regulation.

7. Trading venues shall ensure that its authority may access information or inspect offices of the service provider to exercise its supervisory powers.

8. The above provisions on outsourcing apply regardless of whether or not the outsourcing trading venue and the service provider belong to the same corporate group. Where the trading venue and the service provider are members of the same group, the trading venue shall, in monitoring the service provider's performance of the outsourced activity, take into

account the extent to which the venue controls the service provider or has the ability to influence its actions.

9. The conditions listed above have to be met irrespective of whether the service provider to which all or part of the trading venue's operational functions have been outsourced, or whether is located in the same or in a different country.

CHAPTER III
Capacity and resilience of trading venues

Section 1
Members

Article 8
Due diligence for members or participants of trading venues

1. A trading venue shall have pre-defined, publicly available standards specifically relevant to its trading model which cover the knowledge and technical arrangements of the staff of the members for using the order submission systems of the trading venue. The standards shall cover, at least:

(a) pre-trade and post-trade controls on their trading activities, including controls to ensure that there is no unauthorised access to the trading systems and pre-trade controls on order price, quantity, value and usage of the system;

(b) experience of staff in key positions within the members;

(c) responsible manager/s for the operation of the trading system, structure and segregation of the risk as well as compliance and monitoring functions with respect to the operation of the member;

(d) technical and functional conformance testing;

(e) where members are involved in algorithmic trading, testing of algorithms (and of any re-design thereof) to ensure they cannot create or contribute to disorderly trading conditions;

(f) policy of use of the kill functionality;

(g) whether the member may provide direct electronic access to its own clients and if so, the applicable conditions;

(h) business continuity and disaster recovery procedures; and

(i) the outsourcing policy of the member.

2. A trading venue shall undertake a due diligence assessment of a prospective member against the standards referred to in paragraph 1.

3. At least once a year, a trading venue shall assess the compliance of its members with the standards in paragraph 1 and check whether its members remain registered as investment firms.

4. A trading venue shall have in place predefined criteria and procedures making reference to the sanctions that the trading venue may impose on a non-compliant member, including suspending access to the trading venue and losing the condition of member.

5. A trading venues shall maintain records of:

(a) the documentation setting out the criteria and procedures for the due diligence activity; and

(b) the list of members that failed the yearly assessment.

Section 2
Testing

Article 9
Testing of the trading systems

1. Trading venues shall, prior to deploying a trading system or any update to a trading system, make use of clearly delineated development and testing methodologies which ensure at least that:

(a) The operation of the trading system is compatible with the trading venue's obligations under Directive 2014/65/EU and other relevant Union or national law;

(b) The compliance and risk management controls embedded in the systems work as intended, including generating error reports automatically; and

(c) The trading system can continue to work effectively in case of significant increase of the number of messages managed by the system.

2. Trading venues shall be in a position at all times to demonstrate that they have taken all reasonable steps to avoid that their trading systems contribute to disorderly trading conditions.

Article 10

Testing the member's capacity to access trading systems

1. Trading venues shall pre-determine and require their members to undertake conformance testing:

(a) before accessing the market for the first time;

(b) before deploying new algorithms or, algorithms used in other trading venues; and

(c) before deploying any material changes to the core elements of a pre-existing algorithm.

2. The conformance testing in paragraph 1 shall include both technical and functional level testing at least:

(a) In respect of the functional test, the most basic functionalities such as submission, modification or cancellation of an order or an indication of interest and include at least static and market data download and all business data flows (such as trading, quoting and trade reporting);

(b) In respect of the technical test, the connectivity (including cancel/don't cancel on disconnect, market data feed loss and throttles), recovery (including cold intra-day starts) and the handling of suspended instruments or stale market data.

3. Trading venues shall provide a conformance testing environment to its actual or prospective members with the following characteristics:

(a) accessible in equivalent conditions to the rest of the trading venue's testing services;

(b) the list of financial instruments available for testing shall be consistent with the ones available in the live environment;

(c) availability during general market hours or on a pre-scheduled periodic basis if outside market hours;

(d) supported by knowledgeable staff; and

(e) a report with the outcome of the testing should be made available exclusively to the actual or prospective member.

4. Trading venues shall specify phases for the conformance test and their content, provide specific timeframes to complete the test and specify whether the associated cost is charged.

5. Regardless of any additional testing methods that the actual or prospective member may use, trading venues shall require their actual or prospective members to use its testing facilities.

6. Trading venues shall not grant access to members or algorithms which are unable to pass the conformance testing.

Article 11

Testing the members' algorithms to avoid disorderly trading conditions

1. Trading venues shall require their members to undertake testing of their trading algorithms to avoid creating or contributing to disorderly trading conditions before accessing the market for the first time and before the deployment of new algorithms, well-functioning algorithms used in other trading venues and material changes to previous architecture.

2. Trading venues shall design a set of appropriate scenarios with functionalities, protocols and structure reproducing live environment conditions including disorderly trading circumstances. The testing environment and the pre-determined scenarios shall be as close to market situations as possible.

3. Trading venues shall also provide a self-certification front-end so as to permit unusual scenarios to be simulated where the member can test a selection of scenarios that it considers suitable to its activity;

4. Regardless of any alternative testing methods that the member or participant may use in addition, trading venues shall require their members or participants to use the testing facilities provided to this end. Trading venues shall ensure that the testing environment and the designed scenarios are as close to market situations as possible.

5. Trading venues shall not grant access to members or participants who did not pass the trading venues' testing to avoid disorderly trading conditions.

Section 3

Capacity and monitoring obligations

Article 12

Trading venues' capacity

1. Trading venues shall ensure that their trading systems have sufficient capacity to accommodate at least twice the highest number of messages per second and per value as the maximum recorded on that system in one day (historical peak).

2. It will be considered that the capacity of a trading system is not overwhelmed when the elements of that trading systems perform their functions without systems failures or outages,

errors in matching transactions so that no order is lost or missing or incorrect data including that no transaction is lost, no display of blank or incorrect prices or no display of wrong trading volumes.

3. For the purposes of paragraph 1, the capacity is no longer sufficient, if the number of messages has overridden the historical peak.

4. A trading venue shall inform its competent authority immediately about the measures planned to expand capacity or add new capabilities together with the expected timing of these measures.

5. If a trading venue decides not to expand its trading capacity, it shall inform its competent authority of the reasons for this decision.

6. Trading venues shall be able to scale the performance of their systems in order to respond to rising message flow that threatens their proper operation; in particular, the design of the trading system shall enable new capacity to be installed within a reasonable timeframe whenever necessary.

7. A trading venue shall immediately make public and report to its national competent authority and members any interruption of trading (shut down), and any other material connection disruptions and shall inform on the estimated time to resume regular trading.

Article 13
General monitoring obligations

1. Trading venues shall ensure that the trading system is at all times adapted to the business which takes place through it and is robust enough to ensure continuity and regularity in the performance of the markets operated, regardless of the trading model used. Trading venues shall ensure that the system is monitored and reviewed on an on-going basis so as to ensure that the risks and challenges posed by technological developments are promptly addressed.

2. Trading venues shall conduct a real time monitoring activity at least in relation to the following:

(a) performance and capacity of the systems in order to ensure continuity and regularity in the performance of the market;

(b) orders sent by their members in order to prevent excessive flooding of the order book by the operation of throttle limits; and

(c) orders sent by their members in order to maintain an orderly market; in particular, trading venues shall monitor the concentration flow of orders to detect potential threats to the orderly functioning of the market.

Article 14

On-going monitoring of performance and capacity of the trading systems

1. A trading venue shall be able to demonstrate at all times to its competent authority that an on-going real-time monitoring activity of the performance and degree of usage of the elements of its trading systems is performed in relation to, at least, the following parameters:

(a) percentage of the maximum message capacity used per second;

(b) total number of messages managed by the trading system broken down per element of the system including:

(i) number of messages received per second;

(ii) number of messages sent per second; and

(iii) number of messages rejected by the system.

(c) gateway-to-gateway latency, measured from the moment a message is received by an outer gateway of the trading system, sent through the order submission protocol, processed by the matching engine, and then sent back until an acknowledgement is sent from the gateway; and

(d) matching engine progress, measuring the time it takes for the matching engine to accept, process and confirm a message until an acknowledgment is sent from the gateway.

2. Trading venues shall deal adequately with any issues identified in the trading system as soon as reasonably possible in order of priority and, if necessary, be able to adjust, wind down, or shut down the trading system.

Article 15

Periodic review of the performance and capacity of the trading systems

1. Trading venues shall review and evaluate the performance of their trading systems, and associated process for governance, accountability, sign-off and associated business continuity arrangements at least once a year. They shall act on the basis of these reviews and evaluations to promptly remedy any identified deficiencies. As part of the review programme, trading venues shall run stress tests, where the design of adverse scenarios shall contemplate the functioning of the system under:

(a) the historical peak of messages managed by the system and successive multipliers beyond that level;

(b) unexpected behaviour of critical constituent elements of the trading system, associated systems and communication lines. In particular, the on-going stress testing should identify how hardware, software and communications respond to potential threats, covering all trading phases, trading segments and type of instruments to identify systems or parts of the system with tolerance or no tolerance to the adverse scenarios;

(c) random combination of market conditions (both stressed or not stressed) and unexpected behaviour of critical constituent elements.

2. Trading venues shall have the ability to determine the members that should participate in its stress tests and fine them in case they do not collaborate in it.

3. The review and evaluation process described in paragraph 1 shall:

(a) be independent of the production process (upstream, matching engine and downstream) by the involvement of internal audits, the involvement of any other department whose responsible person is appointed and replaced by senior management or by outsourcing it to third parties; and

(b) Result in actions to promptly remedy any identified deficiencies, including measures to address shortcomings in the periodic stress testing.

Section 4

Means to ensure resilience

Article 16

Business continuity arrangements

1. Trading venues shall be able to demonstrate on an on-going basis that their systems have sufficient stability by having effective business continuity arrangements to address disruptive incidents.

2. The business continuity arrangements shall ensure a timely resumption of trading, targeting a recovery time no later than 2 hours and a recovery point objective close to zero.

Article 17

Business continuity plan

1. Trading venues shall set up a business continuity plan and shall implement effective business continuity arrangements in relation to their trading systems. The business continuity

plan shall be framed in the context of the trading venue's overall policy of risk management and shall include the procedures and arrangements identified to address and manage disruptive incidents.

2. The business continuity plan shall provide for at least the following minimum content:

(a) the conditions and procedures for the implementation of the business continuity plan;

(b) an adequate range of possible adverse scenarios as described in paragraph 3 of this Article;

(c) the governance and procedures to be followed in case of a disruptive event;

(d) the procedures in place for the resumption of the normal activity;

(e) the recovery time objective and the recovery point objective;

(f) the operation of back-up and disaster recovery arrangements as well as the procedures for moving to and operating the trading system from a back-up site.

(g) business succession planning.

(h) duplication of hardware components to allow for failover to back-up infrastructure, including network connectivity and communication channels;

(i) back-up of business critical data (including compliance, clock synchronisation and up-to-date information of the necessary contacts to ensure communication inside the trading venue and between the trading venue and the members, participants or users and between the trading venue and clearing and settlement infrastructures).

(j) staff training on the operation of the business continuity arrangements, individual´s roles and a specific security operations team ready to react immediately to a system disruption.

(k) an on-going programme for testing, evaluation and review of the arrangements including procedures for modification of the arrangements in light of the results of that programme.

3. The business continuity plan shall take into account at least the following adverse scenarios and risks:

(a) destruction or inaccessibility of facilities in which they are allocated to operating units or critical equipment;

(b) unavailability of trading systems;

(c) deliberate breaches of the security of the trading system;

(d) unavailability of staff essential to the operation of the trading system;

(e) disruption of the operation of infrastructure, such as electricity and telecommunications;

(f) natural disasters;

(g) alteration or loss of critical data and documents.

4. The definition of a business continuity plan is assisted by an impact assessment, subject to periodic revision, in which the risks shall be identified and the potential negative consequences of the risks listed under paragraph 3 above are highlighted. Any decision by the trading venue not to take into account a specific risk in the business continuity plan shall be adequately documented and explicitly signed-off by its Board of Directors or any other competent management body.

5. Trading venues shall ensure that their Board of Directors or any other competent management body:

(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 a);

(c) approves the business continuity plan and any amendments thereof necessary as a consequence of organizational, technological and legal changes;

(d) is informed, at least on a yearly basis, on the outcome of the controls and audits performed on the adequacy of the business continuity plan;

(e) appoints a staff member responsible for the business continuity plan and having no conflict of interest in relation to the business continuity plan.

6. Trading venues ensure that appropriate consideration is given to policies and procedures to address any disruptions of outsourced critical services, including:

(a) adequately considering in their business continuity plan and disaster recovery plan the possibility that the supplying firm’s services becomes unavailable;

(b) specifying in the outsourcing contract the obligations of the supplying firm in case it cannot provide its services (such as the provision of substituting firm); and

(c) having access to information in relation to the business continuity or disaster recovery arrangements of the entity providing the service.

Article 18

On-going review of business continuity arrangements and information to competent authorities

1. Trading venues shall test, at least once a year and on a basis of scenarios as realistic as possible, the operation of the business continuity plan, verifying the capability of the trading venue to recover from incidents under the predefined objectives in terms of timely resumption of trading. Trading venue shall make sure that a review of the business continuity plan and arrangements is foreseen, where necessary, in light of the results of the testing activity. The results of the testing activity shall be:

(a) documented in writing, stored and submitted to the trading venue's Board of Directors or other competent management body as well as to the operating units involved in the business continuity plan;

(b) made available to the national competent authority on request.

2. Trading venues shall be able to provide their competent authority with any information relating to the business continuity plan and any other information to demonstrate, on an on-going basis, that their systems have sufficient stability by effective business continuity arrangements to address adverse events.

Article 19

Prevention of disorderly trading conditions

1. Trading venues shall have at least the following arrangements to prevent disorderly trading and breaches of capacity limits:

(a) limits per member on the number of orders sent (throttle limits) per second to prevent flooding of the order book;

(b) mechanisms to manage volatility;

(c) pre- and post-trade controls;

(d) requirements on their members to have pre- and post-trade controls;

2. Trading venues shall be able to:

(a) obtain information from any member/participant or user to monitor compliance with the rules and procedures of the trading venue relating in particular to organisational requirements and trading controls;

(b) suspend the access of a member or a trader's ID to the trading system at the trading venue's own initiative or at the request of that member, a clearing member, the CCP (in the pre-defined cases by the CCP's governing rules) or the competent authority;

(c) cancel orders at least under the following circumstances:

(i) on request of a member that is technically unable to delete its own orders;

(ii) when the order book is corrupted by erroneous duplicated orders;

(iii) in cases of a suspension initiated either by the market operator or the regulator; and

(iv) in cases of a request from the CCP in the pre-defined cases of the CCP's governing rules.

(d) cancel or correct transactions; and

(e) balance order entrance between their different gateways to avoid collapses.

3. Trading venues shall set up and maintain their policies and procedures in respect of:

(a) mechanisms to manage volatility;

(b) pre- and post-trade controls used by the venue and those necessary for their members or participants to access the market, including the functioning of the kill functionality;

(c) information requirements to members/participants;

(d) suspension of access;

(e) cancellation policy in relation to orders and transactions including, at least:

(i) cases to invoke the intervention policy which will only include malfunction of the trading venue's mechanisms to manage volatility or the trading system;

(ii) the timing and procedure to follow;

(iii) specific procedures to effectively cancel a transaction (including a reverse trade, transfer position, cash settlement and a price adjustment);

(iv) reporting and transparency obligations;

(v) dispute resolution procedures; and

(vi) measures to minimise erroneous trades;

(vii) throttling arrangements including at least:

(viii) timeframe of throttling for each case;

(ix) equal-treatment policy among market participants and members (unless they are throttled on an individual basis);

(x) penalties that the trading venues shall effectively impose pursuant to their internal rules in cases where inadequate behaviour from one or several member/s has led to throttling; and

(xi) measures to be adopted following a throttling event.

4. Trading venues shall make public the policies and procedures listed in paragraph 3.

5. A trading venue shall provide its competent authority with the information and documentation on policies and procedures under paragraph 3 on an annual basis or whenever it intends to amend them. Where there is no significant change with respect to the previous year's documentation trading venues may refer to them.

Article 20
Mechanisms to manage volatility

1. Trading venues shall ensure that appropriate mechanisms to automatically halt or constrain trading are operational at all times in all phases of trading (from opening to close of trading) and, to be informed where there is a significant price movement in a financial instrument traded on another trading venue where the same instrument is traded.

2. Trading venues shall set up and maintain channels to inform their NCAs about significant price movements in a financial instrument traded on it and be informed by the NCA where there is a significant price movement in financial instruments traded on other trading venue.

3. Trading venues shall perform an in-depth assessment to evaluate the potential risks, pros and cons to investors and to the market arising from different approaches to trading halts and constraints, taking into account in particular:

(a) the trading model implemented by the trading venue;

(b) the trading profile of the financial instrument;

(c) the trading profile of investors;

(d) liquidity of the instrument or the class of instruments;

(e) the volatility history of financial instruments that are considered to have similar characteristics.

4. Trading venues shall ensure that:

(a) appropriate mechanisms, arrangements and processes are in place for testing the mechanisms to halt or constrain trading before the mechanisms are implemented and periodically when the capacity and performance of trading systems is reviewed;

(b) specific and adequate IT and human resources are allocated to deal with the design, maintenance and monitoring of the effectiveness of the mechanisms implemented to halt or constrain trading;

(c) the adequacy of the mechanisms in place, including the implemented thresholds are continuously monitored in light of the observed volatility in the markets operated by the trading venue to ensure that they are in line with market developments and to allow upgrading of the mechanisms where relevant.

5. The mechanisms to halt or constrain trading shall be established and maintained in writing, regularly reviewed and updated in order to ensure their continued appropriateness.

6. Trading venues shall ensure that the rules, policies and procedures relating to the operating conditions and parameters of the mechanisms to manage volatility in place and any modification thereof are documented and reported to the competent authority in a consistent and comparable manner notably so as to allow the latter to report them to ESMA.

7. Trading venues shall ensure that the rules, policies and procedures on the implementation of the mechanisms to manage volatility include procedures to manage situations where the parameters have to be manually overridden for ensuring orderly trading.

8. Trading venues shall disclose on their websites the rules, policies and procedures relating to the operating conditions of the mechanisms to manage volatility. This obligation does not include the specific parameters of dynamic mechanisms to manage volatility.

9. Trading venues shall maintain records of the assessment carried out under paragraph 2 as well as records of the operation, management and upgrading of those mechanisms.

Article 21

Pre-trade controls

1. Trading venues shall ensure that their members operate the pre-trade risk limits and controls described in the Regulation on the organisational requirements for investment firms engaged in algorithmic trading. Additionally, trading venues shall operate:

(a) price collars which automatically block or cancel orders that do not meet set price parameters with respect to different financial instruments, both on an order-by-order basis and over a specified period of time

(b) maximum order value (fat-finger notional limits) which prevent orders with uncommonly large order values from entering order books by reference to notional values per financial instrument; and

(c) maximum order volume which prevent orders with an uncommonly large order size from entering order books by reference to limits set in shares or lots.

2. The controls mentioned in paragraph 1 shall ensure:

(a) their automated application and monitoring in real-time with the ability to readjust the limits even during the trading session and in all its phases;

(b) order submission is entirely stopped once a limit is breached; and

(c) there are in place mechanisms to authorise orders above the pre-set limits upon request from member.

3. A trading venue shall act on the basis of fair and non-discriminatory pre-determined criteria to ensure orderly trading in determining the pre-trade controls for its members.

4. Trading venues shall disclose the general framework of pre-trade controls to their members and participants.

Article 22
Kill functionality

Trading venues shall have a manual “kill functionality” that, when activated, disables the ability of a member or participant to trade and cancels all resting orders of that firm.

Section 5
Direct electronic access

Article 23
Pre-determination of the conditions to provide direct electronic access

1. Trading venues permitting direct electronic access (DEA) through their systems shall set out and make public the rules and conditions pursuant to which their members may provide DEA to their own clients [DEA users]. These rules and conditions shall at least cover:

(a) specific requirements that members should meet to provide DEA to their own clients;

(b) specific due diligence on prospective clients to which the members intend to provide DEA with the objective of ensuring minimum standards in terms of:

(i) appropriate financial resources;

(ii) appropriate resources in terms of systems and controls;

(iii) sufficient knowledge of market rules and trading systems;

(iv) sufficient knowledge of the use of the order submission system used; and

(v) in particular, DEA providers that permit sub-delegating the use of DEA services to their clients should subject prospective DEA users to an equivalent due diligence to the one they went through to become member or participant to the concerned trading venue.

(c) the requirement that a legally binding written agreement be entered between the DEA provider and DEA user;

(d) the description of the systems and controls to be established and maintained in order to ensure that the provision of DEA does not adversely affect compliance with the rules of the trading venue, lead to disorderly trading or facilitate conduct that may involve market abuse or attempts of market abuse. The means to ensure the adequacy and effectiveness of the systems and controls should include at least:

(i) monitoring requirements including DEA user definition and product definition, recognition of DEA orders submitted by DEA users, control of the overall trading activity carried out by DEA users, monitoring the frequency of DEA orders that have overridden the existing controls and system alerts in terms of price, size and number; and

(ii) prior written authorisation policy by the DEA provider in relation to DEA users' sub-delegating the DEA to their own clients.

(e) The responsibility vis-à-vis trading venues, reflecting that DEA providers remain ultimately responsible to the trading venue for all trades using their market member

or participant ID code or any other related identification, including potential fines and sanctions imposed on the member as a consequence of the DEA user's behaviour.

(f) Whether sub-delegation of DEA to third parties is permitted and if so, provisions to ensure that the DEA provider is able to identify the different order flows from beneficiaries of the sub-delegation (DEA users or sub-delegates) which submit orders through its systems. For these purposes, it will not be necessary for the DEA provider to know the identity of the users accessing the trading venue via sub-delegation.

2. Trading venues that permit DEA Sponsored Access through their systems shall require the members who provide Sponsored Access to comply with the requirements for DEA providers contained in Article 26 of the Regulatory Technical Standards on organisational requirements of investment firms engaged in algorithmic trading. In particular, trading venues shall ensure that such DEA providers are at all times solely entitled to set or modify the parameters or limits that apply to the pre-trade and post-trade controls over the order flow of its clients.

3. A trading venue shall ensure that the provision of Sponsored Access shall be subject to its authorisation which requires the prospective user to meet at least the same requirements that a member is subject to in terms of pre-trade risk limits and controls.

Article 24

Systems and controls of DEA providers and trading venues permitting DEA through their systems

1. In addition to the pre-trade controls that members shall have to access a trading venue, trading venues permitting DMA through their systems shall request DEA providers to have the ability to:

(a) monitor any orders sent to their systems by DMA users;

(b) stop orders flow transmitted by their DMA user;

(c) suspend or withdraw DEA services to any clients where DEA provider is not satisfied that continued access would be consistent with the trading venue's rules and procedures for fair and orderly trading and market integrity; and

(d) carry out, wherever the DEA provider deems it necessary, a review of the internal risk control systems of the DEA user.

2. In addition to the pre-trade controls that trading venues shall have in place, trading venues permitting Sponsored Access through their systems shall:

(a) Request SA providers to have the abilities described under paragraph 1(c) and (d) of this article;

(b) Monitor the orders flow sent to their systems by Sponsored Access users;

(c) Stop orders transmitted by any single Sponsored Access user directly.

3. Trading venues shall cancel the provision of Sponsored Access to those users which have infringed a requirement of Directive 2014/65/EU, Regulation (EU) No 600/2014 and , Regulation (EU) No 596/2014 or the trading venue's internal rules.

Section 6
Security

Article 25
Security and limits to access

1. Trading venues shall have 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 the systems, including arrangements that allows the prevention and minimization of the risks of attacks against the information systems as defined under Article 2 of Directive (EU) No 2013/40/EU of the European parliament and the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA.

2. In particular, trading venues shall set up and maintain measures and arrangements to promptly identify and manage the risks related to any, unauthorised access to the whole or to any part of its trading system; system interferences that seriously hinder or interrupt the functioning of an information system by inputting computer data, by transmitting, damaging, deleting, deteriorating, altering or suppressing such data, or by rendering such data inaccessible; data interferences that delete, damage, deteriorate, alter or suppress computer data on the information system, or render such data inaccessible; interceptions, by technical means, of non-public transmissions of computer data to, from or within an information system, including electromagnetic emissions from an information system carrying such computer data.

3. A trading venue shall also establish and maintain arrangements for physical and electronic security that allows the prevention or minimization of any risks related to the unauthorised access to the working environment and loss of information confidentiality.

4. The trading venue shall promptly inform its competent authority of any successful breaches in the physical and electronic security measures which it has in place by promptly providing an incident report indicating the nature of the incident, the measures adopted to

cope with the emergency situation and the initiatives taken to avoid similar incidents from occurring in the future.

Article 26
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.

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

Done at Brussels, […]

Annex I: parameters that, as a minimum, have to be considered in the trading venues' self-assessment

List of elements that have to be considered in the trading venues' self-assessment:

(a) Nature, in terms of:

(i) types and regulatory status of the instruments traded in the venue (e.g. liquid instruments subject to mandatory trading);

(ii) the trading venues' role in the financial system (i.e. if the financial instrument can be traded elsewhere).

(b) Scale, in terms of the potential impact of the venue on the fair and orderly functioning of the markets, taking as a reference at least the following elements:

(i) number of algorithms operating in the venue;

(ii) messaging volumes capacities;

(iii) volume of executions on the venue;

(iv) the percentage of algorithmic trading over the total trading activity (turnover traded) on the venue;

(v) the percentage of HFT activity over the total trading activity (amount traded) on the venue;

(vi) number and of members and participants;

(vii) number of members providing DEA access (including, where applicable, specific numbers for Sponsored Access) and the conditions under which DEA is offered or can be delegated ;

(viii) ratio of unexecuted orders to executed transactions (OTR) as observed and determined pursuant to Article XX of this Regulation (OTR);

(ix) number and percentage of remote members;

(x) number of co-location or proximity hosting sites provided;

(xi) number of countries and regions in which the trading venue is undertaking business activity.

(xii) operating conditions for mechanisms to manage volatility (e.g., dynamic / static trading limits triggering trading halts and /or rejecting orders).

(c) Complexity, in terms of:

(i) classes of instruments traded on the trading venue;

(ii) trading models available in the trading venue (e.g. different trading models operating at the same time such as auction, continuous auction and hybrid systems);

(iii) the use of transparency waivers in combination with trading models;

(iv) the venue's trading systems (in terms of diversity of trading systems employed, extent of the firm's control over setting, adjusting, testing, and reviewing of its trading systems);

(v) the structure of the trading venue (in terms of ownership and governance and its organisational, operational, technical, physical, and/or geographical set up);

(vi) diverse locations of the trading venue's connectivity and technology;

(vii) diversity of the venue's physical trading infrastructure;

(viii) level of outsourcing (in particular where key functions are being outsourced) when operational functions have been outsourced; and

(ix) frequency of changes (trading models, IT systems, members etc.).

RTS 15: Draft regulatory technical standards on market making, market making agreements and marking making schemes

COMMISSION DELEGATED REGULATION (EU) No …/..

of [date]

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards further specifying the requirements on market making strategies, market making agreements and market making 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 in particular Articles 17 (7)(a), (b) and (c) and 48 (12)(a) and (f) thereof, and amending Regulation (EU) No. 648/2012.

Whereas:

(1) Directive 2014/65/EU pursues two main goals by determining market making obligations with respect to algorithmic traders. Firstly, the introduction of an element of predictability to the apparent liquidity in the order book by establishing contractual obligations for firms performing certain types of strategies. Secondly, as advanced technologies may bring new risks to the market, the presence of market makers provides market participants with the ability to transfer risks efficiently during stressed market conditions.

(2) To that end, Directive 2014/65/EU established two sets of obligations. For those investment firms engaged in algorithmic trading and pursuing “market making strategies”, Article 17 establishes the obligation to sign an agreement with the trading venues where those strategies take place, whereby the firms should provide liquidity to the market on a regular and predictable basis and have certain systems and controls in place. For the trading venues where the investment firms pursue those strategies, Article 48 of Directive 2014/65/EU not only imposes the obligation to sign the aforementioned agreements but also requires having in place a scheme to ensure that a sufficient number of investment firms sign those agreements.

(3) Given the intrinsic relationship between the obligations in both articles, it seems appropriate to include them in the same Regulation.

(4) A number of terms should be defined to clearly identify a limited number of concepts stemming from Directive 2014/65/EU. In particular, it is necessary to clarify in which circumstances a market making strategy is taking place, as this is the element that triggers the rest of the obligations under Articles 17 and 48 of Directive 2014/65/EU in this respect.

(5) Trading venues should establish a scheme of incentives to facilitate investment firms engaged in a market making agreement performing their obligations during stressed market conditions, by providing additional benefits compared to those investment firms that only provide liquidity in normal trading hours.

(6) Current market practice waives market making obligations after the determination of "fast" market conditions by a trading venue. This Regulation is based on the concept that precisely under those types of conditions, there should be a scheme of incentives to limit as much as possible the effect of sudden collapses of liquidity.

(7) As established in Article 17(3) of Directive 2014/65/EU, 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 practically possible for a trading venue to identify extremely sophisticated strategies. Therefore, trading venues should be able to detect market making strategies in accordance with the nature, scale and complexity of their business. The basic strategy which trading venues should be able to detect is that which affects one instrument traded on their venue.

(8) This Regulation affects entities engaged in algorithmic trading and pursuing a market making strategy, irrespective of whether trading venues have in place any type of contractual arrangement for liquidity provision. These firms and trading venues should review their existing agreements on market making to ensure that their terms comply with this Regulation or sign those agreements where there should be one in place.

(9) With respect to trading venues, this Regulation establishes new obligations and additional capacities that are instrumental for the effective implementation of the framework designed by Articles 17(3) and 48(2) of Directive 2014/65/EU such as the obligations of trading venues with respect to the existence of exceptional circumstances that would impede investment firms' ability to maintain prudent risk management practices or the identification of market making strategies.

(10) Regulated markets, multilateral trading facilities and organised trading facilities allowing for or enabling algorithmic trading through their systems should be considered as those where algorithmic trading may take place as opposed to trading venues which do not

permit algorithmic trading. Whereas the former should have a market making scheme with respect to their members or participants engaged in algorithmic trading, the latter should not be captured by this obligation.

(11) Trading venues should determine the specific parameters to be met by investment firms pursuing a market making strategy to access any type of incentives. In particular, trading venues should be able to determine, according to their business models, whether all the firms engaged in market making agreements should access the incentives provided under the market making scheme.

(12) Trading venues may establish schemes which only reward members meeting certain parameters: either providing a certain degree of quality in the liquidity provided, measured in terms of presence, size and spread, or rewarding only those which have met the requirements above a certain threshold measured in terms of presence, size and spread.

(13) This Regulation bans capping the number of members that may take part in a market making scheme. However, nothing prevents trading venues from establishing systems whereby only those firms providing a certain degree of quality in the liquidity provided, measured in terms of presence, size and spread, can access the incentives.

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

(15) In accordance with Article 10 of Regulation (EU) No 1095/2010, ESMA has conducted open public consultations on the draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010.

HAS ADOPTED THIS REGULATION:

CHAPTER I
General provisions

Article 1
Definitions

For the purpose of this Regulation:

(1) ‘trading venue allowing or enabling algorithmic trading through its systems’ means a trading venue where order submission and order matching is facilitated by electronic means.

(2) ‘trading hours’ means the duration of continuous auction trading, and excludes opening/closing auction sessions;

(3) ‘normal trading hours’ means the duration of continuous auction trading excluding:

(a) opening/closing auction sessions;

(b) periods declared to be under stressed market conditions; and

(c) periods declared to be under exceptional market circumstances.

(4) ‘firm quote’ means an order or a quote that is executable and can be matched against an opposite order or quote under the rules of a trading venue;

(5) ‘simultaneous two-way quote’ is a two-way quote where both sides are entered into the order book within one second of one another;

(6) ‘comparable size’ means that the size of the opposite quotes posted in the order book does not diverge more than 50% of each other.

(7) ‘competitive prices’ means quotes posted within the average bid-ask spread.

(8) ‘stressed market condition’ refers to a condition declared by the trading venue where the price discovery process and market liquidity is materially affected by at least one of the following:

(a) Significant change in the number of messages being sent to and received from, the systems of a trading venue;

(b) Significant short-term changes in terms of market volume; or

(c) Significant short term changes in terms of price (i.e. volatility).

The said condition includes volatile market conditions or ‘fast markets’ as defined by the trading venue.

(9) ‘disorderly trading conditions’ means situations where the maintenance of fair, orderly and transparent execution of trades is compromised by:

(a) a trading systems’ performance which is significantly affected by delays and interruptions;

(b) multiple erroneous orders or transactions, including cases where orders are not resting for sufficient time to be executed; or

(c) a trading venue has insufficient capacity.

CHAPTER II

Requirements for investment firms engaged in algorithmic trading technique pursuing a market making strategy

Article 2

General requirements

[Article 17(3) Directive 2014/65/EU]

1. Investment firms engaged in algorithmic trading and intending to pursue a market making strategy in a trading venue shall communicate their intention to the venue.

2. Investment firms engaged in algorithmic trading and pursuing a market making strategy shall sign a market making agreement following the notification by the trading venue in that respect, when the trading venue has detected the effective implementation of a market making strategy without prior notification. In cases where an investment firm is not willing to engage in such agreement following the notification by the trading venue, it shall disconnect the strategy identified.

Article 3

Circumstances in which an investment firm is deemed to pursue a market making strategy

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

1. For the purposes of this Regulation, an investment firm shall be deemed to pursue a market making strategy if it is posting firm, simultaneous two-way quotes of comparable size and competitive prices in at least one financial instrument on a single trading venue for no less than 30 % of the daily trading hours during one trading day.

2. Such strategies may include quotes that are not symmetrical around the mid-point of the market bid-ask range for that financial instrument.

Article 4

Minimum obligations to be specified in the market making agreement

(Article 17(3) Directive 2014/65/EU)

1. The content of the binding written agreement referred to in Article 17(3)(b) of Directive 2014/65/EU shall include, at least:

(a) The organisational requirements for the investment firm in terms of systems and controls with respect to their activity under the market making agreement as described below;

(b) The financial instrument/s covered by the agreement;

(c) The specific obligations of the investment firm in terms of percentage of trading hours, size of the quotes and spread; and

(d) The incentives provided by the trading venue for the performance of the obligations according to the market making scheme under the normal and stressed market conditions, and in particular when trading is resumed after volatility interruptions.

2. The agreement shall include at least the following requirements for investment firms:

(a) posting firm, simultaneous two-way quote of comparable size and competitive prices in at least one financial instrument on the trading venue for no less than 50 % of the daily trading hours;

(b) separating the identity of orders and quotes submitted in the performance of the market making agreement from other order flows;

(c) maintaining records of orders and transactions relating to these activities so that these records can be distinguished from other trading activities and be made available to the trading venue and the competent authority; and

(d) implementing procedures to ensure the fulfilment of the requirements under (a) and (b), including having appropriate and effective surveillance, compliance and audit resources to enable relevant monitoring of its market making activity under these requirements.

3. The agreement shall specify that an investment firm engaged in a market making agreement may suspend its market making activity without incurring any penalties from the trading venue, if the trading venue determines the state of its market to be under exceptional circumstances as defined in this Regulation.

Article 5

Exceptional circumstances impeding providing liquidity on a regular and predictable basis

[Article 17(3)(a) and 48(12)(a) Directive 2014/65/EU]

1. A trading venue shall ensure that its market making agreement specifies that in case of exceptional market circumstances as defined below, an investment firm engaged in a market

making agreement will not have to adhere to all the obligations stipulated in such an agreement as long as those exceptional circumstances remain.

2. Exceptional circumstances shall only include:

(a) Circumstances of extreme volatility, leading to an interruption of trading with respect to all instruments traded on that venue;

(b) Political and macroeconomic events such as acts of war, industrial actions and civil unrest or acts of cyber sabotage;

(c) System and operational matters that imply disorderly trading conditions;

(d) Circumstances which impede the investment firm's ability to maintain prudent risk management practices which are either:

(i) Technological issues including problems with a data feed or other system that is essential in order to be able to carry out a market making strategy;

(ii) Risk management issues, which would encompass problems in relation to capital or clearing; and,

(e) For non-equity instruments, when a national competent authority temporarily suspends the pre-trade transparency requirements following a significant decline in liquidity of a particular class of financial instrument in accordance with Article 9(4) of Regulation (EU) No 600/2014.

3. In particular, the exceptional circumstances described in paragraph 2 shall not include any regular or pre-planned information events that may affect the fair value of a financial instrument owing to changes in the perception of market risk. Such a circumstance may occur during or outside the trading hours.

4. In assessing the performance of investment firms engaged in a market making agreement, periods affected by an exceptional circumstance shall be taken into account to ensure that non-performance by the investment firms during such times is not penalised.

5. The exceptional circumstances shall be made public by the trading venue as soon as technically possible except in the case of circumstances that impede the investment firm's ability to maintain prudent risk management practice as described above.

6. Trading venues shall validate exceptional circumstances that contradict the investment firm's ability to maintain prudent risk management practice.

7. Trading venues must set out procedures to resume normal trading when the period constituting an exceptional circumstance has concluded. These procedures shall include a guide on the timing of such resumption and shall be made publically available.

8. With the exception of situations mentioned in paragraph (2)(b) above, exceptional circumstances cannot automatically be extended beyond the market close.

CHAPTER III

Requirements for trading venues with respect to market making agreements and market making schemes

Article 6

General

[Article 48(2)(b) Directive 2014/65/EU]

A trading venue allowing or enabling algorithmic trading through its systems shall have a market making scheme in place with respect to the investment firms engaged in algorithmic trading that pursue market making strategies in it.

Article 7

Cases where it is not appropriate for a trading venue to have a market making scheme in place

[Article 48(2)(a) Directive 2014/65/EU]

Trading venues not allowing for or enabling algorithmic trading through their systems or a specific segment of their systems shall not be required to establish market making schemes for those systems or specific segments of their systems as defined in this Regulation.

Article 8

Market making scheme

1. Trading venues shall establish a market making scheme which describes:

   (a) The specific content of their market making agreements as described above;and

   (b) A scheme of incentives for the investment firms subject to the market making agreements that will define:

      (i) The minimum parameters to be met in terms of presence, size and spread that shall imply at least posting firm, simultaneous two-way quotes of comparable size and competitive prices in no less than one financial instrument on the trading venue for no less than 50 % of the daily trading hours;

(ii) The parameters that should be met in terms of presence, size and spread to access incentives; and

(iii) The incentives in cases where those parameters have been met. In particular, the market making scheme shall establish:

- Incentives offered for performing a market making strategy during normal trading hours. Trading venues may establish that only the best performers under the market making agreement will access those incentives; and

- Incentives offered in stressed market conditions to compensate for the additional risks taken by investment firms engaged in a market making agreement.

2. Market making schemes shall specify that an investment firm engaged in a market making agreement may suspend its market making activity without incurring any penalties from the trading venue, if the trading venue determines the state of its market to be under exceptional circumstances as defined in this Regulation.

Article 9

Fair and non-discriminatory market making schemes

1. The terms of the market making scheme shall be publicly disclosed on the website of the trading venue.

2. Any proposed changes to the terms of the market making scheme shall be communicated to the existing participants not less than three months ahead of the proposed effective date.

3. Trading venues shall provide the same incentives, terms and conditions to all members engaged in a market making agreement who perform equally in terms of presence, price and size, according to published, non-discriminatory and objective criteria.

4. Trading venues shall not limit the number of participants in a market making scheme, but may limit the access to the incentives to those members which have met certain parameters either providing a certain degree of quality in the liquidity provided, measured in terms of presence, size and spread, or rewarding only those which have met the requirements above a certain threshold measured in terms of presence, size and spread.

5. The incentives offered under the market making scheme have to be proportionate to the effective contribution to the liquidity in the trading venue measured in terms of presence, size and spread. In particular, those incentives shall promote the presence of members engaged in market making agreements in case of stressed market conditions.

Article 10

Responsibilities of the trading venue

1. A trading venue shall have in place arrangements in accordance with the nature, scale and complexity of their business to identify market making strategies as defined by Article 17(4) of Directive 2014/65/EU pursued by its members in cases where they have not notified in advance their intention to pursue a market making strategy.

2. Where it is not practically possible for a trading venue to identify strategies involving more than one venue or more than one financial instrument, it shall have arrangements in place to detect strategies affecting one instrument traded in its venue.

3. Trading venues shall monitor and enforce compliance by investment firms of all requirements specified in this Regulation and the market making agreements. In particular, a trading venue shall:

(a) have the ability to set negative incentives to ensure that firms pursuing a market making strategy shall:

(i) Inform the trading venue before the implementation of the strategy;

(ii) Sign a market making agreement following the notification by the trading venue where the firm has been detected as pursuing a market making strategy;

(iii) Prevent those firms from implementing that strategy in cases where the firm rejects signing the market making agreement; and

(iv) Ensure that firms engaged in a market making agreement meet the respective requirements laid down in the agreement on a systematic basis. In this respect, trading venues shall ensure that non-compliant firms are not only excluded from potential benefits, but also risk a significant fine.

(b) put in place effective measures to verify the effective provision of liquidity on an on-going basis, and to detect that the obligations under the market making agreements are fulfilled; and,

(c) keep a detailed record on the measures and penalties adopted, as well as on the monitoring activity carried out on members' behaviour with market making obligations.

4. Trading venues shall publicly disclose on their website:

(a) The terms of the market making scheme;

(b) The names of all members that have signed a market making agreement; and

(c) The financial instruments covered by those agreements.

Article 11

Requirement for trading venues with respect to market making agreements during stressed market conditions

1. Trading venues shall identify and communicate to the members engaged in a market making agreement the existence of stressed market conditions in their market through readily accessible channels.

2. Trading venues shall establish procedures to determine stressed market conditions, and the trading arrangements during such stressed market conditions. These procedures shall be publicly available.

Article 12

Entry into force

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

It shall apply from 3 January 2017.

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

Done at Brussels,

RTS 16: Draft regulatory technical standards on orders to transactions ratio

COMMISSION DELEGATED REGULATION (EU) No …/..

of [date]

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the ration of unexecuted orders to transactions

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive (EU) No 2002/92/EC and Directive (EU) No 2011/61/EU[19], and in particular Article 48(12)(b) of the Directive 2014/65/EU.

Whereas:

(1) In order to meet the objective of an efficient and orderly functioning of financial markets, it is necessary that the methodology to be followed by trading venues for determining the ratio of unexecuted orders to transactions of their members or participants is defined in a precise and harmonised manner.

(2) Voice trading models should not be considered within the scope of this regulation.

(3) In order to simplify this exercise while keeping it sufficiently granular and efficient, the ratio of unexecuted orders to transactions should at least be determined per group of financial instruments.

(4) Trading venues should make an internal assessment to determine whether for derivatives it is relevant and justified to set out the maximum ratio of unexecuted orders to transactions on a per group of instruments or, when possible, on a per instrument basis.

(5) Given the constant evolution of financial markets, it is not possible to determine a exhaustive list of order types and how these orders should be counted.

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

(6) The methodology for the determination of the maximum ratio of unexecuted orders to transactions that may be entered into the system by a member or participant should be supported by an adequate observation period of the ratios effectively incurred. For newly established venues, they should have in place projections for these purposes.

(7) This Regulation sets out the procedures to specify the maximum ratio of unexecuted orders to transactions with respect to all market participants. However, trading venues may establish derogatory arrangements for firms engaged in market making agreements as long as those firms effectively provide liquidity on a regular and frequent basis to the overall market.

(8) Trading venues should formally communicate the ratio of unexecuted orders to transactions to their members and participants and apply whichever consequences in this respect are determined in accordance with Article 48(9) of Directive 2014/65/EU following the billing period and at least on a monthly basis.

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

(10) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and the Council establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC , ESMA has conducted open public consultations on the draft regulatory technical Regulations, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of that Regulation.

HAS ADOPTED THIS REGULATION:

Article 1
Subject matter and scope

(1) The purpose of this Regulation is to specify the methodology to determine the ratio of unexecuted orders to transactions that may be entered into the trading system of those trading venues allowing or enabling algorithmic trading through their systems by a member or participant.

(2) This Regulation applies to electronic continuous auction order book, quote-driven, and hybrid trading models.

Article 2
Definitions

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

1. ’order‘ means all input messages, including submission, modification, cancellation, sent to a trading venue’s trading system; this shall include market orders and limit orders such as Immediate-or-Cancel orders or pegged orders as well as any type of quotes including any indications of interest irrespectively of whether or not they are actionable;

2. ’transactions‘ means executed orders;

3. ’volume‘ means the quantity of financial instruments traded and shall be counted as follows:

(a) For shares, depositary receipts, ETFs, certificates and other similar financial instrument, the volume shall be counted in terms of the number of instruments;

(b) For bonds and structured finance products, the volume shall be counted in terms of the amount of the nominal value;

(c) For derivatives, the volume shall be counted in terms of the number of lots size or contracts; and,

(d) For emission allowances, the volume shall be counted in terms of tons of carbon dioxide;

Article 3

Methodology for determining the ratio of unexecuted orders to transactions

[Article 48(12)(b) of Directive 2014/65/EU]

1. For the purposes of Article 48(6) of Directive 2014/65/EU, trading venues shall determine a maximum ratio of unexecuted orders to transactions at least for every group of financial instruments of a similar nature, bearing similar trading characteristics and traded under the electronic continuous auction order book, quote-driven, and hybrid trading models.

2. For the purposes of paragraph 1, a group of financial instruments of a similar nature, bearing similar trading characteristics shall be considered to be any of the following:

(a) shares, depositary receipts, ETFs, certificates and similar financial instruments falling within the same liquidity band under the tick size table applicable in the trading venue according to the [Draft RTS on Tick Size];

(b) bonds and structured finance products falling within the same class of financial instruments as determined under [Draft RTS on transparency for non-equity financial instruments - COFIA approach]; and

(c) any other group of financial instruments, provided that it is relevant and justified taking into account the trading activity on the trading venue and the specificities of those financial instruments.

3. A trading venue may apply a more granular approach at its discretion and determine the ratio of unexecuted orders to transactions at financial instrument level.

4. For the purposes of Article 48(6) of Directive 2014/65/EU, trading venues shall determine the maximum ratio of unexecuted orders to transactions as follows:

(a) In volume terms: $\frac{\text{Total volume of orders}}{\text{Total volume of transactions}} - 1$

(b) In number terms: $\frac{\text{Total number of orders}}{\text{Total number of filled or partially filled transactions}} - 1$

5. A trading venue shall calculate the maximum ratio of unexecuted orders to transactions in both volume and number terms at least once a year. For that purpose, trading venues shall take into account all the orders submitted by all members and participants across all phases of the trading sessions, including the auctions, during the preceding twelve months' trading.

6. The ratio of unexecuted orders to transactions calculated by the trading venue in accordance with this Article shall be considered as exceeded by a member or participant of the trading venue on a trading session where the trading activity of this member or participant in one specific instrument, taking into account all phases of the trading session including the auctions, exceeds any of the two ratios specified under paragraph 4.

Article 4

Entry into force and application

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

It shall apply from 3 January 2017.

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

Done at Brussels,

RTS 17: Draft regulatory technical standards on co-location and fee structures

COMMISSION DELEGATED REGULATION (EU) No …/..

of [date]

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical Regulations on organisational requirements to ensure co-location and fee structures are fair and non-discriminatory

(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 in particular Articles 48(8), 48(9) and 48(12)(d).

Whereas:

(1) The provision of latency-intensive services based on proximity to a trading venue's execution infrastructure encompasses four types of circumstances: (i) data centers owned and managed by the venue, (ii) data centers owned by the trading venue but managed by a third party selected by the venue; (iii) data centers owned and managed by a third party but where an outsourcing arrangement with the trading venue organises that venue's execution infrastructure as well as the proximity access to it; and (iv) proximity hosting services owned and managed by third parties with a contractual arrangement with a trading venue. It becomes necessary to impose requirements to set a level playing field between the trading venues organising their own data centers and those organised by third parties having a contractual relationship with the trading venue.

(2) Trading venues have the ability to determine their own commercial policy as regards co-location and determine which types of market participants they want to grant access to these services on the basis of objective, transparent and non-discriminatory criteria.

(3) Trading venues may freely transfer the costs of trading to its members, participants or other types of users such as market data vendors or third party IT providers in accordance with their own commercial policy.

(4) Directive 2014/65/EU establishes new obligations for trading venues with respect to the resilience of the markets, and more specifically, on the testing of algorithms. It is considered that trading venues may legitimally transfer the costs of design and provision of basic testing environments to their prospective members or participants or to current ones which have to test new algorithms or modifications to existing algorithms. As long as those basic scenarios fulfil the requirement to effectively permit testing a number of plausible scenarios, nothing prevents trading venues from developing more added-value services and testing scenarios in these areas and charge for them as they consider appropriate.

(5) Post-trade services such as clearing and settlement services would not be considered within the scope of this Regulation. For these services, reference should be made to Article 38 of EMIR.

(6) Ensuring fair and non-discriminatory practice in relation to fee structures and co-location requires a sufficient degree of transparency without which the MiFID II obligations could be easily circumvented.

(7) The practice of 'cliff edge' pricing is to be explicitly banned as it may encourage intensive trading before a certain time limit to reach a threshold or to obtain a higher market share, leading to a potential stress of market infrastructures.

(8) One of the key ancillary services that trading venues provide to participants engaged in electronic trading is the provision of market data. This area is also regulated by Articles 12 and 13 of Regulation 600/2014. This Regulation is without prejudice to those Articles.

(9) The evolution of financial markets will be monitored on an on-going basis by national competent authorities and the European Securities and Markets Authority (ESMA) with a view to propose amendments to this Regulation as appropriate in case of identification of new fee structures that may lead to disorderly trading conditions or market abuse.

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

(11) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council, in developing the draft regulatory technical standards on which this Regulation is based, ESMA has conducted open public consultations, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of that Regulation.

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL

Article 1
Definitions

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

(1) ‘execution fee’ means fees directly related to the execution of a transaction by a member or participant of a trading venue, including the fees for the submission, modification, cancellation or execution of orders and quotes;

(2) ‘ancillary fee’ means fees charged by a trading venue directly related to the membership or participation in that trading venue, including a membership fee, access to market data, use of terminals, connectivity or access through third party software providers;

(3) 'cliff edge' means a fee structure implying that if a member‘s or participant's trading exceeds a given threshold, all of their trades benefit from a lower fee for a set period, including in some cases trades which have already been executed as opposed to just the marginal trade executed subsequent to reaching the threshold;

(4) ‘rebate’ means a refund paid by the trading venue to a member or participant of a portion of the execution fee charged to the market maker or any other type of economic incentives paid for its market making service in shares or a basket of shares;

(5) ‘volume discount’ means a price differentiation scheme based on the total trading volume, the total number of trades or the cumulated trading fees generated by one member whereby the marginal trade executed subsequent to reaching the threshold is reduced;

(6) ‘users’ means members and participants of trading venues, data vendors and third party IT providers.

CHAPTER II
Co-location services

Article 2
Fair and non-discriminatory co-location services

1. A trading venue shall publish its policy regarding co-location services on its website, including:

(a) a detailed list of co-location services that it offers including details about space, power, telecommunications and any other related products and services; and

(b) pricing per service.

(c) the conditions for accessing the service, including practical IT and operational arrangements;

(d) the different types of latency access provided.

(e) the procedure to allocate co-location space; and

(f) The requirements to provide co-location services by third party providers.

2. A trading venue shall ensure sufficient capacity to allow new participants access on equivalent conditions to the co-location services within the limits of the available space.

3. A trading venue shall ensure that a third party provider of co-location services is subject of equivalent obligations in terms of fair and non-discriminatory provision of co-location services as a trading venue under this Regulation.

4. A trading venue shall provide to all users of co-location services with access to its network under equivalent conditions depending on the service provided, including space, cable length, access to data, power, market connectivity, technology, technical support and messaging types.

5. A trading venue shall monitor all connections and latency measurements to ensure the non-discriminatory treatment of any of the users according to the different types of latency provided.

6. Users of co-location services shall be provided the possibility to subscribe only to those services they need, without being required to pay for other bundled services.

7. The pricing models of co-location services shall be designed and applied in a transparent, fair and non-discriminatory manner to all users of the services according to the next chapter.

8. Trading venues shall apply non-discriminatory practice as regards co-location services on the basis of objective, transparent and non-discriminatory criteria with respect to the different types of users of the venue.

CHAPTER III
Fair and non-discriminatory fee structures

Article 3
Fair and non-discriminatory fee structures

1. A trading venue shall publish its fee structures on its website, including execution fees, ancillary fees and any rebates in one comprehensive document or section.

2. Fee structures available on the website shall identify at least the following concepts:

(a) chargeable activity, identifying the activity that triggers a fee;

(b) pricing policy for each chargeable activity, identifying clearly whether that pricing policy is based on a fixed or a variable fee; and

(c) pricing structure, including rebates, incentives or disincentives based on it.

3. A trading venue offering packages of services shall ensure that there is sufficient granularity in the fees charged for the different services.

4. A trading venue shall charge the same price and provide the same conditions to the different types of users who are in the same position in accordance with its published and objective criteria.

5. A trading venue shall charge different prices only on the basis of non-discriminatory and published commercial grounds such as the quantity, scope or field of use demanded.

6. A trading venue shall enable a user to subscribe only for those services needed, without being required to pay for other bundled services.

7. The fee structure, including benefits and disincentives shall be described in sufficient granularity such that the outcome is predictable.

Article 4
Incentives and disincentives

Any rebate, incentive or disincentive provided under a fee structure shall be pre-determined by publicly available document of the trading venue and based on non-discriminatory, measurable and objective parameters including volumes effectively traded, services effectively used and the provision of specific services, such as provision of liquidity provided by a market maker.

CHAPTER IV
Fee structures that may create incentives for disorderly trading

Article 5
General

A trading venue shall not use a fee structure where, upon reaching a certain threshold of total trading volume, the total number of trades or the cumulated trading fees generated by a trader benefit from a discount including those trades already executed.

Article 6

Fee structures and testing obligations

A trading venue may charge current and prospective members and participants the costs incurred in developing and providing conformance testing and testing of algorithms against disorderly trading conditions.

Article 7

Entry into force

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

It shall apply from 3 January 2017.

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

Done at Brussels, […]

RTS 18: Draft regulatory technical standards on the tick size regime for shares, depositary receipts, exchange traded funds and certificates

COMMISSION DELEGATED REGULATION (EU) No …/..

of [date]

supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to the tick size regime for shares, depositary receipts, exchange traded funds and certificates

(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 Regulation (EU) No 648/2012[20], and in particular Article 49(3) thereof,

Whereas:

(1) Under Articles 18(5) and 48(6) of Directive 2014/65/EU, Member States shall require a trading venue to have in place effective systems, procedures and arrangements to ensure that algorithmic trading systems cannot create or contribute to disorderly trading conditions on the market and to manage any disorderly trading conditions arising from such algorithmic trading systems including systems to limit and enforce the minimum tick size that may be executed on the market.

(2) The minimum difference between two price levels in the order- book of a financial instrument is a dimensionless quantity and the currency attached to the tick size should correspond to the currency of the financial instrument.

(3) This Regulation establishes a number of elements instrumental for the effective implementation of the tick size regime as defined in Article 49 of Directive 2014/65/EU.

(4) For the purposes of harmonising tick size regimes to prevent the disorderly functioning of the financial markets in the Union, Article 49 of Directive 2014/65/EU requires that the

[20] OJ L 173, 12.06.2014, p. 84.

minimum tick sizes or tick size regimes shall be specified through regulatory technical standards in consideration of several factors including the liquidity profile and price of financial instruments, and in a way that is adapted to each financial instrument appropriately.

(5) In order to achieve this harmonisation objective, it is necessary that the common tick size regime is robust and sufficiently granular, while being sufficiently straightforward, easy to understand and flexible to implement for trading venues. To this end, the determination of the common tick size regime should rely on a robust liquidity proxy for financial instruments and should consider the relevant adjustments to be made to the common tick size regime according to the nature of financial instruments, for example equity-like financial instruments including exchange-traded funds. It should also consider particular circumstances, for example equities trading on a fixing segment or corporate actions.

(6) At this stage, this Regulation only subjects equity and certain equity-like instruments to the tick size regime. Nevertheless, the evolution of financial markets will be monitored on an on-going basis by national competent authorities and the European Securities and Markets Authority (ESMA) with a view to propose amendments to this Regulation as appropriate in order to extend their scope to other financial instruments or to adjust the tick size regime. ESMA should also propose an amendment to this Regulation in light of the evolution of financial markets' microstructure, if it is considered that the liquidity classes have shifted away from the table. This review should take place at least on an annual basis.

(7) For the purpose of this annual review of the tick size regimes, it should be considered in particular the appropriateness of the number of liquidity bands and of both the upper and lower bounds of each liquidity band. A particular attention should be given to the spread to tick ratio; whether a large number of orders are sent to the order book hindering the reading of the order book; the median lifetime of the orders or the order-to-trade ratio; the queuing time and any other relevant market quality indicator such as the price volatility of the stocks, with attention to the behaviour of the control group.

(8) Trading venues should have the ability to react to events known in advance that lead to a change in the number of financial instruments or in their nature, leading to a situation where the tick size prescribed by this Regulation may no longer be appropriate. To that end, these standards set out a specific procedure for corporate events that may make the tick size of one specific instrument unsuitable which will ensure the avoidance of a disorderly market. National competent authorities and ESMA should monitor the interpretation of this provision to ensure supervisory convergence.

(9) Following the annual revision of the liquidity bands, trading venues should be in a position to apply immediately the tick size corresponding to a new liquidity band including outstanding orders.

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

(11) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council, in developing the draft regulatory technical standards on which this Regulation is based, ESMA has conducted open public consultations, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of that Regulation,

HAS ADOPTED THIS REGULATION:

Article 1
Definitions

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

(1) 'relevant competent authority' means the Home competent authority of the most relevant market in terms of liquidity for a share, depositary receipt or certificate;

(2) 'most relevant market in terms of liquidity' means the most relevant market in terms of liquidity as defined in Article 4 of Commission Delegated Regulation (EU) on transparency requirements in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments and on the trading obligation;

(3) 'number of trades per day' means the number of transactions carried out in a given financial instrument on the most relevant market in terms of liquidity, excluding transactions executed in accordance with one of the pre-trade transparency waivers provided under Article 4(1)(a) to (c) of Regulation (EU) No 600/2014;

(4) 'liquidity class/band' means the range determined by an upper bound and a lower bound based on the average number of trades per day on a given financial instrument;

(5) 'price class/band' means a price range determined by an upper price bound and a lower price bound;

(6) 'spread' or 'bid-ask spread' means the mathematical difference between the time weighted average best ask price and the time weighted average best bid price of a financial instrument expressed in the same currency as that of the financial instrument and expressed by a positive value;

(7) ‘most liquid liquidity band of the tick size table’ means the band corresponding to the highest number of average number of trades per day; and

(8) ‘corporate action” means splits (sub-division), reverse splits (consolidation), scrip issues (capitalisation or bonus issue), capital repayments, rights issues or entitlement offers, takeovers and mergers and stock conversions.

2. For the purposes of this Regulation, the use of a quantitative metric shall use the data relating to the most relevant market in terms of liquidity.

Article 2

Tick size regime for shares, depositary receipts and certificates

1. A trading venue shall apply in respect of the shares, depositary receipts and certificates traded on it tick sizes which are greater than or equal to those specified in the Annex according to the procedure set out in this Article.

2. Competent authorities of the most relevant market in terms of liquidity shall ensure that the identification of the liquidity band applicable to each share, depositary receipt and certificate for which they are the relevant competent authority is provided. To that end, the most relevant market in terms of liquidity for each share, depositary receipt and certificate traded or admitted to trading on a European Union trading venue shall publish the average number of trades per day in that financial instrument calculated over the previous twelve months of trading or, where applicable, that part of the year during which that financial instrument was admitted or traded on a trading venue and was not suspended from trading.

3. Competent authorities shall ensure the publication, not later than on the first trading day of March of each year, of the liquidity band applicable for each share, depositary receipt, and certificate which is admitted to trading or traded on a trading venue and for which they are the relevant competent authority.

4. Following the publication of the liquidity band applicable to each share, depositary receipt and certificate and before the start of the next trading day, each trading venue on which that instrument is traded or admitted to trading shall allocate the liquidity band in accordance with the table in the Annex.

5. Over the next twelve months the tick size of that share shall evolve continuously as price changes within the liquidity band so that the tick size shall increase by one increment if the price crosses above the upper price threshold for that liquidity band and shall decrease by one increment if the price crosses below its lower price threshold.

6. Where shares, depositary receipts and certificates are traded on a fixing segment, the relevant trading venue shall use the lowest liquidity band in the tick size table in the Annex.

Article 3

Tick size regime for shares, depositary receipts and certificates newly admitted to trading or traded for the first time

1. A trading venue shall apply to shares, depositary receipts and certificates admitted to trading on a trading venue or traded for the first time the tick size table corresponding to the liquidity band as determined in this Article.

2. Before the admission to trading or the date in which the share, depositary receipt or certificate actually starts trading, the competent authority for that instrument shall ensure that estimates of the average daily number of transactions are provided for the share. To this end, the listing trading venue shall consider the previous trading history of that share if such history exists, or the trading history of shares having similar characteristics such as the market capitalisation and free float, in case of an initial public offering, and determine on this basis the applicable liquidity band.

3. No later than six weeks after the share, depositary receipt or certificate has started trading, its tick size shall be calculated on the basis of the first four weeks of trading.

Article 4

Corporate actions

If a trading venue reasonably considers that a corporate action will cause the average number of trades per day relating to a particular financial instrument to no longer provide an accurate metric for the liquidity profile of that financial instrument, the trading venue shall treat that financial instrument as if it were admitted to trading or traded for the first time.

Article 5

Tick size regime for ETFs

1. A trading venue shall apply tick sizes which are greater than or equal to the tick sizes specified in this Article in respect of the exchange-traded funds (ETF) traded on it irrespective of the nature of their underlying.

2. A trading venue shall apply to the ETFs traded on it the tick size table corresponding to the most liquid liquidity band in the Annex.

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 from 3 January 2017.

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

Done at Brussels, […]

Annex I: Tick size table

Liquidity bands							
Price ranges			0-100	100-500	500-2000	2000-15000	15000-
0	≤...<	0,1	0,0002	0,0001	0,0001	0,0001	0,0001
0,1	≤...<	0,2	0,0005	0,0002	0,0001	0,0001	0,0001
0,2	≤...<	0,5	0,001	0,0005	0,0002	0,0001	0,0001
0,5	≤...<	1	0,002	0,001	0,0005	0,0002	0,0001
1	≤...<	2	0,005	0,002	0,001	0,0005	0,0002
2	≤...<	5	0,01	0,005	0,002	0,001	0,0005
5	≤...<	10	0,02	0,01	0,005	0,002	0,001
10	≤...<	20	0,05	0,02	0,01	0,005	0,002
20	≤...<	50	0,1	0,05	0,02	0,01	0,005
50	≤...<	100	0,2	0,1	0,05	0,02	0,01
100	≤...<	200	0,5	0,2	0,1	0,05	0,02
200	≤...<	500	1	0,5	0,2	0,1	0,05
500	≤...<	1000	2	1	0,5	0,2	0,1
1000	≤...<	2000	5	2	1	0,5	0,2
2000	≤...<	5000	10	5	2	1	0,5
5000	≤...<	10000	20	10	5	2	1
10000	≤...<	...	50	20	10	5	2

RTS 19: Draft regulatory technical standards on material market in terms of liquidity

COMMISSION DELEGATED REGULATION (EU) No …/..

of [date]

supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to material market in terms of liquidity

(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 in particular Article 48(12)(e), thereof,

HAS ADOPTED THIS REGULATION:

Article 1
Definition

For the purposes of this Regulation, 'material market in terms of liquidity' in a financial instrument means:

(1) the trading venue where the financial instrument was first admitted to trading, including all the venues where the instrument was simultaneously admitted to trading in case of multiple listing; or

(2) the most relevant market in terms of liquidity for shares, depositary receipts, ETFs, certificates or other similar financial instruments as specified in the Regulation [Draft RTS on transparency requirements for equity and equity-like financial instruments].

Article 2
Entry into force

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

It shall apply from 3 January 2017.

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

Done at Brussels, […]

CHAPTER 5: DATA PUBLICATION AND ACCESS

RTS 20: Draft regulatory technical standards on authorisation and organisational requirements for data reporting services providers

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

of […]

supplementing Directive 2014/65/EUof the European Parliament and of the Council with regard to regulatory technical standards on the authorisation and organisational requirements for data reporting services providers

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of 15 May 2014 of the European Parliament and of the Council on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU[21] and in particular Article 61(4)(a) and (b), Article 64(8)(c), Article 65(6), Article 65(8)(e) and Article 66(5)(a) and (b) thereof,

Whereas:

(1) The current fragmentation of financial markets at Union level requires the adoption of adequate standards for the provision of data reporting services in order to improve the quality of publication of post-trade data and to provide market participants with an adequate overview of trading activity across the Union. It is also vital to ensure that there is a consistent framework for the submission of transaction reporting information to various competent authorities in the case of approved reporting mechanisms (ARMs).

Directive 2014/65/EU considers within the concept of 'data reporting services' three different types of entities: APAs, ARMs and CTPs. Although these types of entities are engaged in different activities, Directive 2014/65/EU envisages a similar authorisation process for all of these entities.

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

(2) It is essential to set out the information that competent authorities are to receive as part of the application for authorisation by data reporting services providers as well as the information that is to be provided on an ongoing basis once authorisation has been granted.

(3) Organisational requirements for data reporting services providers in the areas of conflicts of interest, business continuity and back up facilities as well as in relation to errors and omissions should also be set out in order to specify the means by which a data reporting services provider will be considered to have complied with its obligations.

(4) Conflicts of interest can arise between the data reporting services provider and its clients. More complex business models may also exist, with a data reporting services provider potentially engaged in more than one type of data reporting service or carrying out other functions such as operating as an investment firm, market operator or a trade repository. In these cases, a broader range of conflicts of interest could arise, which may result in the data reporting services provider having an incentive to give priority to the publication or submission of its data ahead of its clients, delay publication or submission or to trade on the basis of the confidential information it has received in its capacity as a data reporting services provider. To address such situations the data reporting services provider should adopt an encompassing approach to identifying and handling conflicts of interest when maintaining an inventory of its conflicts of interest and to implement appropriate policies and procedures to segregate business functions and personnel.

(5) For the purposes of assessing the types of conflicts of interest that may exist and how conflicts of interest are eliminated or managed and disclosed, a data reporting services provider should provide competent authorities with an up-to-date inventory of existing and potential conflicts of interest covering at least the conflicts with clients and arising from the carrying out of any other activities or services by the data reporting services provider.

(6) In order for competent authorities to assess if any conflicts of interest arising from the activities of the data reporting services provider might affect the independence of the data reporting services provider, the latter should also provide information about all the activities which it undertakes. 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 corporate governance structure ensures the independence of the data reporting services provider and the avoidance of conflicts of interest.

(7) The systems and infrastructures operated by data reporting services providers and the quality of the data published or reported by them are key elements of the transparency regime envisaged in Directive 2014/65/EU and 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'[22] and for providing competent authorities with the information necessary to monitor the activities of investment firms to ensure that they act honestly, fairly and professionally and in a manner which promotes the integrity of the market. The smooth operation and security of those systems in the Union is vital for the development of the transparency framework and for transaction reporting purposes.

(8) In the particular case of ARMs, they are responsible for handling confidential information provided to them by their clients about their trading activity. ARMs play an important function in transmitting that information onwards to the competent authority of the investment firm's home Member State which requires this information for market abuse detection. Fundamental to this responsibility is the obligation to handle that data responsibly by ensuring that the data is kept secure and is not subject to unauthorised disclosure. An investment firm which has transaction reporting obligations (a 'reporting firm') may choose to use a third party to submit transaction reports on its behalf to an ARM (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 is not entitled to access the 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 itself submitted to the ARM directly or which it has sent to another submitting firm to send to the ARM.

(9) Data reporting services providers have responsibilities in relation to the quality of the data that they publish to the public or report to competent authorities. This stems from an acknowledgement that complete and accurate data is vital to the reliable functioning of the transparency regime and for monitoring the integrity of the market.

(10) The data reporting services providers' responsibilities generally include not only detecting errors or omissions caused by their clients but also ensuring that they do not introduce errors or omissions into the trade reports, transaction reports or consolidated tape.

(11) 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 the ARM submits reports of the error or omission. 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.

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

(12) An APA and CTP should be able to delete and amend the information which it received from the entity providing it with information to deal with situations where in exceptional circumstances the entity cannot delete or amend the information itself. However, APA or CTP 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.

(13) Data reporting services providers should also ensure that they store the transaction and trade reporting information which they handle 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, are able to respond to any request.

(14) The policies, procedures and terms of reference which govern the management body, senior management, non-executive members and committees represent a key element of the governance of data reporting services providers. In addition, the management body of a data reporting services provider should be composed of persons who are of sufficiently good repute and possess sufficient knowledge, skills and experience as these persons play a key role in ensuring that the data reporting services provider meets its regulatory obligations. Non-executive board members also carry out an important function as they contribute to the strategy of the data reporting services provider, scrutinise the performance of management in achieving the agreed objectives and provide objective views on resources, appointments and standards of conduct.

(15) The systems used by a data reporting services provider should be well adapted to the activity which takes place through them and robust enough to ensure continuity and regularity in the performance of the services provided. This includes ensuring that the data reporting services provider's 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, data reporting services providers should stress test their systems to ensure that they are robust enough to handle changes in operating conditions and ensure that their systems are sufficiently scalable.

(16) The back up facilities and arrangements established by a data reporting services provider should be sufficient to enable the data reporting services provider to carry out its critical services, even in the event of a disruptive incident.

(17) To ensure that the services provided remain continually effective, a data reporting services provider should take steps to periodically review and evaluate its technical infrastructures, and associated process for governance, accountability and sign-off and

associated business continuity arrangements, and act on the basis of these reviews and evaluations to remedy deficiencies. A data reporting services provider should be able to demonstrate on an ongoing basis that its systems have sufficient stability by effective business continuity arrangements to address disruptive incidents.

(18) The deploying of any systems' updates may potentially impact the effectiveness and robustness of the system and any data reporting services provider should make use of clearly delineated development and testing methodologies. The use of these methodologies ensures that the operation of the system is compatible with the data reporting services provider's regulatory obligations, that compliance and risk management controls embedded in the systems work as intended and that the system can continue to work effectively in all conditions. Where a data reporting services provider undertakes a significant system change, it should notify the competent authority of its home Member State and other competent authorities, where relevant. System changes by a data reporting services provider may have repercussions for the competent authority's own systems for ingesting data received from the data reporting services provider or may negatively impact the ability of the data reporting services provider's ability to fulfil its regulatory function.

(19) Given the nature of the information which is handled by data reporting services provider, it is important that such information be kept in a secure environment and not be vulnerable to unauthorised access, whether intentional or unintentional.

(20) Attacks against information systems are a growing concern in the Union and globally, and there is increasing concern about the potential for attacks against information systems. The identification and reporting of threats and risks posed by cyber-attacks and the related vulnerability of information systems as well as setting up effective measures against attacks are a pertinent element of effective prevention of, and response to, cyber-attacks and to improving the security of information systems.

(21) Data reporting services providers may establish their own operational hours provided that these hours are pre-established and publicly available. Data reporting services providers have a commercial incentive to offer a sufficiently wide range of hours to attract clients which in turn encourages competition between data reporting services providers and allows prospective clients to select a data reporting services provider that is best able to meet their needs. In setting their hours, data reporting services provider should give consideration to the hours during which clients may need a provider to be operational in order to be able to effectively receive and publish data within the timeframes set by the Directive and Regulation (EU) No 600/2014.

(22) CTPs may provide other services that improve the efficiency of the market. It is therefore important to clearly set out what types of services are compatible with being a CTP.

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

(24) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and the Council of 24 November 2010[23] the European Securities and Markets Authority has conducted an open public consultation on the draft regulatory standards on which this Regulation is based, has analysed the potential related costs and benefits and has requested the opinion of the Securities and Markets Stakeholder Group referred to in Article 37 of that Regulation.

HAS ADOPTED THIS REGULATION:

Section 1
Definitions

Article 1
Definition

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

'client' means any natural or legal person providing information to an ARM for transmission to the competent authority for the purposes of fulfilling their transaction reporting responsibilities under Regulation (EU) 600/2014, any natural or legal person providing information to an APA or CTP for publication or distribution and any natural or legal person receiving the information published or distributed by an APA or CTP.

Section 2
Authorisation

Article 2
Attestation of the accuracy and completeness of the application

A data reporting services provider shall include in the information to be provided to competent authorities during the authorisation process a letter signed by a member of the data reporting services provider's management body, senior management or a representative authorised by the senior management, attesting that the submitted information is accurate and complete to the best of their knowledge, as of the date of that submission.

[23] 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

Policies and procedures on compliance

1. A data reporting services provider shall provide information about its policies and procedures in support of its application which contains or is accompanied by:

(a) an indication of who is responsible for the approval and maintenance of the policies and procedures;

(b) a description of the compliance policies and procedures, the means to monitor and enforce them (including the measures to be undertaken in the event of a breach of those policies) and the persons responsible for each function;

(c) an indication of the procedure for reporting to the competent authority any material breach of the policies or procedures, including the procedure to report any breach which may result in a failure to meet the conditions for initial authorisation.

2. A data reporting services provider shall also be considered to have fulfilled its obligation to provide information regarding its policies and procedures by submitting a copy of the relevant policies and procedures if this is acceptable to the competent authority to whom it has submitted its application.

Article 4

Organisational chart

1. A data reporting services provider shall include in its application for authorisation an organisational chart detailing its organisational structure, including a clear identification of its key personnel in each of the activities performed and of the persons responsible for each significant role. This information shall include at least the management body, senior management and persons who effectively direct the activities of the data reporting services provider.

2. Where the data reporting services provider also provides services other than data reporting services, it shall also detail, in the organisational chart, its organisational structure in respect of those services and provide a description thereof.

Article 5

Corporate governance

1. A data reporting services provider shall provide, in its application for authorisation, information regarding its internal corporate governance policies and the procedures and terms of reference which govern its management body, senior management, non-executive members and, where established, committees.

2. The information set out in paragraph 1 shall include:

(a) a description of the mechanisms to ensure adequate management of the entity, the segregation of duties and the prevention of conflicts of interest (including the remuneration policy of the management body) in accordance with Article 63(4) of Directive 2014/65/EU;

(b) a description of the selection process, appointment, performance evaluation and removal of senior management and members of the board;

(c) information on the structure and number of members of the management body;

(d) a description of the roles and responsibilities of the members of the management body and the senior management; in particular, clarification about the existence and role of non-executive members of the senior management;

(e) information on the reporting lines and the frequency of reporting to the management body and the senior management. In particular, information on the ability of the members of the management body to access documents;

Article 6

Senior management and members of the management body

1. A data reporting services provider shall include in the application for authorisation the information required in Annex II of the [insert reference to the ITS on DRSP standard forms, templates and procedures] and the following information in respect of each member of the senior management and each member of the management body:

(a) a copy of the curriculum vitae in order to enable the assessment of sufficient experience and knowledge to adequately perform the responsibilities;

(b) a self-declaration of good repute in relation to the provision of a financial or data service, stating whether the member:

(i) 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;

(ii) has been subject to an adverse decision in any proceedings of a disciplinary nature brought by a regulatory authority or government bodies or agencies or are the subject of any such proceedings which are not concluded;

(iii) has been subject to an adverse judicial finding in civil proceedings before a court in connection with the provision of financial or data services, or for impropriety or fraud in the management of a business;

(iv) has been part of the board or senior management of an undertaking whose registration or authorisation was withdrawn by a regulatory body;

(v) has been refused the right to carry on activities which require registration or authorisation by a regulatory body;

(vi) has been part of the management body or senior management of an undertaking which has gone into insolvency or liquidation while this person was connected to the undertaking or within a year of the person ceasing to be connected to the undertaking;

(vii) has been part of the management body or senior management of an undertaking which was subject to an adverse decision or penalty by a regulatory body;

(viii) 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 government, regulatory or professional body;

(ix) 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.

(c) a declaration of any potential conflicts of interests that may exist or arise in performing the duties and how these conflicts are managed.

2. A data reporting services provider shall promptly notify the competent authority of its home Member State of any changes to the members of its management body, including new members, exiting members and changes to the responsibilities of any of the members of the management body. The notification shall include the name of the relevant member and date on which the change took effect. Where the change involves the addition of a new member or a change to the responsibilities of an existing member, the data reporting services provider shall provide the competent authority of its home Member State with the information set out in paragraph 1 and in Annex II of the [insert reference to the ITS on DRSP standard forms, templates and procedures] in relation to that member.

Article 7
Information to competent authorities

1. At the time of the application for authorisation, a data reporting services provider shall also provide the competent authority of its home Member State with information regarding all the organisational requirements set out in Section 3.

2. A data reporting services provider shall promptly inform the competent authority of its home Member State of any material change in the information provided at the time of the authorisation and thereafter.

Section 3
Organisational requirements

Article 8
Independence and avoidance of conflicts of interest

1. A data reporting services provider shall set up and maintain policies and procedures for identifying, managing and disclosing existing and potential conflicts of interest. The data reporting services provider shall ensure that all staff in the company are aware of such policies and procedures.

2. The policies and procedures for identifying, managing and disclosing existing and potential conflicts of interest shall include:

(a) the inventory of existing and potential conflicts of interest, with an explanation of how and by which means the existing and potential conflicts of interest are to be identified, prevented, mitigated, and disclosed;

(b) the segregation of duties and business functions within the data reporting services provider;

(c) the determination of fees charged by the data reporting services provider and related third parties;

(d) the management of inside information as defined by Article 6 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse[24] including the existence of a ban on trading in financial instruments on which the data reporting services provider has any kind of insider information;

(e) the policy regarding the acceptance of money, gifts or favours.

3. The inventory of existing and potential conflicts of interest shall identify any potential conflicts of interest between the data reporting services provider and its clients.

4. A data reporting services provider shall describe the arrangements in place to prevent, disclose and mitigate any existing or potential conflicts of interest between the data reporting service and any other services.

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

5. A data reporting services provider shall provide the competent authority of its home Member State upon request or periodically with a copy of the results of any internal assessment performed to identify any existing or potential conflict of interest between the data reporting service and any other services provided.

6. A data reporting services provider shall submit to the competent authority of its home Member State, on an annual basis at the time of approval of the financial statement by the management body of the data reporting services provider, a report on the management of existing conflicts of interest as well as any changes in the policies and procedures needed to cope with potential conflicts of interest. The report shall also include information on the main results of controls implemented within the company at the various organisational levels, the functional failings discovered as well as the measures taken to cope with the failures.

Article 9
Conflicts of interest with clients

1. A data reporting services provider shall maintain and operate effective administrative arrangements aimed at preventing conflicts of interest that may affect the interests of clients.

2. The inventory of existing and potential conflicts of interest with clients shall at least consider whether the data reporting services provider:

(a) may realise a financial gain or avoid a financial loss, to the detriment of the client;

(b) may have an interest in the result of the service provided to the client, which differs from the client's interest;

(c) may have an incentive to prioritise its own interests rather than the interest of the client to whom the service is provided;

(d) receives or may receive from any person other than the client, in relation to the service provided to the client, an incentive in the form of money, goods or services, other than commission or fees normally received for the service.

3. A data reporting services provider shall set up and maintain administrative arrangements aimed at:

(a) preventing or controlling the exchange of information between relevant persons involved in activities entailing a risk of conflicts of interest when the exchange of this information may damage the interests of one or more clients;

(b) implementing separate supervision of relevant persons whose main functions involve interests that are potentially in conflict with those of the client on whose behalf a service is provided.

4. Where the implemented administrative arrangements to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to client interests will be prevented, the data reporting services provider shall clearly disclose the general nature and/or sources of conflicts of interest to the clients before providing any service to them.

Article 10
Shared resources

1. A data reporting services provider shall provide the competent authority of its home Member State with a description of the resources, both human and technical, shared by the data reporting services provider and the group of undertakings to which it belongs.

2. Where a data reporting services provider shares resources with other entities in the same group of undertakings, it shall provide to the competent authority of its home Member State on request, a copy of relevant service level agreements that it has entered into, or proposes to enter into, with other group members, and the following information:

(a) a description of the relevant tasks carried out by each group entity, including undertakings located in third countries;

(b) a clear identification of the entity involved in performing the task, specifying its location;

(c) information on the reporting lines and frequency of reporting of each entity involved and on the way information is collected from each entity;

(d) information on any dedicated resources located in the Union. In the case of human resources, the applicant shall specify the time devoted to the function on the basis of full time equivalence.

Article 11
Business continuity and back-up facilities

1. A data reporting services provider shall use systems that are well adapted to the activity which takes place through them and robust enough to ensure continuity and regularity in the performance of the services provided.

2. In order to ensure that the services provided remain continually effective at all times, a data reporting services provider shall conduct periodic reviews at least annually and evaluate its technical infrastructures, and associated process for governance, accountability and sign-off and associated business continuity arrangements. A data reporting services provider shall act on the basis of these reviews and evaluations to remedy deficiencies.

3. A data reporting services provider shall conduct a business impact analysis to identify the business functions which are critical to providing data reporting services. A data reporting services provider shall use scenario based risk analysis to identify how various scenarios pose risks to the performance of its critical business functions. The data reporting services provider shall keep the business impact analysis and scenario analysis up to date and periodically review and them.

4. A data reporting services provider shall be able to demonstrate on an ongoing basis that its systems have sufficient stability by having effective business continuity arrangements to address disruptive incidents.

5. The business continuity arrangements shall include at least:

(a) all processes, escalation procedures and related systems which are critical to ensuring the services of the data reporting services provider, including any relevant outsourced service or dependencies on external providers and including the data reporting services provider's strategy, policy and objectives towards continuity of the processes;

(b) an adequate range of possible scenarios related to the operation of the systems which require specific continuity arrangements including at least system failures, natural disasters, communication disruptions, loss of key staff and inability to use the premises regularly used. The business continuity plan shall foresee short term and medium term contingencies and set out measures to address them;

(c) duplication of hardware components to allow for failover to 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 to ensure communication inside the data reporting services provider and between the data reporting services provider and its clients;

(e) the procedures for moving to and operating the system from a back-up site;

(f) the arrangements to ensure a minimum service level of the critical functions and the expected timing of the completion of the full recovery of those processes;

(g) the maximum acceptable recovery time for business processes and systems, having in mind the deadlines for reporting and disclosing the information. The maximum recovery time shall be no longer than six hours in the case of APAs and CTPs and until the close of the next working day in the case of ARMs;

(h) staff training on the operation of the business continuity arrangements, individuals' roles including a specific security operations team ready to react immediately to a system disruption;

(i) an on-going programme for testing, evaluation and review of the business continuity arrangements including procedures for modification of the arrangements in light of the results of that programme.

6. A data reporting services provider shall promptly report to the competent authority of its home Member State and make public services interruptions or connection disruptions as well as the time estimated to resume a regular service.

7. A data reporting services provider shall inform the clients and the competent authority of its home Member State about other disruptions to the performance of the system.

8. In the case of ARMs, the notifications set out in paragraphs 6 and 7 shall also be made to any competent authority to whom the ARM submits transaction reports.

Article 12
Testing and Capacity

1. A data reporting services provider shall, prior to deploying any systems' updates, make use of clearly delineated development and testing methodologies. The use of these methodologies shall ensure that the operation of the system satisfies the data reporting services provider's regulatory obligations, that compliance and risk management controls embedded in the systems work as intended and that the system can continue to work effectively in all conditions. Following a systems' update, a data reporting services provider shall also make use of a testing methodology to ensure that the systems' update has not adversely impacted the data reporting services provider's ability to fulfil its regulatory obligations.

2. An APA and CTP shall promptly notify the competent authority of its home Member State of any significant system changes prior to the implementation of those changes.

3. An ARM shall promptly notify the competent authority of its home Member State and any other competent authority to whom the ARM submits transaction reports of any significant system changes. These notifications shall be made prior to the implementation of those changes.

4. A data reporting services provider shall also have in place an on-going programme for the testing, evaluation and review of the arrangements including procedures for modification of the arrangements in light of the results of that programme.

5. As part of on-going testing programme, 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 on-going 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.

6. 6.An APA or CTP shall perform periodic reconciliations between the trade report information it receives and the information that is published to ensure that the information has been properly published;

7. 7.An ARM shall report information without introducing any errors or omissions. An ARM shall perform periodic reconciliations at the request of the competent authority of its home Member State or the competent authority to which the ARM submits transaction reports between:

(i) the information that the ARM receives from its client or generates on its client's behalf for transaction reporting purposes; and

(ii) data samples provided by the competent authority at the ARM's request of the information submitted on behalf of the client that was accepted by the competent authority;

8. A data reporting services provider shall:

(a) have sufficient capacity to perform its functions without failures or outages, missing or incorrect data;

(b) be able to scale the performance of its systems beyond any safety buffer that it has identified in order to respond to rising data flows that might threaten the proper operation of its systems;

(c) have sufficient capacity to accommodate without delay any increase in the amount of information to be processed and any increase in the number of access requests from clients.

Article 13
Security

1. A data reporting services provider shall have procedures and arrangements for physical and electronic security designed to protect its systems from misuse or unauthorised access, prevent unauthorised disclosure of information and to ensure the integrity of the data that is part of or passes through the systems.

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 arrangements for physical and electronic security that allows the minimization of the risks of attacks against the information systems as defined under Article 2 of Directive 2013/40/EU[25]. A data reporting services provider shall set up and maintain measures and arrangements to promptly identify and manage the risks related to:

(a) any unauthorised access to the whole or to any part of an information system;

(b) any unauthorised system interference that seriously hinders or interrupts the functioning of an information system by inputting computer data, by transmitting, damaging, deleting, deteriorating, altering or suppressing such data, or by rendering such data inaccessible;

(c) any unauthorised data interference that deletes, damages, causes to deteriorate, alters or suppresses computer data on the information system, or renders such data inaccessible;

(d) any unauthorised interception, by technical means, of non-public transmissions of computer data to, from or within an information system, including electromagnetic emissions from an information system carrying such computer data.

4. A data reporting services provider shall also set up and maintain arrangements for physical and electronic security that allows the minimisation of any risks related to the unsecure access to the working environment and loss of information confidentiality.

5. A data reporting services provider shall promptly inform the competent authority of its home Member State and the clients of any breaches in the physical and electronic security measures undertaken. An incident report shall be provided to the competent authority of its home Member State, indicating the nature of the incident, the measures adopted to cope with the incident and the initiatives taken to prevent similar incidents happening in the future.

6. An ARM shall promptly notify and send an incident report to the competent authority of its home Member State and any other competent authorities to which the ARM submits transaction reports.

[25] OJ L 218, 14.8.2013, p. 8.

Article 14

Identification by APAs and CTPs of incomplete or potentially erroneous information

1. An APA and CTP shall set up and maintain appropriate arrangements and controls to ensure that it accurately publishes the information which it has received without itself introducing any errors or omissions in the trade information and shall have the ability to correct (including deleting or amending) the information where an APA or CTP has itself caused the error or omission.

2. An APA and CTP shall be able to demonstrate at all times to the competent authority of its home Member State continuous real-time monitoring of the performance of the elements of its systems and shall have the capability to monitor its own systems and controls to ensure with reasonable certainty that the trade information it has received has been successfully published.

3. 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 at a minimum, 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; and

(d) if needed, other parameters to be set manually according to the characteristics of the financial instrument.

4. Where an APA determines that a trade report it receives is incomplete or contains information that is likely to be erroneous, it shall ensure it does not publish this information. An APA shall promptly alert the entity submitting the information that the trade report is incomplete or contains information that is likely to be erroneous and has not been published.

5. An APA and CTP shall have and, when necessary, utilise a mechanism enabling it to delete and amend information received upon request by the entity providing the information when that entity cannot delete or amend its own information for technical reasons in exceptional circumstances.

6. An APA and CTP shall apply its information cancellation and amendment policy according to non-discretionary rules. The general framework for information cancellations and amendments shall pre-define and make public:

(a) the cases where cancellations and amendments will operate;

(b) the timeframe for each case;

(c) the penalties that an APA and CTP may impose on entities providing the information where the incomplete or erroneous information has lead to cancellations and/or amendments.

Article 15

Identification by ARMs of incomplete or potentially erroneous information

1. An ARM shall set up and maintain appropriate arrangements to identify transaction reports that are incomplete or contain obvious errors caused by the investment firm. At a minimum, an ARM shall perform validation for field, format and content of fields according to [table 1 in Annex I of the draft RTS on transaction reporting].

2. An ARM shall set up and maintain appropriate arrangements to identify transaction reports which contain errors or omissions caused by that ARM itself and shall have the ability to correct (including deleting or amending) such errors or omissions. An ARM shall perform validation for field, format and content of fields according to the technical specifications.

3. An ARM shall be able to demonstrate at all times to the competent authority of its home Member State continuous real-time monitoring of the performance of the elements of its systems and controls and shall have the capability to ensure with reasonable certainty that the relevant information is successfully reported to the competent authority.

4. Any corrections (cancellations or amendments) that are not correcting errors or omissions caused by an ARM, shall only be made at the request of an ARM's client and on an individual transaction report basis. Where an ARM cancels or amends a transaction report at its client's request, it shall provide this updated information to the client.

5. Where an ARM becomes aware of an obvious error or omission caused by the investment firm, it shall not submit the transaction report to the competent authority but shall promptly notify the client of the details of the error or omission to enable the client to correct and re-transmit the information.

6. Where an ARM becomes aware of any errors or omissions which have been caused by itself, it shall correct (including cancelling) any erroneously submitted report and submit a correct and complete report to the competent authority without delay in accordance with Article 26(7) of Regulation (EU) No 600/2014. The requirement to correct or cancel erroneous reports or report omitted transactions shall not extend to errors or omissions which occurred more than 5 years before the date that the ARM became aware of such errors or omissions. An ARM shall also promptly notify the client of the details of the error or omission and provide updated information to the client. An ARM shall also promptly notify the

competent authority of its home Member State and the competent authority to which the ARM reported the information about the error or omission.

Article 16
Outsourcing requirements

1. Where a data reporting services provider arranges for activities to be performed on its behalf by third parties, the data reporting services provider shall ensure that the service provider is fit, able and willing to perform the activity.

2. A data reporting services provider shall not outsource the responsibilities of its senior management and management body.

3. A data reporting services provider shall remain responsible for any outsourced activity and shall adopt organisational measures to ensure:

(a) that it is in a position to assess whether the service provider is carrying out its functions effectively and in compliance with applicable laws and regulatory requirements;

(b) the integration of outsourced activities into the data reporting services provider's overall internal audit system;

(c) the identification of the risks in relation to outsourced activities and the existence of a detailed periodic monitoring programme;

(d) adequate control procedures with respect to outsourced activities, including having persons within the data reporting services provider that are responsible for such procedures and appropriate reporting to the management body and auditors;

(e) business continuity of outsourced activities. For this purpose the data reporting services provider shall obtain information on the business continuity arrangements of the service provider, assess the quality of the measures envisaged therein and arrange coordinated business continuity options.

4. A data reporting services provider shall define the scope of the activities to be outsourced taking into account the overall company strategy, maintaining awareness and governance of related processes and related risk control.

5. A written agreement between a data reporting services provider and a service provider shall:

(a) identify the nature, subject, service objectives, the service methods and frequency, and data confidentiality obligations;

(b) guarantee the observance of provisions indicated in paragraph 3;

(c) include appropriate controls and provisions to allow competent authorities to exercise their supervisory powers, including but not limited to obtaining information from the entity providing the outsourced activities about those activities.

6. Where a data reporting services provider outsources any important functions, it shall provide the competent authority of its home Member State with the following information:

(a) the organisational measures and policies with respect to outsourcing as specified in paragraph 2;

(b) an explanation of how it intends to identify, manage and monitor the risks posed by the outsourcing of important operational functions;

(c) a copy of the outsourcing agreements between the data reporting services provider and the entity to which the activities are outsourced;

(d) a copy of any internal or external report on the outsourced activities.

Article 17
Connectivity

1. An ARM shall have in place policies, arrangements and technical capabilities to comply with the technical specifications determined 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 reporting firms and to transmit information back to those firms, including copies of the transaction reports which the ARM submitted to the competent authority on the firm's behalf.

Article 18
Other services provided by CTPs

1. A CTP may also perform the following 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, provided that such services do not create a risk affecting the quality of the tape or the independence of the CTP that cannot be adequately prevented or mitigated.

Article 19
Entry into force

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

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

Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]

RTS 21: Draft regulatory technical standards on the publication of transactions by APAs and CTPs

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

of […]

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the publication of transactions by APAs and CTPs

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments and in particular Article 64(6), Article 64(8)(a) and (b), Article 65(6) and Article 65(8)(a),(b), (c) and (d) thereof,

Whereas:

(1) Promoting efficient dissemination of information by APAs and CTPs so that it is easily accessible and utilisable for market participants implies that the information is published in a machine readable format through robust channels allowing for automatic access to the data. While websites may currently not always offer an architecture that is robust and scalable enough and that allows for easy automatic access to data, these technological constraints may be overcome in the future. A particular technology should therefore not prescribe, but criteria should be set out that need to be met by the technology which is used.

(2) With respect to equity and equity-like instruments, Regulation (EU) No 600/2014[26] 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 (including especially CTPs) to identify such potential duplicate trades as otherwise the same trade might be consolidated several times, and published repeatedly by the CTPs. Such a fact is to be avoided as it would undermine the quality and usefulness of the consolidated tape.

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

(3) APAs should be required to adopt efficient mechanisms to ensure the publication of transactions reported by investment firms in a format that facilitates consolidation by including a “reprint” field indicating whether a report is a duplicate. One way to ensure duplication of reports relating to the same trade is for the APA to get information from the investment firm that all trades in a certain instrument (or classes thereof) are only sent to that particular APA. Another possible way is for the APA to ensure that the investment firm identifies each trade report as original or duplicate so that it is possible for the data providers and users to consolidate information.

(4) CTPs should not publish information in relation to a transaction published by an APA that according to the “reprint” field is identified as duplicative in order to avoid the publication of the same transaction more than once. This strengthens the reliability of the provided information.

(5) APAs should publish information on transactions, including the relevant time stamps, i.e., the time transactions were executed and the time transactions were published, that is most meaningful for data users. With that in mind, the granularity of the timestamps should reflect the nature of the trading system the transaction was executed on, i.e., a greater granularity is needed when publishing information on transactions executed in electronic systems than on other transactions.

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

(7) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and the Council of 24 November 2010[27] the European Securities and Markets Authority has conducted an open public consultation on the draft regulatory standards on which this Regulation is based, has analysed the potential related costs and benefits and has requested the opinion of the Securities and Markets Stakeholder Group referred to in Article 37 of that Regulation.

HAS ADOPTED THIS REGULATION:

Article 1

Machine Readability

(1) An APA or a CTP shall publish its data in a machine readable way.

[27] 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) Data shall be considered published in a ‘machine readable’ way where:

(a) it is in an electronic format designed to be directly and automatically read by a computer and known in advance by the party wishing to access the data.

(b) it is in a location known in advance by the party wishing to access the data and stored in an appropriate IT architecture in accordance with Article 12(7) of [insert DRSP technical standards reference here] 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; and

(d) it can be accessed, read, used and copied by freely and publicly available computer software, the source code of which is openly shared.

(3) For the purposes of subparagraph (a) of paragraph 2 “electronic format” includes the type of files or messages, the rules to identify them, and the name and data type of the fields they contain.

(4) An APA or a CTP shall make instructions available to all parties explaining how users can access and use the data easily and continuously. Changes to those instructions shall be made public at least one month before coming into effect. The homepage of an APA or a CTP should contain a link to this information, if applicable.

Article 2

Scope of the consolidated tape for shares, depositary receipts, ETFs, certificates and other similar financial instruments

1. The data stream of the consolidated tape shall include data made public pursuant to Articles 6 and 20 of Regulation (EU) No 600/2014 relating to all financial instruments mentioned therein.

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 data stream of its consolidated tape as soon as possible, and in any case no later than three months after the start of the APA’s or trading venue’s operations.

Article 3

Identification of original and duplicative trade reports in shares, depositary receipts, ETFs, certificates and other similar financial instruments

1. An APA shall publish transactions reported by investment firms in a format that facilitates consolidation by including a reprint field.

2. Where an APA publishes a trade report which is a reprint, it shall fill in the reprint field with the code 'Z' to enable recipients of the data to differentiate between original trade report and duplicates of such report.

3. For the purposes of paragraphs 1 and 2 an APA shall require each investment firm to comply with one of the following approaches:

(a) certifying that it only reports transactions through that APA;

(b) using an identification mechanism which flags one report as the original one ('ZX'), and all other reports of the same transaction as duplicates ('Z').

Article 4
Publication of original reports

A CTP shall not publish information in relation to a transaction published by an APA where there is a code 'Z' in the reprint field for that transaction.

Article 5
Information to be published by the APA

1. 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

2. By way or derogation to paragraph 1, an APA that publishes information regarding transactions executed on an electronic system, it shall include the date and time, up to the millisecond, it publishes all transactions.

3. Timestamps referred to in paragraphs 1 and 2 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 6
Non-discrimination

An APA or a CTP shall ensure that the information required under Articles 20 and 21 of Regulation (EU) No 600/2014 is disseminated to all users 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 7
Information to be published by the CTP

1. The information on when the transaction was reported shall include the date and time it was first published by an APA or a trading venue. A CTP shall ensure that when disseminating information about a transaction received from a trading venue it includes the date and time when the transaction was published.

2. The information made public by a CTP in accordance with Article 65 of Directive 2014/65/EU shall include the identification of an APA or a trading venue from which the CTP has received the information.

3. A CTP shall assign and publish a unique identifier, valid for one calendar day, to each trade they publish.

Article 8
Entry into force

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

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

Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]

RTS 22: Draft regulatory technical standards on data disaggregation

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

of […]

laying down regulatory technical standards with regard to disaggregation of pre-trade and post-trade data according to Regulation (EU) No 600/2014 of the European Parliament and of the Council

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments and amending Regulation (EU) No 648/2012[28] and in particular the third subparagraph of Article 12(2) thereof,

Whereas:

(1) 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 in order to reduce costs for market participants when purchasing data. Therefore this Regulation should set out specific criteria by which venues should offer disaggregated data. All venues should be required to disaggregate by asset class, and each venue should also disaggregate by a range of criteria wherever there is sufficient demand for such disaggregated data from their customers.

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

(3) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and the Council of 24 November 2010[29] the European Securities and Markets Authority has conducted an open public consultation on the draft regulatory technical standards on which this Regulation is based, has analysed the potential related costs and benefits and has requested the opinion of the Securities and Markets Stakeholder Group referred to in Article 37 of that Regulation.

[28] OJ L 173, 12.6.2014, p. 84.
[29] 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
Disaggregation by asset class

(1) A market operator or investment firm operating a trading venue shall make the information published in accordance with Articles 3, 4 and 6 to 11 of Regulation (EU) No 600/2014 available to the public by offering pre-trade and post-trade data separately for each of the following asset classes:

(a) equity instruments referred to in Article 3 of Regulation (EU) No 600/2014;

(b) fixed income instruments;

(c) emission allowances;

(d) derivatives

(2) Where it is unclear to which asset class an instrument belongs, the market operator or investment firm shall determine to which asset class that instrument belongs to.

Article 2
Other disaggregation

1. A market operator or investment firm operating a trading venue shall make the information published in accordance with Articles 3, 4 and 6 to 11 of Regulation (EU) No 600/2014 available to the public by offering pre- and post-trade data separately in according with the following criteria:

(a) the country of issue of the instrument;

(b) the currency in which the instrument is denominated or traded;

(c) the industry sector of the issuer based on the EU Statistical Classification of Economic Activities in the European Community (NACE) or another appropriate classification;

(d) membership of a major index;

(e) auctions as opposed to continuous trading;

(f) different types of derivatives according to the underlying:

(i) equity derivatives

(ii) interest rate derivatives (including fixed income derivatives)

(iii) credit derivatives

(iv) foreign exchange derivatives

(v) commodity derivatives.

2. Where it is unclear whether an instrument or a type of data meets a particular criterion, the market operator or investment firm shall determine whether that criterion is met.

Article 3
Exemption

1. A market operator or investment firm operating a trading venue may decide not to disaggregate data according to the criteria listed in Article 2(1) where there is not sufficient demand for the packages of data that would result from applying a criterion.

2. A market operator or investment firm shall make a declaration that it qualifies for the exemption referred to in paragraph 1. The market operator or investment firm shall make that declaration available to its customers or potential customers along with its price list for data services, and shall include the declaration in its response to any request for information about the prices of its data services.

Article 4
Entry into force

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

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

Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]

RTS 23: Draft regulatory technical standards on identification of the investment firm responsible for making public the volume and price transparency of a transaction

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

of […]

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on the identification of the investment firm responsible for making public the volume and price of a transaction

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments and amending Regulation (EU) No 648/2012 and in particular Article 20(3)(c) and Article 21(5)(

c) thereof,

Whereas:

(1) It is essential to clarify which investment firm should make public the information in cases where both the buyer and the seller are investment firms established in the European Economic Area. Therefore, in the absence of any agreement otherwise, and unless the buying firm is a systematic internaliser, the selling investment firm should report the transaction. There may be exchange-traded derivative transactions carried out off-market including certain swaps, where the identification of the buyer and the seller is not obvious from the nature of the transaction. However, the buyer and the seller will need to be identified for reporting those transactions to a Trade Repository in

accordance with Regulation (EU) No 648/2012[30]. Therefore,by following the same criteria it should be easy to identify the seller and implement the rule.

(2) Where the buying firm is a systematic internaliser, it should be responsible for reporting that transaction, and should ensure that the selling investment firm is aware that it is doing so.

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

(4) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and the Council of 24 November 2010[31] the European Securities and Markets Authority has conducted an open public consultation on the draft regulatory standards on which this Regulation is based, has analysed the potential related costs and benefits and has requested the opinion of the Securities and Markets Stakeholder Group referred to in Article 37 of that Regulation.

HAS ADOPTED THIS REGULATION:

Article 1

Investment firm responsible for reporting a transaction

(1) 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, the investment firm that sells the financial instrument concerned shall be responsible for making the transaction public through an APA.

(2) By way of derogation to paragraph 1, if only one of the investment firms party to the transaction is a systematic internaliser in the given instrument, that firm shall report the transaction, informing the seller of the action taken.

(3) Investment firms shall take all reasonable steps to ensure that the transaction is made public as a single transaction. For those purposes 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 2

Entry into force

[30] OJ L 201, 27.7.2012, p. 1.

[31] 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).

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

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

Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]

RTS 24: Draft regulatory technical standards on access in respect of trading venues, central counterparties and benchmarks

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on access in respect of trading venues, central counterparties and benchmarks

(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[32], and in particular Articles 35(6), 36(6) and 37(4) thereof,

Whereas:

(1) To prevent competitive distortions, central counterparties (CCPs) as well as trading venues should only be able to deny access if they have made all reasonable efforts to manage the risk arising from that access and significant undue risk remains.

(2) Articles 35 and 36 of Regulation (EU) 600/2014 mandate granting access in relation to financial instruments. The application of the requirements in this Regulation has to take into account the differences resulting from the whole spectrum of different financial instruments. For example, managing risks in relation to derivatives may be more complex and challenging than in relation to securities. The differences between financial and commodities and other non-financial derivatives have also to be taken into account.

(3) According to Articles 35(3) and 36(3) of Regulation (EU) No 600/2014 the party denying access has to provide full reasons for that decision and this includes identifying how the relevant risks arising from granting access would in the concrete situation be unmanageable such that there would be significant undue risk remaining. An appropriate

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

way of doing this is for the party denying access to clearly outline the changes that would arise from granting access, how it would have to manage the risk associated with the changes, and explain the impact on its structures such as necessary compliance measures. In particular, a CCP using an open offer trade acceptance model that receives a request for access from a trading venue using a novation trade acceptance model would either have to grant that access or identify how precisely the simultaneous use of an open offer and a novation trade acceptance model would give rise to significant undue risks that cannot be managed.

(4) When granting access CCPs and trading venues incur costs. These will be both one-off costs, such as assessing legal requirements, and ongoing costs. This Regulation addresses the issues regarding costs only under the empowerments in Articles 35(6)(b) and 36(6)(b), without covering the specific allocation of costs between the CCP and trading venue.

(5) The relationship between a CCP and its clearing members is regulated primarily under Articles 26(7) and 28(3) of 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[33], Article 10(1)(d) of 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[34], and the member eligibility criteria of the CCP. Likewise, the relationship between a trading venue and its members or participants is regulated primarily under Article 53 of 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[35] and the eligibility criteria of the trading venue. This Regulation does not alter those requirements.

(6) Although Articles 35 and 36 of Regulation (EU) No 600/2014 refer to risks incurred by CCPs and trading venues in very similar ways, in practice those risks may impact CCPs and trading venues differently, thus demanding a different approach in this Regulation.

(7) When a trading venue requests access to a CCP concerning instruments currently not covered under the CCP's authorisation, the latter should request an extension of its authorisation to the competent authority of the Member State where it is established, which should in turn immediately transmit all information received from the applicant CCP to the college of the CCP. The relevant competent authority should duly consider the opinion of the college on the extension of authorisation according to Regulation (EU) No. 648/2012.

[33] OJ L 201, 27.7.2012, p. 1.
[34] OJ L 52, 23.2.2013, p. 41.
[35] OJ L 173, 12.6.2014, p. 349.

(8) When each relevant 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 is functioning properly as there may be a risk of contagion and wider systemic risk if one or more of the entities involved are functioning poorly and access is permitted.

(9) According to Commission Delegated Regulation (EU) No 876/2013, of 28 May 2013, supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on colleges for central counterparties[36], the competent authority of a CCP should provide the college in a timely manner with the relevant information on the commercial proposals related to the trading venue's request for access to the CCP, including new products or services offered, as well as any information on any material threats to the CCP's ability to comply with Regulation (EU) No 648/2012 related to the trading venue's request for access to the CCP.

(10) The terms under which access must be permitted should be reasonable and non-discriminatory so as not to undermine the purpose for which the access provisions were introduced. For example, charging fees in a discriminatory way so as to deter access would not be permitted. However, fees could differ on objectively justified reasons, such as where the costs to implement the access arrangements are higher. When access results in a trading venue dealing with two or more CCPs, it will be important to specify how these CCPs interact, for example, whether this is by interoperability or the preferred clearer model, and address the specific risks. The terms of an access arrangement should balance out the interests of all involved parties.

(11) Pursuant to Regulation (EU) No. 648/2012, a CCP wishing to extend its business to additional services or activities not covered by the initial authorisation should submit a request for an extension of authorisation. An extension of authorisation is needed where a CCP intends to offer clearing services on financial instruments with a different risk profile or that have material differences from the CCP's existing product set. When a contract traded on a trading venue to which a CCP has granted access is covered by the scope of the CCP's current authorisation, such a contract is to be considered as economically equivalent to the contracts already cleared by the CCP.

(12) 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

[36] OJ L 244, 13.9.2013, p. 19.

Risk Committee of the CCP and be considered as a significant change to the model and parameters for the purpose of the review procedure as provided for under 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.

(13) Article 35 (6)(e) of Regulation (EU) No 600/2014 refers to the cross-margining of correlated contracts. It is noted that the term “portfolio margining” should be used when referring to correlated contracts cleared by the same CCP, rather than “cross-margining” which is used in contexts involving two CCPs.

(14) A notification by a relevant competent authority to the CCP college and ESMA about the approval of a CCP transitional relief in accordance with Article 35(5) of Regulation (EU) 600/2014 should be made without undue delay in order to assist other relevant competent authorities 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 enhance transparency.

(15) The information specified in this Regulation will contribute to a transparent and harmonised application of the notification process.

(16) It is important to help avoid the risk of larger trading venues using calculation methods that will minimise their annual notional amount in order to avoid being captured by the access provisions. Where there are equally accepted alternative approaches to calculating notional amount, using the calculation which gives the higher value will help achieve this. The methods used for calculating notional amount for the purposes of Article 36(5) of Regulation (EU) No 600/2014 should enable genuinely smaller trading venues that have not yet acquired the technological capability to engage on a level playing field with the majority of the post-trade infrastructure market to utilise the opt-out mechanism. It is also important for the methods prescribed to be straightforward and unambiguous.

(17) It is important for trading venues to be consistent about how they calculate their notional amount for the purposes of Article 36(5) of Regulation (EU) No 600/2014 so that the access provisions can be applied fairly. Without the provisions set out in this Regulation, trading venues may apply different methods for calculating notional amount for certain types of exchange-traded derivatives, for example, in respect of commodity derivatives traded in units, such as barrels or tons.

(18) Article 37 of Regulation (EU) No 600/2014 captures a variety of different types of benchmarks and so the information a trading venue or CCP needs for trading or clearing purposes may vary depending on a number of factors, including the relevant financial

instrument being traded or cleared and the type of benchmark that the financial instrument references.

(19) This Regulation, therefore, does not prescribe an exhaustive list of the types of information that should be provided by a person with proprietary rights to a benchmark to trading venues and CCPs, but allows CCPs and trading venues to request access to information, provided it is required for trading or clearing purposes. For example for option benchmarks it may be necessary to know whether the option model is volatility or premium based and for equity benchmarks it may be necessary to know relevant corporate action information.

(20) Depending on the type of benchmark concerned, a person with proprietary rights to a benchmark may need to take particular considerations into account that will require the information provided to trading venues and CCPs to be modified appropriately. For instance, for reference rate benchmarks, pricing information should include the names of the contributors themselves, but should not cover values of individual submissions by contributors as this could cause adverse signalling effects affecting the price formation process. For certain types of benchmarks information on constituents and their weightings may not be available, for example, credit benchmarks are based on submissions from contributors.

(21) To ensure Articles 35 and 36 of Regulation (EU) No 600/2014 work effectively the terms trading and clearing for the purposes of Article 37(1) of Regulation (EU) No 600/2014 should include all functions that the trading venue and CCP will be obliged to fulfil as part of its trading and clearing business. For example, a trading venue must be able to make an initial assessment of the characteristics of the benchmark, market the relevant product and support on-going market surveillance activities, and a CCP must be able to perform appropriate risk management of relevant open exchange-traded derivatives positions, including to perform netting, and to meet relevant obligations, such as to calculate risk intraday in order to assess whether it has an appropriate level of margin in accordance with requirements set out in Regulation (EU) No 648/2012.

(22) Where the person with proprietary rights to a benchmark is not in a position to pass on relevant information itself, it should, where appropriate, notify the trading venue or CCP of whom it may contact at the relevant third party or parties so that the trading venue or CCP can request access to such information. For equity benchmarks it may be clear whom the trading venue or CCP needs to contact, but for other benchmarks it may not be as clear.

(23) In line with Recital 40 and Article 37 of Regulation (EU) No 600/2014, the purpose of this regulation is to prevent the use of the licence agreement in a way that restricts the other access provisions contained in Articles 35 and 36 of Regulation (EU) No 600/2014.

(24) The diversity of benchmarks and the different identified uses make it difficult to achieve a high degree of harmonisation on the content of licence agreements. Constraining the conditions to predetermined terms might be detrimental to all parties.

(25) Nonetheless, persons with proprietary rights to a benchmark should set conditions for trading venues and CCPs to access their benchmark. Persons with proprietary rights to a benchmark may set different conditions for different categories of trading venues and CCPs to access their benchmarks only if justified by objective criteria, such as quantity, scope or field of use demanded, and these conditions should be applied on a non-discriminatory basis and in a proportionate manner. The criteria defining the different categories of trading venues and CCPs should be made publicly available. The trading venues and CCPs before requesting access should assess to what category its activity correspond and subsequently request to see the conditions applicable to that category.

(26) Trading venues and CCPs falling under the same category should be treated equally, including where the person with proprietary rights to a benchmark and the trading venue or CCP are connected by close links.

(27) The way in which it is assessed whether a benchmark can be deemed new will vary on a case by case basis and it is for the person with proprietary rights to a benchmark to demonstrate a benchmark's newness if invoked as reason for denying immediate access. As an example, the values of two benchmarks may be highly correlated, particularly in the short run, but their compositions or methodology may be fundamentally different to one another. The long run correlation and similarities in the composition and the methodology of each of the benchmarks should be taken into account. The assessment will have to consider the ways in which the compositions of the two benchmarks are related, and where there are differences how significant they are. Furthermore, the assessment should consider whether the methodologies adopted by each of the benchmarks are related, and to what extent. It is possible for two benchmarks to calculate their benchmark value in the same way, but still be fundamentally different if the composition of each is significantly different. Each assessment of a benchmark’s newness should therefore look at various factors to assess whether the benchmark meets the criteria specified in Regulation (EU) No 600/2014 or not. It will also be important to give an appropriate weighting to each of the various factors.

(28) Other factors specific to the types of benchmarks being assessed may also need to be taken into account in an assessment of a benchmark’s newness, for example, for commodity benchmarks it may be necessary to assess other factors, including whether the relevant benchmarks are based on different underlying commodities and different delivery locations.

(29) Certain benchmarks release a new series on a periodic basis, such as CDS benchmarks. In these cases, the newly released benchmark is a continuation of the previous series and should therefore not be considered a new benchmark.

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

(31) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and the Council of 24 November 2010[37] the European Securities and Markets Authority has conducted an open public consultation on the draft regulatory standards on which this Regulation is based, has analysed the potential related costs and benefits and has requested the opinion of the Securities and Markets Stakeholder Group referred to in Article 37 of that Regulation.

HAS ADOPTED THIS REGULATION:

Title 1

Non-discriminatory access to ccps and trading venues

Section 1

Denial of access by a CCP or a trading venue

Article 1

Common conditions on the denial of access by a CCP or a trading venue

(1) A CCP and a trading venue shall assess whether granting access will create any of the risks specified in Articles 2 to 6 and make arrangements to manage any risk identified.

(2) A CCP and a trading venue may deny access only if, after making all reasonable efforts to manage its risks in accordance with previous paragraph, there remain significant undue risks that cannot be managed.

(3) If a CCP or trading venue denies access, it shall identify which risks specified in Articles 2 to 6 would result from granting access and why those risks cannot be managed.

Part I

Conditions under which a CCP may deny an access request

Article 2

Denial of access based on the anticipated volume of transactions

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

A CCP may deny an access request on grounds of the anticipated volume of transactions only when the reasonably anticipated volume of transactions arising from such access would create significant undue risks by:

(a) exceeding the scalable design of the CCP to such an extent that the CCP cannot adapt its systems so as to deal with the anticipated volume; or

(b) exceeding the planned capacity of the CCP in a way that the CCP would not be able to acquire the required extra capacity in due time.

Article 3

Denial of access based on operational risk and complexity

1. A CCP may deny an access request on grounds of operational risk and complexity arising from such access only when it cannot adopt arrangements to adequately manage those risks such that there would be significant undue risk remaining.

2. For the purposes of the previous paragraph, relevant types of risks are, among others:

(a) Incompatibility of CCP and trading venue IT systems such that the CCP cannot provide for connectivity between the systems;

(b) the CCP does not have, nor is it able to get in due time, the necessary human resources with the necessary knowledge, skills and experience to perform its functions regarding the risk stemming from additional financial instruments where these differ from financial instruments already cleared by the CCP.

Article 4

Denial of access based on other factors creating significant undue risks

1. In addition to the circumstances identified in Articles 2 and 3 of this Regulation, a CCP may deny an access request, only when it cannot adopt arrangements to adequately manage any of the following risks arising from granting access such that there would be significant undue risk remaining:

(a) the CCP does not have, nor is it able to get in due time, the necessary authorisations consistent with meeting the relevant requirements set out in Title IV of Regulation (EU) No 648/2012 regarding the financial instruments in question;

(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) legal risks; or

(d) there is an incompatibility of CCP 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 subparagraph (c) of the previous paragraph, where as a result of granting access the CCP:

(a) would not be able to enforce its rules relating to close out netting and default procedures; or

(b) cannot manage the risks arising from the simultaneous use of different trade acceptance models.

Part II

Conditions under which a Trading Venue may deny an access request

Article 5

Denial of access based on operational risk and complexity

1. A trading venue may deny an access request on the grounds of operational risk and complexity arising from such access only when it cannot adopt arrangements to adequately manage those risks such that there would be significant undue risk remaining.

2. For the purposes of paragraph 1, types of relevant risk are, among others, the incompatibility of CCP and trading venue IT systems such that the trading venue cannot provide for connectivity between the systems.

Article 6

Denial of access based on other factors creating significant undue risks

In addition to the circumstances identified in the previous article a trading venue may deny an access request only when it cannot adopt arrangements to adequately manage any of the following risks arising from granting access such that there would be significant undue risk remaining:

(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; and

(b) incompatibility of trading venue and CCP rules that the trading venue cannot remedy in cooperation with the CCP.

Section 2

Denial of access by a competent authority

Article 7

Conditions under which access will threaten the smooth and orderly functioning of markets or adversely affect systemic risk

Granting access will threaten the smooth and orderly functioning of the markets or adversely affect systemic risk, apart from the situations identified in Regulation (EU) No 600/2014, where:

(a) one of the parties to the agreement is not meeting its legal obligations, or would be unlikely to meet its legal obligations as a consequence of granting access;

(b) granting access would create significant undue risks for the CCP or the trading venue in a way that would have a wider negative impact on the market; and

(c) there is no remedial action that would allow the relevant party to meet its legal obligations with reasonable effort prior to the access arrangement being put in place according to Article 35(3) and 36(3) of Regulation (EU) No 600/2014.

Title 2

Conditions under which access must be permitted

Article 8

Conditions under which access must be permitted

1. The relevant parties to an access arrangement in accordance with Articles 35 and 36 Regulation (EU) No 600/2014 shall agree on their respective rights and obligations, including the applicable law governing their relationships. The terms of the access arrangement shall:

(a) be clearly defined, transparent, valid and enforceable in all relevant jurisdictions;

(b) where applicable, specify how two or more CCPs with access to the same trading venue interact with one another;

(c) contain clear rules concerning the moment of entry of transfer orders into relevant systems and the moment of irrevocability;

(d) not contain any provision that restricts or creates obstacles for the establishment or future extension of the access arrangement to other entities, other than on duly justified risk grounds;

(e) not impact on the compliance by the entities participating in the arrangement with the requirements to which they are subject under relevant regulations;

(f) contain rules regarding the termination of the access arrangements by any of the involved parties, which should

(i) be clear and transparent;

(ii) cater for termination in an orderly manner that does not unduly expose other entities that are part of the access arrangement to additional risks;

(iii) ensure that termination is not triggered by minor breaches of the contract and that the relevant party is given a reasonable amount of time to remedy any breach that does not give rise to immediate termination;

(iv) allow the termination, if risks increase in a way that would have justified denial of access in the first instance;

(g) specify the contracts being subject to the access arrangement;

(h) specify the cover of the one-off and ongoing costs triggered by the access request; and

(i) cater appropriately for claims and liabilities stemming from the access arrangements.

2. The terms shall require that the trading venue and all CCPs party to the access arrangement put in place adequate policies, procedures and systems to ensure:

(a) timely, reliable and secure communication between the relevant entities;

(b) consultation where any change to either entity's operations is likely to have a material impact on the access arrangement or the risks to which the other entity is exposed;

(c) timely notification to the relevant party before a change is implemented, where the impact of a change is unlikely to be significant;

(d) resolution of disputes;

(e) identification, monitoring and management of the potential risks arising from the access arrangement;

(f) reception by the trading venue of relevant information in order to be able to fulfil its obligations regarding the monitoring of open interest, as appropriate; and

(g) acceptance by the CCP of delivery of physically settled commodities, as appropriate.

3. The relevant parties to the access arrangement shall ensure that:

(a) risk management standards are not being reduced by granting access;

(b) information provided in the request for access is kept up-to-date throughout the duration of the access arrangement, which includes an information about any material changes; and

(c) non-public and commercially sensitive information including any information provided during the development phase of a financial instrument is only to be used for the specific purpose for which it was conveyed and may only be acted upon for the specific purpose agreed by the entities.

Article 9

Non-discriminatory and transparent clearing fees charged by CCPs

1. A CCP shall only charge fees for clearing transactions executed on a trading venue to which it has granted access on the basis of objective criteria, applicable to all clearing members and, where relevant, clients. Fees shall not depend on the trading venue where the transaction takes place.

2. A CCP shall make all clearing members and, where relevant, clients subject to the same schedule of fees and rebates and not just a subset of them.

3. A CCP shall only charge fees to a trading venue in relation to access on the basis of objective criteria. The same fees and rebates shall apply for all trading venues accessing the CCP with regard to the same or similar financial instruments, unless a different basis can be objectively justified.

4. A CCP shall ensure that the fee schedules referred to in paragraphs 1, 2 and 3 are easily accessible, adequately identified per service provided and sufficiently granular in order to ensure that fees charged are predictable.

5. For the purpose of this Article, relevant fees are fees charged to cover both one-off and ongoing costs.

Article 10

Non-discriminatory and transparent fees charged by trading venues

1. A trading venue shall only charge fees in relation to access on the basis of objective criteria. The same fees and rebates shall apply to all CCPs accessing the trading venue with regard to the same or similar financial instruments, unless a different basis can be objectively justified.

2. A trading venue shall ensure that the fee schedules referred to in paragraph 1 are easily accessible, adequately identified per service provided and sufficiently granular in order to ensure that the fees charged are predictable.

3. This Article applies to all fees related to access, including those that are charged to cover one-off and ongoing costs.

Title 3
Conditions for non discriminatory treatment of contracts

Article 11
Collateral and margining requirements of economically equivalent contracts

1. A CCP shall consider economically equivalent all contracts traded on the trading venue to which it has granted access, which are covered by the CCPs' initial authorisation referred to in Article 14 of Regulation (EU) No. 648/2012, or by any subsequent extension of authorisation referred to in Article 15 of Regulation (EU) No. 648/2012.

2. The CCP shall apply to economically equivalent contracts referred to in paragraph 1 the same margin and collateral methodologies, irrespective of where the contracts are executed. A CCP may introduce changes to models or parameters regarding the clearing of economically equivalent contracts referred to in paragraph 1, in order to mitigate the respective risk factors of that trading venue or the contracts traded thereon. These changes shall be considered as significant changes to models or parameters that shall be subject to a review by the Risk Committee of the CCP and be subject to the review procedure referred to in Article 49 of Regulation (EU) No 648/2012.

Article 12
Netting of economically equivalent contracts

1. A CCP shall apply to economically equivalent contracts referred to in paragraph 1 of Article 11 the same netting processes, irrespective of where the contracts were executed, provided that the applied netting process is valid, binding and enforceable in compliance with Directive 98/26/EC of the European Parliament and of the Council on settlement finality in payment and securities settlement systems and the relevant applicable insolvency law.

2. Where the CCP considers that the legal risk or the basis risk related to a netting process applied to an economically equivalent contract traded on different trading venues is not sufficiently mitigated, the CCP may exclude such contracts from that netting process.

3. Where, in accordance with paragraph 2 above, a CCP excludes from netting economically equivalent contracts traded on different trading venues, this shall be considered as a significant change to its netting process that shall be subject to a review by the Risk

Committee of the CCP and be subject to the review procedure referred to in Article 49 of Regulation (EU) No 648/2012.

4. For the purpose of this Article “basis risk” means the risk arising from less than perfectly correlated movements between two or more assets or contracts cleared by the CCP.

Article 13

Cross-margining of correlated contracts (Portfolio margining)

Where a CCP calculates margins with respect to portfolio margining of financial instruments in accordance with Article 41 of Regulation (EU) No 648/2012 and Article 27 of Regulation (EU) No 153/2013, the CCP shall apply its portfolio margining approach to all relevant correlated contracts irrespective of where the contracts are executed.

Title 4

Transitional arrangements

Part 1

CCP transitional arrangements

Article 14

Notification procedure from the CCP to its competent authority

1. In accordance with Article 35 Regulation (EU) No 600/2014, where a CCP does not wish to be bound by that Article, it shall submit a notification to its competent authority in written form.

2. The CCP shall submit the notification using Form 1 in Annex I and shall include the following information:

(a) the identification of the CCP and relevant contact details;

(b) the date of the CCP’s authorisation or recognition; and

(c) where a trading venue is connected by close links to the CCP, its name and the jurisdiction in which it is established.

Article 15

Notification procedure from the competent authority to ESMA and the CCP college

1. Relevant competent authorities shall notify ESMA and the CCP college of every decision to approve a transitional arrangement in accordance with Article 35 of Regulation (EU) No 600/2014 in writing without undue delay and no later than one month from the decision.

2. The competent authority shall submit the notification using Form 2 in Annex I and shall include the following information:

(a) the identification of the CCP and the relevant contact details;

(b) the date of the CCP's authorisation or recognition;

(c) the date of the approval decision;

(d) the beginning and end date of the transitional period; and

(e) where a trading venue is connected by close links to the CCP, its name and the jurisdiction in which it is established.

Part 2

Trading venues transitional opt-out arrangements

Article 16

Notification procedure from the trading venue to its competent authority regarding the initial transitional period

In accordance with Article 36 of Regulation (EU) No 600/2014, where a trading venue does not wish to be bound by that Article, it shall submit a notification to ESMA and its competent authority in written form.2. The trading venue shall submit the notification using Forms 3a and 3b in Annex I and shall include the following information:

(a) the identification of the trading venue and the relevant contact details;

(b) where applicable, information about being part of a group, including specification of any trading venues in the group and the jurisdictions in which they are established;

(c) the specification of the traded notional amount in exchange-traded derivatives per asset class for 2016, where applicable, broken down for each trading venue in the group based in the Union; and

(d) where a CCP is connected by close links to the trading venue, its name and the jurisdiction in which it is established.

Article 17

Notification procedure from the trading venue to its competent authority regarding an extension of the transitional period

1. In accordance with Article 36 Regulation (EU) No 600/2014, where a trading venue wishes to continue not to be bound by that Article, it shall submit a notification to ESMA and its competent authority in written form.

2. The trading venue shall submit the notification using Forms 4a and 4b in Annex I and shall include the following information:

(a) the identification of the trading venue and the relevant contact details;

(b) where applicable, information about being part of a group, including specification of the trading venues in the group and the jurisdictions in which they are established;

(c) the specification of the traded notional amount in exchange-traded derivatives per asset class broken down for each relevant rolling year in the preceding opt-out period and, where applicable, broken down for each other trading venue in the group based in the Union; and

(d) where a CCP is connected by close links to the trading venue, its name and the jurisdiction in which it is established.

Article 18

Further specifications for the calculation of notional amount for transitional purposes

1. In accordance with Article 36(5) of Regulation (EU) No 600/2014, a trading venue that does not wish to be bound by Article 36 for a period of thirty months from the entry into application of that Regulation shall include in its calculation of its annual notional amount all exchange-traded derivatives concluded in the calendar year preceding the entry into application that are classified as transactions under its rules.

2. For the purposes of calculating its annual notional amount in accordance with paragraph 1, a trading venue shall use for 2016 actual figures for the period for which they are available, and, for the remaining months of that year, estimate figures, by using the ratio of the corresponding period to the full year of 2015. The trading venue shall use actual figures for at least 8 consecutive months of 2016. If the notification is sent before actual data for at least the first 8 months of 2016 is available, the trading venue shall provide ESMA and the competent authority with updated figures once available.

3. Where a trading venue wishes to continue to not be bound by Article 36 of Regulation (EU) No 600/2014 for a further thirty month period, it shall include in its calculation of its annual notional amount all trades in exchange-traded derivatives concluded in each of the first two rolling 12 month periods of the previous thirty month period that are classified as transactions under its rules.

4. Where for certain types of instruments there are equally accepted alternative approaches to calculating notional amount, but there are notable differences in the values to which these calculation methods give rise, the calculation which gives the higher value shall be used. In particular, for a future or an option, including for commodity derivatives which are designated in units, the notional amount shall be the full value of the derivative's underlying assets at the relevant price at the time at which the transaction is concluded.

Article 19

Approval and verification method by ESMA

1. For the purposes of verification, the trading venue shall submit to ESMA on request all facts and figures on which the calculation is based.

2. ESMA shall also consider relevant post-trade data and annual statistics for verification of the submitted notional amount figures.

3. ESMA shall decide on the approval of the opt-out within three months after the reception of the notification according to either Article 16 or 17, including the information specified by Article 18. The three month assessment period shall be interrupted for the period between the request of any additional information by ESMA and the receipt of the requested information.

Title 5

Non-discriminatory access to and licensing of benchmarks

Article 20

[Article 37(4)(a) of Regulation 600/2014]

Principles guiding the information to be made available to CCPs and trading venues

1. In accordance with Article 37(1) of Regulation (EU) No 600/2014, trading venues and CCPs shall only obtain information that is necessary for trading and clearing purposes. The information required shall depend on a number of factors, including the relevant financial instrument being traded or cleared and the type of benchmark that the financial instrument references.

2. A trading venue or CCP may request from the person with proprietary rights to a benchmark the information mentioned in Article 21 and shall also explain to that person the reasons why such information is required for trading or clearing purposes.

3. A person with proprietary rights to a benchmark shall supply relevant information requested by a trading venue or CCP promptly, either on a one-off basis, including amendments to previously supplied information, or on a continuous or periodic basis, depending on the type of information concerned.

4. A person with proprietary rights to a benchmark shall provide information to a trading venue on the same basis as it provides to other trading venues, unless a different basis can be objectively justified.

5. A person with proprietary rights to a benchmark shall provide information to a CCP on the same basis as it provides it to other CCPs, unless a different basis can be objectively justified.

6. A person with proprietary rights to a benchmark shall provide all relevant information to all trading venues, all CCPs and any other licensees on the same timescales.

7. Where a person with proprietary rights to a benchmark does not have access to relevant information mentioned in Article 21 or cannot pass such information on to a trading venue or CCP due to non-discriminatory restrictions included in the contract with the third party or parties who own that information or other legal obligations, the trading venue or CCP shall request such information directly from the third party or parties who own it. Where appropriate, the person with proprietary rights to a benchmark shall notify the trading venue or CCP of whom it may contact at the third party or parties to be able to access the relevant information.

8. If a person with proprietary rights to a benchmark can show that certain information is available publicly or through other commercial means to a trading venue or CCP, provided such information is reliable and timely, it does not need to supply that information through licensing to that trading venue or CCP.

Article 21

The information through licensing to be made available to CCPs and trading venues

1. Subject to the provisions in Article 20, relevant information in respect of price and data feeds shall at least include:

(a) a feed of the relevant benchmark's values;

(b) prompt notification of any inaccuracy in the calculation of a benchmark's value and of the updated or corrected benchmark value;

(c) historical benchmark values where the person with proprietary rights to the benchmark maintains such information.

2. In respect of composition and methodology, the information provided shall allow the trading venue or CCP to understand how each benchmark value is developed, the actual methodology used to make benchmark's values and the rationale for adopting a particular methodology. Subject to the provisions in Article 20 and unless such information is not

needed for trading or clearing purposes, relevant information in respect of composition and methodology shall at least include:

(a) definitions of key terms;

(b) all criteria and procedures used to develop the benchmark, including input selection, the mix of inputs used to derive the benchmark, the procedures and practices that control the exercise of discretion, priority given to certain data types, minimum data needed to determine a benchmark, any models or extrapolation methods, and the methodology used to determine the benchmark's value;

(c) the procedures used to calculate the benchmark in periods of market stress or disruption, or when inputs are temporarily unavailable, such as when inputs are suspended or closed;

(d) the hours during which the benchmark is calculated.

(e) the procedures which govern the benchmarks rebalancing methodology and the resulting weightings of the constituents of the benchmark;

(f) the procedures for dealing with error reports, including when a revision of a benchmark would be applicable;

(g) information regarding the frequency for any internal reviews and approvals of the composition and methodology. Where applicable, information regarding the procedures and frequency for external review of the composition and methodology;

(h) the circumstances and procedures under which the person with proprietary rights to that benchmark will consult with the trading venue or CCP that uses the benchmark, as appropriate;

(i) the identification of potential limitations of the benchmark, including its operation in illiquid or fragmented markets and the possible concentration of inputs;

(j) procedures for making changes to the composition and methodology and details of any change thereof.

3. Subject to the provisions in Article 20 and unless such information is not needed for trading or clearing purposes, relevant information in respect of pricing shall include the values, types and sources of inputs used to develop the benchmark's values.

Article 22

Other conditions under which access must be granted

1. A person with proprietary rights to a benchmark shall set the conditions in paragraph 5 for licensing agreements pursuant to Article 37 of Regulation (EU) No 600/2014 and shall make those conditions freely available to any trading venue or CCP upon request.

2. Where a person with proprietary rights to a benchmark sets different conditions, including fees, and the conditions for paying them, for different categories of licensees, those differences shall be objectively justified according to parameters such as the quantity, scope or field of use and that person shall make freely available to a trading venue or CCP upon request the conditions for the category to which that trading venue or CCP belongs.

3. A person with proprietary rights to a benchmark shall make the criteria defining the different categories of licensees publicly available.

4. The conditions shall be granted on fair, reasonable and non-discriminatory terms. A person with proprietary rights to a benchmark shall set the same rights and obligations for the licensees within the same category, including where the person with proprietary rights to a benchmark and a trading venue or CCP are connected by close links. The person with proprietary rights to a benchmark shall ensure that the conditions for licensing agreements and the specific content of the agreement do not contain any provision that restricts or creates obstacles for the establishment or future extension of the access arrangement to other entities or mandate the use of a designated CCP, where derivatives constructed on the benchmark would have to be mandatorily cleared, or in any other way hinder the rights under Articles 35 and 36 of Regulation (EU) 600/2014.

5. In particular, the conditions shall:

(a) set the scope of use and content of information for each use under the licence, clearly identifying in each case confidential information;

(b) set the conditions for redistribution, if allowed, of information by trading venues and CCPs;

(c) set the technical requirements to provide the service;

(d) set the fees and the conditions for paying them;

(e) set the conditions under which the agreement expires taking into consideration the lifespan of financial instruments that reference the benchmark;

(f) set the contingency circumstances and the relevant measures to regulate the continuation, transitional periods and interruption of the service during this contingency period, which:

(i) cater for termination in an orderly manner;

(ii) ensure that termination is not triggered by minor breaches of the contract and that the relevant party is given a reasonable amount of time to remedy any breach that does not give rise to immediate termination; and

(g) set the governing law and allocation of liabilities.

6. The person with proprietary rights to a benchmark shall make available to all licensees within the same category any additions or modifications to the conditions in paragraph 5 agreed with a licensee within that category.

7. The licensing agreement shall require that the person with proprietary rights to a benchmark and the trading venue or CCP put in place adequate policies, procedures and systems, including in relation to relevant conditions referred to in paragraph 5, to ensure:

(a) a prompt implementation of the service since its request according to a prearranged schedule;

(b) all information provided by both parties be kept up-to-date throughout the duration of the access arrangement, and that each party informs the other about any material changes, including information that could have a reputational impact;

(c) a fluent communication channel between all parties that is timely, reliable and secure during the lifetime of the licence agreement;

(d) consultation where any change to either entity's operations is likely to have a material impact on the licence agreement or on the risks to which the other entity is exposed;

(e) the provision of information and the relevant instructions to transmit and use it through the technical means agreed;

(f) disclosure of any modifications to the technical means agreed to the trading venue or CCP as soon as possible before they are implemented;

(g) notification to the relevant party within a reasonable notice period before any change to either entity's operations is implemented, where the impact of a change is unlikely to be significant;

(h) the provision of up-to-date information to persons with proprietary rights to a benchmark regarding the dissemination, if redistribution is allowed, of information to clearing members of CCPs and participants of trading venues; and

(i) resolution of disputes and termination of the agreement occurs in an orderly manner according to the identified circumstances.

Article 23

Standards guiding how a benchmark may be proven to be new

1. A person with proprietary rights to a benchmark shall establish whether a benchmark is new in accordance with the criteria specified in Article 37(2)(a) and (b) of Regulation (EU) No 600/2014 taking into account the factors specified in paragraph 2.

2. A benchmark is less likely to be new if any of the following factors apply:

(a) Contracts based on the newer benchmark are capable of being netted or substantially offset with contracts based on the relevant existing benchmark by a CCP.

(b) The regions and industry sectors covered by the relevant benchmarks are the same, or relatively similar.

(c) The values of the relevant benchmarks are highly correlated.

(d) The composition of the relevant benchmarks, having regard to the number of constituents, the actual constituents, their values and their weightings, are the same, or relatively similar.

(e) The methodologies of each relevant benchmark are the same, or relatively similar.

3. Each assessment shall also take into account any other factors specific to the types of benchmarks being assessed, as appropriate.

4. Any adaptation to an existing benchmark, whether material or not, shall not constitute a new benchmark.

5. Each newly released series of a benchmark shall not constitute a new benchmark

Annex I

Form 1

Notification according to Article 14

Name of the CCP (Article 14 (2) (a))	Relevant contact details (Article 14 (2) (a))	Date of authorisation or recognition (Article 14 (2) (b))	Name(s) of trading venue(s) connected by close links (Article 14 (2) (c))	Jurisdiction(s) of trading venue(s) connected by close links (Article 14 (2) (c))
			1. 2. 3. ...	1. 2. 3. ...

Form 2

Notification according to Article 15

Name of the CCP (Article 15 (2) (a))	Relevant contact details (Article 15 (2) (a))	Date of authorisation or recognition (Article 15 (2) (b))	Date of approval decision (Article 15 (2) (c))	Dates of beginning and end of transitional period (Article 15 (2) (d))	Name(s) of trading venue(s) connected by close links (Article 15 (2) (e))	Jurisdiction(s) of trading venue(s) connected by close links (Article 14 (2) (e))
				Beginning: End:	1. 2. 3. …	1. 2. 3. ...

Form 3a

General notification according to Article 16

Name of the trading venue (Article 16 (2) (a))	Relevant contact details (Article 16 (2) (a))	Name(s) and jurisdiction(s) of trading venues in the same group based in the Union (Article 16 (2) (b))	Name(s) and jurisdiction(s) of CCP(s) connected by close links (Article 16 (2) (d))
		1. 2. 3. …	1. 2. 3 …

Form 3b

Notification according to Article 16(2)(c)

Trading Venue:	**Traded notional amount in 2016**
Asset class X:	
Asset class Y:	
Asset class Z: ...	

Form 4a

General notification according to Article 17

Name of the trading venue (Article 17 (2) (a))	**Relevant contact details (Article 17 (2) (a))**	**Name(s) and jurisdiction(s) of trading venues in the same group based in the Union (Article 17 (2) (b))**	**Name(s) and jurisdiction(s) of CCP(s) connected by close links (Article 17 (2) (d))**
		1. 2. 3. ...	1. 2. 3. ...

Form 4b

Notification according to Article 17(2)(c)

Name of the trading venue:	**Notional amount for rolling year** **...**	**Notional amount for rolling year** **...**
Asset class X:		
Asset class Y:		
Asset class Z: ...		

CHAPTER 6: REQUIREMENTS APPLYING ON AND TO TRADING VENUES

RTS 25: Draft regulatory technical standards on the admission of financial instruments to trading on regulated markets

COMMISSION DELEGATED REGULATION (EU) No …/..

of [date]

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the 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[38], and in particular Article 51(6) thereof,

Whereas:

(1) Article 51 of Directive 2014/65/EU sets conditions for the admission to trading of financial instruments. With a view to clarifying these conditions the European Commission is to adopt regulatory technical standards which specify the characteristics of different classes of financial instruments to be taken into account when assessing whether an instrument is duly issued for admission to trading on the different market segments which a regulated market operates.

(2) There is also a need to clarify the arrangements that a regulated market has to implement so as to be considered to have fulfilled its obligation to verify that the issuer of a transferable security complies with its obligations under Union law in respect of initial, ongoing or ad hoc disclosure obligations.

[38]OJ L 173, 12.06.2014, p. 349.

(3) The Commission Implementing Regulation under Article 51(3) of Directive 2014/65/EU is also to clarify the arrangements that a regulated market has to establish in order to facilitate access to information which has been made public under the conditions established by Union law by its members or participants.

(4) For the admission to trading on a regulated market of a transferable security as defined in Article 4(1)(44) of 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 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 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[39], there should be considered to be sufficient information publicly available of a kind needed to value that financial instrument, as this is a precondition for admission to trading.

(5) 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 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)[40] or of 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.[41]

(6) The admission to trading on a regulated market of derivative instruments as defined in Sections C(4) to (10) of Annex I to Directive 2014/65/EU should take into account whether there is sufficient information available for the pricing of the derivative as well as the underlying, and in the case of physically settled contracts, the existence of appropriate settlement and delivery procedures.

(7) Emission allowances have been added as a new type of financial instrument in Section C(11) of Annex I to Directive 2014/65/EU. Any emission allowance recognised for compliance with the requirements of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 (Emissions Trading Scheme)[42] should be eligible for admission to trading on a regulated market and no further requirements are imposed in this regulation.

---

[39] OJ L 345, 31.12.2003, p. 64.
[40] OJ L 302, 17.11.2009, p. 32.
[41] 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)
[42] OJ L 275, 25.10.2003, p. 32

(8) Arrangements by regulated markets in relation to verifying the compliance of issuers with obligations under Union law and in relation to facilitating access to information which has been made public under Union law should cover the obligations in Regulation (EU) No 596/2014 of the European Parliament and of the Council 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 [43], Directive 2003/71/EC and Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market amending Directive 2001/34/EC[44].

(9) Regulated markets should have a policy for verifying the compliance of issuers of transferable securities with obligations under Union law which should be accessible for issuers and the public. The policy should ensure that compliance checks are efficient and issuers should be made aware of their obligations by the regulated market. Regulated markets should cooperate with competent authorities to be able to undertake the necessary verifications.

(10) 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.

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

(12) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and the Council[45], in developing the draft regulatory technical standards on which this Regulation is based, ESMA has conducted open public consultations, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of that Regulation.

HAS ADOPTED THIS REGULATION:

Article 1

Transferable securities

(1) Transferable securities shall be considered freely negotiable for the purposes of Article 51(1) of Directive 2014/65/EU if they can be traded between the parties to a transaction,

[43] OJ L 173, 12.06.2014, p.1.
[44] OJ L 390, 31.12.2004, p.38.
[45] OJ L 331, 15.12.2010, p. 84.

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 unless that restriction is not likely to disturb the market.

(3) Transferable securities that are not fully paid may be considered as freely negotiable if arrangements have been made to ensure that the negotiability of such securities is not restricted and that adequate information concerning the fact that the securities are not fully paid, and the implications of that fact for shareholders, is publicly available.

(4) When exercising its discretion whether to admit a share to trading, a regulated market shall, in assessing whether the share is capable of being traded in a fair, orderly and efficient manner, take into account the following:

(a) the distribution of those shares to the public;

(b) such historical financial information, information about the issuer, and information providing a business overview as is required to be prepared under Directive 2003/71/EC, or is or will be otherwise publicly available.

(5) 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.

(6) For the purposes of Article 51(1) of Directive 2014/65/EU, when assessing whether a transferable security referred to in Article 4(1)(44)(c) of 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 that underlying.

Article 2

Units in collective investment undertakings

1. A regulated market shall, when admitting to trading units in a collective investment undertaking, whether that undertaking is constituted in accordance with Directive 2009/65/EC or managed by an alternative investment fund manager that is authorised or registered in accordance with Directive 2011/61/EU, satisfy itself that the collective investment undertaking complies or has complied with the notification procedures which are a necessary precondition for the marketing of the collective investment undertaking in the jurisdiction of the regulated market.

2. Without prejudice to Directive 2009/65/EC, Directive 2011/61/EU or any other Community legislation or national law relating to collective investment undertakings, Member States may provide that compliance with the requirements referred to in paragraph 1 is not a necessary precondition for the admission of units in a collective investment undertaking to trading on a regulated market.

3. When assessing whether units in an open-ended collective investment undertaking are capable of being traded in a fair, orderly and efficient manner in accordance with Article 51(1) of Directive 2014/65/EU, the regulated market shall take the following aspects into account:

(a) the distribution of those units 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;

(c) in the case of exchange-traded funds, whether in addition to market making arrangements appropriate alternative arrangements for investors to redeem units are provided at least in cases where the value of the units significantly varies from the net asset value;

(d) whether the value of the units is made sufficiently transparent to investors by means of the periodic publication of the net asset value.

4. When assessing whether units in a closed-end collective investment undertaking are capable of being traded in a fair, orderly and efficient manner in accordance with Article 52(1) of Directive 2014/65/EU, the regulated market shall take the following aspects into account:

(a) the distribution of those units to the public;

(b) whether the value of the units is made sufficiently transparent to investors, either by publication of information on the fund's investment strategy or by the periodic publication of net asset value.

Article 3
Derivatives

1. When admitting to trading a financial instrument of a kind listed in points of Sections C(4) to (10) of Annex I to Directive 2014/65/EU, regulated markets shall verify that the following conditions are satisfied:

(a) the terms of the contract establishing the financial instrument must be 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 must be reliable and publicly available;

(c) sufficient information of a kind needed to value the derivative must be publicly available;

(d) the arrangements for determining the settlement price of the contract must be 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 must be 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. Where the financial instruments concerned are of a kind listed in Sections C (5), (6), (7) or (10) of Annex I to Directive 2014/65/EU, point (b) of paragraph 1 shall not apply if the following conditions are satisfied:

(a) the contract establishing that instrument must be 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 must ensure that appropriate supervisory arrangements are in place to monitor trading and settlement in such financial instruments;

(c) the regulated market must ensure 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 4
Verification of issuer obligations

1. Regulated markets shall adopt and publish on their website a policy that determines how they verify compliance by an issuer of a transferable security with its obligations under Regulation (EU) No 596/2014, Directive 2003/71/EC and Directive 2004/109/EC.

2. Regulated markets shall ensure that compliance with the obligations specified in paragraph 1 is checked effectively according to the nature of the obligation under review.

3. Regulated markets shall ensure that the policy describes:

(a) the processes the regulated market employs to achieve the outcome specified in paragraph 1;

(b) how an issuer may best demonstrate compliance with the obligations specified in paragraph 1 to the regulated market.

4. Regulated markets shall ensure that an issuer is made aware of its obligations upon admission to trading of that issuer's transferable security and upon the request of the issuer.

Article 5
Facilitation of access to information

Regulated markets shall facilitate access to information which has been made public under the conditions established by Regulation (EU) No 596/2014, Directive 2003/71/EC and Directive 2004/109/EC to members and participants. A description of how the regulated market facilitates access to this information should be easily accessible, free of charge and published on the website of the regulated market.

Article 6
Entry into force and application

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

It shall apply from 3 January 2017.

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

Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]

RTS 26: Draft regulatory technical standards on suspension and removal of financial instruments from trading

COMMISSION DELEGATED REGULATION (EU) No …/..

of [date]

supplementing Directive (EU) No 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on 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[46], and in particular Articles 32(2) and 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 of 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 overall objective for which the underlying instrument has been suspended or removed should also be considered. This is to ensure that the behaviour which a

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

suspension or removal is designed to prevent cannot simply transfer to a related market as well as to support fair and orderly markets.

(4) The inability to correctly price related derivatives, leading to a disorderly market, would be strongest for the cases where the price or value of the related derivative is dependent on the prevailing price or value of the financial instrument that is suspended or removed from trading as its sole underlying. When the underlying is 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.

(5) In this context, this Regulation has taken into account the fact that a market operator has to ensure fair, orderly and efficient trading in its market and that in cases other than the one set out in 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,

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

(7) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[47], in developing the draft regulatory technical standards on which this Regulation is based, the European Securities and Markets Authority has conducted open public consultations, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of that Regulation.

HAS ADOPTED THIS REGULATION:

Article 1
[Article 32(2) and 52(2) of Directive 2014/65/EU]

Connection between a derivative relating or referenced to a financial instrument suspended or removed from trading and the original financial instrument

For the purposes of the first paragraph of Article 32(2) and the first paragraph of Article 52(2) of Directive 2014/65/EU, the market operator shall suspend or remove a derivative referred to in points (4) to (10) of Section C of Annex I of Directive 2014/65/EU from trading where:

[47] OJ L 331, 15.12.2010, p. 84

(a) that derivative is related or referenced to only one financial instrument; and

(b) that financial instrument has been suspended or removed from trading.

Article 2

Entry into force and application

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

It shall apply from 3 January 2017.

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

Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]

ITS 27 : Draft implementing technical standards description of MTFs and OTFs

COMMISSION IMPLEMENTING REGULATION (EU) No …/..

of [ ]

laying down implementing technical standards with regard to the content and format of the description of the functioning of the MTF or OTF and to the notification to ESMA according to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments

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([48]), and in particular Article 18(11) thereof,

Whereas:

(1) It is important to recognise the need for supervisors to receive complete information about the purpose, structure and organisation of MTFs and OTFs that they will be required to supervise in order to ensure the efficient and orderly functioning of financial markets.

(2) To ensure all necessary information is provided, Article 18(10) of Directive 2014/65/EU of the European Parliament and of the Council (MiFID) provides that Member States shall require investment firms or market operators operating an MTF or an OTF to provide its competent authority with a detailed description of the functioning of the MTF or OTF, including any links to or participation by a regulated market, an MTF, an OTF or a systematic internaliser owned by the same investment firm or market operator, and a list of their members and users.

(3) This information should build upon the information an investment firm or market operator would be required to provide as part of the general authorisation requirements under MiFID. It should focus upon the specific functionality of the trading system such as to

[48] OJ L 173, 12.6.2014, p. 173

enable competent authorities to assess whether the system satisfies the definition of an MTF or OTF and to assess its compliance with the particular, venue-orientated requirements of MiFID and 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[49] (MiFIR). The requirement for a detailed description does not affect the duty of an investment firm or market operator to provide other information to its competent authority as required under MiFID and MiFIR, or the rights of competent authorities to request other information as part of their on-going supervision of trading venues.

(4) The information should ensure the uniform application of MiFID, and in particular Article 18(10) thereof, and to achieve an efficient processing of this information, for existing MTFs already operating in accordance with national authorisation at the point the requirement comes into force.

(5) Since SME growth markets are distinguished from other MTFs in that they are subject to additional rules, it is necessary that SME Growth Markets shall provide additional information.

(6) To ensure the uniform application of MiFID, and in particular Article 18(10) thereof, and since OTFs represent a new type of trading venue, it is considered appropriate that OTFs provide all the necessary information required in this Regulation for their initial authorisation.

(7) Since OTFs are distinguished from MTFs in that the trading process will involve the use of discretion by the operator, and because the operator of an OTF will owe client facing responsibilities to users of the system, it is necessary that OTFs shall provide further information.

(8) To ensure the efficient processing of the information required by this Regulation, it is necessary for it to be provided in electronic format.

(9) To facilitate the publication by the European Securities and Markets Authority established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010[50] of the list of all MTFs and OTFs in the Union with information on the services they provide and the unique code identifying them, this Regulation should set out a standard template for that information to be provided to ESMA.

[49] OJ L 173, 12.06.2014, p. 84.
[50] OJ L 331, 15.12.2010, p. 84.

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

(11) In accordance with Article 15 of Regulation (EU) No 1095/2010, in developing the draft implementing technical standards on which this Regulation is based, the European Securities and Markets Authority has conducted open public consultations, analysed the potential related costs and benefits and requested the opinion of the Securities and the Market, established by Article 37 of that Regulation,

HAS ADOPTED THIS REGULATION:

Article 1
Definitions

For the purposes of this Regulation, 'relevant operator' means:

(a) an investment firm operating an MTF;

(b) an investment firm operating an OTF;

(c) a market operator operating an MTF;

(d) a market operator operating an OTF.

Article 2
Information to be provided by MTFs and OTFs

1. A relevant operator shall provide its competent authority with the following information:

(a) the asset class of financial instruments traded on the MTF or OTF and the number of financial instruments traded in each class;

(b) the rules and procedures for making financial instruments available to trade together with details of the publication arrangements used to make that information available to the public;

(c) the rules and procedures to ensure the objective and non-discriminatory access to the facility together with details on the publication arrangements used to make that information available to the public;

(d) the measures and procedures to ensure that sufficient information is publicly available to users of the MTF or OTF to form an investment judgement, taking into account both the nature of the users and the classes of financial instruments traded;

(e) the systems, procedures and arrangements to facilitate compliance with the conditions laid down by Articles 48 and 49 of Directive 2014/65/EU as required by Article 18(5) thereof;

(f) a detailed description of the arrangements to facilitate the provision of liquidity to the system (such as market maker or liquidity incentive schemes);

(g) the arrangements and procedures to monitor transactions undertaken by members or participants by means of its facilities, such as to identify potential breaches of its trading rules, disorderly trading conditions, systems disruptions or conduct that may involve market abuse required by Article 31 of Directive 2014/65/EU;

(h) the rules and procedures for suspension and removal of financial instruments from trading required by Article 32 of Directive 2014/65/EU;

(i) the arrangements to comply with pre and post-trade transparency obligations, as applicable to the financial instruments traded and the trading functionality of the MTF or OTF together with information on the intention to use waivers under Articles 4 and 8 and deferred publication under Article 7 of Regulation (EU) No 600/2014.

(j) the arrangements for the efficient settlement of the transactions effected under its systems and to ensure that users are aware of their respective responsibilities in this regard;

(k) a list of the members or participants of the MTF or OTF which it operates.

2. A relevant operator shall provide its competent authority with a detailed description of the functioning of its trading system specifying:

(a) whether the system represents a voice, electronic or hybrid functionality;

(b) in the case of an electronic or hybrid trading system, the nature of any algorithm or program used to determine the matching and execution of trading interests;

(c) in the case of a voice trading system, the rules and protocols used to determine the matching and execution of trading interests;

(d) a description explaining how the trading system satisfies each element of the definition of an MTF or an OTF.

3. A relevant operator shall provide its competent authority with information on how and in what instances the operation of the MTF or OTF will give rise to any potential conflicts between the interests of the MTF or OTF, its operator or its owners and the sound functioning of the MTF or OTF, specifying the procedures and arrangements to be used to

identify and to manage any adverse consequences for the operation of the MTF or OTF, or its members or participants, that could result from such conflicts, as required by Article 18(4) of MiFID.

4. A relevant operator shall provide its competent authority with the information on its outsourcing arrangements that relate to the management, operation or oversight of any MTF or OTF which it operates and, in particular:

(a) the organisational measures to identify the risks in relation to those outsourced activities and to monitor the outsourced activities;

(b) the contractual agreement between the MTF or OTF operator and the entity providing the outsourced service in which the nature, scope, objectives, and service level agreements are outlined.

5. A relevant operator shall provide its competent authority with information on any links to or participation by a regulated market, MTF, OTF or systematic internaliser owned by the same relevant operator.

Article 3

Additional information to be provided by MTFs

1. An investment firm and market operator operating an MTF shall provide its competent authority with the following additional information relating to its obligation in Article 19(3) of MiFID:

(a) a description of the arrangements and the systems implemented to manage the risks to which it is exposed, to identify all significant risks to its operation and to put in place effective measures to mitigate those risks;

(b) a description of the arrangements implemented to facilitate the efficient and timely finalisation of the transactions executed under its systems;

(c) having regard to the nature and extent of the transactions concluded on the market and the range and degree of the risks to which it is exposed, the financial resources considered sufficient to facilitate its orderly functioning.

Article 4

Additional information to be provided by MTFs already in operation

With respect to an MTF in operation prior to the application of this Regulation, a relevant operator shall comply with the obligations under Articles 2 and 3 to the extent necessary:

(a) to correct, update or clarify information previously submitted by the investment firm or market operator to its competent authority, or

(b) to demonstrate compliance with obligations imposed by or under Directive 2014/65/EU and Regulation (EU) No 600/2014 that did not apply to the MTF prior to the application of this Regulation.

Article 5
Material changes

1. A relevant operator shall provide its competent authority with a description of any material changes to the information previously submitted in accordance with this Regulation, or to information on which an investment firm or market operator operating an MTF has previously submitted and relies on for the purposes of Article 3(a), which would be relevant to an assessment of that operator's compliance with Directive 2014/65/EU and Regulation (EU) No 600/2014.

2. A relevant operator shall provide any other information relevant to the competent authority's tasks under Articles 18 and 19 of Directive 2014/65/EU.

Article 6
Additional information to be provided by MTFs applying for registration as an SME growth market

In the case of an MTF which is applying for registration as an SME growth market, the investment firm or market operator operating that MTF shall ensure that the information provided under Articles 2 and 3 clearly identifies which functionalities or arrangements are applicable to the SME growth market.

Article 7
Additional information to be provided by OTFs

1. An investment firm and a market operator operating an OTF shall provide its competent authority with the following additional information:

(a) information on whether another investment firm is engaged to carry out market making on its OTF on an independent basis in accordance with Article 20(5) of Directive 2014/65/EU.

(b) a detailed description of how and under what circumstances it executes orders on the OTF on a discretionary basis in accordance with Article 20(6) of Directive 2014/65/EU;

(c) the rules, procedures and protocols which allow the operator to route the trading interest of a member or participant outside the facilities of the OTF;

(d) a description of the use of matched principal trading which complies with Article 20(7) of Directive 2014/65/EU;

(e) the rules and procedures to ensure compliance with Articles 24, 25, 27 and 28 of Directive 2014/65/EU for transactions concluded on the OTF where those rules are applicable to the investment firm or market operator operating the OTF in relation to an OTF user.

2. An investment firm or market operator operating an OTF shall provide its competent authority with the information in paragraph 1 for each asset class traded on the OTF, if relevant.

Article 8
Format of the information

1. Where the relevant market operator makes a notification under this Regulation in the context of an application for authorisation as an investment firm or market operator, information which is required to be supplied for the purpose of that application need not be duplicated in the notification, but the information should be clearly referenced in Table 1 of the Annex.

2. Where a relevant market operator sends a new description to its competent authority to correct, update or clarify information previously submitted in accordance with this Regulation, it does not need to include information which is of a purely minor or technical nature that would not be relevant to an assessment of their compliance with Directive 2014/65/EU or Regulation (EU) No 600/2014.

3. In providing the information required by this Regulation, a relevant operator must include references to the appropriate provisions of the rules of its MTF or OTF, agreements or contracts with participants or relevant third parties and internal procedures and policies.

4. A relevant operator shall provide the information required by this Regulation to its competent authority in an electronic format.

5. A relevant operator shall:

(a) give a unique reference number to each document it submits;

(b) ensure that the information it submits clearly identifies which specific requirement of this Regulation it refers to and in which document that information is provided by using the unique reference number to identify the document;

(c) ensure that if a requirement of this Regulation does not apply to it, that fact is stated together with an explanation;

(d) submit that information in the format set out in Table I of the Annex.

6. Where the notification occurs in the context of an authorisation request, an entity requesting authorisation to provide more than one service at the same time, will submit one application clearly identifying the services to which the information provided applies. When the same document is to be considered as part of several authorisation requests, for the purpose of filling in the Table 1 of Annex I, the same reference number shall be used when submitting the same document for several applications.

Article 9
Notification to ESMA

A competent authority shall notify ESMA of the authorisation of an investment firm or market operator as an MTF or an OTF in electronic format and in the format in Table 2 of the Annex.

Article 10
Entry into force

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

It shall apply from 3 January 2017.

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

Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]

Annex I

Table 1
Information by MTFs and OTFs

Relevant operator for which the application is submitted	Relevant Article number of this Regulation	Document reference number	Title of the document	Chapter or section or page of the document where the information is provided or reasons why the information has not been provided

Table 2
Information to be sent to ESMA

Notifying Competent Authority	Name of the relevant operator	Name of the MTF/OTF operated	MIC code	Services provided (i.e. MTF and/or OTF)

CHAPTER 7: COMMODITY DERIVATIVES

RTS 28: Draft regulatory technical standards on criteria for establishing when an activity is to be considered to be ancillary to the main business

COMMISSION DELEGATED REGULATION (EU) No …/..

of [date]

supplementing Directive 2014/65/EU [MiFID II] of the European Parliament and of the Council[51] with regard to regulatory technical standards on criteria for establishing when an activity is to be considered to be ancillary to the main business at a group level

(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 [MiFID II] of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, and in particular Article 2 (4).

Whereas:

(1) For defining the scope of the exemption provided for in Article 2(1)(j) of Directive 2014/65/EU criteria should be specified for establishing when an activity is to be considered to be ancillary to the main business at a group level. Those criteria shall ensure that non-financial firms dealing in financial instruments in a disproportionate manner compared with the level of investment in the main business are covered by the scope of Directive 2014/65/EU. They shall take into account at least the need for ancillary activities to constitute a minority of activities at group level and the size of the trading activity compared to the overall market trading activity in that asset class.

(2) The definition of a group should be aligned with the definition used in 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[52]. Therefore, a group is considered to be comprised of the

[51] OJ L 173, 12.6.2014, p. 349.
[52] OJ L 182, 29.6.2013, p. 19.

parent undertaking and all its subsidiary undertakings. Subsidiary undertakings are those undertakings controlled by the parent undertaking taking into account the elements of control as referred to in Directive 2013/34/EU. In line with that Directive a group includes entities domiciled in the European Union and third country entities, regardless of whether the group is headquartered inside or outside the EU.

(3) The criteria for establishing when an activity is to be considered to be ancillary to the main business at a group level shall exclude privileged transactions. Such privileged transactions include intra-group transactions as referred to in 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 53 that serve group-wide liquidity or risk management purposes; transactions in derivatives which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity and transactions in commodity derivatives and emission allowances entered into to fulfil obligations to provide liquidity on a trading venue where such obligations are required by regulatory authorities in accordance with Union law or national laws, regulations and administrative provisions, or by trading venues.

(4) Transactions that are deemed to be objectively measurable as reducing risks directly relating to commercial activity or treasury financing activity and intra-group transactions should be considered in a consistent way with Regulation (EU) No 648/2012. 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 supplementing Regulation (EU) No 648/201254 only refers to OTC-derivatives while Article 2(4) of Directive 2014/65/EU covers also derivatives traded on trading venues. Therefore, this Regulation should also take into account non OTC-derivatives in relation to transactions that are deemed to be objectively measurable as reducing risks directly related to commercial activity or treasury financing activity.

(5) Examples for obligations to provide liquidity on a trading venue required by regulatory authorities or trading venues include rules established by trading venues and the mandatory market making requirements established by the UK energy regulator Ofgem which oblige large electricity suppliers to post the prices at which they buy and sell wholesale electricity on power trading platforms up to two years in advance and to trade at these prices. In accordance with Directive 2014/65/EU the obligation to provide liquidity when engaging in algorithmic trading and pursuing market making strategies is also applicable to members or participants of regulated markets and MTFs who are not required to be authorised pursuant to that Directive. In accordance with Article 1(6) of Directive 2014/65/EU Article 57 of that Directive also applies to persons exempt under

[53] OJ L 201, 27.7.2012, p. 1.
[54] OJ L 52, 23.2.2013, p. 11.

Article 2 of that Directive. Furthermore, the obligation to provide liquidity back into the market at an agreed price and volume with the express intent of mitigating the effects of a large or dominant position under Directive 2014(65/EU only applies on a temporary basis. Therefore, transactions in order to fulfil obligations to provide liquidity on a trading venue as referred to in Directive 2014/65/EU should not be considered as privileged transactions under that Directive.

(6) In relation to the first threshold determining the extent to which ancillary activity constitutes a minority of activities at a group level, the capital employed for carrying out the ancillary activity relative to the capital employed for the main business should be considered. In order to take into account the global nature of commodity business and in line with the definition of the group, the main business should be determined by consideration of the overall activity of the group, including activity undertaken in third countries. The ancillary activity should be determined by taking together all ancillary activities undertaken in the European Union on the basis of the group excluding privileged transactions in the European Union on the basis of the group. Trading activity undertaken by a MiFID authorised entity of the group should be excluded when determining the ancillary activity. The capital employed should be calculated on the basis of balance sheets and financial statements.

(7) With regard to the second threshold considering the size of the trading activity relative to the overall market trading activity, the size of the trading activity should be determined on the basis of all trading activity undertaken in the European Union at group level. The size of the trading activity should be determined by deducting the sum of the volume of privileged transactions from the volume of the overall trading activity undertaken by that person. Trading activity undertaken by a MiFID authorised entity of the group should be excluded. The volume should be determined by the gross notional value of contracts held by that person in the European Union at group level on the basis of a rolling average of three calendar years. The overall market size should be determined on the basis of trading activity undertaken in the EU and in relation to different asset classes, including metals, oil, coal, emission allowances, gas, power, agricultural products and other commodities. Derivatives on wholesale energy products as referred to in Article 2(4) of Regulation (EU) No 1227/2011 are not financial instruments in accordance with Article 4(1)(15) and Section C 6 of Annex I of Directive 2014/65/EU provided that they are traded on an OTF and “must be physically settled”. Therefore, these derivatives should not be taken into account when establishing the size of the trading activity. Due to the lack of availability of global data, the overall market size should be established at the level of the European Union by means of data collected by trade repositories. . Where a person operates simultaneously in different asset classes and exceeds the threshold in relation to one asset class, it should be subject to Directive 2014/65/EU for all commodity asset classes.

(8) A person should not be able to benefit from the exemption under Article 2(1)(j) of Directive 2014/65/EU if it exceeds one of the two thresholds.

(9) In order to benefit from the exemption under Article 2(1)(j) of Directive 2014/65/EU, a person should comply on a continuous basis with the conditions laid down for that exemption. Furthermore, a person should notify the relevant competent authority on an annual basis that it makes use of that exemption and, upon request, report the basis on which it considers the activity to be ancillary to the main business. In order to avoid inconsistencies and potential conflicts of double regulation, the relevant competent authority should be the competent authority in the Member State of incorporation of the person making use of the exemption. If an entity situated in a third country undertakes ancillary activities in the European Union and wishes to benefit from the exemption it should make the notification to the competent authority of the Member State where its branch is situated. In order to allow for market participants to plan and operate a business in a reasonable way and to take into account seasonal patterns of activity, the calculation of the thresholds determining when an activity is considered to be ancillary to the main business should take place on the basis of a rolling average of three calendar years.

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

(11) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[55], the European Securities and Markets Authority has conducted open public consultations on the draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation.

HAS ADOPTED THIS REGULATION:

CHAPTER I
General

Article 1
Definitions

For the purpose of this Regulation the following definitions shall apply:

(a) ”eligible activity” means

[55] OJ L 331, 15.12.2010, p. 84

(i) dealing on own account, including market makers, in commodity derivatives or emission allowances or derivatives thereof, excluding persons who deal on own account when executing client orders; or

(ii) providing investment services, other than dealing on own account, in commodity derivatives or emission allowances or derivatives thereof to the customers or suppliers of their main business;

(b) “main business” means the overall activity of a group;

(c) “privileged transactions” means

(i) intra-group transactions as referred to in Article 3 of Regulation (EU) No 648/2012 that serve group-wide liquidity or risk management purposes;

(ii) transactions in derivatives which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity as referred to in Article 10 of Commission Delegated Regulation (EU) No 149/2013, including also non OTC derivatives;

(iii) transactions in commodity derivatives and emission allowances entered into to fulfil obligations to provide liquidity on a trading venue, where such obligations are required by regulatory authorities in accordance with Union or national laws, regulations and administrative provisions or by trading venues;

(d) “capital” means capital encompassing total equity, current debt and non-current debt as calculated from balance sheets and financial statements;

(e) “relevant national competent authority” means the national competent authority of the jurisdiction of the place of incorporation of the person making use of the exemption under Article 2(1)(j) of Directive 2014/65/EU or the national competent authority of the Member State where its branch is situated if the person making use of that exemption is situated in a third country.

CHAPTER II
Thresholds defining when an activity is considered to be ancillary to the main business

Article 2
Application of the thresholds

An activity shall be considered to be ancillary to the main business in accordance with Article 2(1)(j) of Directive 2014/65 EU:

(a) if the capital employed by the group for carrying out eligible activity in the European Union accounts for less than 5% of the capital employed for carrying out the main business of the group in the European Union and in third countries; and

(b) if the size of the trading activity

(i) in commodity derivatives of the group undertaken in the European Union accounts for less than 0.5% of the overall market trading activity in the European Union in one of the following asset classes:

1. metals;

2. oil and oil products;

3. coal;

4. gas;

5. power;

6. agricultural products; or

7. other commodities, including freight and commodities referred to in Section C 10 of Annex I of Directive 2014/65/EU; or

(ii) in emission allowances or derivatives thereof of the group undertaken in the European Union accounts for less than 0.5% of the overall market trading activity in the European Union.

Article 3

Calculation of the capital employed

1. The capital employed for carrying out the eligible activity shall be calculated by deducting from the sum of the capital employed for eligible activity by the group in the European Union the sum of the capital employed for privileged transactions by the group in the European Union. Capital employed for trading activity undertaken by an entity of the group that holds a license in accordance with Article 5 of Directive 2014/65/EU shall not be considered when calculating the capital employed for the eligible activity.

2. The capital employed for carrying out the eligible activity calculated in accordance with paragraph (1) shall be divided by the capital employed for the main business of the group in the European Union and in third countries.

Article 4

Calculation of the size of the trading activity

1. The size of the trading activity shall be calculated by deducting from the volume of the overall trading activity of the group in the European Union the sum of the volume of the privileged transactions undertaken by the group in the European Union. The volume of trading activity undertaken by an entity of the group that holds a license in accordance with Article 5 of Directive 2014/65/EU shall not be considered when calculating the size of the trading in the eligible activity. The volume shall be measured using the gross notional value of contracts.

2. The size of the trading activity calculated in accordance with paragraph (1) shall be divided by the overall market trading activity in the European Union in the relevant asset class referred to in Article 2(2)(b).

3. The size of the trading activity and the size of the overall trading activity in the relevant asset class referred to in Article 2(2)(b) shall be determined by using the records collected and maintained by trade repositories as referred to in Article 2(2) of Regulation (EU) No 648/2012.

Article 5
Period for calculation

1. The calculation of the capital employed for the eligible activity as referred to in Article 3 and the calculation of the size of the trading activity as referred to in Article 4 shall be undertaken on the basis of a rolling average of three calendar years.

2. Until […] 2020 the calculation of the capital employed for the eligible activity as referred to in Article 3 and the calculation of the size of the trading activity as referred to in Article 4 shall be undertaken on the following basis:

(a) for 2017, the calculation shall take into account the simple average of 12 months over the 2016 calendar year;

(b) for 2018 the calculation shall take into account the simple average of 24 months for the calendar years 2016 and 2017;

(c) for 2019 the calculation shall take into account the simple average of 36 months for the calendar years 2016, 2017 and 2018.

CHAPTER III
Final provisions

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 from […].

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

Done at Brussels, […]

Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]

RTS 29: Draft regulatory technical standards on methodology for calculating position limits for commodity derivatives traded on trading venues and economically equivalent OTC contracts

COMMISSION DELEGATED REGULATION (EU) No …/..

of [date]

supplementing Directive 2014/65/EU [MiFID II] of the European Parliament and of the Council with regard to regulatory technical standards on methodology for calculating position limits for commodity derivatives traded on trading venues and economically equivalent OTC contracts

(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 [MiFID II] of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, and in particular Article 57 (3).

Whereas:

(1) Article 57(1) of Directive 2014/65/EU requires that Member States shall ensure that competent authorities, in line with the methodology for calculation determined by ESMA, establish and apply position limits on the size of a net position which a person can hold at all times in commodity derivatives traded on trading venues and economically equivalent OTC contracts.

(2) Article 57(3) of Directive 2014/65/EU requires the methodology for calculation to take into account at least the following factors: the maturity of the commodity derivative contracts; the deliverable supply in the underlying commodity; the overall open interest in that contract and the overall open interest in other financial instruments with the same underlying commodity; the volatility of the relevant markets, including substitute derivatives and the underlying commodity markets; the number and size of the market participants; the characteristics of the underlying commodity market, including patterns of production, consumption and transportation to market; and the development of new contracts.

(3) The methodology shall ensure a consistent approach for the calculation of position limits by national competent authorities in order to establish a harmonised position limits regime across commodity derivatives traded on trading venues and economically equivalent OTC contracts across different markets. However, the methodology shall also enable national competent authorities to take into account the specific characteristics of the market in question, by applying the relevant factors for calculating position limits in a manner that takes into account appropriately the impact and significance of the different characteristics of the relevant commodity derivative, commodity, and its underlying market and which can therefore meet the objectives of supporting orderly pricing and settlement conditions, the integrity of the market and the underlying commodity, and price discovery on the market for the underlying commodity.

(4) The methodology will apply separate calculation factors based on the maturity of the commodity derivative in order to establish the position limit for the spot month and the position limit for other months.

(5) The national competent authority shall base deliverable supply in the underlying commodity on the measure of deliverable supply that is calculated by the trading venue for that commodity derivative for both physically settled and for cash settled commodity derivatives. However, as that measure of deliverable supply might not reflect accurately the wider deliverable supply in the underlying commodity, the national competent authority shall be able adjust the measure of deliverable supply calculated by trading venues, to take into account deliverable supply held outside trading venues and other factors relating to that commodity and its market such as capacity constraints on production or delivery that could determine the deliverable supply.

(6) The national competent authority shall base overall open interest in a commodity derivative contract and the overall open interest in other financial instruments with the same underlying commodity on the open interest on the volume of open interest calculated by the trading venue for that commodity derivative. The national competent authority may use open interest in other commodity derivatives that have the same underlying to more appropriately reflect the activity in that contract.

(7) The national competent authority shall consider the volatility of the relevant market in a commodity derivative by receiving information on the price movements for that commodity derivative from the trading venue for that commodity derivative, as well that of any substitute derivatives and their underlying commodity. The national competent authority will also take into account volatility in its consideration of the other factors such as deliverable supply, the maturity of the contract, and the characteristics of the underlying commodity market which may impact on the volatility of the commodity derivative.

(8) The national competent authority shall consider broadly the characteristics of the underlying commodity market, including patterns of production, consumption, and transportation to the market. Different bespoke features of different commodity markets and their underlying commodities could have a significant impact on the functioning of the commodity derivative and its market and the positions taken in those markets. Therefore, the national competent authority shall take into account a wide range of potential factors and ensure that their impact and significance is taken into account appropriately when calculating position limits in order to ensure that all relevant factors are addressed.

(9) Position limits should not create barriers to the development of new commodity derivatives. The national competent authority shall apply position limits that are sufficiently high to support the development of a new commodity derivative by ensuring that position limits do not constrain liquidity for new commodity derivatives or adversely impact on the orderly pricing and settlement conditions for that commodity derivative. Position limits should take into account the time required to develop and attract liquidity on both new and existing commodity derivatives, and in particular such commodity derivatives that may be supporting bespoke or immature markets or be seeking to develop new hedging arrangements in new commodities.

(10) The national competent authority of the trading venue for the commodity derivative will calculate a baseline position limit for the commodity derivative based on 25% of the deliverable supply for the contract or contracts to which the position limit shall apply. The baseline shall be specified in the number of lots of the relevant commodity derivative.

(11) The national competent authority shall apply the relevant factors in Article 57(3) of Directive 2014/65/EU to the baseline position to ensure that the position limit takes into account appropriately the impact and significance of specific characteristics of that commodity derivative, the relevant commodity market, and the underlying commodity.

(12) The national competent authority shall be able to vary the application of the relevant factors and the relationship between those factors across different commodity derivatives to reflect appropriately the different features, functioning, and characteristics of that commodity derivative, commodity market, and the underlying commodity.

(13) National competent authorities shall be able to either increase or decrease the baseline position by an additional 15% so that no position limit is higher than 40% of deliverable supply or by lowering the baseline by no more than an additional 15% so that no position limit is lower than 10% of deliverable supply, based on its consideration of the relevant factors.

(14) National competent authorities shall take into account the experience of trading venues that commodity derivatives are traded on to ensure that national competent authorities'

position limits and the trading venues position management regime are complementary in order to support orderly pricing and settlement conditions, the integrity of the market and the underlying commodity, and price discovery on the market for the underlying commodity.

(15) National competent authorities shall periodically review the methodology used to calculate a position limit for a commodity derivatives to ensure that the methodology sufficiently and appropriate takes into account the specific features, functions, and characteristics of specific commodity derivatives, commodity markets, and the underlying commodity and supports orderly pricing and settlement conditions, the integrity of the market and the underlying commodity, and price discovery on the market for the underlying commodity.

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

(17) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council, the European Securities and Markets Authority has conducted open public consultations on the draft regulatory technical standards, analyzed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation.

HAS ADOPTED THIS REGULATION:

Article 1

The methodology for the calculation to be applied in establishing position limits

[Article 57(3) of Regulation (EU) No 600/2014]

(1) The competent authority, or central competent authority as specified in Article x, shall calculate a spot month positon limit and an other months' position limit for each commodity derivative traded on a trading venue for which it is the competent authority, or central competent authority as specified in Article x, based on the methodology for calculation set out in this Regulation. The position limits shall apply to both physically settled and cash settled commodity derivatives.

(2) The competent authority shall, for each commodity derivative traded on a trading venue for which it is the competent authority, or central competent authority as specified in Article x, determine a baseline figure on the basis of the deliverable supply for that commodity derivative. The deliverable supply shall be that which is used either as settlement for, or a pricing reference to, that commodity derivative.

(3) The baseline figure shall be 25% of the deliverable supply for the commodity derivative to which the position limit shall apply. The baseline figure shall be specified in the number of lots of the relevant commodity derivative with the definition of lot being the unit of quantity used by the trading venue on which the commodity derivative contract trades

(4) The competent authority, or central competent authority as specified in Article x, shall assess the potential impact of each of the factors specified under Articles 2 to 8 on the trading of the commodity derivative when determining the exact size of the position limits for the spot month and for other months.

(5) Where the competent authority, or central competent authority as specified in Article x, assesses that one or more of the factors specified under Articles 2 to 8 may have such an impact that the baseline figure for the position limit requires adjustment, the competent authority, or central competent authority as specified in Article x, may vary the baseline by either increasing it by no more than an additional 15% so that no position limit is higher than 40% of deliverable supply or by lowering the baseline by no more than an additional 15% so that no position limit is lower than 10% of deliverable supply.

(6) The position limits shall be specified in lots with the definition of lot being the unit of quantity used by the trading venue on which the commodity derivative contract trades.

Article 2

The maturity of the commodity derivatives contracts

[Article 57(3)(a) of Regulation (EU) No 600/2014]

1. The competent authority, or central competent authority as specified in Article x, shall assess whether the maturity of the commodity derivative is such that the baseline figure for the position limit for other months' requires adjustment. Any adjustment made to the baseline figure for the position limit shall be based on the principle that there is a commonality between the length of the maturity of a commodity derivative and the level of the position limit so that the longer the maturity of a commodity derivative, the higher the overall position limit.

2. The competent authority, or central competent authority as specified in Article x, shall also have regard to the frequency of expiries of the commodity derivative contract and take into consideration whether expiration occurs on a daily, monthly or less frequent basis. Any adjustment made to the baseline figure for the position limit in relation to the frequency of expiry of the commodity derivative contract shall be based on the principle that there is a correlation between the frequency of expiry of a commodity derivative contract and the level of the position limit so that the greater the frequency of expiry of a commodity derivative contract, the higher the overall position limit.

Article 3

The deliverable supply in the underlying commodity

[Article 57(3)(b) of Regulation (EU) No 600/2014]

1. The competent authority, or central competent authority as specified in Article x, shall assess whether the deliverable supply in the underlying commodity is such that the baseline figure for the position limit requires adjustment. The deliverable supply shall be that which is used either as settlement for, or a pricing reference to, a commodity derivative contract.

2. Where relevant to the activity of the underlying markets, the competent authority, or central competent authority as specified in Article x, may decide to take into consideration the capacity to take or make delivery. Any adjustment made to the baseline figure for the position limit shall be based on the principle that there is a commonality between the quantity of the deliverable supply in the underlying commodity and the level of the position limit so that the greater the quantity of deliverable supply in the underlying commodity, the higher the overall position limit.

Article 4

The overall open interest

[Article 57(3)(c) of Regulation (EU) No 600/2014]

1. The competent authority, or central competent authority as specified in Article x, shall assess whether the overall open interest in the commodity derivative and the overall open interest in other financial instruments with the same underlying commodity markets is such that the baseline figure for the position limit requires adjustment. Any adjustment made to the baseline figure for the position limit shall be based on the principle that there is a commonality between the volume of overall open interest in the commodity derivative and the overall open interest in other financial instruments with the same underlying commodity markets and the level of the position limit so that the greater the volume of overall open interest, the higher the overall position limit.

2. Financial instruments which are merely linked to the commodity derivative will not be included for the purposes of the calculation of the volume of the overall open interest of that commodity derivative.

Article 5

The volatility of the relevant markets

[Article 57(3)(d) of Regulation (EU) No 600/2014]

The competent authority, or central competent authority as specified in Article x, shall assess whether the volatility of the relevant markets in the commodity derivative is such

that the baseline figure for the position limit requires adjustment. Any adjustment made to the baseline figure for the position limit shall be based on the principle that there is a commonality between the level of volatility in the markets relevant to the commodity derivative and the level of the position limit so that the greater the level of volatility, the lower the overall position limit.

Article 6
The number and size of market participants

[Article 57(3)(e) of Regulation (EU) No 600/2014]

1. The competent authority, or central competent authority as specified in Article x, shall assess whether the number and size of market participants that hold a position in the commodity derivative is such that the baseline figure for the position limit requires adjustment. Any adjustment made to the baseline figure for the position limits shall be based on the principle that there is a commonality between the number and size of market participants that hold a position in the commodity derivative and the level of the position limit so that the greater the number of position holders, the lower the overall position limit.

2. The competent authority, or central competent authority as specified in Article x, shall also have regard to whether the proposed level of position limits may result in increased volatility.

Article 7
Characteristics of the underlying commodity market

[Article 57(3)(f) of Regulation (EU) No 600/2014]

1. The competent authority, or central competent authority as specified in Article x, shall assess whether the characteristics of the underlying commodity market is such that the baseline figure for the position limit requires adjustment. Any adjustment made to the baseline figure for the position limit shall be based on the principle that there is a commonality between the flexibility of the underlying commodity market and the level of the position limit so that the greater the flexibility of the underlying commodity market, the higher the position limit.

2. In considering the extent to which the underlying commodity market is flexible, the competent authority, or central competent authority as specified in Article x, shall have regard to:

(a) Whether there are restrictions on the supply of the commodity including but not limited to;

(i) The perishability of the deliverable commodity;

(b) The method of transportation and delivery of the physical commodity including but not limited to;

(i) Whether the commodity can be delivered to specified delivery points only; and

(ii) The capacity constraints of specified delivery points; and

(c) The structure and the operation of the market, including but not limited to:

(i) The seasonality present in extractive and agricultural commodity markets whereby physical supply fluctuates over the calendar year;

(d) The features of the underlying commodity.

Article 8
Development of new contracts

[Article 57(3)(g) of Regulation (EU) No 600/2014]

1. The competent authority, or central competent authority as specified in Article x, shall assess whether the development of a new commodity derivative contract is such that the baseline figure for the position limit requires adjustment. Any adjustment made to the baseline figure for the position limit shall be based on the principle that there is a correlation between the development of a new commodity derivative contract and the level of the position limit so that the position limit shall be set at a higher level for new contracts. In undertaking this assessment, the competent authority, or central competent authority as specified in Article x shall take into account the commonality between the development of a new commodity derivative contract and the number and size of market participants that hold a position in the commodity derivative as specified under Article 6 and the amount of the overall open interest as specified under Article 4.

2. The competent authority, or central competent authority as specified in Article x, shall review the level of trading in the new commodity derivative contract regularly and adjust the position limits for the spot month and the other months when it judges that the commodity derivative contract is established.

Article 9
Entry into force

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

It shall apply from 3 January 2017.

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

Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]

RTS 30: Draft regulatory technical standards on the application of position limits for commodity derivatives traded on trading venues and economically equivalent OTC contracts

COMMISSION DELEGATED REGULATION (EU) No …/..

of [date]

supplementing Directive 2014/65/EU [MiFID II] of the European Parliament and of the Council with regard to regulatory technical standards on the application of position limits for commodity derivatives traded on trading venues and economically equivalent OTC contracts

(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 [MiFID II] of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, and in particular Article 57 (12).

Whereas:

(1) Article 57(1) of Directive 2014/65/EU requires that Member States shall ensure that competent authorities, in line with the methodology for calculation determined by ESMA, establish and apply position limits on the size of a net position which a person can hold at all times in commodity derivatives traded on trading venues and economically equivalent OTC contracts.

(2) Articles 57(1)(a) and 57(1b) of Directive 2014/65/EU requires that such limits shall be set to prevent market abuse, support orderly pricing and settlement conditions, including preventing market distorting positions, and ensuring, in particular, the convergence between prices of derivatives in the delivery month and spot prices for the underlying commodity, without prejudice to price discovery on the market for the underlying commodity.

(3) Article 57 of Directive 2014/65/EU sets out various requirements for the application of position limits. Article 57(1) of Directive 2014/65/EU states that position limits shall not apply to positions held by or on behalf of a non-financial entity and which are objectively measurable as reducing risks directly relating to the commercial activity of that non-

financial entity. Article 57(1) of Directive 2014/65/EU states that position limits shall be set on the basis of all positions held by a person and those held on its behalf at an aggregate group level. Articles 57(1) and 57(4) of Directive 2014/65/EU states that position limits should be applied to a person's positions in commodity derivatives traded on trading venues and economically equivalent OTC contracts. Article 57(6) of Directive 2014/65/EU states that where the same commodity derivative is traded on significant trading venues in more than one jurisdiction, that the competent authority of the trading venue where the largest volume of trading takes place (the central competent authority) shall set the single position limit to be applied on all trading in that contract. Article 57(1) of Directive 2014/65/EU states that position limits should apply on the size of a net position which a person can hold at all times in hold at all times in commodity derivatives traded on trading venues and economically equivalent OTC contracts.

(4) Article 57(12) of Directive 2014/65/EU requires ESMA to produce regulatory technical standards to determine how the requirements above should be applied for position limits: the criteria and methods for determining whether a position qualifies as reducing risks directly relating to commercial activities; the methods to determine when positions of a person are to be aggregated within a group; the criteria for determining whether a contract is an economically equivalent OTC contract to that traded on a trading venue, in a way that facilitates the reporting of positions taken in equivalent OTC contracts to the relevant competent authority as determined in Article 58(2) of Directive 2014/65/EU; the definition of what constitutes the same commodity derivative and significant volumes under Article 57(6) of Directive 2014/65/EU; the methodology for aggregating and netting OTC and on-venue commodity derivatives positions to establish the net position for purposes of assessing compliance with the limits (with such methodologies establishing criteria to determine which positions may be netted against one another and which would not facilitate the build-up of positions in a manner inconsistent with the objectives set out in Article 57(1) of Directive 2014/65/EU; the procedure setting out how persons may apply for the exemption under the second subparagraph of Article 57(1) of Directive 2014/65/EU and how the relevant competent authority will approve such applications; and the method for calculation to determine the venue where the largest volume of trading in a commodity derivative takes place and significant volumes under Article 57(6) of Directive 2014/65/EU.

(5) Article 57(1) of Directive 2014/65/EU sets out that position limits shall not apply to positions held by or on behalf of a non-financial entity and which are objectively measurable as reducing risks directly relating to the commercial activity of that non-financial entity.

(6) The criteria and methods for determining whether a position qualifies as reducing risks directly relating to commercial activities shall be based on the criteria for establishing which OTC contracts are objectively reducing risks in Article 10 Commission Delegated Regulation 149/2013 to ensure that activities that are deemed to be objectively

measurable as reducing risks directly relating to the commercial activity or treasury financing activity and intragroup transactions should be considered in a consistent way with Regulation (EU) No 648/2012. This criterion has been adjusted to be relevant for exchange traded contracts.

(7) To avoid the position limit regime being circumvented, non-financial entities that apply for positions which are objectively measurable as reducing risks directly relating to the commercial activity of that non-financial entity should be able to provide on request to the relevant competent authority of the trading venue for the relevant commodity derivative with sufficient information to demonstrate that such activity is related to the commercial activity of the non-financial entity and how such a position reduces risk directly relating to those commercial activities.

(8) Article 57(1) of Directive 2014/65/EU requires that position limits shall be set on the basis of all positions held by a person and those held on its behalf at an aggregate group level. Article 4(34) of Directive 2014/65/EU establishes the definition of group in Article 2(11) of Directive 2013/34/EU which refers to a group as a parent undertaking and all its subsidiary undertakings. The positions of a person which is a member of a group shall therefore be aggregated with the positions in commodity derivatives that it holds in its own name together with those of any wholly or partly owned subsidiary undertakings of that entity. The whole positions of the other entities within the group will be added to the person's positions, to simplify reporting and to reflect that a person which has effective control of an entity may use the full amount of that entity's position to support its activities.

(9) Article 57(1) of Directive 2014/65/EU requires that position limits are set on commodity derivatives traded on trading venues and economically equivalent OTC contracts. Article 57(12)(c) of Directive 2014/65/EU requires that economically equivalent OTC contracts are determined in a way that facilitates the reporting of investment firms positions in economically equivalent OTC contracts for Article 58(2) of Directive 2014/65/EU. An OTC commodity derivative contract shall be considered to be economically equivalent to a commodity derivative that it is traded on a trading venue in the European Union when it references such a commodity derivative or when it is valued on the same or comparable features of that commodity derivative.

(10) Where persons consider an OTC commodity derivative is economically equivalent to a commodity derivative traded on a trading venue, they should notify the relevant competent authority for the trading venue on which the commodity derivative trades. The relevant competent authority will determine whether OTC commodity derivative is economically equivalent. The relevant competent authority and ESMA will publish a list of commodity derivative contracts and the OTC commodity contracts that are economically equivalent to them for the purposes of position limits. OTC commodity contracts that are not listed will not be considered in the calculation of the position limit

for a commodity derivative and cannot be used for the purposes of netting when calculating a person's position.

(11) Article 57(6) of Directive 2014/65/EU states that where the same commodity derivative is traded in significant volumes on trading venues in more than one jurisdiction, the competent authority of the trading venue where the largest volume of trading takes place (the central competent authority) shall set the single position limit to be applied on all trading in that contract. Article 57(12) of Directive 2014/65/EU requires ESMA to define what constitutes the same commodity derivative.

(12) The same commodity derivative shall be a commodity derivative on a trading venue which is the same as another commodity derivative contract traded on another trading venue where both trading venues are in the European Union. ESMA considers that same shall mean the contract must be at least economically equivalent to each other and have other equivalent properties, such as accepting the same deliverable supply for settlement. In addition, the contracts must be traded under or with reference to the same set of trading venue rules. Trading venues should notify the central competent authority if a commodity derivative traded on their venue is the same commodity derivative. The central competent authority shall determine when a commodity derivative is the same commodity derivative. The central competent authority, other competent authorities where the same commodity derivative is traded in significant volumes on a trading venue in their jurisdictions, and ESMA will publish a list of commodity derivative contracts and the same commodity derivatives on other trading venues that are related to them for the purposes of position limits. Same commodity derivatives that are not listed will not be considered in the calculation of the position limit for a commodity derivative and cannot be used for the purposes of netting when calculating a person's position.

(13) Article 57(12) of Directive 2014/65/EU requires ESMA to define what constitutes significant volumes for Article 57(6) of Directive 2014/65/EU where the same commodity derivative is traded in significant volumes on trading venues in more than one jurisdiction. Significant volumes shall mean where there are more than three lots of open interest in the same commodity derivative across trading venues in more than one jurisdiction to ensure that same commodity derivatives are treated the same across trading venues.

(14) Article 57(1) of Directive 2014/65/EU requires that that position limits should apply on the size of a net position which a person can hold at all times in commodity derivatives traded on trading venues and economically equivalent OTC contracts. Article 57(12)(e) of Directive 2014/65/EU requires ESMA to determine the methodology for aggregating and netting OTC and on-venue commodity derivatives positions to establish the net position for purposes of assessing compliance with the limits. The methodologies shall establish criteria to determine which positions may be netted against one another and

shall not facilitate the build-up of positions in a manner inconsistent with the objectives set out in Article 57(1) of Directive 2014/65/EU.

(15) Commodity derivatives, the same commodity derivatives traded on another trading venue, and economically-equivalent OTC contracts shall be aggregated by the summation of a person's position in those contracts. Long and short positions in those contracts will be netted together by the relevant competent authority to determine the net position of that person for those contracts. As specified by Article 58 of Directive 2014/65/EU, such positions must be reported on a gross basis. The relevant competent authority will determine which contracts are netted together on the basis of the daily position reports.

(16) Article 57(12)(f) of Directive 2014/65/EU requires ESMA to set out the procedure for how persons may apply for the exemption under the second subparagraph of Article 57(1) of Directive 2014/65/EU for position limits not applying to positions held by or on behalf of a non-financial entity and which are objectively measurable as reducing risks directly relating to the commercial activity of that non-financial entity and how the relevant competent authority will approve such applications.

(17) A non-financial entity will apply to the competent authority of the trading venue that establishes and applies the position for the relevant commodity derivative contract for a general exemption from position limits for risk reducing positions in that commodity derivative. The person will need to provide information to demonstrate why positions in a commodity derivative are related to the person's commercial activity and how it reduces risk directly relating to that person's commercial activities. The competent authority may require persons to provide similar information to verify positions that they have reported as risk-reducing.

(18) Article 57(6) of Directive 2014/65/EU states that the competent authority of the trading venue where the largest volume of trading takes place (the central competent authority) shall set the single position limit to be applied on all trading in that contract where the same commodity derivative is traded in significant volumes on trading venues in more than one jurisdiction. Article 57(12)(g) of Directive 2014/65/EU requires ESMA to determine the method for the calculation to determine the venue where the largest volume of trading in a commodity derivative takes place and what is considered to be significant volumes with regard to where the same commodity contract is traded in significant volumes on trading venues in more than one jurisdiction. The trading venue with the largest volume of trading in a commodity derivative shall be the trading venue with the largest volume of open interest measured in lots of the commodity derivative.

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

(20) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council, the European Securities and Markets Authority has conducted open public consultations on the draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation.

HAS ADOPTED THIS REGULATION:

CHAPTER I
General

Article 1
Determining whether a position qualifies as reducing risks directly relating to commercial activities

[Article 57(12)(a) of Regulation (EU) No 600/2014]

(1) A position held by or on behalf of a non-financial entity in a commodity derivative contract shall be considered as objectively measurable as reducing risks directly relating to the commercial activity of that non-financial entity when, by itself or in combination with other derivative contracts, it meets one of the following criteria:

(a) it covers the risks arising from the potential change in the value of assets, services, inputs, products, commodities or liabilities that the non-financial counterparty or its group owns, produces, manufactures, processes, provides, purchases, merchandises, leases, sells or incurs or reasonably anticipates owning, producing, manufacturing, processing, providing, purchasing, merchandising, leasing, selling or incurring in the normal course of its business;

(b) it covers the risks arising from the potential indirect impact on the value of assets, services, inputs, products, commodities or liabilities referred to in point (i), resulting from fluctuation of interest rates, inflation rates, foreign exchange rates or credit risk;

(c) it qualifies as a hedging contract pursuant to International Financial Reporting Standards (IFRS) adopted in accordance with Article 3 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council.

Article 2
Determining when positions of a person are to be aggregated within a group

[Article 57(12)(b) of Regulation (EU) No 600/2014]

1. The positions of a person shall be aggregated within a group by aggregating the positions in commodity derivatives that the person holds in its own name (whether held directly by itself or on its behalf by third parties such as investment firms, under a client relationship) together with those of any subsidiary undertakings of that group, but not to aggregate the positions of other subsidiary undertakings of a mutual parent or of any intermediate or ultimate holding company. Such aggregation shall be made on a whole position basis and not on a pro rata basis. A subsidiary undertaking means an undertaking that is controlled by a parent undertaking.

2. Positions that are held by an intermediary on behalf of a client shall not count towards that intermediary's own position limits regardless of whether, for reasons of market practice, operational structure or legal framework, the positions are held by the intermediary as principal.

Article 3

Determining whether a contract is an OTC economically equivalent

[Article 57(12)(c) of Regulation (EU) No 600/2014]

An OTC commodity derivative contract shall be economically equivalent to a commodity derivative that is traded on a trading venue when it either:

(a) explicitly refers to or is otherwise based upon a commodity derivative that is traded on a trading venue; or

(b) is valued on the basis of the same or equivalent commodity of the same or equivalent grade that is deliverable at the same location, or another equivalent location so long as the other delivery location has similar economic characteristics, and is deliverable on the same date as that of a commodity derivative that is traded on a trading venue.

Article 4

Defining what constitutes the same commodity derivative

[Article 57(12)(d) of Regulation (EU) No 600/2014]

The definition of the same commodity derivative shall be that a commodity derivative contract on a trading venue is the same as another commodity derivative contract on another trading venue in the European Union, if :

(a) it is at least economically equivalent; and

(b) has other equivalent properties, such as requiring the same underlying commodity for settlement; and

(c) it is traded under or with reference to the same set of trading venue rules as the other commodity derivative contract, and together they create a single fungible pool of open interest.

Article 5

Methodology for aggregating and netting OTC and on-venue commodity derivative positions

[Article 57(12)(e) of Regulation (EU) No 600/2014]

1. A person's position in a particular commodity derivative shall be the summation of its positions held in that commodity derivative on trading venues within the European Union and its positions held in economically equivalent OTC contracts to that particular commodity derivative. Where a person holds both long positions and short positions in a commodity derivative on trading venues and/or economically equivalent OTC commodity derivative contracts they shall be netted against each other in order to determine the net position of that person for those contracts.

2. The positions held by or on behalf of a non-financial entity in a commodity derivative contract which are considered as objectively measurable as reducing risks directly relating to the commercial activity of that non-financial entity as specified under Article X of this RTS and which have been notified to the Competent Authority in line with the procedure specified under Article X of this RTS shall not be included in the calculation required under paragraph 1.

3. The positions of a person in a commodity derivative which has been netted in accordance with subparagraph 1 and 2 shall be aggregated with the net positions in that commodity derivative held by other persons within the same group in the European Union to determine the final net position.

Article 6

Procedure for application of use of exemption from position limits

[Article 57(12)(f) of Regulation (EU) No 600/2014]

1. The non-financial entity shall apply for an exemption to the competent authority of the relevant trading venue that establishes and applies the position limit for the relevant commodity derivative where the non-financial entity considers that it holds a position which is objectively measureable as reducing risks directly relating to its commercial activity. Applications shall be made online to the relevant competent authority by means of an electronic portal or by such other means as the competent authority may specify.

2. The non-financial entity shall provide information demonstrating how the position is:

(a) related to the commercial activity of the non-financial entity; and

(b) reduces risk directly relating to that person's commercial activities.

3. The non-financial entity shall apply to use the exemption before it exceeds the limits set for the size of a position in that particular commodity derivative. A position under Article x(10) shall not be considered as exempt from the relevant position limit if the competent authority has not approved the exemption.

4. A competent authority shall have up to 30 calendar days to approve an application under Article x(10). The competent authority shall send a confirmation to the non-financial entity to approve or reject the application. Where the non-financial entity has not received a refusal, confirmation or request for more information from the competent authority within a period of 30 calendar days, the person may use the exemption.

Article 7

Determining the trading venue where the largest volume of trading takes place and and what is considered to be significant volumes where the same commodity contract is traded on trading venues in more than one jurisdiction

[Article 57(12)(g) of Regulation (EU) No 600/2014]

1. The trading venue on which the largest volume of trading in a commodity derivative takes place, where the same commodity derivative, as defined under Article X of this RTS is traded on two or more trading venues within the European Union, shall be the trading venue which has the largest volume of open interest, measured in the number of lots of the same commodity derivative contract. .

2. Trading in a commodity derivative shall be considered to be of a significant volume when there are more than three lots of open interestin the same commodity derivative contract traded on more than one trading venue.

3. The determination required under paragraph 1 of Article 7 regarding the trading venue on which the largest volume of trading in a commodity derivative takes place, where the same commodity derivative, shall be made initially when the criteria set out in paragraph 2 of Article 7 are met and thereafter every twelve months until such time as the criteria set out in paragraph 2 of Article 7 are no longer met

Article 8

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 […].

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

Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]

ITS 31: Draft implementing technical standards on position reporting

COMMISSION IMPLEMENTING REGULATION (EU) No …/..

of [date]

supplementing Directive 2014/65 of the European Parliament and of the Council on markets in financial instruments with regard to implementing technical standards on the format of position reports by investment firms and market operators

(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[56] on markets in financial instruments, and in particular Article 58(5) thereof.

Whereas:

(1) The format of the weekly report on aggregate positions held by different categories of persons for the different commodity derivatives or emission allowances or derivatives thereof traded on trading venues (Commitment of Trader Reports) should break positions down into risk-reducing, other, and total positions to provide transparency on the split between financial and non-financial related activities in commodity derivatives or emission allowances or derivatives thereof traded on trading venues.

(2) The format of daily reports providing a complete breakdown of investment firms and their clients' positions in commodity derivatives or emission allowances or derivatives thereof traded on trading venues and economically equivalent OTC contracts (Position Reports) is structured to support the monitoring and application of position limits under Article 57 of Directive 2014/65/EU. Positions should be reported gross so that competent authorities can net and aggregate persons positions as required by Article 57 of Directive 2014/65/EU.

(3) For positions that have arisen as a consequence of buy and sell trades spread between different delivery dates or commodities or as a result of other complex strategies should be reported on a disaggregated basis. Separate reporting of each of the constituent

[56] OJ L 173, 12.06.2014, p. 84

elements that are within the scope of the reporting obligation should be made rather than the reporting of these positions in aggregate.

(4) To carry out their duties effectively and consistently, the relevant authorities and ESMA should be provided with data that can be compared across investment firms and market operators operating trading venues. The use of a common format across different financial market infrastructures facilitates the greater use of this format by a wide variety of market participants, thus promoting standardisation.

(5) To facilitate straight through processing and the reduction of costs to market participants, it is important to use standardised procedures, data formats, and protocols across investment firms and market operators operating trading venues.

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

(7) In accordance with Article 15 of 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) [57], ESMA has conducted an open public consultation before submitting the draft implementing 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 in accordance with Article 37 of that Regulation.

HAS ADOPTED THIS REGULATION:

CHAPTER I
General

Article 1
Commitment of Trader Report

(1) An investment firm or a market operator operating a trading venue which trades commodity derivatives, emission allowances or emission allowances or derivatives thereof shall produce and send the weekly report specified under Article 58(1)(a) of Directive 2014/65/EU with the aggregate positions held by the different categories of persons for the different commodity derivatives or emission allowances or derivatives thereof traded on their trading venue to the competent authority and to ESMA in the format set out in Table 1 of the Annex.

[57] OJ L 331, 15.12.2010, p. 84.

(2) The report shall contain the aggregate positions meaning the summation of all positions in an individual commodity derivative, emission allowance or derivative thereof that is traded on that trading venue.

(3) An investment firm or a market operator operating a trading venue shall prepare a separate report for each commodity derivative, emission allowance or derivative thereof that is traded on a trading venue, subject to the thresholds for publication referred to in the second paragraph of Article 58(1) of Directive 2014/65/EU.

Article 2
Position Report

1. Investment Firms shall produce and send a daily position report on their positions taken in commodity derivatives or emission allowances or derivatives thereof traded on a trading venue and in economically equivalent OTC contracts, as well as of those of their clients and the clients of those clients until the end client is reached to the competent authority of the trading venue where the commodity derivatives or emission allowances or derivatives thereof are traded or the central competent authority where the commodity derivatives or emission allowances or derivatives thereof are traded in significant volumes on trading venues in more than one jurisdiction, in the format specified in Table 2 of the Annex.

2. All positions should be reported on a gross basis indicating whether they are long or short positions. Positions should not be netted in the preparation or making of the reports.

3. The details of all positions across all maturities of all contracts must be provided.

Article 3
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 […].

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

Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]

Annex I: Tables of fields to be reported as referred to in Article 1

{Name of Trading Venue} {Date of the Report} {Name of Commodity Derivative Contract}												
			Investment Firms		Investment Funds		Other Financial Institutions		Commercial Undertakings		Emission Operators	
		Total	Long	Short	Long	Short	Long	Short	Long	Short	Long	Short
Current week's report	Risk Reducing											
	Other											
	Total											
Changes from last week's report (+/-)	Risk Reducing											
	Other											
	Total											
Percentage of open interest	Risk Reducing											
	Other											
	Total											
Number of Position Holders in each category	Risk Reducing											
	Other											
	Total											

Annex II: Tables of fields to be reported as referred to in Article 2

	Field	Explanatory comments
1.	**Date of the business day of the reported positions**	The report shall be produced as at the close of the business day and submitted by 09.00 am local time on the next business day
2.	**Reporting investment firm ID**	Legal Entity Identifier ("LEI")
3.	**End client ID**	LEI for legal entities or other identifiers for natural persons, as specified by ESMA in Regulation (EU) No xxxx/xxxx [TS under Article 26 MiFIR]. Note: if the position is held as a proprietary position of the reporting firm, this field will be identical to field 2 above
4.	**Unique product identifier of on-venue contract**	Alternative Instrument Identifier should be used. See field 5 below for treatment of OTC contracts that are economically equivalent to contracts that are traded on trading venues
5.	**Trading venue identifier**	Either the Market Identifier Code ("MIC") or for off-exchange positions in economically equivalent OTC contracts, the code "XOFF"
6.	**Position maturity**	Either "SPOT" for spot month or "ALL" for all other months. Note: separate reports are required for spot months and all other months in order to facilitate the monitoring of compliance with Article 57(1).
7.	**Position quantity**	Position expressed in the number of contracts
8.	**Indicator of whether position is long or short**	Indicated by the use of "+" (long) or "-" (short)
9.	**Indicator of whether the position is risk reducing in relation to commercial activity**	Indicated by the use of "yes" (position is risk reducing) or "no" (position is not risk reducing).

CHAPTER 8: MARKET DATA REPORTING

RTS 32: Draft regulatory technical standards on reporting obligations under Article 26 of MiFIR

COMMISSION DELEGATED REGULATION (EU) No …/..

of [date]

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on .....

(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 in particular Article 26(1), Article 26(3) , Article 26(4) thereof,

Whereas:

(1) A suitable definition of execution and transaction applied consistently across Member States for the purposes of Article 26 of Regulation (EU) 600/2014 is crucial for ensuring that competent authorities receive reports when an action is taken or an outcome is brought about in relation to a reportable financial instrument that could be susceptible to market abuse or illegal practices by investment firms or market participants. In accordance with the principle of avoiding necessary administrative burden on firms, reports should not be submitted by firms in relation to actions or outcomes which are not expected to be useful for enabling competent authorities to carry out their functions. Taking into account market practices, supervisory experience and market developments, it is important that the meaning of transaction for reporting purposes extends beyond mere purchases or sales of reportable instrument. The potential scope for market abuse can be anticipated in connection with changes in investment firms' or their clients' positions. To enable competent authorities to properly monitor that investment firms are acting honestly, fairly and professionally, it is also important that the meaning of execution for reporting purposes extends beyond actions bringing about a transaction performed by an investment firm itself including where this is conducted through a branch of the firm located inside or outside of the Union, to include actions performed by another investment firm instructed by the first firm to carry out such action.

(2) An investment firm that receives a client's order and sends it to another firm to be filled or an investment firm acting on a discretionary basis that places an order with another firm should be considered to be executing for the purposes of Article 26 of Regulation (EU) 600/2014, up until the point that it has successfully transmitted the order and all relevant information, including complete and accurate details of the client, to the receiving third party firm in accordance with the criteria set out in this Regulation. This is to that any report provided by the third party firm after the order is filled to incorporate all data necessary for enabling competent authorities to perform their market abuse and monitoring functions, including data to identify the client of the transmitting firm. Where all the criteria for successful transmission had been complied with to enable the third party firm who filled the order to report the transaction accurately, the investment firm who first transmitted the order should no longer be considered to be executing for the purposes of Article 26 of Regulation (EU) 600/2014 and should no longer report. This is to prevent competent authorities from receiving duplicate reports of the same transaction, and therefore receiving a distorted picture of the change in the investment firm's client's position as a result of a single transaction.

(3) To be an effective tool for enabling market monitoring, transaction reports need to capture accurately any change in an investment firm's or in its client's positions resulting from a reportable transaction at the time it took place. Therefore, where an investment firm submits a report for a transaction undertaken on behalf of a client that is already reported by another firm to whom the client's order was successfully transmitted, it should cancel these reports without delay.

(4) Transaction reporting is not only used for market abuse surveillance but also for monitoring market integrity. Hence, the requirement for providing in the transaction reports 'details of the identity of the client' and 'a designation to identify the clients on whose behalf the investment firm has executed the transaction' aims at achieving a more thorough and efficient monitoring of the market.

(5) The designation of the identity of the client, aiming to provide a consistent, unique and robust client identification to the greatest possible extent, grants competent authorities ready access to more detailed information about investors and market participants trading activity. This designation has respected the different national identification codes chosen by each Member State for natural persons, where available, and relies on the LEI code for legal entities.

(6) The client identifier is envisaged to act as a means to uniquely identify the client involved in the transaction, regardless of where the execution takes place, while the additional client information with details such as names and surnames, date of birth and data of residence of the natural person will provide meaningful information to CAs about the client which the identifier alone cannot provide. This additional client information will help

CAs to clearly identify the client, cross-check it and detect patterns that would not be evident from the client codes themselves.

(7) These requirements have been prescribed for identifying not only the owners of legal title to the instruments but also the decision maker for the transaction where this is different in order to be able to effectively monitor for market abuse since the decision maker will be the one conducting any market abuse .

(8) Article 26 (9) (c) of Regulation (EU) 600/2014 prescribes the designation to identify the person within the investment firm responsible for the investment decision and for the execution of a transaction. As those two persons can be different it is necessary to distinguish them in different fields of the transaction report.

(9) Investment firms should designate every person responsible for the investment decision or the execution of the transaction with a unique, consistent and persistent identifier. As individual persons within investment firms have to be identified in transaction reports, the same approach as for the designation to identify natural persons as clients shall be followed for the purpose of consistency.

(10) Decisions made by a formal committee should not be reported identifying every single person involved but should identify the committee as a whole. Therefore a unique, consistent and persistent identifier should be assigned to a formal committee. To enable competent authorities to determine the individuals involved in such a committee adequate records of the composition shall be provided upon request.

(11) Investment firms should designate every computer algorithm responsible for the investment decision or the execution of the transaction with a unique, consistent and persistent identifier.

(12) Investment firms should specify in each transaction report they transmit to the competent authority whether the seller to the transaction is short selling where the seller is the investment firm or a client of the investment firm. To this end, investment firms should use the designation provided in this Regulation.

(13) A regime of waivers from pre-trade transparency is needed to support the efficient functioning of markets. Additionally, a uniform application of the waivers from pre-trade transparency shall be ensured. As per transaction reporting purposes, and specifically according to MiFIR Article 26(3) reports to CAs shall include a designation to identify the applicable waiver under which the trade has taken place. This mandate refers only to waivers in relation to pre-trade transparency requirements as indicated in MiFIR Article 4 and 9, respectively for equity and non-equity instruments and it does not refer to deferred publication of trade reports (post trade transparency).

(14) Transaction reporting obligations are not meant to fulfill only market abuse purposes but also for achieving market integrity, and to allow CAs to properly monitor the activities of investment firms to ensure that they act honestly, fairly and professionally and in a manner which promotes the integrity of the market. A designation to identify the applicable waiver under which the transaction was undertaken fulfills all these goals and allows CAs to have a broader oversight of the financial markets.

(15) As MIFIR Articles 4 and 9 describe several situations under which pre-trade transparency obligations may be waived, each type of waiver shall be identified with the relevant flag.

(16) As only direct executions on a trading venue can benefit from pre-trade transparency waivers, only transaction reports for transactions that are directly facing the trading venue are required to be populated with waiver flags.

(17) To avoid uncertainty and risk of over- or under-reporting, as well as inconsistencies between market participants, this Regulation set out the criteria determining whether financial instruments based on baskets or indices fall within the relevant category of reportable financial instruments. In particular, financial instruments based on a basket should be reportable as soon as more than one component of the basket is a reportable financial instrument. Identification of baskets should rely on their decomposition into underlying financial instruments. The transaction reports will therefore mention in the "underlying" field the list of financial instruments constituting the basket. This list should be limited to reportable financial instruments only in order to avoid difficulties in referencing non-reportable financial instruments. Identification of the constituents should be based on ISINs.

(18) The Legal Entity Identifier (LEI) code ensures a persistent, consistent and unique means of identification for legal entities and its implementation across the EEA is rapidly increasing due to the reporting obligations in Regulation 648/2012/EU on OTC Derivatives, central counterparties and trade repositories, but also to other regulations and situations where the LEI is envisaged to be used. By the time MiFIR transaction reporting starts, the LEI will be widespread and used by legal entities. Therefore this Regulation sets out requirements for investment firms to have appropriate arrangements in place in order to collect and verify the LEI provided by the client and to ensure that the client can execute a transaction only upon disclosure and authentication of the LEI. In addition, investment firms are obliged to maintain their own LEIs by making sure that the LEI they use is valid and it has been duly renewed.

(19) Transparency of the activity of branches is crucial for ensuring that host competent authorities can supervise the services provided by branches within their territory, which includes transaction reporting of transactions executed by the branch. In order for host competent authorities to be able to supervise this effectively, it is essential that they

receive all of the transaction reports for transactions executed by the branch and are also able to ascertain the nature of the activity that the branch undertook with respect to a particular transaction. Where different branches or a branch and head office of an investment firm are both involved in a transaction it is important for competent authorities to be able to understand the split of the activity between the branches or the branch and its head office in order that the different competent authorities coordinate supervision of the different entities.

(20) All transaction reports for transactions executed by an investment firm regardless of whether they are conducted through its branches located inside or outside of the Union or through the home investment firm will be sent to the home competent authority. Inclusion of granular data on branch activity allows for these transaction reports to be routed to all the relevant competent authorities for the branches that take an active part on those transactions.

(21) The branch activity that is of particular interest to competent authorities in relation to transactions is where the transactions are for clients and the branch has the primary relationship with the client, where the branch made the investment decision, where the branch executed the transaction and where the transaction was executed on an trading venue using the membership of the branch.

(22) Given the importance of complete and accurate transaction reporting data for monitoring for market abuse and market integrity, it is essential that trading venues and investment firms have methods and arrangements in place to ensure the consistency and accuracy of transaction reports. These include mechanisms to prevent errors, and arrangements to detect errors or omissions and correct any errors or omissions detected without delay.

(23) It is central to effective market abuse market monitoring that any change of position in a reportable financial instrument for an investment firm or its client or clients is reported accurately. To achieve this, firms must report related fields in an individual transaction report consistently and must also report a transaction or different legs of a transaction so that cumulatively the reports provide the whole picture and accurately reflect the change in position of a firm or its client.

(24) The rules to determine the relevant competent authority are essential for Competent Authorities to route the transaction reports received by their local systems to the other Competent Authorities. They are also used by investors to establish where they need to report their short positions pursuant to Articles 5, 7 and 8 of Regulation (EU) 236/2012. As the rules for determining which is the relevant competent authority that were defined under Directive 2004/39/EC work appropriately for most financial instruments, this Regulation does not change the existing rules and procedures. However, new rules are introduced specifically for those instruments that were not covered by Directive 2004/39/EC. These are debt instruments issued by a non-EEA entity and derivatives

where the ultimate underlying has no global identifier (e.g. commodities), is a basket or is a non-EEA index.

HAS ADOPTED THIS REGULATION:

CHAPTER I
General

Article 1
Definitions

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

(a) ‘Transaction report’ means a complete and accurate set of details specified in Table 1 of Annex I of this Regulation that pertain to a transaction executed in a financial instrument and reported under Article 26(1) and (3) of Regulation (EU) 600/2014.

(b) ‘Matched principal capacity’ means dealing on own account as defined in Article 4(1)(6) where the concerned entity enters into a transaction as defined in Article 4(1)(38)of Directive 2014/65/EU as a facilitator by interposing the firm between the buyer and the seller to the transaction in a way whereby the firm is never exposed to market risk throughout the execution of the transaction, with both sides executed simultaneously, and where the transaction is concluded at a price where the facilitator makes no profit or loss, other than a previously disclosed commission, fee or charge for the transaction.

(c) ‘Principal capacity’ means all other instances of dealing on own account as defined in Article 4(1) (6) that do not fall under the definition of matched principal according to Article 4(38) of Directive 2014/65/EU.

(d) ‘Agent capacity’ means all other instances of dealing that do not fall under the definitions in Article 4(1) (6) and 4(1) (38) of Directive 2014/65/EU.

(e) ‘Reportable financial instrument’ means the financial instruments described in Article 26 Regulation (EU) 600/2014.

(f) ‘Transmitting firm’ means an investment firm that receives an order from a client or clients and sends it to a third party to be filled or places an order with a third party when acting on a discretionary basis.

(g) ‘Receiving firm’ means an investment firm that has received an order from a transmitting firm.

Article 2

Data standards and formats

A transaction report shall contain all the relevant information pertaining to a given transaction specified in Table 1 Annex I and shall be provided in the standards and in the formats specified in Table 1 Annex I.

CHAPTER II
Reporting obligations

Article 3
Transaction and execution of a transaction

1. For the purpose of Article 26 of Regulation (EU) 600/2014, 'transaction' shall mean an acquisition, disposal or modification of a reportable financial instrument, except where indicated in paragraph 3 below.

2. For the purposes of this article, an acquisition or disposal shall include but will not be limited to:

(a) A purchase or sales of a reportable financial instrument;

(b) Simultaneous acquisition and disposal of a reportable financial instrument where there is no change in beneficial ownership of the instrument but where post-trade publication is required according to articles 6, 10, 20 and 21 of Regulation 600/2014/EU;

(c) Entering into or closing out of a reportable financial instrument.

3. For the purpose of Article 26 of Regulation (EU) 600/2014, the term 'transaction' shall not include:

(a) Securities financing transactions provided they are subject to reporting under Regulation 2014/0017(COD), the Securities Financing Transaction Regulation;

(b) Contracts arising solely and exclusively for clearing or settlement purposes;

(c) Post-trade assignments and novations in derivatives where one of the parties to the derivative contract is replaced by a third party;

(d) Portfolio compressions as defined in Article 2(1)(47) of Regulation (EU) 600/2014;

(e) Creation and redemption of exchange traded funds by the administrator of the fund;

(f) Internal transfers within the investment firm of reportable financial instruments held by an investment firm for its own account and/or for the account of its client(s), which do not lead to a change in beneficial ownership of the instrument;

(g) Creation, expiration or redemptions of financial instruments as a result of pre-determined contractual terms or mandatory events where no investment decision takes place at that point in time, including mergers, takeovers, bankruptcy, stock splits or reverse stock splits);

(h) A change in the composition of an index after a transaction occurred;,

(i) Issuance of scrip dividends;

(j) Acquisitions or disposals under dividend re-investment plans, employee share incentive plans, or arising from the administration of unclaimed asset trusts, or of residual fractional share entitlements following corporate events or as part of shareholder reduction programmes where all of following criteria are met:

  (i) The dates are pre-established and published in advance;

  (ii) The investment decision taken by the investor amounts to an election by the investor to enter into the transaction with no ability to vary the terms of the transaction;

  (iii) There is a time delay of at least 10 business days between the election and the time of execution;

  (iv) The value of the transaction is capped at the equivalent of €500 for a one off transaction for the particular investor in the particular instrument. Where the arrangement results in regular transactions these shall be capped at the equivalent of €250 for the particular investor in the particular instrument per calendar month.

(k) exchange and tender offers on bonds and other forms of securitised debt ,where all the following criteria are met:

  (i) The terms and conditions of the offer are pre-established and published in advance; and

  (ii) The investment decision taken by the investor amounts to an election by the investor to enter into the transaction with no ability to vary the terms of the transaction.

4. For the purpose of Article 26 of Regulation (EU) 600/2014 ‘execution’ shall mean any action irrespective of on whose behalf these actions are undertaken, that results in a transaction if such action in a chain of events leading to the transaction is of enough importance that without that involvement the transaction would not have taken place. This includes but is not limited to:

(a) where the investment firm takes action itself which includes taking action through a branch of the investment firm regardless of whether the branch is located inside or outside of the Union.

(b) where an investment firm receives an order from one or several clients and sends such order to a third party without complying with all the conditions for successful transmission set out in Article 4(1) of this Regulation;

(c) where an investment firm acting on a discretionary basis, places an order with a third party without complying with all the conditions for successful transmission set out in Article 4(1) of this Regulation.

5. For the purpose of Article 26 of Regulation (EU) 600/2014 the term execution shall not include:

(a) investment advice as defined under Article 4(4) Directive 2014/65/EU;

(b) where the investment firm introduces two parties to each other without interposing itself between those parties

Article 4
Transmission of an order

1. A transmitting firm is deemed to have successfully transmitted an order for the purposes of Article 26(4) of Regulation (EU) 600/2014 when all of the following conditions are met:

(a) The relevant information specified in Article 26(1) and (3) of Regulation (EU) 600/2014 has been sent to the receiving firm by the transmitting firm no later than the expiry of the time period specified in the transmission agreement referred to in paragraph (b) below. This shall include complete and accurate details of:

(i) Identification of the financial instrument;

(ii) Whether the order is for a purchase or sale;

(iii) The quantity and any price or quantity conditions for the order such as limit price or minimum quantity;

(iv) Designation of the transmitting firm's client or clients and information and details of the identity of the client or clients, which shall include the designation and details for the ultimate client or clients where these have been successfully transmitted to the transmitting firm by another transmitting firm;

(v) A designation to identify short sales;

(vi) Where the order is aggregated for several clients, information shall be provided for each allocation.

(b) There is a written transmission agreement between the transmitting firm and the receiving firm that provides for all of the following:

(i) specification of the precise circumstances under which the relevant details of the order, as specified in Article 26(1) and (3) of Regulation (EU) 600/2014 and further described in paragraph (a) above, will be deemed to be provided by the transmitting firm to the receiving firm;

(ii) specification of the time period by which the relevant details are to be received by the receiving firm in order for it to report the transaction, which shall be no later than the day after the order is executed by the receiving firm;

(iii) confirmation that, where the specifications referred to in i. and ii. are met, the receiving firm will send a transaction report to the competent authority in accordance with Article 26 of Regulation (EU) 600/2014 that contains the relevant details specified in paragraph (a) above that were passed to it by the transmitting firm; and

(iv) confirmation that the receiving firm is located in a Member State and is subject to the obligation to report complete and accurate details of transactions under Article 26 of Regulation (EU) 600/2014, including branches of third country firms located in a Member State.

(c) The information specified in paragraph (a) above, has been provided by the transmitting firm to the receiving firm in accordance with the terms of the transmission agreement.

2. Where a transmitting firm has complied with the conditions set out in Article 4(1) of this Regulation for successful transmission of an order it shall not submit a transaction report pertaining to such order. The receiving firm shall submit a transaction report pertaining to such order of the information in Article 26(3), which will include all the following information provided by the transmitting firm:

(a) client information, including designation and additional client details

(b) short selling information relating to the client;

(c) where the order is aggregated for more than one client, information for each allocation;

(d) identification of the ultimate transmitting firm as per the 'buyer/seller transmitting the order identification' fields in Table 1 Annex I of this Regulation.

3. If a transmitting firm does not comply with at least one of the conditions under paragraph 1 of this Article, it shall be deemed not to have transmitted the order successfully for purposes of Article 26(4) of Regulation (EU) No 600/2014 and

(a) the transmitting firm shall itself submit a transaction report pertaining to the client(s) order filled by the third party, which will include all the information specified in Article 26(3) including a flag that the given report pertains to an transmitted order filled by a third party where the conditions for transmission were not satisfied.

(b) the receiving firm will treat the transmitting firm as its client and submit a transaction report accordingly.

4. A receiving firm shall validate information received from the transmitting firm for obvious errors and omissions before submitting a transaction report under Article 26 of Regulation (EU) 600/2014. Where obvious errors or omissions are detected, the receiving firm shall reject the information and notify the transmitting firm that it has rejected the information and request that the transmitting firm submits correct information before the end of the time period specified in the transmission agreement.

Article 5

Means of identifying the investment firm

1. Investment firms executing a transaction as defined in Article 3 of this Regulation shall be identified with a valid LEI code in the transaction report submitted under Article 26 of Regulation (EU) 600/2014. In cases where the executing entity is not eligible for a LEI that entity shall be identified pursuant to Article 6 (2) of this Regulation.

2. Investment firms shall ensure that the LEI code used is duly maintained and renewed according to the terms of any of the accredited Local Operating Unit of the Global Legal Entity Identifier System.

Article 6

Designation to identify the client

1. An investment firm shall designate a client that is a legal entity with the LEI code pursuant to Article 12(2) of this Regulation.

2. To designate a client that is a natural person, investment firms shall use the concatenation of the following in the specified order:

(a) The ISO 3166-1 alpha-2 (2 letter country code) of the nationality of the person, and

(b) The highest priority identifier obtainable as specified in Table 1 Annex II based on the nationality of the person.

3. The client identifier shall be assigned exclusively according to the priority set out in Table 1 Annex II. For each given natural person, the identifiers described in the Table as second priority shall not be used if a first priority identifier is obtainable. Identifiers described as third priority shall not be used if a first priority or second priority identifier are obtainable for that person.

4. Investment firms shall provide within each report for a transaction executed on behalf of a client that is a natural person the following information: full name, date of birth, country of residence and postcode.

5. Where a natural person is a national of more than one EEA country, the country code of the first nationality when sorted alphabetically by its ISO 3166-1 2 character code and the highest priority identifier obtainable related to the first nationality shall be used. For natural persons with non-EEA nationality, the highest priority identifier obtainable as specified in the line "all other countries" of Table 1 Annex II applies.

6. Where Table 1 Annex II refers to CONCAT the client must be identified by the investment firm using an identifier created from the concatenation of the following elements in the following order:

(a) The date of birth of the person in the format YYYYMMDD.

(b) The 5 first characters of the first name.

(c) The 5 first characters of the surname.

7. Common prefixes to names and titles should be excluded. First names and surnames shorter than 5 characters should be appended by '#' until there are 5 characters. All characters should be upper case. No apostrophes, hyphens or punctuation marks shall be used.

Article 7

Designation to identify the person within the investment firm

1. Where a person within the reporting firm makes the decision to acquire or dispose of a reportable financial instrument or to modify an existing contract in a reportable financial

instrument, that person shall be identified in fields 68-70 of Table 1 Annex I of this Regulation following the same approach as defined in Article 6 (2) of this Regulation.

2. For formal committees making decisions the committee shall be identified using a code (pre-fixed with “COM”) which is assigned to that committee and is unique, consistent and persistent. Investment firms shall keep adequate records of the composition of the committee and provide those to the competent authority upon request. A change in the composition of the committee shall not change the code assigned to that committee.

3. Informal committees and committees established on an ad-hoc basis, where no records according to paragraph 2 are kept, shall instead be identified by the person taking the primary responsibility for that investment decision.

4. Whenever a person rather than an algorithm, executes a transaction in a reportable financial instrument that person shall be identified in fields 71-73 of Table 1 Annex I following the same approach as defined Article 6 (2) of this Regulation.

5. In cases where more than one person is involved in the execution of the transaction, the last person in the chain shall be identified in fields 71-73 of Table 1 Annex I following the same approach as defined in Article 6 (2) of this Regulation.

Article 8

Designation to identify the computer algorithm within the investment firm

1. Where an algorithm within the reporting firm makes the decision to acquire or dispose of a reportable financial instrument or to modify an existing contract in a reportable financial instrument, the algorithm shall be identified in field 74 of Table 1 Annex I of this Regulation.

2. Where an algorithm, executes a transaction in a reportable financial instrument that algorithm shall be identified in field 75 of Table 1 Annex I of this Regulation.

3. Investment firms shall ensure that:

(a) an exclusive designation is given to each unique set of code or trading strategy that constitutes an algorithm;

(b) the same designation is always used when referring to the algorithm or version of the algorithm once assigned to it;

(c) the same designation applies for a specific algorithm code or trading strategy regardless of the products or markets that the algorithm applies to;

(d) an algorithm’s designation is unique over time.

Article 9

Designation to identify an applicable waiver and types of transactions

1. Investment firms shall identify the applicable waiver under which the transaction took place when the following two conditions apply:

(a) The transaction is undertaken under a pre-trade transparency waiver as prescribed under Articles 4 or 9 of of Regulation (EU) 600/2014

and

(b) The transaction report relates to a market-facing execution on a trading venue

2. Investment firms shall designate the applicable waivers with the flags specified in Table 1 Annex I of this Regulation.

Article 10

Designation to identify short sales

1. Investment firms shall identify a short sale when the following two conditions apply:

(a) the short sale has been concluded at the time of the execution of the transaction in accordance with Article 2(1)(b) of Regulation (EU) 236/2012 in respect of shares or sovereign debt

(b) the investment firm concluded the short sale on its own account or on behalf of a client.

2. Where an investment firm's client is the seller in the transaction, the investment firm shall be obliged to determine on a best effort basis whether its client had concluded a short sale.

3. Where an investment firm concluded a short sale on its own account, the investment firm shall indicate whether the short sale was undertaken in a market making or primary dealer capacity under an exemption in Article 17 of the Regulation (EU) 236/2012.

4. For the purposes of this Article, no differentiation between partial and full short sales shall be made.

5. In the event where an investment firm aggregates orders from multiple clients, the investment firm shall only mark the allocated transaction to the individual client provided that the given transaction constitutes a short sale.

Article 11

The relevant categories of financial instruments

The categories of financial instruments identified in Article 26(2) (c) of Regulation (EU) 600/2014 include the following types of instruments:

(a) Financial instruments where the underlying is an index and where at least one component of the index is a financial instrument which is admitted to trading or traded on a trading venue;

(b) Financial instruments based on baskets where at least one component of the basket is a financial instrument which is admitted to trading or traded on a trading venue.

Article 12

Conditions to develop, attribute, maintain and use legal entity identifiers

1. Member states shall ensure that legal entity identifiers are developed, attributed and maintained according to the principles and recommendations established by the Financial Stability Board in its report on the global legal entity identifier and by the regulatory oversight committee for the global legal entity identifier system.

2. Prior to the provision of the relevant investment service resulting in the investment firm's obligation to submit a transaction report under Article 26 of Regulation (EU) 600/2014 investment firms shall:

(a) obtain the LEI code of the clients that are eligible for a legal entity identifier;

(b) validate the format and content of the LEI code provided by the client ensuring that it fulfils the following conditions;

(i) The length and construction of the code are compliant with the ISO 17442 standard,

and

(ii) The identifier is validated against the global LEI database and it pertains to the actual client.

Article 13

Transaction reporting of activity by branches

1. Where an investment firm executes a transaction as set out in Article 3 of this Regulation, either wholly or partly through its branches, which are located inside or outside of the Union, it shall only report the transaction once and shall populate the relevant fields in Table 1 Annex I of this Regulation with the ISO country code for the branch to indicate which of the situations set out in paragraph 2 apply.

2. The relevant fields in Table 1 Annex I of this Regulation shall be populated with the ISO country code for the branch where any of the following conditions are applicable:

(a) the branch has the primary relationship with the client

(b) the branch has supervisory responsibility for the person responsible for the investment decision

(c) the branch has supervisory responsibility for the person responsible for the execution

(d) the transaction was concluded on a trading venue utilising the membership of the branch

3. For the purposes of this article:

(a) having the primary relationship with the client means maintaining the client relationship through on-going engagement with the client

(b) where the investment decision is made by a committee, the branch will have supervisory responsibility where it has supervisory responsibility for the person taking the primary responsibility for the decision made by the committee.

4. Where no branch is involved in the transaction or the investment firm is responsible for the activity set out in paragraph 2, the relevant fields in Table 1 Annex I of this Regulation shall be populated with the ISO country code for the home member state of the investment firm.

5. All transaction reports for transactions executed in whole or in part by the investment firm, including through its branches, shall be sent to the home competent authority of the investment firm.

Article 14

Methods and arrangements to report financial transactions

1. Transaction report submitted shall be provided in an electronic and machine readable form.

2. 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 as set out in Article 26(7) Regulation (EU) 600/2014 for trading venues and Article 16 Directive 2014/65/EU for investment firms;

(b) mechanisms for authenticating the source of the transaction report;

(c) appropriate precautionary measures to enable the timely resumption of reporting in the case of system failure;

(d) mechanisms for identifying errors and omissions within transaction reports;

(e) mechanisms to avoid the submission of duplicate transaction reports;

(f) mechanisms to avoid reporting of transactions that do not fall within the scope of Article 26(1) of Regulation (EU) 600/2014.

(g) mechanisms to avoid reporting of transactions in instruments that do not fall within the scope of Article 26(2) of Regulation (EU) 600/2014 as further defined in Article 11 of this Regulation.

(h) mechanisms for identifying transactions that are reportable but have not been reported.

3. Where the trading venue or investment firm becomes aware of errors or omissions within transaction reports, a failure to submit reports that should have been submitted, or reporting of transactions that are beyond the scope of Article 26(1) and (2) as further defined in Article 3 and 11 of this Regulation, it shall, without delay, notify the competent authority and correct the errors or omissions, cancel any reports that should not have been submitted and report any transactions that are reportable that have not been transaction reported. The requirement to correct or cancel erroneous reports or report omitted transactions shall not extend to errors or omissions which occurred more than 5 years before the date the firm became aware of such errors or omissions.

4. Investment firms shall have adequate arrangements in place to ensure they detect and correct errors in their transaction reports and that their transaction reporting is complete and accurate. These arrangements shall include comprehensive testing of their full reporting process and regular reconciliations of the firm's front-office trading records against data samples provided to the investment firm by the competent authority, where available. Where the competent authority does not provide such data samples the investment firm shall reconcile their front office trading records against the reports it has submitted to ARMs or to the competent authority. The reconciliations shall include checking the accuracy and completeness of the individual data fields and their compliance with the regulatory technical standards.

5. Investment firms shall have adequate arrangements in place to ensure that:

(a) the transaction reports submitted by the firm when viewed cumulatively accurately reflect the changes in position of the firm and/or its clients in the financial instrument at the time the changes in position took place; and

(b) the related fields in an individual transaction report are consistent, such that they accurately reflect the details of the transaction.

6. Where an investment firm has outsourced submission of its transaction reports to a third party, either directly to an ARM or trading venue or to another investment firm that in turn outsources submission to an ARM, the investment firm that has outsourced the submission of its reports shall, subject to paragraph 3 of Article 26(7) of Regulation (EU) 600/2014, retain responsibility for the timeliness, completeness and accuracy of its transaction reports and shall ensure that it has the arrangements set out above to ensure that its reporting is accurate and complete. The validations shall include checking the information sent by the investment firm to the third party where applicable and also checking that the information has been reported accurately by the third party to the investment firm's competent authority.

7. Where the ARM cancels or corrects a transaction report pursuant to an agreement with the investment firm, the investment firm shall ensure that it retains details of the corrections and cancellations provided to it by the ARM under Article 17(3) DRSP in order to be able to track the cancellations or corrections.

8. Trading venues shall have arrangements in place to enable them to detect errors and omissions in the transaction reports that the trading venue submits to the competent authority where the error or omission is caused by the trading venue itself. The trading venue shall also have arrangements in place to enable it to correct those errors or omissions that it becomes aware of and submit corrected transaction reports to the competent authority and the investment firm without delay.

Article 15

Determination of the most relevant market in terms of liquidity

1. The most relevant market in terms of liquidity for a financial instrument, hereinafter 'the most relevant market', shall be determined in accordance with paragraphs 2 to 8 of this article.

2. In the case of a share or other transferable security covered by Article 4(1)(44)(a) of Directive 2014/65/EU or of a unit in a collective investment undertaking that are admitted to trading or traded on a trading venue for the first time and/or where no trading history exists for that instrument, the most relevant market shall be the competent authority of the member state where the instrument was first admitted to trading or traded.

3. In the case of a share or other transferable security covered by Article 4(1)(44)(a) of Directive 2014/65/EU or of a unit in a collective investment undertaking which are not covered by paragraph 2 of this article, the most relevant market shall be determined each year according to the following criteria:

(a) For instruments admitted to trading on a regulated market, the most relevant market shall be the regulated market where the turnover for that instrument is highest.

(b) For instruments that are admitted to trading on a regulated market and on a multilateral trading facility, the most relevant market shall be the regulated market where the turnover for that instrument is highest.

(c) For instruments that are not admitted to trading on regulated markets, the most relevant market shall be the multilateral trading facility where the turnover for that instrument is the highest.

(d) The highest turnover shall be calculated by excluding all transactions executed in accordance with one of the pre-trade transparency waivers in article 4(1)(a) to (c) of Regulation 600/2014.

(e) The home competent authority for the trading venue with the highest turnover as determined in letter (a) or (b) or (c) and according to the calculation in letter (d) shall be the relevant competent authority for the given instrument.

4. In the case of a bond or other transferable security covered by Article 4(1) (44)(b) of Directive 2014/65/EU or of a money market instrument issued by an EEA issuer where the ultimate issuer is located in the EEA the most relevant market shall be the competent authority of the Member State where the registered office of the ultimate issuer is situated.

5. In the case of a bond or other transferable security covered by Article 4(1) (44)(b) of Directive 2014/65/EU or of a money market instrument issued by an EEA issuer where the ultimate issuer is not located in the EEA, the most relevant market shall be the competent authority of the Member State where the registered office of the issuer is situated.

6. In the case of a bond or other transferable security covered by Article 4(1) (44)(b) of Directive 2014/65/EU or of a money market instrument issued by a third country issuer which is not covered by paragraph 4 of this Article, the most relevant market shall be the Member State where that security was first admitted to trading or was first traded on a trading venue.

7. In the case of a derivative contract or a financial contract for difference or a transferable security covered by Article 4(1)(44)(c) of Directive 2014/65/EU, the most relevant market shall be:

(a) where the ultimate underlying security is a share or other transferable security covered by Article 4(1)(44)(a) of Directive 2014/65/EU which is admitted to trading on a regulated market or traded on an MTF, the Member State deemed to be the most relevant market in terms of liquidity for the underlying security, in accordance with paragraph 2 or 3;

(b) where the ultimate underlying security is a bond or other transferable security covered by 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 OTF, the Member State deemed to be the most relevant market in terms of liquidity for that underlying security, in accordance with paragraphs 4, 5 or 6 of this Article;

(c) where the ultimate underlying is a basket, the Member State where the derivative was first admitted to trading on a regulated market, or traded on an MTF.

(d) Where the ultimate underlying is not in (a) to (c) and where the immediate underlying of the derivative is a derivative:

(i) where the immediate underlying derivative is admitted to trading on a regulated market or traded on a MTF/OTF, the Member State that is the Relevant Competent Authority for the immediate underlying derivative or

(ii) where the immediate underlying derivative is not admitted to trading on a regulated market nor traded on a MTF/OTF, the Member State where the derivative itself was first admitted to trading on a regulated market, or traded on an MTF.

(e) In any case not covered by letters (a), (b), (c) and (d) of this paragraph, the relevant competent authority shall be the home competent authority of the trading venue where the derivative is traded.

8. In any case not covered by paragraphs 2 to 7 of this Article, the most relevant market shall be the Member State where the trading venue is located that first admitted the financial instrument to trading or that first traded the financial instrument.

Annex I

Table 1
Table of fields

	FIELD	DETAILS TO BE REPORTED	FORMAT TO BE REPORTED
1	Reporting entity identification code type	Type of code used to identify the entity executing the transaction	Legal entity : the word “LEI” or non-legal entity: ISO 3166-1 alpha-2 country code (2 letter country code) + the letters “NI” (National Identifier) or + the letters “PN” (Passport Number) or + the letters “CN” (Concatenated Number)
2	Reporting entity identification code	Code used to identify the entity executing the transaction. For legal entities: legal entity identifier Or For non-legal entities: see Annex II for details	Legal Entity Identifier: 20 alphanumerical characters or non-legal entity: ISO 3166-1 alpha-2 country code (2 letter country code) + National Identification Code up to 50 alphanumerical characters or +Passport Number up to 50 alphanumerical characters or + a concatenated code of 18 alphanumerical characters in the format YYYYMMDDXXXXXXXXXX
3	Submitting entity identification code type	Type of code used to identify the entity submitting the transaction report to the competent authority	Legal entity : the word “LEI” or non-legal entity: ISO 3166-1 alpha-2 country code (2 letter country code) + the letters “NI” (National Identifier) or + the letters “PN” (Passport Number) or

			+ the letters “CN” (Concatenated Number)
4	Submitting entity identification code	Code used to identify the entity submitting the transaction report to the competent authority	Legal Entity Identifier: 20 alphanumerical characters Or non-legal entity: ISO 3166-1 alpha-2 country code (2 letter country code) + National Identification Code up to 50 alphanumerical characters or + Passport Number up to 50 alphanumerical characters or + a concatenated code of 18 alphanumerical characters in the format YYYYMMDDXXXXXXXXXX
Buyer details			
5	Buyer identification code type	Type of code used to identify the acquirer of the legal title to the financial instrument.	Legal entity : the word “LEI” or non-legal entity: ISO 3166-1 alpha-2 country code (2 letter country code) + the letters “NI” (National Identifier) or + the letters “PN” (Passport Number) or + the letters “CN” (Concatenated Number) or 'INTERNAL': I or Anonymous order book without central counterparty: M
6	Buyer identification code	Code used to identify the acquirer of the legal title to the financial instrument	Legal Entity Identifier: 20 alphanumerical characters or non-legal entity ISO 3166-1 alpha-2 country code (2 letter country code) + National Identification Code up to 50 alphanumerical characters or + Passport Number up to 50 alphanumerical characters or

			+ a concatenated code of 18 alphanumerical characters in the format YYYYMMDDXXXXXXXXXX or Where buyer code type is I, the word 'INTERNAL' or Where buyer code type is M, ISO 10383 segment MIC (4 characters)
7	Country of the branch for the buyer	Where the buyer is a client, this field should identify the country of the branch of the investment firm having the primary relationship with the client as set out in Article 13(2). Where no branch was involved in the transaction or the primary relationship is held by the investment firm rather than the branch this should be populated with the country code of the investment firm. Where the buyer is not a client this field shall not be populated	ISO 3166-1 alpha-2 country code (2 letter country code)
The fields below are only applicable where the buyer is a natural person			
8	Buyer - first name (s)	Full first name of the buyer	Up to 100 alphanumerical digits
9	Buyer – surname (s)	Full surname(s) of the buyer	Up to 100 alphanumerical digits
10	Buyer – date of birth	Date of birth of the buyer	ISO 8601 date format: YYYY-MM-DD
11	Buyer - country of residence	Country of residence of the buyer	ISO 3166-1 alpha-2 country code (2 letter country code)
12	Buyer - post code	Post code of the buyer	Up to 50 alphanumerical characters
13	Buy decision maker code type	Type of code used to identify the person who makes the decision to acquire the financial instrument where different from the buyer - person with power of attorney or the	Legal entity : the word “LEI” or non-legal entity: ISO 3166-1 alpha-2 country code (2 letter country code)

		person acting under a discretionary mandate	+ the letters “NI” (National Identifier) or + the letters “PN” (Passport Number) or + the letters “CN” (Concatenated Number)
14	Buy decision maker code	Code used to identify the person who makes the decision to acquire the financial instrument where different from the buyer - person with power of attorney or the person acting under a discretionary mandate	Legal Entity Identifier: 20 alphanumerical characters or non-legal entity: ISO 3166-1 alpha-2 country code (2 letter country code) + National Identification Code up to 50 alphanumerical characters or +Passport Number up to 50 alphanumerical characters or + a concatenated code of 18 alphanumerical characters in the format YYYYMMDDXXXXXXXXXX
The fields below are only applicable where the decision maker is a natural person and where different from the buyer			
15	Buy decision maker - First Name	Full first name of the decision maker for the buyer	Up to 100 alphanumerical digits
16	Buy decision maker - Surname	Full surname(s) of the decision maker for the buyer	Up to 100 alphanumerical digits
17	Buy decision maker - Date of birth	Date of birth of the decision maker for the buyer	ISO 8601 date format: YYYY-MM-DD
18	Buy decision maker - Country of residence	Country of residence of the decision maker for the buyer	ISO 3166-1 alpha-2 country code (2 letter country code)
19	Buy decision maker - Post code	Post code of the decision maker for the buyer	Up to 50 alphanumerical characters
Seller details			
20	Seller identification code type	Type of code used to identify the disposer of the title to the financial instrument	Legal entity : the word “LEI” or non-legal entity: ISO 3166-1 alpha-2 country code (2 letter country code)+ the letters “NI” (National Identifier) or + the letters “PN” (Passport Number)

			or + the letters “CN” (Concatenated Number) or 'INTERNAL': I or Anonymous order book without central counterparty: M
21	Seller identification code	Code used to identify the disposer of the title to the financial instrument	Legal Entity Identifier: 20 alphanumerical characters or non-legal entity: ISO 3166-1 alpha-2 country code (2 letter country code) + National Identification Code up to 50 alphanumerical characters or + Passport Number up to 50 alphanumerical characters or + a concatenated code of 18 alphanumerical characters in the format YYYYMMDDXXXXXXXXXX or Where seller code type is I, the word 'INTERNAL' or Where seller code type is M, ISO 10383 segment MIC (4 characters)
22	Country of branch for the seller	Where the seller is a client, this field should identify the country of the branch of the investment firm having the primary relationship with the client as set out in Article 13(2). Where no branch was involved in the transaction or the primary relationship is held by the investment firm rather than the branch this should be populated with the country code of the investment firm. Where the seller is not a client this field should not be populated	ISO 3166-1 alpha-2 country code (2 letter country code)
The fields below are only applicable where the seller is a natural person			

23	Seller - First Name	Full first name of the seller	Up to 100 characters
24	Seller - Surname	Full surname(s) of the seller	Up to 100 characters
25	Seller - Date of birth	Date of birth of the seller	ISO 8601 date format: YYYY-MM-DD
26	Seller - Country of residence	Country of residence of the seller	ISO 3166-1 alpha-2 country code (2 letter country code)
27	Seller - Post code	Post code of the seller	Up to 50 alphanumerical characters
28	Sell decision maker code type	Type of code used to identify the entity who makes the decision to dispose of the financial instrument where different from the seller - entity with power of attorney or the entity acting under a discretionary mandate	Legal entity : the word “LEI” or non-legal entity: ISO 3166-1 alpha-2 country code (2 letter country code) + the letters “NI” (National Identifier) or + the letters “PN” (Passport Number) or + the letters “CN” (Concatenated Number)
29	Sell decision maker code	Code used to identify the entity who makes the decision to dispose of the financial instrument where different from the seller - entity with power of attorney or the entity acting under a discretionary mandate	Legal Entity Identifier: 20 alphanumerical characters or non-legal entity: ISO 3166-1 alpha-2 country code (2 letter country code) + National Identification Code up to 50 alphanumerical characters or +Passport Number up to 50 alphanumerical characters or + a concatenated code of 18 alphanumerical characters in the format YYYYMMDDXXXXXXXXXX
The fields below are only applicable where the decision maker is a natural person and where different from the seller			
30	Sell decision maker - First Name	Full first name of the decision maker for the seller	Up to 100 characters

31	Sell decision maker - Surname	Full surname(s) of the decision maker for the seller	Up to 100 characters
32	Sell decision maker - Date of birth	Date of birth of the decision maker for the seller	ISO 8601 date format: YYYY-MM-DD
33	Sell decision maker - Country of residence	Country of residence of the decision maker for the seller	ISO 3166-1 alpha-2 country code (2 letter country code)
34	Sell decision maker - Post code or ZIP code	Post code or Zip code of the decision maker for the seller	Up to 50 alphanumerical characters
Transmission			
35	Transmission of order(s) indicator	Indication as to whether the transaction results from an order transmitted by the reporting firm on behalf of a client to a third party where the conditions for transmission set out in Article 4 were not satisfied	Transmission of order(s): Y No transmission of order(s): N
36	Seller transmitting the order identification code type	Type of code used to identify the seller transmitting the order to the reporting firm where the conditions for transmission set out in Article 4 were satisfied	Legal entity : the word “LEI” or non-legal entity: ISO 3166-1 alpha-2 country code (2 letter country code) + the letters “NI” (National Identifier) or + the letters “PN” (Passport Number) or + the letters “CN” (Concatenated Number)
37	Seller transmitting the order identification code	Code used to identify the seller transmitting the order to the reporting firm where the conditions for transmission set out in Article 4 were satisfied	Legal Entity Identifier: 20 alphanumerical characters or non-legal entity: ISO 3166-1 alpha-2 country code (2 letter country code) + National Identification Code up to 50 alphanumerical characters or +Passport Number up to 50 alphanumerical characters or + a concatenated code of 18 alphanumerical characters in the format YYYYMMDDXXXXXXXXXX
38	Buyer transmitting the order identification code type	Type of code used to identify the buyer transmitting the order to the reporting firm where the conditions for transmission set out in Article 4	Legal entity : the word “LEI” or non-legal entity: ISO 3166-1 alpha-2

		were satisfied	country code (2 letter country code) + the letters “NI” (National Identifier) or + the letters “PN” (Passport Number) or + the letters “CN” (Concatenated Number)
39	Buyer transmitting the order identification code	Code used to identify the buyer transmitting the order to the reporting firm where the conditions for transmission set out in Article 4 were satisfied	Legal Entity Identifier: 20 alphanumerical characters or non-legal entity: ISO 3166-1 alpha-2 country code (2 letter country code) + National Identification Code up to 50 alphanumerical characters or +Passport Number up to 50 alphanumerical characters or + a concatenated code of 18 alphanumerical characters in the format YYYYMMDDXXXXXXXXXX
Transaction details			
40	Trading day	Date when the transaction was executed. For OTC transactions, the date when the parties agree the content of the following fields: quantity, quantity notation, price, price notation, currencies 1 and 2, price multiplier, instrument identification, instrument classification and underlying instrument, where applicable	ISO 8601 date format: YYYY-MM-DD UTC time
41	Trading time	Time when the transaction was executed. For OTC transactions, the time when the parties agree the content of the following fields: quantity, quantity notation, price, price notation, currencies 1 and 2, price multiplier, instrument identification, instrument classification and underlying instrument, where	ISO 8601 time format hh:mm:ss.0Z where the number of zeros after the ‘seconds’ is determined by the Article 50 MiFID II requirements UTC time

		applicable	
42	Trading capacity	Capacity in which the reporting firm executed the transaction as defined in Article 1	Principal: P Matched principal: M Agent: A
43	Quantity	Number of units of the financial instrument, the nominal value of bonds or number of lots on derivative contracts in the transaction	Up to 20 numerical digits with a decimal separator No negative or nil values Where applicable, values should be rounded and not truncated For spread bets, the quantity shall be the monetary value wagered per point movement in the ultimate underlying financial instrument
44	Quantity Notation	Indication as to whether the quantity reported is expressed in number of units, in nominal value or in monetary value	Number of units: U Nominal value: N Monetary value: V
45	Price	Traded price of the transaction excluding, where applicable, commission and accrued interest unless the instrument is traded with a dirty price In the case of option contracts, it is the premium of the derivative contract per underlying security or index In the case of spread bets it should be the reference price of the underlying instrument. Where no price is available, a default value shall be used If the agreed price is zero a price of zero should be used.	Up to 20 numerical digits with a decimal separator Where price reported in monetary terms, it shall be provided in the major currency unit Where applicable, values should be rounded and not truncated
46	Price notation	Indication as to whether the price and the strike price is expressed in monetary value, in percentage or in yield	Monetary value: M Percentage: P Yield: Y Where no price is available, the price notation shall be populated with N

47	Currency 1	Currency in which the price is expressed (where price notation is M) or in which the quantity is expressed (where quantity notation is V)	ISO 4217 Currency Code, 3 alphabetical characters
48	Currency 2	Currency in which the reference price of the ultimate underlying instrument is expressed (where applicable)	ISO 4217 Currency Code, 3 alphabetical characters
49	Price multiplier	Number of units of the underlying instrument represented by a single derivative contract	Up to 10 numerical digits with a decimal separator In case of non-derivative financial instruments: 1
50	Consideration	Total monetary value of the transaction based on settlement values - excluding commission and accrued interest, except where these are included in the price. The information reported in the price, price notation, currency 1, currency 2, quantity, quantity notation, and price multiplier should be consistent with the value in this field. Where there is a zero price the consideration should be zero.	Up to 20 numerical digits with a decimal separator
51	Venue	Identification of the venue where the transaction was executed	MiFID trading venue or non-EEA valid trading market: ISO 10383 segment MIC (4 characters) For financial instruments admitted to trading or traded on a trading venue, where the transaction on that financial instrument is executed over-the-counter: XOFF 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 (SI): ISO 10383 MIC (four characters) for that SI

			Where an investment firm does not know it is trading with another investment firm acting as a SI: XOFF For financial instruments where the underlying is a financial instrument admitted to trading or traded on a trading venue and where the transaction on the main financial instrument is executed over-the-counter: XXXX For financial instruments traded on a non-EEA valid trading venue for which a valid MIC is not assigned: NEEA
52	Country of the branch whose market membership was used for executing the transaction	The ISO 3166 two character country code shall be used to identify the country of the branch of the reporting firm whose market membership was used to execute the transaction. Where the market membership of the investment firm rather than that of the branch was used this should be populated with the country code of the investment firm. Where the transaction was not executed on a trading venue this field should not be populated	ISO 3166-1 alpha-2 country code (2 letter country code)
Instrument details			
53	Instrument identification code type	Code type used to identify the financial instrument	I = ISIN, A = AII
54	Instrument identification code	Code used to identify the financial instrument	Where Instrument identification code type is I, ISO 6166 ISIN Where Instrument identification code type is A, AII venue + Exchange Product Code (16 alphanumerical characters)
55	Instrument classification type	Taxonomy type used to classify the financial instrument	C = ISO 10962 CFI code

56	Instrument classification	Taxonomy used to classify the financial instrument	ISO 10962 CFI code
57	Ultimate underlying instrument identification code type	Code type used to identify the ultimate underlying	I = ISIN, A = AII, L = LEI, C = Country Code, N=Index Name
58	Ultimate underlying instrument code	ISIN code of the Ultimate Underlying For ADR's, GDR's and similar instruments, the code of the instrument on which the instruments is based. For Convertible bonds, the code of the instrument in which the bond can be converted. For derivatives or other instruments which have an underlying, the ultimate underlying instrument code, when the ultimate underlying is admitted to trading, or traded on a trading venue. In case the instrument is referring to an issuer, rather than to one single instrument, the LEI code of the Issuer, or the country code, in case the issuer is a Government, state or municipal. In case the underlying or the ultimate underlying is an Index, the ISIN code for that index, or when the index does not have an ISIN, the name of the Index. When the underlying is a basket, all the identifying code for each constituent of the basket that is admitted to trading or is traded on a trading venue.	ISO 6166 ISIN Code Or AII code Or ISO 17442 LEI Code Or ISO 3166-1 alpha-2 country code (2 letter country code) Or 25 alphanumerical characters for the Index Name

59	Put/call identifier	Indication as to whether the derivative contract is a call or a put.	P = Put C= Call
60	Strike price	Strike price of an option or warrant.	Up to 10 numerical digits with a decimal separator Where strike price reported in monetary terms (strike price notation: M), it shall be provided in the major currency unit
61	Option style (exercise)	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).	E = European S = Asian B = Bermudan A = American
62	Maturity date	Original date of expiry of the reported financial instrument.	ISO 8601 date in the format YYYY-MM-DD
Other relevant information			
63	Result of the exercise	Indication as to whether the reported transaction results from an option, warrant, convertible bond or other financial instrument having been exercised	Exercise: Y No exercise: N
64	Delivery type	Indication as to whether the transaction is settled physically or in cash	Physically settled: P Cash settled: C Optional for counterparty or when determined by a third party : O
65	Up-front payment	Monetary value of any up-front payment received or paid by the seller	Up to 10 numerical digits with a decimal separator 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
66	Up-front payment currency	Currency in which the up-front payment is expressed	ISO 4217 Currency Code, 3 alphabetical characters
67	Modification of the contract	Indication as to whether a increase or decrease of notional has taken place	Increase: I Decrease: D
68	Trader identification code	Code type used to identify the	ISO 3166-1 alpha-2 country code (2

	type (investment decision)	person or the committee within the reporting firm responsible for the execution.	letter country code)+ the letters “NI” (National Identifier) or + the letters “PN” (Passport Number) or + the letters “CN” (Concatenated Number) or In case of a formal committee: COM
69	Trader identification code (investment decision)	Code used to identify the person or the committee within the reporting firm who is responsible for the investment decision If the investment decision was made by a formal committee within the investment firm, this field shall be populated with a unique code starting with the prefix “COM” as defined in Article 7(2) of this Regulation.	ISO 3166-1 alpha-2 country code (2 letter country code)+ National Identification Code up to 50 alphanumerical characters or +Passport Number up to 50 alphanumerical characters or + a concatenated code of 18 alphanumerical characters in the format YYYYMMDDXXXXXXXXXX Or a code up to 50 alphanumerical digits starting with the prefix “COM”
70	Country of branch for trader (investment decision)	The ISO 3166 two character country code shall be used to identify the country of the branch of the reporting firm for the person or committee responsible for the investment decision, as set out in Article 13(2). Where the person or committee responsible for the investment	ISO 3166-1 alpha-2 country code (2 letter country code)

		decision was not a person or committee for a branch but a person or committee of the investment firm this should be populated with the country code of the investment firm.	
71	Trader identification code type (execution)	Code type used to identify the person within the reporting firm responsible for the execution	ISO 3166-1 alpha-2 country code (2 letter country code)+ the letters “NI” (National Identifier) or + the letters “PN” (Passport Number) or + the letters “CN” (Concatenated Number)
72	Trader identification code (execution)	Code used to identify the person within the reporting firm responsible for the execution	ISO 3166-1 alpha-2 country code (2 letter country code)+ National Identification Code up to 50 alphanumerical characters or +Passport Number up to 50 alphanumerical characters or + a concatenated code of 18 alphanumerical characters in the format YYYYMMDDXXXXXXXXXX
73	Country of branch for trader (execution)	The ISO 3166-1 two character country code shall be used to identify the country of the branch for the person responsible for the execution of the transaction, as set out in Article 12(2). Where no branch was involved in the execution of the transaction, this should be populated with the country code of the investment firm.	ISO 3166-1 alpha-2 country code (2 letter country code)
74	Algorithm identification code (investment decision)	Code used to identify the algorithm within the reporting firm responsible for the investment decision (Article 8 of this Regulation)	Up to 50 alphanumerical characters
75	Algorithm identification code (execution)	Code used to identify the algorithm within the reporting firm responsible for the execution (Article 8 of this Regulation)	Up to 50 alphanumerical characters

76	Waiver indicator	Indication as to whether the transaction was executed under a pre-trade waiver in accordance with Articles 4 and 9 of MiFIR	For all instruments: 'L' = Large in scale For equity instruments: 'R' = Reference price transaction 'N' = Negotiated transactions in liquid financial instruments 'O' = Negotiated transactions in illiquid financial instruments 'P' = Negotiated transactions subject to conditions other than the current market price of that equity financial instrument. For non-equity instruments: 'S' = Above specific size transaction 'I' = Illiquid instrument transaction
77	Short selling indicator	Indication as to whether the seller is conducting a short sale as defined in Article 2(1)(b) of Regulation (EU) 236/2012 where the seller is the investment firm or a client of the investment firm and whether the transaction was carried out in a market making or primary dealer capacity under an exemption in Article 17 of Regulation (EU) 236/2012 Where the seller is not the investment firm or a client of the investment this field will not be applicable.	Short sale with no exemption: Y Short sale with exemption: E No short sale: N
78	OTC post-trade indicator	Indicator as to the type of transaction in accordance with Articles 20(3)(a) and 21(5)(a) of Regulation (EU) 600/2014	
79	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	Y: the transaction reduces the risk in an objectively measurable way. N: the transaction does not reduce the risk in an objectively measurable way.
80	Transaction Reference Number	Unique identification number, internal to the reporting firm, for each transaction report	Up to 52 alphanumerical characters.

		For transactions executed directly on a trading venue, this number shall be generated by trading venues and disseminated to both the buyer and the seller parties who shall persist it in transaction reporting.	
81	Report status	Indication as to whether the transaction report is new or a cancellation	New: N Cancellation: C

Annex II

Table 1
National client identifiers for natural persons

ISO 3166 – 1 alpha 2	Country Name	1st priority	2nd priority	3rd priority
AT	Austria	National Identifier	To be confirmed	To be confirmed
BE	Belgium	Belgian National Number (Numéro de registre national – Rijksregisternummer)	CONCAT	
BG	Bulgaria	CONCAT		
CY	Cyprus	National Passport Number	CONCAT	
CZ	Czech Republic	National identification number (Rodné číslo)	Passport Number	CONCAT
DE	Germany	Personal Identity Card Number (Personalausweisnummer)	National Passport Number	CONCAT
DK	Denmark	Personal identity code 10 digits alphanumerical: DDMMYYXXXX	National Passport Number	CONCAT
EE	Estonia	National Passport Number (isikukood)	CONCAT	
ES	Spain	Tax identification number (NIF : Número de identificación fiscal)		
FI	Finland	Personal identity code	National Passport Number	CONCAT
FR	France	National Passport Number	National Identity Card	CONCAT
GB	United Kingdom	UK National Insurance number	National Passport Number	CONCAT
GR	Greece	10 DSS digit investor share	National Passport Number	CONCAT
HR	Croatia	CONCAT		
HU	Hungary	CONCAT		
IE	Ireland	CONCAT		
IS	Iceland	National Passport Number (Kennitala)	CONCAT	

ISO 3166 – 1 alpha 2	Country Name	1st priority	2nd priority	3rd priority
IT	Italy	Fiscal code (Codice fiscale)		
LI	Liechtenstein	National Passport Number	CONCAT	
LT	Lithuania	Personal code (Asmens kods)	National Passport Number	CONCAT
LU	Luxembourg	National Passport Number	National Identity Card Number	CONCAT
LV	Latvia	Personal code (Personas kods)	CONCAT	
MT	Malta	National Passport Number	CONCAT	
NL	Netherlands	National Passport Number	National identity card number	CONCAT
NO	Norway	11 digit personal id (Personnummer)	National Passport Number	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	National Passport Number	CONCAT
SI	Slovenia	Personal Identification Number (EMŠO: Enotna Matična Številka Občana)	CONCAT	
SK	Slovakia	Personal number (Rodné číslo)	National Passport Number	CONCAT
All other countries		**National Passport Number**	**CONCAT**	

RTS 33: Draft RTS on obligation to supply financial instrument reference data

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and in particular Article 27(2), Article 27(3) thereof,

Whereas:

(1) The instrument reference data is essential information that enables competent authorities to fulfil their supervisory duties under Regulation (EU) 600/2014 (MiFIR) and Regulation (EU) 596/2014 (MAR), instrument reference data is also essential to validate the data received in transaction reports. In addition, such data facilitates the exchange of transaction reports between competent authorities.

(2) Article 27 of MiFIR and Article 4 of MAR establish a requirement on the provision of reference data to the competent authorities. Considering the common purpose of the two provisions and the common reference data elements to be provided it is important to ensure that the two requirements are fully aligned.

(3) In order to ensure the objectives above, this regulation specifies the list of reference data fields to be reported, the methods and arrangements for supplying reference data and the systems and controls that the relevant entities handling the data should have in place to ensure that the instrument reference data is correct, complete and delivered in a timely fashion.

(4) In order to improve the quality of the reference data, this regulation clarifies the exact scope of financial instruments for which reference data should be submitted by setting the specific criteria that determine the exact moment when an instrument should be included in the reference data submissions.

(5) In order to capture all end of the day changes in reference data for a given financial instrument, this regulation requires the submission of such reference data once per day after the end of the trading day but before the end of the day.

(6) In order to ensure that competent authorities and ESMA receive correct, complete and timely reference data, this regulation requires trading venues and systematic internalisers to have adequate systems and controls in place. As competent authorities and ESMA also handle the reference data, this regulation set out requirements to ensure correct, complete and timely delivery of this data by competent authorities to ESMA and to ensure the correct, complete and timely distribution of this reference data by ESMA to competent authorities.

(7) In order to enable competent authorities to validate the data received and to correctly identify the instruments traded, trading venues are required to include in the reference data the instrument code type (ISIN or AII) used as the method of identification for financial instruments per segment Market Identifier Code (MIC). As ESMA will publish this information on its website together with the same set of reference data as received pursuant to Article 27(1), investment firms will know which instrument code type they will have to use in their transaction reports.

HAS ADOPTED THIS REGULATION:

CHAPTER I
General

Article 1
Subject matter and scope

This regulation lays down the detailed rules supplementing Articles 27 of Regulation (EU) No xx/xxxx [MiFIR].

Article 2
Definitions

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

(a) ‘Admission to trading’ has the meaning given in Article 51 of the Commission Directive (EU) No 2014/65/EU [MiFID II].

(b) ‘Specified list’ means a definite and pre-defined list of individual instruments for which trading is allowed on a given multilateral trading facility, organised trading facility or systematic internaliser.

(c) ‘Trading commencement’ means the moment at which an order or a quote is placed on a given trading venue or systematic internaliser or from the moment of the first trade takes place.

CHAPTER II

Methods and arrangements for supplying reference data

Article 3

Form and content to be reported as instrument reference data

1. Submissions of instrument reference data shall include the fields, formats and contents prescribed in the technical specifications in Table 1 of Annex I of this Regulation.

2. Regulated markets shall provide instrument reference data pursuant to paragraph (1) for financial instruments admitted to trading.

3. Multilateral trading facilities organised trading facilities and systematic internalisers that use a specified list of financial instruments shall provide instrument reference data pursuant to paragraph (1) for those financial instruments included in the specified list.

4. Multilateral trading facilities, organised trading facilities and systematic internalisers that do not use a specified list of financial instruments shall provide instrument reference data pursuant to paragraph (1) for instruments traded on those markets or for which orders or quotes were placed on those markets.

Article 4

Frequency of submissions of financial instruments reference data

Trading venues and systematic internalisers shall submit instrument reference data to the Home competent authority once per working day and no later than 21:00 CET.

Article 5

Use of Instrument Identifiers

1. For instrument reference data purposes, trading venues and systematic internalisers shall use one of the following instrument code types to identify financial instruments:

(a) Instrument Securities Identifier Number (ISIN)

(b) Alternative Instrument Identifer (AII)

2. Where a trading venue or systematic internaliser chooses to use both instrument code types, the trading venue shall ensure a single instrument code type is used per market segment and segment Market Identifier Codes are applied accordingly.

3. Trading venues and systematic internalisers shall notify the home competent authority of the following details:

(a) Segment Market Identifier Code(s) of the trading venue or systemic internaliser.

(b) Instrument code type, as specified in paragraph 1, used as the method of identification for financial instruments admitted to trading or traded per segment Market Identifier Code.

Article 6

Exchange and use of financial instrument reference data

1. Competent authorities and ESMA shall establish arrangements designed to ensure that the financial instrument reference data is available to all competent authorities in a timely manner.

2. All competent authorities shall use the consolidated financial instrument reference data for a given day to validate the financial instruments of the transactions executed on that given day by investment firms pursuant to Article 26 of Regulation (EU) No 600/2014.

3. All competent authorities shall use the consolidated financial instrument reference data to route transaction reports in accordance with Article 14 of Regulation on transaction reporting.

CHAPTER III

Organisational requirements

Article 7

Effective reception of financial instrument reference data

1. Trading venues and systematic internalisers shall have policies, arrangements and technical capabilities in place to be able to comply with the technical specifications determined by the competent authority to whom they submit the reference data, for the purposes of the trading venues or systematic internalisers connecting to the competent authority's system.

2. Trading venues and systematic internalisers shall have policies, arrangements and technical capabilities in place to ensure completeness and accuracy of the instrument reference data before submitting the data to their Home competent authority. Where LEI codes, ISIN codes or AII codes are included in the instrument reference data, trading venues and systematic internalisers shall ensure those codes are valid in terms of content and format.

Article 8

Back-up facilities

1. The systems used by the trading venues and systematic internalisers shall be well adapted to the activity which takes place through them and robust enough to ensure continuity and regularity in the performance of the services provided.

2. In order to comply with the obligation under Article 27 of Regulation (EU) No 600/2014 at all times, trading venues and systematic internalisers shall periodically review and evaluate their technical infrastructures, and associated process for governance, accountability and sign-off and associated business continuity arrangements. Trading venues and systematic internalisers shall act on the basis of these reviews and evaluations to remedy deficiencies.

3. Trading venues and systematic internalisers shall be able to demonstrate on an on-going basis that their systems have sufficient stability by having effective business continuity arrangements to address disruptive incidents.

4. The business continuity arrangements shall cover, at a minimum:

(a) all processes, escalation procedures and related systems which are critical to ensure that the trading venue or systematic internaliser comply with their obligation under Article 27 MiFIR, including any relevant outsourced service;

(b) an adequate range of possible scenarios related to the operation of the systems which require specific continuity arrangements including at least system failures, natural disasters, communication disruptions, loss of key staff and inability to use the premises regularly used. The business continuity plan shall foresee short term and medium term contingencies;

(c) duplication of hardware components to allow for failover to 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 to ensure communication inside the trading venue or systematic internaliser and between the trading venue or systematic internaliser and the entities providing the data as well as those receiving the data;

(e) the procedures for moving to and operating the system from a back-up site;

(f) the arrangements to ensure a minimum service level of the critical functions and the expected timing of the completion of the full recovery of those processes;

(g) the maximum acceptable recovery time for business processes and systems, having in mind the deadlines for submitting the information;

(h) staff training on the operation of the business continuity arrangements, individuals' roles including a specific security operations team ready to react immediately to a system disruption;

(i) an on-going programme for testing, evaluation and review of the business continuity arrangements including procedures for modification of the arrangements in light of the results of that programme.

5. The trading venue or systematic internaliser shall promptly report to its Home competent authority and make public any interruptions of services or connection disruptions as well as the time estimated to resume a regular service. The trading venue or systematic internaliser shall inform its competent authority about any other disruption to the performance of the system.

Article 9
Data Quality

1. Trading venue or systematic internaliser shall set up and maintain appropriate arrangements to identify submissions that are incomplete or contain obvious errors. At a minimum, the trading venue or systematic internaliser shall perform periodic validations for fields, formats and contents according to the technical specifications prescribed in Annex I of this Regulation.

2. Where the trading venue or systematic internaliser determines that the submitted instrument reference data is incomplete or contains erroneous information, it shall promptly notify the Home competent authority that the data is incomplete or contains erroneous information and correct it.

3. Trading venues or systematic internalisers shall correct erroneous and incomplete submissions immediately after they become aware of those erroneous or incomplete submissions.

4. Competent authorities and ESMA shall set up and maintain appropriate arrangements to identify on receipt submissions that are incomplete or contain information that is likely to be erroneous. These arrangements shall ensure at a minimum that a validation is performed for the fields, formats and contents according to the technical specifications prescribed in Annex I of this Regulation.

Article 10
Entry into force

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

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

Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]

Annex I

Table 1
Table of fields

Field	Details to be reported	Format
Instrument Classification	Taxonomy used to classify the financial instrument	ISO 10962 CFI Code
Instrument Identifier Code	Code used to identify the financial instrument	Where Instrument identification code type is I, ISO 6166 ISIN Where Instrument identification code type is A, AII venue + Exchange Product Code (16 alphanumerical characters)
Type of Identifier of the financial instrument	Code type used to identify the financial instrument	I = ISIN, A = AII
Instrument Full Name	Full name or description of the financial instrument	Up to 150 alphanumerical characters
Issuer Identifier	Legal entity identifier code (LEI)	ISO 17442 LEI Code
Ultimate Issuer Identifier	Legal entity identifier code (LEI) of the ultimate parent of the issuer	ISO 17442 LEI Code
Total Number Of Issued Financial Instruments	Total number of shares issued by the company. It does not represent the free float or the number of shares which were distributed through a public offer	Up to 15 digits
Trading Venue	Segment MIC for the trading venue or systematic internaliser.	ISO 10383 MIC Code (4 characters)
Date Of Admittance	Date of admittance on the trading venue or the first data the instrument was traded or an order was received on the trading venue or Systemic Internaliser.	ISO 8601 date format: YYYY-MM-DD
Termination Date	It should correspond to the date when the equity is delisted from the relevant trading venue when applicable. ISO 8601 date format:	ISO 8601 date format:

	YYYY-MM-DD	YYYY-MM-DD
Issuer sub Type	Type of issuer: Financial or nonfinancial.	N = Nonfinancial F = Financial
Bond type	Bond type according to Article xx of TTF.	
Total Issued Nominal Amount	Total issued nominal amount To be populated for debt instruments only	Up to 19 digits with a decimal separator.
Nominal Value Per Unit/Minimum Traded Value	Nominal value of each instrument. If not available, the minimum traded value should be populated To be populated for debt instruments only	Up to 19 digits with a decimal separator.
Currency Of Nominal Value	Currency of the nominal value for debt instruments and currency code 1 for swaps.	ISO 4217 Currency Code, 3 alphabetical characters
Currency Code 2	Currency code for swaps To be populated for swaps only	ISO 4217 Currency Code, 3 alphabetical characters
Maturity Date	Original date of expiry of the reported financial instrument	ISO 8601 date format: YYYY-MM-DD
Fixed Rate	The fixed rate percentage To be populated for fixed rate Debt instruments only.	Up to 19 digits with a decimal separator.
Identifier Of The Index/Benchmark Of A Floating Rate Bond+ Bp At Issuance	Where an identifier exists; Where no identifier exists, standardized names will be necessary (e.g.:EURIBOR6M+ XX bp, LIBOR3M-XX bp), etc To be populated for debt instruments only	Up to 25 alphanumerical characters

Seniority Of The Bond	The database should identify the type of bond: senior debt, mezzanine, subordinated or junior.	P = Senior Debt M = Mezzanine S = Subordinated Debt J = Junior Debt
Issuance Price	Issuance price	Up to 19 digits with a decimal separator.
Issuance Price Notation	Currency of the issuance price	ISO 4217 Currency Code, 3 alphabetical characters
Redemption value	Amount the holder receives at maturity expressed as a percentage of the face amount of the bond, or as a cash amount	Up to 19 digits with a decimal separator.
Currency Of The Reimbursement	Currency of the reimbursement price	ISO 4217 Currency Code, 3 alphabetical characters
Price Multiplier	Number of units of the underlying instrument represented by a single derivative contract	Up to 10 numerical digits with a decimal separator Non-derivative financial instruments: 1
Type of Identifier of Ultimate Underlying instrument	Code type used to identify the ultimate underlying	I = ISIN, A = AII, L = LEI, C = Country Code, N=Index Name

Identifier Of The Ultimate Underlying	ISIN code of the Ultimate Underlying For ADR's, GDR's and similar instruments, the code of the instrument on which the instruments is based. For Convertible bonds, the code of the instrument in which the bond can be converted. For derivatives or other instruments which have an underlying, the ultimate underlying instrument code, when the ultimate underlying is admitted to trading, or traded on a trading venue. For derivatives or other instruments which have an underlying, when the ultimate underlying is not admitted to trading, or traded on a trading venue. In case the instrument is referring to an issuer, rather than to one single instrument, the LEI code of the Issuer, or the country code, in case the issuer is a Government, state or municipal. In case the underlying or the ultimate underlying is an Index, the ISIN code for that index, or when the index does not have an ISIN, the name of the Index. When the underlying is a basket, all the identifying code for each constituent of the basket that is admitted to trading or is traded on a trading venue.	ISO 6166 ISIN Code Or AII code Or ISO 17442 LEI Code Or ISO 3166-1 alpha 2 country code (2 letter country code) Or 25 alphanumerical characters for the Index Name
Asset Class	Asset class of the underlying instrument This field should only be populated	C = Commodity I = Interest Rate

	for instruments that have a non-financial instrument or commodity as underlying	F = Foreign Exchange
Base Product	Base product for the underlying asset class This field should only be populated for instruments that have a non-financial instrument or commodity as underlying	When Asset Class is Commodity: • Agricultural • Base Product • Energy • Environmental • Freight • Index • Metals • Multi Commodity Exotic When Asset Class is Interest Rate: • The ISO 4217 Currency Code for the currency code When Asset Class is Foreign Exchange: • FX Spot
Sub-Product	The Sub Product for the underlying asset class This field should only be populated for instruments that have a non-financial instrument or commodity as underlying	When Base Product is Agricultural: • Dairy • Forestry • Grains Oil Seeds • Livestock • olive oil • Softs When Base Product is Energy: • Coal • Elec • Inter Energy • Nat Gas

		• Oil When Base Product is Environmental: • Emissions • Weather When Base Product is Freight: • Not populated When Base Product is Index: • Not populated When Base Product is Metals: • Non Precious • Precious When Base Product is Multi Commodity Exotic: • Not populated When Asset Class is Interest Rate: • EONIA • EONIA SWAP • EURIBOR • EURODOLLAR • Euroswiss • GCF REPO • ISDAFIX • LIBOR • TIBOR When Asset Class is Foreign

		Exchange: • The ISO 4217 Currency Code for the currency 1 code concatenated with the character '/' and concatenated with The ISO 4217 Currency Code for the currency 2 code
Further Subproduct Type	This field should only be populated for instruments that have a non-financial instrument or commodity as underlying	When Sub-Product is Coal: • Not Populated When Sub-Product is Dairy: • Not Populated When Sub-Product is Electricity: • Base load • Financial Transmission Rights • Peak load When Sub-Product is Emissions: • CER • ERU • EUA • EUAA When Sub-Product is Forestry: • Not Populated When Sub-Product is Grains Oil Seeds: • Feed Wheat

		When Sub-Product is Inter Energy: • Not Populated When Sub-Product is Livestock: • Not Populated When Sub-Product is Nat Gas : • GASPOOL • LNG • NBP • NCG • TTF When Sub-Product is Non Precious: • Aluminium • Aluminium Alloy • Cobalt • Copper • Iron ore • Lead • Molybdenum • NASAAC • Nickel • Steel • Tin • Zinc When Sub-Product is Oil: • Bakken • Biodiesel • Brent • Brent NX • Canadian • Condensate • Diesel

		• Dubai • ESPO • Ethanol • Fuel Oil • Gasoil • Gasoline • Heating Oil • Jet Fuel • Light Louisiana Sweet (LLS) • Mars • Naptha • NGL • Urals • WTI When Sub-Product is olive oil: • Lampante When Sub-Product is Precious: • Gold • Silver When Sub-Product is Softs: • Cocoa • Robusta Coffee • White Sugar When Sub-Product is Weather: • Not Populated When Asset Class is Interest

		Rate: • The Term of the contract. When in days, number of days concatenated with D. • When in weeks, number of weeks concatenated with W. • When in months, number of months concatenated with M. • When in years, number of years concatenated with Y. When Asset Class is Foreign Exchange: • FX Cross Rates • FX Emerging Markets • FX Majors
Transaction Type	This field should only be populated for instruments that have a non-financial instrument or commodity as underlying	When Asset Class is Commodity: • Futures • Options • TAPOS • SWAPS • Minis • OTC • Outright • Crack • Differential When Asset Class is Interest Rate: • Not populated When Asset Class is Foreign

		Exchange: • Not populated
Settlement Type	This field should only be populated for instruments that have a non-financial instrument or commodity as underlying	When Asset Class is Commodity: • Not populated When Asset Class is Interest Rate: • Not populated When Asset Class is Foreign Exchange: • Cash settled • Physically delivered
Final Price Type	This field should only be populated for instruments that have a non-financial instrument or commodity as underlying	When Asset Class is Interest Rate: • Not populated When Asset Class is Foreign Exchange: • Not populated When Asset Class is Commodity • Argus/McCloskey • Baltic • Exchange • globalCOAL

		• IHS McCloskey • Platts
Underlying Index Country	Country Of The Underlying Index To be populated only when the underlying is an Index.	ISO 3166-1 alpha 2 country code (2 letter country code)
Strike price (cap/floor rate)	Exercise, Strike or cap/floor price	Up to 10 numerical digits with a decimal separator
Strike price Notation	Currency of the Strike Price	ISO 4217 Currency Code, 3 alphabetical characters
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 does not have to be populated for ISIN instruments.	E= European S= Asian B= Bermudan A= American
Option type	Indication as to whether the derivative contract is a call or a put.	P = Put C= Call
Delivery type	Indication as to whether the financial instrument is settled physically or in cash.	P = Physically Settled C = Cash settled O = Optional for counterparty or when determined by a third party

RTS 34: Draft regulatory technical standards on obligation to maintain records of orders

COMMISSION DELEGATED REGULATION (EU) No …/..

of [date]

supplementing Directive (EU) No 2014/65/EU of the European Parliament and of the Council on markets 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/EU [include a reference to OJ publication details in a footnote] of the European Parliament and the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, and in particular Article 25(3) thereof.

Whereas:

(1) Order data is essential information for the purpose of market supervision. Along with transaction data, it allows for the detection of market manipulation and comprehensive analysis of functioning of the markets.

(2) In order to ensure that order data contains the relevant information and is comparable across trading venues, this Regulation specifies the minimum requirements concerning content of the order data to be maintained by the operators of trading venues.

(3) ESMA is conscious that prescribing a specific format in which the records should be maintained might result in operational difficulties for trading venues. Therefore the trading venues are permitted to keep the relevant data according to their own classifications and protocols under the condition that upon request of the competent authority such data will be provided in the format prescribed in this Regulation.

(4) ESMA considers that for the purpose of detection and investigation of market manipulation practices it is essential to enable identification of the relevant parties involved, including the member or participant which transmitted the order, the person or algorithm responsible for the investment decision and execution of the order, the non-executing broker and the client on behalf of which the order is submitted.

(5) In order for identification of such parties to be timely and effective, trading venues should maintain designations for the above mentioned parties for all the orders they receive. Furthermore, these designations should be consistent with the ones used for the purpose of transaction reporting, allowing in this manner for comparability of order and transaction data and therefore for comprehensive surveillance of the market.

(6) The exact date and time of any event that affects the order is also necessary to track the order from its receipt by the trading venue until its removal from the order book and to allow for understanding of the changes to the order throughout its lifetime. Therefore trading venues should maintain information about date and time of all the relevant events and these data should be accurate and specified with a sufficient level of granularity. Additionally, a sequence number should be assigned to the event in order to determine the sequence of the events when two or more events take place at the same time.

(7) Specification of the position of the orders in the order book allows for the reconstruction of the order book and for analysis of the sequence of execution of orders. ESMA is conscious that the position assigned to the order depends on how the priority is determined by the trading system. Therefore, this Regulation obliges trading venues to assign and maintain details of the priority of orders according to the price visibility-time priority or to the size priority method.

(8) Unique identification of all the orders is crucial for the analysis of the order data. Furthermore, ESMA believes that it is important to have an identifier generated by a trading venue to link orders with the corresponding executed transactions. Therefore, this Regulation sets out rules for the identification of the orders and executed transactions.

(9) Trading venues should store information on how the order should be handled by the matching engine according to the instructions submitted with the order. While the detailed information on specific order instructions is important and therefore should be maintained by a trading venue, ESMA acknowledges that, given an unlimited number of existing and potential order types, additional high-level information would be beneficial for the purpose of order data analysis. For this reason a simplified approach is set out in this Regulation, obliging a trading venue to classify an order type into the two generic categories: limit orders and stop orders.

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

(11) In accordance with Article 10 of 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)(5), ESMA has

conducted open public consultations on such draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the ESMA Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation.

Article 1
Subject matter and scope

(1) This regulatory technical standard lays down the detailed rules supplementing Article 25(2) of MiFIR.

(2) The operator of a trading venue shall maintain, at a minimum, the details of orders set out in this Regulation and in Table 1 of Annex I of this Regulation.

(3) Where Table 1 or any part of this Regulation prescribes a specific format for a given order detail, the trading venue shall be permitted to maintain that element according to its own classifications and protocols but the trading venue shall convert the element into the specified format and provide it in that format upon request by the competent authority of the trading venue. Where Table 1 does not prescribe a specific format for a given order data element, this data element shall be maintained by the trading venue according to the trading venue's own classifications and protocols.

(4) The order details prescribed in this Regulation shall be considered non-exhaustive and shall not limit a trading venue's ability to maintain other order details not referred to in this Regulation.

(5) Trading venues where orders are disclosed and/or tradable through an electronic trading system shall maintain records of the order details prescribed in this Regulation.

(6) By way of derogation from paragraph 1 of this Article, trading venues operating Request-for-Quote as defined in Table 1 of Annex I of the draft technical standard on non-equity transparency or voice trading systems shall keep record of the order details prescribed in this Regulation only where those details are advertised through the trading venue's system and are relevant for the specific trading model.

(7) Where the order data details to be maintained by operators of trading venues are also prescribed under Article 26 of MiFIR, such details shall be maintained in a consistent way and according to the same standards prescribed under Article 26 of MiFIR.

Article 2
Definitions

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

(a) ‘Orders’ includes orders and quotations on trading venues.

(b) “Advertised through the trading venue’s system” means disclosed and/or tradable through the system of a given trading venue.

(c) ’Non-Executing broker’ means an investment firm member or participant of a trading venues that routes orders on behalf of other trading venues’ members, using the latter’s identification as opposed to its own.

(d) ’Gateway-to-gateway latency’ means the time measured from the moment a message is received from an outer gateway of the trading system, sent through the order submission protocol, processed by the matching engine, and then sent back until an acknowledgement is sent from the gateway.

(e) “Other liquidity providers” are persons, other than persons pursuing a market making activity as referred to in Articles 17 and 48 of Directive 2014/65/EU, that under a formal agreement with an issuer, hold themselves out on the financial markets on a continuous basis as willing to deal by buying and selling financial instruments.

(f) “Messages” refer to any kind of input (such as but not limited to the submission of an order, each modification of the order, its cancellation) that implies independent use of the trading venue’s trading system´s capacity, including market orders and limit orders (including Immediate-and/or-Cancel orders or pegged orders) submitted to the trading venue by a member or participant and any quotes including any indications of interest (irrespective of whether or not they are actionable). Output by the trading venue (such as the response of its system to an input by a member or participant in the form of an acknowledgement and confirmation of receipt by the trading venue) as well as batched orders (which shall be broken down into each individual component) shall be included in this definition.

(g) ‘Electronic system’ means a system where orders are electronically tradable or where orders are tradable outside the system provided that they are advertised through the given system.

(h) ‘Voice trading system’ means a trading system that do not fall under the definition of ‘electronic system’ according to letter (b) of this article.

Article 3

Relevant parties, trading capacities and liquidity provider

1. For the purpose of Article 25(3) of MiFIR, trading venues shall maintain the following designations for each order they receive in accordance with Table 1 of Annex I:

(a) The member or participant which transmitted the order shall be identified with the member or participant's Legal Entity Identifier (LEI).

(b) The person within the member or participant that is responsible for (i) the investment decision and (ii) the execution and submitting to this end the order to the trading venue shall be identified with the same codes and format prescribed to identify the person within the investment firm for transaction reporting purposes under Article 7 of the transaction reporting technical standard;

(c) The computer algorithm within the member or participant that is responsible for (i) the investment decision and (ii) the execution and submitting to this end the order to the trading venue shall be identified with the same codes and format prescribed to identify the algorithms for transaction reporting purposes under Article 8 of the transaction reporting technical standard;

(d) The non-executing broker that routes the order on behalf of a member or participant of the trading venue according to the rules of the trading venue shall be identified with the non-executing broker's LEI;

(e) The client on behalf of which the order is submitted to the trading venue shall be identified with the same codes and formats prescribed to identify the client for transaction reporting purposes under Article 6 of the transaction reporting technical standard. In the case of aggregated orders, the member or participant of the trading venue shall use the default reference "AGGREGATED_X" where "X" represents the number of clients on whose behalf orders have been aggregated.

(f) The trading capacity in which the member or participant of the trading venue submitted the orders according to the method and format used to identify the trading capacity for transaction reporting purposes under Article 2 of the transaction reporting technical standard.

2. Where orders are submitted to a trading venue by members or participants conducting a market making/liquidity provision activity such orders shall be flagged, according to the format indicated in Table 1 of Annex I.

Article 4

Date and time, validity period and trade restrictions

1. For the purpose of Article 25(3) of MiFIR, trading venues shall maintain the date and time for each event affecting the order's current state, including the date and time at which the order was transmitted, according to the content and format indicated in Table 1 of Annex 1. In the case of trading venues operating an electronic trading system, all data elements that require a time stamp shall be in a format that complies with the level of granularity required

under paragraph 2(a) of this Article. Trading venues operating voice-trading systems only shall utilise a format that accommodates for data element fields to be recorded to the level of granularity required under paragraph 2(b) of this Article.

2. The time stamp for all order related events shall be accurate to the millisecond as a minimum. By way of derogation from this paragraph:

(a) Trading venues operating an electronic trading system where the gateway-to-gateway latency is measured in less than one millisecond shall maintain time stamps for all order related events in accordance with Article 50 of the Directive;

(b) Trading venues that only operate a voice-trading system shall maintain a time stamp for all order related events with a granularity of one second.

3. The relevant processing point for time stamps that reflect an event affecting the order and any characteristic of the order except for a rejection of the order shall be the matching engine of each trading venue. In the case of rejection of the order by the system of the trading venue, the order shall be time stamped immediately at the time the order is rejected.

4. For the purpose of Article 25(3) of MiFIR, within the order data to be maintained under Article 25 of MiFIR, trading venues shall maintain the data elements in respect of validity periods and transaction restrictions, according to the content and format indicated in Table 1 of Annex I. Where a trading venue uses other validity periods or trade restrictions than those listed in Table 1 of Annex I, that trading venue shall populate the data field “Other” set out in Table 1 of Annex I according to the trading venue’s own classification.

5. Standardised default time stamps shall be maintained for the validity periods indicated in Table 2 of Annex I as detailed in the Table.

Article 5

Priority time/size stamp and sequence number

1. For the purpose of Article 25(3) of Regulation (EU) No 600/2014, trading venues shall maintain their order priority under either one of the following methods:

(a) Trading venues that operate trading systems on a price visibility-time priority shall maintain a priority time stamp for all orders in financial instruments that are advertised on their systems. The priority time stamp shall comply with the content and format indicated in Table 1 of Annex I. The priority time stamp shall:

(i) be in the same granularity as the date and time field under Article 4 of this Regulation;

(ii) change to reflect any priority changes to the specific order; and

(iii) be different from the date and time of event when the event has no impact on the order priority.

(b) Trading venues that operate trading systems on a size priority shall maintain the relevant quantity that determines their priority for all orders in financial instruments that are advertised on their systems. The priority size shall be a positive number and shall change to reflect any priority changes to the specific order;

(c) Trading venues that operate models which use a combination of price-visibility-time priority and size priority shall follow one of the two methods indicated in a) and b) of paragraph 1 of this Article, depending on the method in which the orders are displayed. If the trading venue's orders are displayed on that venue's order book in time priority then it shall comply with the method specified under subparagraph a) of paragraph 1. If the trading venue's orders are displayed on their order book in size priority then it shall comply with the method specified under subparagraph b) of paragraph 1;

(d) Trading venues that operate models where the concept of priority does not exist, including Request for Quote, shall not be required to maintain details of the priority time stamp and size.

2. For the purpose of Article 25(3) of MiFIR, trading venues shall maintain a sequence number to identify the correct sequence of events where multiple events have exactly the same time stamp. The sequence number shall satisfy the following conditions:

(a) start at a positive integer;

(b) increase in ascending order for each event with each increment being an integer;

(c) be unique for each event;

(d) be consistent across all events processed by the trading venue; and

(e) be persistent and robust for the date that the event occurs.

Article 6

Identification code of the order and identification code of the order book

1. For the purpose of Article 25(3) of MiFIR, trading venues shall maintain a unique identification code for each order they receive from its receipt by the trading venue until its definitive removal from the order book, without prejudice to the events that may affect the order until its removal from the order book.

2. The identification code of the order shall be unique per order book, per trading day and per financial instrument and shall consist of the five following elements in accordance with Table 1 of Annex I:

(a) Denomination of the trading venue through the segment MIC code;

(b) The alphanumerical code established by the trading venue for each and every order book;

(c) The financial instrument's identification code;

(d) The date of receipt of the order by the trading venue;

(e) An alphanumerical code assigned by the trading venue to the individual order.

3. For strategy orders with implied functionality, the details of the order shall be maintained on all of the relevant markets. In addition to these details, the following shall apply:

(a) the order status for implied orders shall be populated with 'implicit';

(b) the prices of all orders including the implicit orders shall be maintained using the limit price field on the order for that event;

(c) the quantity field for the implied orders shall be populated with the order quantities for each contract. This field shall not be populated with the ratio for the quantities; and

(d) the relevant alphanumeric code of the strategy order book shall be populated according to paragraph 2(b) of this Article. This information shall be provided in the Strategy Order Book Code field in Table 1 of Annex I.

(e) A linked order ID code shall be populated with the same ID code for all orders connected to the particular strategy. This information will be provided in the Strategy Linked Order ID field in Table 1 of Annex I.

4. Orders that are sent to a trading venue with a routing strategy shall be flagged as "routed" when they are rerouted in the order status. The trading venue shall maintain the routing strategy as per its specification. The order ID shall remain the same for the lifetime of the routable order including if any residual is re-posted on the order book of entry.

Article 7

New order, order modification and cancellation, partial and full execution

For the purpose of Article 25(3) of MiFIR, trading venues shall maintain the order details listed in Table 1 of Annex I in relation to new orders, order modifications and cancellations and partial and full execution of orders, except in the case of trading venues that do not permit an order to be disclosed and/or tradable through its system.

Article 8

Type of order, prices and specific order instructions

1. For the purpose of Article 25(3) of MiFIR, trading venues shall maintain the details of the specific order type for each order in accordance with Table 1 of Annex I.

2. In addition, where a trading venue receives a request for information from a competent authority under Article 25(3), the trading venue shall classify all the orders included in the information request according to one of the two order types as required under the field 'generic order type' in Table 1 of Annex I and provide the relevant order details to the competent authority. Where a trading venue has a specific type of order that is not listed in Table 1 of Annex I, the trading venue shall classify the relevant orders as limit orders for the purposes of this paragraph unless the orders have a price at which they will become active, in which case they shall be maintained as stop orders.

3. For the purpose of Article 25(3) of MiFIR, trading venues shall maintain the price(s) relevant for each order. The price shall be maintained to the same granularity as used by the trading system and shall not be maintained as a rounded or truncated price. Market orders or any unpriced orders shall be maintained with a limit price equal to zero. Stop orders triggered by events independent of the price of the underlying financial instrument shall maintain the stop price equal to zero.

4. The price fields under paragraph 3 of this Article shall be maintained, if relevant for the order, according to the Table 1 of Annex I. Any additional price field that are not listed in table 1 of Annex I and submitted as part of the order message shall still be maintained.

5. For the purpose of Article 25(3) of MiFIR, within the order data to be maintained under Article 25 of MiFIR, trading venues shall maintain all the specific order instructions that were received for each order, according to the content and format indicated in Table 1 of Annex I. Where a trading venue's trading model does not make use of one, some or any of the data elements indicated in Table 1 of Annex I, that trading venue shall not populate such fields, provided that these elements are irrelevant for such trading model.

Article 9

Reference to the transaction(s) following the order in case of execution

Trading venues shall generate a transaction identification code in accordance with Table 1 of Annex I that links each order with the executed transaction that stems from that order,

whether full or partial. This transaction identification code shall be unique, consistent, persistent and robust at least within the trading day.

Article 10

Elements relating to the functioning of the order book

1. Trading venues shall maintain data elements on the functioning of the order book in accordance with Table 1 of Annex I where those elements are not specifically related to the characteristics of the order but determine how the order interacts within the order book. This shall at least include maintaining records of when trading phases start and finish, as well as information about unscheduled trading phases like a circuit breaker auction call period. Likewise, the indicative prices and volumes during auction call periods shall also be maintained.

2. Trading venues shall link each element with the relevant sequence number when providing it to the CAs, to ensure a consolidated and consistent picture.

3. Where any of these elements trigger an event, this shall be maintained with the relevant timestamp.

Annex I

Table 1

Field/Content	Description	Format
1. Identification of the market member or participant which transmitted the order	The member or participant transmitting the order	Legal Entity Identifier: 20 alphanumerical characters
2. Identification of relevant parties other than the trading venues' members or participants		
Client identification code	Code used to identify the member or participant's client	Legal Entity Identifier: 20 alphanumerical characters or non-legal entity: ISO 3166-1 alpha 2 country code (2 letter country code) + National Identification Code up to 50 alphanumerical characters or + Passport Number up to 50 alphanumerical characters or + a concatenated code of 18 alphanumerical characters in the format YYYYMMDDXXXXXXXXXX or where it is an aggregated order the field will be populated with "AGGREGATED_X" where X is number of clients
Client ID code type	Type of code used to identify the member or participant's client.	Legal entity : the word "LEI" or non-legal entity: ISO 3166-1 alpha 2 country code (2 letter country code) + the letters "NI" (National Identifier) or + the letters "PN" (Passport Number) or + the letters "CN" (Concatenated Number) or

		aggregated order: the word “AGGREGATED”
Trader identification code (investment decision)	Code used to identify the person or the committee within the member or participant who is responsible for the investment decision If the investment decision was made by a formal committee within the investment firm, this field shall be populated with a unique code starting with the prefix “COM” as defined in Article 6(3) of this Regulation	ISO 3166-1 alpha 2 country code (2 letter country code) + National Identification Code up to 50 alphanumerical characters or +Passport Number up to 50 alphanumerical characters or + a concatenated code of 18 alphanumerical characters in the format YYYYMMDDXXXXXXXXXX Or a code up to 50 alphanumerical digits starting with the prefix “COM”
Trader identification code type (investment decision)	Code type used to identify the person or the committee within the member or participant who is responsible for the investment decision.	ISO 3166-1 alpha 2 country code (2 letter country code) + the letters “NI” (National Identifier) or + the letters “PN” (Passport Number) or + the letters “CN” (Concatenated Number) or In case of a formal committee: COM
Trader identification code (execution)	Code used to identify the person within the member or participant who is responsible for the execution	ISO 3166-1 alpha 2 country code (2 letter country code) + National Identification Code up to 50 alphanumerical characters or +Passport Number up to 50 alphanumerical characters or + a concatenated code of 18 alphanumerical characters in the format YYYYMMDDXXXXXXXXXX
Trader identification code type (execution)	Code type used to identify the person within the member or participant who is responsible for the execution	ISO 3166-1 alpha 2 country code (2 letter country code) + the letters “NI” (National Identifier)

		or + the letters “PN” (Passport Number) or + the letters “CN” (Concatenated Number)
Algorithm identification code (investment decision)	Code used to identify the algorithm within the member or participant that is responsible for the investment decision	Up to 50 alphanumerical characters
Algorithm identification code (execution)	Code used to identify the algorithm within the member or participant that is responsible for the execution	Up to 50 alphanumerical characters
Non-executing broker	Code used to identify the investment firm (being a member or participant of trading venue) that routed the order on behalf of another trading venue member, using the latter’s ID, as opposed to their own.	Legal Entity Identifier: 20 alphanumerical characters
3. The trading capacity	M – Matched principal capacity P - Principal capacity A – Agent capacity	M or P or A
4. Liquidity provision activity	Where orders are placed in a trading venue by investment firms pursuing a market making activity or by other liquidity providers due to their liquidity provision activity, such orders should be flagged. Where there is no liquidity activity involved in the order, this field should be populated with NO value.	YES or NO
5. Date and Time	It shall be in UTC and in the format: YYYY-MM-DDThh:mm:ss.0Z Where: Y is the year, M is the month, D is the day, T signifies the time section, h is the hour, m is the minute, s is the second, zero is the fraction of a second and Z signifies Zulu (UTC) time.	YYYY-MM-DDThh:mm:ss.0Z where the number of zeros after the ‘seconds’ is determined by the draft technical standard on Article 50 MiFID II
6. Validity period or trade restrictions		
Good-For-Day	When the order expires at the end of the trading day on which it was entered in the order book.	DAY
Good-Till-Cancelled	The order will remain active in the order book and be executable until it is actually cancelled either by the member or participant who submitted it initially, or by the trading venue operator (pursuant to its market rulebook).	GTC
Good-Till-Time	When the order expires at the latest at a pre-determined time, set by the member or	GTT

	participant who submitted the order, within the current trading session.	
Good-Till-Date	When the order expires at the end of the date specified by the member or participant who submitted it.	GTD
Good-Till-Specified Date and Time	When the order expires at the date and time specified by the member or participant who submitted it.	GTS
Good After Time	This means that the order is only active after a pre-determined time, set by the member or participant who submitted the order within the current trading session.	GAT
Good After Date	This means that the order is only active from the beginning of a pre-determined date, set by the member or participant who submitted it.	GAD
Good After Specified Date and Time	This means that the order is only active from a pre-determined time on a pre-determined date, set by the member or participant who submitted it.	GAS
Good For Closing Price Crossing Session	When an order qualifies for the closing price crossing session.	SES
Valid For Auction	This means that the order is only active and can be executed only at auction phases (which can be pre-defined by the member or participants who submitted the order, e.g. opening and/or closing auctions and/or intraday auction).	VFA
Valid For Continuous Trading only	When the order is only active during continuous trading.	VFC
Immediate-Or-Cancel	This refers to 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.	IOC
Fill-Or-Kill	This refers to 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.	FOK
Other	This refers to additional indications that are unique for specific business models, trading platforms or systems.	Trading venue own classification
7. Priority time stamp/size	For trading venues which use price-visibility-time priority, this field shall be in UTC and in the format: YYYY-MM-DDThh:mm:ss.0Z Where: Y is the year, M is the month, D is the day, T signifies the time section, h is the hour,	YYYY-MM-DDThh:mm:ss.0Z where the number of zeros after the 'seconds' is determined by the Article 50 MiFID II requirements;

	m is the minute, s is the second, zero is the fraction of a second and Z signifies Zulu (UTC) time. For trading venues which use size-time priority, this field shall be populated with the quantity.	Or Numerical quantity
8. The sequence number	A positive integer that is unique, consistent, persistent, robust for the date and in ascending order.	Number field
9. Identification code of the order and identification of the order book		
Segment MIC code	Denomination of the trading venue through the segment MIC code	ISO 10383 segment MIC
Alphanumeric code established by the trading venue for the order book	The alphanumerical code established by the trading venue for each and every order book	Alphanumeric code
Financial instruments ID code	The financial instrument's identification code i.e. the ISIN code; if there is no ISIN code, then the AII product code should be chosen.	ISIN or AII product code
Date of receipt	Date of receipt of the original order in ISO 8601 format.	YYYY-MM-DD
Alphanumeric code established by the trading venue for the order	An alphanumeric code assigned by the trading venue to the individual order, and which shall be unique.	Alphanumeric code
10. New order, order modification, order cancellation and partial/full execution		
New order	New order: receipt of a new order by the trading venue.	Free format
	Rejected order: an order that was received by the trading venue but rejected by that trading venue.	Free format
Order modification	Triggered: where an order becomes executable / non-executable upon the realisation of a pre-determined condition.	Free format
	Replaced by the member or participant: where a member or participant decides upon its own initiative to change any characteristic(s) of the order it has previously entered into the order book.	Free format
	Replaced by market operations (automatic): where any characteristic(s) of an order is	Free format

	changed by the trading venue operator's IT systems. This includes where a peg order's or a trailing stop order's current characteristics are changed to reflect how the order is located within the order book.	
	Replaced by market operations (human intervention): where any characteristic(s) of an order is changed by a trading venue operator's staff. This includes where a member or participant of the trading venue has IT issues and needs its orders to be cancelled urgently.	Free format
	Change of status at the initiative of the Member/Participant. This includes activation, deactivation.	Free format
	Change of status due to market operations. This includes suspension of trading.	Free format
Order cancellation	Cancelled at the initiative of the member or participant: where a member or participant decides upon its own initiative to cancel the order it has previously entered.	Free format
	Cancelled by market operations. This includes a market maker's protection mechanism.	Free format
	Rejected by the counterparty: where an order has been executed but that trade has been rejected by the counterparty	Free format
	Expired order. This includes at the end of validity period events.	Free format
Partial/full execution	Partially filled: where the order is not fully executed so that there remains a quantity to be executed.	Free format
	Filled: where there is no more quantity to be executed.	Free format
11. Type of order		
Generic order type	Classification of the order according to two generic order types: LIMIT order and STOP order	LIM or STOP
Specific order type	Description of the order type as per venue specifications	Free text
12. Prices		
Limit price	The maximum price at which a buy order can trade or the minimum price at which a sell order can trade.	Up to 20 numerical digits with a decimal separator. Where price reported in monetary

	The spread price for a strategy order. It can be negative or positive.	terms, it shall be provided in the major currency unit. Where applicable, values should be rounded and not truncated.
Additional Limit Price	The minimum price at which a buy order can trade or the maximum price at which a sell order can trade	Up to 20 numerical digits with a decimal separator. Where price reported in monetary terms, it shall be provided in the major currency unit. Where applicable, values should be rounded and not truncated.
Stop Price	The price that must be reached for the order to become active.	Up to 20 numerical digits with a decimal separator. Where price reported in monetary terms, it shall be provided in the major currency unit. Where applicable, values should be rounded and not truncated.
Pegged Limit Price	The maximum price at which a pegged order can trade or the minimum price at which a pegged order to sell can trade.	Up to 20 numerical digits with a decimal separator. Where price reported in monetary terms, it shall be provided in the major currency unit. Where applicable, values should be rounded and not truncated.
13. Specific order instructions		
Buy-Sell indicator	To show if the order is to buy or sell.	B or S
Instrument identification code type	Code type used to identify the financial instrument.	I = ISIN, A = AII
Identification code of the financial instrument	Code used to identify the financial instrument.	Where the instrument identification code type is I, ISO 6166 ISIN shall be used Where the instrument identification code type is A, the AII venue + Exchange Product Code (16 alphanumerical characters) shall be used
Instrument classification	Taxonomy used to classify the financial instrument	ISO 10962 CFI code
Order status	To identify orders that are active/inactive/suspended, firm/indicative (assigned to quotes only)/implicit/rerouted.	Active; Inactive; Suspended;

	Active – non-quote orders that are tradable. Inactive – non-quote orders that are not tradable. Suspended –orders which have become inactive due to market operations 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. Rerouted – Used for orders that are routed by the trading venue to other venues.	Firm/Indicative; Implicit; Rerouted.
Initial quantity	The number of units of the financial instrument included in the order. This means the precise number of shares, or lots if the instrument is tradable by lot.	Up to 20 numerical digits with a decimal separator.
Remaining / outstanding quantity including hidden	The total quantity that remains in the order book after a partial execution or any other event affecting the order.	Up to 20 numerical digits with a decimal separator.
Displayed quantity	The quantity that is visible (as opposed to hidden) in the order book.	Up to 20 numerical digits with a decimal separator.
Hidden quantity	The quantity that is hidden (as opposed to visible) in the order book, for example in the case of iceberg orders.	Up to 20 numerical digits with a decimal separator.
Traded quantity	This quantity is incremented by the number of shares that has been traded at the last execution when an execution, whether partial or full, occurs; this quantity is maintained as zero by the trading venue when the order is entered and shall be equal to the initial quantity when the order is totally executed (provided the initial quantity has not been modified by the member).	Up to 20 numerical digits with a decimal separator.
Minimum Acceptable Quantity (MAQ)	This is the minimum acceptable quantity for an order to be filled which can consist of multiple partial executions and is normally only for non-persistent order types.	Free format
Minimum executable size (MES)	This is the minimum execution size of any individual potential execution. It should also specify whether the MES is relevant for the first execution only or the lifetime of the order.	Free format
Date and time of any event affecting the order	See relevant paragraph in the section “Relevant data constituting the characteristics of the order, including those that link an order with the executed transactions”, sub-section on	YYYY-MM-DDThh:mm:ss.0Z where the number of zeros after the ‘seconds’ is determined by the

	the date and time. It shall be in UTC and in the format: YYYY-MM-DDThh:mm:ss.0Z Where: Y is the year, M is the month, D is the day, T signifies the time section, h is the hour, m is the minute, s is the second, zero is the fraction of a second and Z signifies Zulu (UTC) time.	Article 50 MiFID II requirements
Currency	The trading currency of the order.	ISO 4217 Currency Code, 3 alphabetical characters.
Passive only indicator	Indicates if the order is only to enter the order book if it would not result in an execution with any visible volume.	Free format
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.	Free format
Passive or Aggressive indicator	Indicates whether the order entered onto the order book and therefore provided liquidity or whether the order event resulted in an execution and thus was taking liquidity.	Free format
Strategy Order Book Code	The alphanumeric code used by the trading venue to identify the strategy order book.	Free format
Strategy Linked Order ID	The alphanumeric code used to link all connected orders that are part of a strategy.	Free format
Routing Strategy	The applicable routing strategy as per the trading venue specification.	Free format
14. Reference to the transaction(s) following the order in case of execution	Execution ID to uniquely identify each executed order.	Alphanumeric value that begins with the ISO 10383 segment MIC followed by "_"
15. Elements relating to the functioning of the order book		
Trading Phases	The different trading sessions that occur including scheduled and unscheduled.	Free format
Indicative auction price	The price at which the auction is due to uncross at that point in time.	Free format
Indicative auction volume	The volume that would execute at that point in time.	Free format

Note: it should be noted that the sub-fields under item 10 of the above table do not constitute different fields but reflect the different flags that will need to be used to populate the same field depending on the applicable status.

Table 2
XXX

Field/Content	Description	Format
Validity period	Good for day: default will be the date of entry with the timestamp immediately prior to midnight to the required granularity	YYYY-MM-DDThh:mm:ss.0Z where the number of zeros after the 'seconds' is as a minimum up to the microsecond or even greater accuracy according to the methodology prescribed in the technical standard on clock synchronisation
	Good till time: Default will be the date of entry and the time to that specified in the order	
	Good till date: Default will be the specified date of expiry with the timestamp immediately prior to midnight to the required granularity	
	Good till specified date and time: default will be the specified date and time of expiry	
	Good after time: Default will be the date of entry and the specified time	
	Good after date: Default will be the specified date with the timestamp immediately after midnight the previous day to the required granularity	
	Good after specified date and time: Default will be the specified date and time	

RTS 35: Draft RTS on the requirement to maintain records of orders for firms engaging in high-frequency algorithmic trading techniques

COMMISSION DELEGATED REGULATION (EU) No …/..

of [date]

supplementing Directive (EU) No 2014/65/EU of the European Parliament and of the Council on markets 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 Directive (EU) No 2014/65/EU [MiFID II] of the European Parliament and the Council of 15 May 2014 on markets in financial instruments, and in particular Articles 16 and 17 thereof.

Having regard to Regulation (EU) No 600/2014/EU [MiFIR] of the European Parliament and the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, and in particular Article 25 thereof.

Whereas:

(1) […text prepared by the TFMSI on Article 17 to be inserted….]

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

(3) In accordance with Article 10 of 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)(5), ESMA has conducted open public consultations on such draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the ESMA Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation.

HAS ADOPTED THIS REGULATION:

CHAPTER I

General

Article 1
Subject matter and scope

[Insert RTS text to be prepared by the TFMSI on Article 17 of MiFID II on algorithmic trading]

Article 2
Definitions

[….][Insert RTS text to be prepared by the TFMSI on Article 17 of MiFID II on algorithmic trading]

CHAPTER II
Firms engaging in high frequency algorithmic trading

Article 3
The content and format of the order records

1. An investment firm that engages in a high frequency algorithmic trading technique shall immediately record and keep at the disposal of the competent authority at least the details set out in Table 1 of Annex I in relation to every initial order received from a client and every initial decision to trade, as applicable.

2. The details in paragraph 1 shall be provided in the format specified in column 3, Table 1 of Annex I of this Regulation.

3. In addition to the details in paragraph 1, an investment firm shall after processing and submitting a client order or decision to trade, record and keep at the disposal of the competent authority at least the details set out in Table 2 of Annex I, as applicable.

4. The details in paragraph 3 shall be provided in the format specified in column 3, Table 2 of Annex I of this regulation.

5. For the purposes of this article the relevant information shall not include market data messages or the parameters used to calibrate a trading algorithm.

Article 4
The length of time for which order record must be kept

An investment firm that engages in a high-frequency algorithmic trading technique shall keep the records of all order details as per this Regulation related to its placed orders, including cancellations of orders, executed orders and quotations on venues, at the disposal of the competent authority of its home Member State for a period of five years.

Article 5

Entry into force

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

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

Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]

Annex I

Table 1

Information relating to incoming orders from clients and every initial decision to deal

Field/Content	Description	Format
Client first name (s)	This field shall contain the full first name(s) of the client.	100 alphanumerical characters or blank in case of coverage by Legal Entity Identifier (LEI).
Client surname (s)	This field shall contain the full surname(s) of the client	100 alphanumerical characters or blank in case of coverage by Legal Entity Identifier (LEI).
Client identification code type	This field should be maintained in accordance with Article 6 of [technical standard on transaction reporting]	Legal entity : the word “LEI” or ISO 3166-1 alpha-2 country code (2 letter country code) + (1) the letters “NI” (National Identifier) or + the letters “PN” (Passport Number) or + the letters “CN” (Concatenated Number)
Client identification code	This field should be maintained in accordance with Article 6 of [technical standard on transaction reporting]	Legal entity identifier: 20 alphanumerical characters Or non-legal entity: ISO 3166-1 alpha-2 country code (2 letter country code) + National Identification Code up to 50 alphanumerical characters

		or +Passport Number up to 50 alphanumerical characters or +a concatenated code of 18 alphanumerical characters in the format YYYYMMDDXXXXXXXXXX.
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.	100 alphanumerical characters or blank in case of coverage by Legal Entity Identifier (LEI).
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	100 alphanumerical characters or blank in case of coverage by Legal Entity Identifier (LEI).
Code type for identification of person acting on behalf of the client	Legal entity: the word “LEI”[58]. Natural person: If the client is a natural person not eligible for LEI this field shall indicate what type of identifier was used to identify the client.	Legal entity : the word “LEI” or non-legal entity: ISO 3166-1 alpha-2 country code (2 letter country code) + (1) the letters “NI” (National Identifier) or + the letters “PN” (Passport Number) or + the letters “CN” (Concatenated Number)
Code for identification of person acting on behalf of the client	Legal entity: the LEI code[59] of the client. Natural person: in case of a natural person not eligible for LEI, this field shall be populated with a unique national number based on the nationality of the natural person. If such a number is not available, a passport number shall be used. If both numbers are not available, a concatenated	Legal entity identifier: 20 alphanumerical characters Or non-legal entity: ISO 3166-1 alpha-2

[58] See Article 6.1 in [transaction reporting regulatory technical standard] on Assigning client designations to legal persons
[59] See Article 6.1 in transaction reporting regulatory technical standard on Assigning client designations to legal persons

	number, consisting of ISO 3166 two character country code based on the nationality of the natural person, birth date, first five characters of the first name and first five characters of the surname shall be used.	country code (2 letter country code) + National Identification Code up to 50 alphanumerical characters or +Passport Number up to 50 alphanumerical characters or +a concatenated code of 18 alphanumerical characters in the format YYYYMMDDXXXXXXXXXX[60].
Trader (investment decision) identification code type	Type of code used to identify the person within the investment firm who made the investment decision. This field shall be maintained in accordance with Article 7 of [insert reference to SG2 transaction reporting RTS]	ISO 3166-1 alpha-2 country code (2 letter country code)+ (1) the letters “NI” (National Identifier) or + the letters “PN” (Passport Number) or + the letters “CN” (Concatenated Number) or In case of a formal committee: COM
Trader (investment decision) identification code	Identification of the person within the investment firm who made the investment decision. This field shall be maintained in accordance	ISO 3166-1 alpha-2 country code (2 letter country code)+ National Identification Code up to 50

[60] See Article 6.2-6.7 in transaction reporting regulatory technical standard on Assigning client designations to natural persons

	with Article 7 of [insert reference to SG2 transaction reporting RTS]	alphanumerical characters or +Passport Number up to 50 alphanumerical characters or +a concatenated code of 18 alphanumerical characters in the format YYYYMMDDXXXXXXXXXX Or a code up to 50 alphanumerical digits starting with the prefix “COM”
Algorithm (investment decision) - identification code	This field shall be populated in accordance with Article 8 of [insert SG2 transaction reporting RTS reference] with the designation for the algorithm within the investment firm, which was responsible for the investment decision.	Up to 50 alphanumerical characters
Initial order designation	Code used to identify the order that was received from the client or generated by the firm before it submits the order to the trading venue.	Free text
Buy-Sell indicator	To show if the order is to buy or sell	B or S
Instrument identification code type	Code type used to identify the financial instrument	I = ISIN, A = AII
Instrument identification code	Code used to identify the financial instrument.	Where Instrument identification code type is I, ISO 6166 ISIN Where Instrument identification code type is A, AII venue + Exchange Product Code (16 alphanumerical characters) shall be used

Price	Traded price of the transaction excluding, where applicable, commission and accrued interest unless the instrument is traded with a dirty price In the case of option contracts, it is the premium of the derivative contract per underlying security or index In the case of spread bets it should be the reference price of the underlying instrument. Where no price is available, a default value shall be used If the agreed price is zero a price of zero should be used.	Up to 20 numerical digits with a decimal separator Where price reported in monetary terms, it shall be provided in the major currency unit Where applicable, values should be rounded and not truncated
Price notation	Indication as to whether the price and the strike price is expressed in monetary value, in percentage or in yield.	U = Units P = Percentage Y = Yield Where no price is available, the price notation shall be populated with N
Price multiplier	Number of units of underlying instruments represented by a single derivative contract.	Up to 10 numerical digits with a decimal separator Non-derivative financial instruments: 1
Currency 1	Currency in which the price is expressed (where the price notation is M) or in which the quantity is expressed (where quantity notation is V)	ISO 4217 Currency Code, 3 alphabetical characters
Currency 2	Currency in which the reference price of the ultimate underlying instrument is expressed (where applicable).	ISO 4217 Currency Code, 3 alphabetical characters
Ultimate underlying Instrument code	ISIN code of the Ultimate Underlying instrument For ADR's, GDR's and similar instruments, the code of the ADR, GDR or similar	 ISO 6166 ISIN Code

	instrument on which the instruments is based shall be used. For convertible bonds, the code of the instrument in which the bond can be converted shall be used. For derivatives or other instruments which have an underlying, the ultimate underlying instrument code shall be used, provided that the ultimate underlying is admitted to trading, or traded on a trading venue. Where the instrument is referring to an issuer, rather than to one single instrument: - the LEI code of the issuer shall be used, or -where the issuer is a Government, state or municipal, the country code shall be used. Where the underlying or the ultimate underlying is an index, the ISIN code for that index shall be used, or when the index does not have an ISIN, the name of the index shall be used. Where the underlying is a basket, all the identifying codes for each constituent of the basket that is admitted to trading or is traded on a trading venue shall be used.	Or AII code Or ISO 17442 LEI Code Or ISO 3166-1 alpha-2 country code (2 letter country code) Or 25 alphanumerical characters for the Index Name
Put/Call identifier	Indication as to whether the derivative contract is a call or a put.	P = Put C= Call
Strike price	Strike price of an option or warrant.	Up to 10 Numerical digits with a decimal separator
Up-front payment	Monetary value of any up-front payment received or paid by the seller	Up to 10 numerical digits with a decimal separator 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
Delivery type	Indication as to whether the financial instrument is settled physically or in cash.	P = Physically Settled C = Cash settled O = Optional for counterparty or when determined by a third party
Option 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).	E= European S = Asian B = Bermudan A = American
Maturity date	Original date of expiry of the financial instrument.	ISO 8601 date in the format YYYY-MM-DD
Initial quantity	Number of units of the financial instrument, nominal value of bonds or number of lots on derivative contracts in the transaction.	Up to 20 numerical digits with a decimal separator No negative or nil values Where applicable, values should be rounded and not truncated For spread bets, the quantity shall be the monetary value wagered per point movement in the ultimate underlying financial instrument
Quantity notation	Indication as to whether the quantity is expressed in number of units, in nominal value or in monetary value.	Number of units: U Nominal value: N Monetary value: V
Generic order type	Classification of the order according to two generic order types: LIMIT order and STOP order. This classification shall be in	LIM or

	accordance with [insert cross reference to the Annex in the Article 25(2) MiFIR table which contains the rules about how to classify]	STOP
Specific order type	Description of the order type as per venue specifications	Free text
Additional information from the client	Any other details, conditions and particular instructions from the client	Free text
The date and exact time of the receipt of the order or making a decision to deal	The exact time must be measured in microseconds or even greater accuracy according to the methodology prescribed under the technical standard on clock synchronisation	YYYY-MM-DDThh:mm:ss.0Z where the number of zeros after the 'seconds' is as a minimum up to the microsecond or even greater accuracy according to the methodology prescribed in the technical standard on clock synchronisation

Table 2

Information relating to outgoing orders

Field/Content	**Description**	**Format**
Buy/Sell indicator	To show if the order is to buy or sell	B or S
The trading capacity	Capacity in which the investment firm is sending the order to the trading venue / processing the order. This field shall be populated in accordance with Article 1 of [insert reference to SG2 transaction reporting RTS]	Principal: P Matched principal: M Agent: A
Trader (execution) identification code type	Type of code used to identify the person within the investment firm who executed the transaction. This field shall be maintained in accordance with Article 7 of [insert reference to SG2 transaction reporting RTS]	ISO 3166-1 alpha-2 country code (2 letter country code)+ (1) the letters "NI" (National Identifier) or + the letters "PN" (Passport Number) or + the letters "CN"

		(Concatenated Number)
Trader (execution) identification code	Identification of the person within the investment firm who was responsible for execution of the transaction. This field shall be maintained in accordance with Article 7 of [insert reference to SG2 transaction reporting RTS]	ISO 3166-1 alpha-2 country code (2 letter country code)+ National Identification Code up to 50 alphanumerical characters or +Passport Number up to 50 alphanumerical characters or +a concatenated code of 18 alphanumerical characters in the format YYYYMMDDXXXXXXXXXX
Algorithm (execution) - identification code	This field shall be populated in accordance with Article 8 of [insert reference to SG2 transaction reporting RTS] with the designation for the algorithm within the investment firm which was responsible for the execution.	Up to 50 alphanumerical characters
The identification code of the order submitted to the trading venue	Internal code used by the investment firm to identify the order submitted to the trading venues provided that it is unique per order book, per trading day and per financial instrument	Free text
The identification code of the order assigned by the trading venue upon receipt of the order	This field shall be populated using the same content and format as the order ID to be maintained by the Trading Venue of execution according to the technical standard on order record keeping for Trading Venues. The trading venue will provide the order ID to the firm in the order acknowledgment. The code shall consist of each of the following five elements:	The format for each element shall be as specified in the five following fields below.
	Denomination of the trading venue through the segment MIC code	ISO 10383 segment MIC
	The alphanumerical code established by the	Alphanumeric code

	trading venue for each and every order book	
	The financial instrument's identification code (that is, the ISIN code; if there is no ISIN code, then the AII product code should be chosen)	ISIN or AII
	The date of receipt of the order by the trading venue	YYYY-MM-DD
	(e) An alphanumerical code assigned by the trading venue to the individual order	Alphanumeric code
A unique identification for each group of aggregated clients' orders	This field shall be populated using the same content and format as the one to be maintained by the Trading Venue of execution as specified in the technical standard on order record keeping for Trading Venues.	AGGREGATED_X with X representing the number of clients whose orders have been aggregated.
Order receiver	The code of the trading venue to which the order has been submitted or of any other investment firm to whom the order was transmitted	The ISO 10383 segment MIC of the trading venue or The LEI of the investment firm
Price	Where price is expressed in monetary value, the price shall be reported in the major unit. In case of a convertible bond the real price (clean or dirty) used for this transaction shall be reflected in this field If there is no price available, this field shall be populated with a standard value.	Up to 20 numerical digits with a decimal separator. Where price reported in monetary terms, it shall be provided in the major currency unit. Where applicable, values should be rounded and not truncated.
Price notation	Indication as to whether the price and strike price is expressed in monetary value, in percentage or in yield.	U = Units P = Percentage Y = Yield Where no price is available, the price notation shall be populated

		with N
Remaining quantity	The total quantity that remains in the order book after a partial execution or any other event affecting the order.	Up to 20 numerical digits with a decimal separator
Modified quantity	The new total quantity of the order as part of the modification.	Up to 20 numerical digits with a decimal separator
Executed quantity	This quantity is incremented by the number of instruments that has been traded at the last execution when an execution, whether partial or full, occurs; this quantity is maintained as zero when the order is initially placed on the trading venue and should be equal to the initial quantity when the order is totally executed (provided the initial quantity has not been modified by the member)	Up to 20 numerical digits with a decimal separator
The date and exact time of the submission of an order or a decision to deal.	The exact time must be measured in microseconds or even greater accuracy according to the methodology prescribed under the technical standard on clock synchronisation	YYYY-MM-DDThh:mm:ss.0Z where the number of zeros after the 'seconds' is as a minimum up to the microsecond or even greater accuracy according to the methodology prescribed in the technical standard on clock synchronisation
The date and exact time of any message that is transmitted to and received from the trading venue in relation to the order.	The exact time must be measured in microseconds or even greater accuracy according to the methodology prescribed under the technical standard on clock synchronisation	YYYY-MM-DDThh:mm:ss.0Z where the number of zeros after the 'seconds' is as a minimum up to the microsecond or even greater accuracy according to the methodology prescribed in the technical standard on clock synchronisation
Order's sequence	Sequence number for each placed order in order to reflect the chronology of every event affecting it, including but not limited to modifications, cancellations and execution.	Numerical digits
Short selling flag	This field indicates whether the executed transaction constitutes a short sale as defined in Article 2(1)(b) of Regulation (EU) 236/2012 and whether the transaction stemming from the order place will fall under one of the capacities falling	Short sale with no exemption: Y

	under exemptions contained in Article 17 of the Short Selling Regulation (EU) 236/2012 in relation to market making activities or primary market operations.	Short sale with exemption: E No short sale: N
Waiver flag	This field identifies the pre-trade transparency waiver used in accordance with Article 4 or 9 of MiFIR.	For all instruments: 'L' = Large in scale For equity instruments: 'R' = Reference price transaction 'N' = Negotiated transactions in liquid financial instruments 'O' = Negotiated transactions in illiquid financial instruments 'P' = Negotiated transactions subject to conditions other than the current market price of that equity financial instrument. For non-equity instruments: 'S' = Above specific size transaction 'I' = Illiquid instrument transaction
Transaction Reference Number	Unique identification number for each execution generated by the trading venue (and disseminated to both the buyer and the seller)	Up to 52 alphanumerical characters.
Type of validity period or trade restrictions	Good for day: default will be the date of entry with the timestamp immediately prior to midnight to the required granularity	DAY GTC GTT

		GTD GTS GAT GAD
Transaction Reference Number	Good till cancelled: he order will remain active in the order book and be executable until it is actually cancelled either by the member or participant who submitted it initially, or by the trading venue operator (pursuant to its market rulebook).	Up to 52 alphanumerical characters.
Type of validity period or trade restrictions Type of validity period or trade restrictions Validity period	Good till time: when the order expires at the latest at a pre-determined time, set by the member or participant who submitted the order, within the current trading session.	DAY GTC GTT GTD GTS GAT GAD GAS SES
	Good till date: when the order expires at the end of the date specified by the member or participant who submitted it.	
	Good-Till-Specified Date and Time: when the order expires at the date and time specified by the member or participant who submitted it.	
	Good after time: this means that the order is only active after a pre-determined time, set by the member or participant who submitted the order within the current trading session.	
	Good after date: This means that the order is only active from the beginning of a pre-determined date, set by the member or participant who submitted it.	
	Good after specified date and time: This means that the order is only active from a pre-determined time on a pre-determined date, set by the member or participant who submitted it.	
	Good for closing price closing session: When an order qualifies for the closing price crossing session.	
Type of validity period	Valid for auction: This means that the order is only active and can be executed only at auction phases	VFA

or trade restrictions Validity period Additional information relating to the outgoing order	(which can be pre-defined by the member or participants who submitted the order, e.g. opening and/or closing auctions and/or intraday auction).	
	Valid for continuous trading only: When the order is only active during continuous trading.	VFC
	Immediate-or-cancel: This refers to 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.	IOC
	Fill-or-kill: This refers to 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.	FOK
	Other: This refers to additional indications that are unique for specific business models, trading platforms or systems.	Investment firms' own classification
	Good for day: default will be the date of entry with the timestamp immediately prior to midnight to the required granularity	YYYY-MM-DDThh:mm:ss.0Z where the number of zeros after the 'seconds' is as a minimum up to the microsecond or even greater accuracy according to the methodology prescribed in the technical standard on clock synchronisation
	Good till time: Default will be the date of entry and the time to that specified in the order	SES
	Good till date: Default will be the specified date of expiry with the timestamp immediately prior to midnight to the required granularity	VFA
	Good till specified date and time: default will be the specified date and time of expiry	VFC
	Good after time: Default will be the date of entry and the specified time	IOC

	Good after date: Default will be the specified date with the timestamp immediately after midnight the previous day to the required granularity	FOK
	Good after specified date and time: Default will be the specified date and time	Investment firms' own classification
	Any message that is transmitted to and received from the trading venue in relation to orders placed by the investment firm or any other details and conditions that was submitted to and received from another investment firm in relation with the order	Free text
		Investment firms' own classification
Additional information relating to the outgoing order	Any message that is transmitted to and received from the trading venue in relation to orders placed by the investment firm or any other details and conditions that was submitted to and received from another investment firm in relation with the order	Free text

RTS 36: Draft regulatory technical standards on clock synchronisation

COMMISSION DELEGATED REGULATION (EU) No …/…

of [ ]

Supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC

(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 repealing Directive 2004/39/EC of the European Parliament and the Council [reference to OJ publication details to be included in a footnote] and in particular Article 50(2) thereof,

Whereas:

(1) The current level of fragmentation and automation of the European financial markets makes it critical that there are adequate standards for the synchronisation of business clocks used by trading venues and their members or participants.

(2) Clock synchronisation has a direct impact in many areas. It is essential for conducting cross-venue monitoring and detecting instances of market abuse; it will contribute to ensuring that post-trade transparency data can readily be part of a reliable consolidated tape; lastly clock synchronisation will be beneficial for the assessment of best execution since it will allow to better compare effective transactions to market conditions prevailing at the time of their execution.

(3) In order to attain the objectives set out above, this Regulation specifies that the concept of reportable event includes the following obligations: publication of post-trade transparency data for equity, equity-like and non-equity instruments, as prescribed by Articles 6, 7, 10 and 11 of MiFIR; transaction reporting under Article 26 MiFIR; data related to orders placed or submitted that might be requested by NCAs to investment firms (Article 25(1) MiFIR) including specific requirements for firms engaged in high frequency algorithmic trading techniques (Article 17(2) of MiFID II); and data related to orders placed or submitted that might be requested by NCAs to trading venues under Article 25(2) MiFIR.

(4) The number of orders received by a trading venue can be very high and in any event, much higher than that of executed transactions, so that for each and every second, a trading venue may receive many orders (e.g. several thousands of orders per second depending on the trading venue and on the financial instruments' volatility and liquidity). As a result, a time granularity of one second would not be sufficient for the purposes of market manipulation surveillance. Therefore, as a general rule this Regulation sets out a minimum requirement according to which internal clocks of trading venues operating an electronic system cannot diverge by more than one millisecond with respect to the reference time and all reportable events should be time stamped to the nearest millisecond. The members or participants of a trading venue will be obliged to synchronise their clocks according to at least the same time accuracy applied by their trading venue.

(5) The rapid evolution of the markets has also led to a situation where in some cases; time stamping to the granularity of one millisecond would not reflect the actual speed at which the system operates. Therefore this Regulation obliges trading venues that have operating systems where the gateway-to-gateway latency is less than one millisecond to synchronise their clocks according to the level of accuracy at which the venues measure their latency and to time stamp to that same level of granularity.

(6) ESMA is also conscious that there are trading models for which the millisecond granularity might not be relevant or feasible. Therefore trading venues that operate through voice trading only are required to have a maximum divergence from the reference clock of one second.

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

(8) In accordance with Article 10 of 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), ESMA has conducted open public consultations on such draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the ESMA Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation.

HAS ADOPTED THIS REGULATION

CHAPTER I
Definitions

Article 1
Definitions

For the purposes of this regulation the following definitions shall apply:

(a) ‘Gateway-to-gateway latency’ means the time measured from the moment a message is received from an outer gateway of the trading system, sent through the order submission protocol, processed by the matching engine, and then sent back until an acknowledgement is sent from the gateway.

(b) ‘Electronic system’ means a system where orders are electronically tradable or where orders are tradable outside the system provided that they are advertised through the given system.

(c) ‘Voice trading system’ means a trading system that do not fall under the definition of ‘electronic system’ according to letter (b) of this Article.

(d) ‘Reference time’ means the Coordinated Universal Time (UTC) issued and maintained by one of the timing centres listed in the latest Bureau International des Poids and Mesures (BIPM) Annual Report on Time Activities.

CHAPTER II
General

Article 2
Reference time

1. Trading venues and their members or participants shall synchronise the business clocks they use to record the date and time of any reportable event against a common reference time.

2. For the purpose of paragraph (1), reportable events shall include but shall not be limited to the following:

(a) transactions to be reported under Article 26 of Regulation (EU) No 600/2014;

(b) publication of data under Articles 6, 7, 10 or 11 of Regulation (EU) No 600/2014;

(c) any event affecting the orders placed on a trading venue to be kept at the disposal of the competent authority by the trading venue and its members or participants pursuant to Articles 25 of Regulation (EU) No 600/2014 and Articles 16(6) and 17(2) of Directive 2014/65/EU.

Article 3
Level of accuracy and granularity

1. A trading venue operating an electronic system shall ensure that its business clocks do not diverge more than one millisecond from the reference time.

2. By way of derogation from paragraph 1, a trading venue measuring its gateway-to-gateway latency time in less than one millisecond shall synchronise its business clocks in accordance with Table 1 of Annex I based on the trading venue's gateway-to-gateway latency. The trading venue shall use as a reference the gateway-to-gateway latency time measured at the ninety ninth percentile of all orders advertised through their system.

3. A trading venue that only operates voice trading systems shall ensure that its business clocks do not diverge more than one second from the reference time.

4. The members or participants of a trading venue referred in paragraphs 1, 2 or 3 above shall ensure that the business clocks used by the relevant system to connect to that specific trading venue are synchronised according to the same time accuracy applied by the trading venue. Where a member or participant has a system that connects to multiple trading venues, all business clocks used by that system shall have the same or higher granularity and accuracy compared to the most accurate trading venue of which they are a member or participant.

5. For the purposes of paragraph 4, where a trading venue changes the accuracy of its business clocks, the members or participants of that venue shall ensure that they implement a corresponding change in the accuracy of the business clocks that are used by the relevant system in a timely manner.

6. Trading venues and their members or participants shall record the date and time of any reportable event to the level of granularity required under Table 1 of Annex I.

Article 4

Entry into force

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

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

Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]

Annex I

Table 1
Level of accuracy and granularity table

	Gateway-to-gateway latency time of the trading venue	**Time divergence allowed from UTC and level of granularity required for timestamps**
1	1 millisecond or greater (equivalent to 1.0x10-3 seconds or higher)	1 millisecond divergence from UTC and all timestamps for reportable events shall be to the nearest millisecond.
2	1 microsecond to 999 microseconds (equivalent to 1.0x10-6 second to 9.99x10-4 second)	1 microsecond divergence from UTC and all timestamps for reportable events shall be to the nearest microsecond.
3	999 nanoseconds or less (equivalent to 9.99x10-7 seconds or less)	1 nanosecond divergence from UTC and all timestamps for reportable events shall be to the nearest nanosecond.

CHAPTER 9: POST-TRADING ISSUES

RTS 37: Draft regulatory technical standards on the obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing (STP)

COMMISSION DELEGATED REGULATION (EU) No …/..

of [date]

supplementing 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 with regard to regulatory technical standards specifying the obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing (STP)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive (EU) No 2014/65/EU [MiFID II] of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, and in particular Article 17(a) thereof.

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May on markets in financial instruments and amending Regulation (EU) No 648/2012,

Whereas:

(1) In order to manage operational risk, it is important to determine whether a derivative transaction can be cleared by a CCP at an early stage. It is therefore necessary to identify it in a clear manner.

(2) The information needed by the trading venue and the CCP to perform their tasks as set in this regulation should be pre-determined and clearly set in the documentation of the trading venue and CCP.

(3) It is more efficient for the market to determine whether a difficulty could occur in the post-trading process, at an early stage, and preferably before the transaction is entered into.

Therefore, when the derivative transaction is entered into on a trading venue, the trading venue should get the clearing member limits for the clients and check them against the orders.

(4) When a transaction is entered into electronically on a trading venue, its processing can be automated and therefore its processing time can be much shorter than when it is not. As a result the time for a trading venue to process a derivative transaction should be much shorter for electronically traded derivative transactions.

(5) As the trading venue sends the information related to derivative transactions to the CCP in a pre-agreed electronic format for both the transactions entered into in an electronic and non-electronic manner, the CCP should not need a different timeframe for these transactions for deciding whether the transaction can be accepted for clearing or not.

(6) When derivative transactions subject to the clearing obligation are not entered into on a trading venue but on a bilateral basis, the process is usually less automated. As a result, more time would be needed to transfer the information to the CCP.

(7) In order to manage the credit risks related to derivative contracts that are not entered into on a trading venue, the CCP should allow the clearing member to review the transaction and decide whether to accept it. As the process between the CCP and the clearing member is usually automated, this process should require limited time.

(8) When derivative contracts are cleared on a voluntary basis, they can be submitted for clearing at any time. At the point when they are submitted to the CCP, they do not differ from other derivative transactions and the same process as for those submitted to the clearing obligation should apply.

(9) As the processing of a derivative transaction subject to the clearing obligation concluded electronically on a trading venue is very short, there should be no or extremely limited damage suffered by the counterparties whose transactions are rejected by a CCP and therefore these transactions should be considered void. As the timeframe is longer for other derivative contracts, the parties should know in advance how the transaction will be treated.

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

(11) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council, 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..

HAS ADOPTED THIS REGULATION:

CHAPTER I
General provisions

[Article 29 of Regulation (EU) No xx/2014]

Article 1
Content and format of the transfer of information

1. A trading venue shall detail in its rules the information it needs in order to submit a derivative transaction to a CCP for clearing and the format in which that information shall be provided.

2. A CCP shall detail in its rules the information it needs in order to clear a transaction submitted to it and the format in which that information shall be provided.

Article 2
Mandatorily cleared transactions

Where a transaction is cleared in accordance with Article 29(1) of Regulation (EU) No 600/2014 or subject to the clearing obligation in accordance with Article 4 of Regulation (EU) No 648/2012, section 1 or 2 of chapter II shall apply depending on whether it is executed on a trading venue or on a bilateral basis.

CHAPTER II
Straight through processing

Section 1
Derivative transactions mandatorily cleared and executed on a Trading Venue

Article 3
Pre-trade check

1. A clearing member shall provide to the trading venue the limits applicable to its clients that are entering into transactions referred to in Article 2 on that trading venue and update them on a regular basis.

2. A trading venue shall check that the amount of the order of the client is within the limit set by the clearing member for that client before the execution of the order.

3. The trading venue shall perform the check referred to in paragraph 2:

(a) within 60 seconds from the receipt of the order when the order is entered into electronically;

(b) within 10 minutes from the receipt of the order when the order is not entered into electronically

When the order is not within the limit, the trading venue shall inform the client and the clearing member on a real time basis when the order is entered into electronically, and within 5 minutes when the order is not entered into electronically.

4. When a trading venue is using the services of a service provider, it remains responsible for complying with paragraphs 2 and 3 of this Article.

Article 4
Transfer of information

1. For transactions referred to in Article 2 executed electronically on a trading venue, the trading venue shall send the information related to the transaction to the CCP within 10 seconds.

2. For transactions referred to in Article 2 that are not executed electronically on a trading venue, the trading venue shall send the information related to the transaction to the CCP within 10 minutes from the execution of the transaction.

3. The CCP shall accept or reject the clearing of a transaction referred to in paragraphs 1 or 2 within 10 seconds following the receipt of the transmission from the trading venue and inform the clearing member and the trading venue on a real time basis.

Section 2
Derivative transactions executed on a bilateral basis and subject to the clearing obligation

Article 5
Transfer of information

1. For transactions that are executed on a bilateral basis and subject to the clearing obligation in accordance with Article 4 of Regulation (EU) No 648/2012, the clearing member shall ensure that the counterparties send the information related to the trade to the CCP within 30 minutes from the execution of the transaction.

2. Within 60 seconds from the receipt of the transaction, the CCP shall check the acceptance of the transaction with the clearing member. The clearing member shall accept or refuse the transaction within 60 seconds from receiving the information from the CCP.

3. The CCP shall accept or reject the clearing of a transaction within 10 seconds following the receipt of the clearing member's acceptance and inform the clearing member and the counterparties on a real time basis.

Section 3
Derivative transactions voluntary cleared

Article 6
Transfer of information

1. Where a transaction is executed on a trading venue or on a bilateral basis and is submitted to CCP clearing on a voluntary basis, paragraphs 2 of Article 5 shall apply.

2. The CCP shall accept or reject clearing of a transaction within 10 seconds following the receipt of the clearing member's acceptance and inform the clearing member and the trading venue or the counterparties on a real time basis.

Section 4
Derivative transactions rejected from clearing

Article 7
Rejection of a transaction

1. Where a derivative contract referred to in Section 1 is concluded on a trading venue and is rejected by the CCP, the trading venue shall void such contract.

2. Where a derivative contract other than those referred to in Section 1 is concluded on a trading venue and is rejected by the CCP, the following shall apply:

(a) If the contract is submitted to clearing in accordance with the rules of the trading venue, these rules shall determine its treatment following a rejection by the CCP;

(b) If the contract is submitted to clearing by the counterparties, the agreement between them shall determine its treatment following a rejection by the CCP.

3. Where a derivative contract is concluded on a bilateral basis and is rejected by the CCP, the agreement between the parties shall determine the treatment for such contract.

4. Without prejudice to paragraphs 1 to 3, when the rejection is due to a technical problem, the transaction could be re-submitted for clearing once within 10 seconds from the previous submission.

Article 8

Entry into force

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

It shall apply from 3 January 2017.

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

Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]

RTS 38: Draft regulatory technical standards on indirect clearing

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

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for [indirect clearing]

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, and in particular Article 30 thereof.

Whereas:

(1) An indirect clearing arrangement should not expose a central counterparty (CCP), clearing member, client or indirect client to additional counterparty risk and the assets and positions of the indirect client should benefit from an appropriate level of protection. It is therefore essential that any type of indirect clearing arrangements comply with minimum conditions for ensuring their safety. To that end, the parties involved in indirect clearing arrangements shall be subject to specific obligations. Such arrangements extend beyond the contractual relationship between indirect clients and the client of a clearing member that provides indirect clearing services.

(2) Regulation (EU) No 648/2012 requires a CCP to be a designated system under 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. This implies that clearing members of CCPs should qualify as participants within the meaning of that Directive. Therefore to ensure an equivalent level of protection to indirect clients as granted to clients under Regulation (EU) No 648/2012, it is necessary to ensure that clients providing indirect clearing services are credit institutions, investment firms, or equivalent third country credit institutions or investment firms.

(3) Indirect clearing arrangements should be established so as to ensure that indirect clients can obtain in a default situation a level of protection of equivalent effect as the one envisaged for direct clients under Regulation (EU) No 648/2012. This does not imply that

indirect clients should be provided with exactly the same options and account segregation arrangements envisaged for clients. However, the account structure, the level of collateral maintained on behalf of indirect clients and the requirements for CCPs, clearing members and clients should ensure that the overall level of protection granted to indirect clients is of equivalent effect as the one envisaged for clients under Regulation (EU) No 648/2012.

(4) As indirect clearing arrangements may give rise to specific risks, all the parties included in an indirect clearing arrangement, including clearing members and CCPs, should routinely identify, monitor and manage any material risks arising from the arrangement. Appropriate sharing of information between clients that provide indirect clearing services and clearing members that facilitate those services is especially important in this context. Clearing members should use information provided by clients for risk management purposes only and should prevent the misuse of commercially sensitive information, including through the use of effective barriers between different divisions of a financial institution to avoid conflicts of interest.

(5) Indirect clients should be granted a level of protection of equivalent effect as the one envisaged for clients under Regulation (EU) No 648/2012. In line with what it is envisaged under Regulation (EU) No 648/2012, the requirements laid down in this Regulation on the segregation of indirect clients' positions and assets should prevail over any conflicting laws, regulations and administrative provisions of the Member States that prevent the parties from fulfilling them. When direct clients outside the European Union chose to facilitate indirect clearing to indirect clients established in the European Union, the types of indirect clearing arrangements specified in this Regulation are only permitted when the insolvency law applicable to the direct client is compatible with this Regulation.

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

For the purposes of this Regulation the following definitions apply:

(1) 'indirect client' means the client of a client of a clearing member;

(2) 'indirect clearing arrangement' or 'indirect clearing service arrangement' means the set of contractual relationships between the central counterparty (CCP), the clearing member, the client of a clearing member and the indirect client that allows the client of a clearing member to provide clearing services to an indirect client.

Article 2

Structure of indirect clearing arrangements

1. Where a clearing member is prepared to facilitate indirect clearing, any client of such clearing member shall be permitted to provide indirect clearing services to one or more of its own clients, provided that the client of the clearing member is an authorised credit institution, investment firm or an equivalent third country credit institution or investment firm.

2. The contractual terms of an indirect clearing arrangement shall be agreed between the client of a clearing member and the indirect client, after consultation with the clearing member on the aspects that can impact the operations of the clearing member. They shall include contractual requirements on the client to honour all obligations of the indirect client towards the clearing member. These requirements shall refer only to transactions arising as part of the indirect clearing arrangement, the scope of which shall be clearly documented in the agreed contracts.

Article 3
Obligations of CCPs

1. Indirect clearing arrangements shall not be subject to business practices of the CCP which act as a barrier to their establishment on reasonable commercial terms. At the request of a clearing member, the CCP shall maintain separate records and accounts enabling each client to distinguish in accounts held with the CCP the assets and positions of the client from those held for the accounts of the indirect clients of the client.

2. When a client manages multiple indirect clients in a single account with the segregation option provided for in Article 4(2)(b), the CCP shall calculate margin requirements separately for each indirect client. This calculation is based on the information under Article 4(3).

3. A CCP shall identify, monitor and manage any material risks arising from indirect clearing arrangements that could affect the resilience of the CCP.

Article 4
Obligations of clearing members

1. A clearing member that offers to facilitate indirect clearing services shall do so on reasonable commercial terms. Without prejudice to the confidentiality of contractual arrangements with individual clients, the clearing member shall publicly disclose the general terms on which it is prepared to facilitate indirect clearing services. These terms may include minimum operational requirements for clients that provide indirect clearing services.

2. When facilitating indirect clearing arrangements, a clearing member shall implement any of the following segregation arrangements as indicated by the client:

(a) keep separate records and accounts enabling each client to distinguish in accounts with the clearing member the assets and positions of the client from those held for the accounts of its indirect clients;

(b) keep separate records and accounts enabling each client to:

(i) distinguish in accounts with the clearing member the assets and positions of the client from those held for the accounts of its indirect clients; and

(ii) distinguish in records the positions and the collateral value of the assets held for the benefit of an indirect client from those held for the benefit of other indirect clients.

3. When a client manages multiple indirect clients in a single account with the segregation option provided for in paragraph 2(b), the clearing member shall ensure that the CCP has all the necessary information to separate the positions from each indirect client in the account on a daily basis. This information is based on the information referred to in Article 5(2).

4. A clearing member that offers to facilitate indirect clearing services shall transfer to the CCP the collateral value of the assets it received from its client for the benefit of each indirect client under segregation option in paragraph 2(b).

5. A clearing member that offers to facilitate indirect clearing services shall open an individually segregated account at the CCP for the client's exclusive purpose of holding the assets and positions of indirect clients.

6. A clearing member that offers to facilitate indirect clearing services shall disclose the information under Article 39(7) of Regulation (EU) No 648/2012 with reference to the segregation arrangements available to clients that provide indirect clearing services.

7. A clearing member shall establish robust procedures to manage the default of a client that provides indirect clearing services. The clearing member shall ensure that its procedures allow for the prompt liquidation of the assets and positions of indirect clients following the default of the client. It shall also include the details of how the clearing member would communicate to indirect clients that the client is in default, the time window by when the relevant indirect client portfolios will have been liquidated, and the steps required to initiate the return of the liquidation proceeds to the indirect client.

8. A clearing member shall identify, monitor and manage any risks arising from facilitating indirect clearing arrangements, including using information provided by clients under paragraph 4. The clearing member shall establish robust internal procedures to ensure this information cannot be used for commercial purposes.

Article 5

Obligations of clients

1. A client that provides indirect clearing services shall keep separate records and accounts that enable it to distinguish between its own assets and positions and those held for the account of its indirect clients. It shall offer indirect clients a choice between the alternative account segregation options provided for in Article 4(2) and shall ensure that indirect clients are fully informed of the risks associated with each segregation option.

2. When a client manages multiple indirect clients in a single account with the segregation option provided for in Article 4(2)(b), the client shall ensure that the clearing member has all the necessary information to separate the positions and the collateral value of the assets held for the benefit of each indirect client in the account on a daily basis.

3. A client that provides indirect clearing services shall request the clearing member to open an individually segregated account at the CCP. The account shall be for the exclusive purpose of holding the assets and positions of its indirect clients.

4. A client that provides indirect clearing services shall disclose the details of the different levels of segregation and a description of the risk involved with the respective levels of segregation offered.

5. A client shall provide the indirect client with sufficient information to identify the CCP and the clearing member used to clear the indirect client's positions.

6. A client that provides indirect clearing services shall include, in its contractual arrangement with indirect clients, terms to facilitate the prompt return to the indirect client of the proceeds from the liquidation of the positions and assets held by the clearing member for the benefit of the indirect client.

7. A client shall provide the clearing member with sufficient information to identify, monitor and manage any risks arising from facilitating indirect clearing arrangements. In the event of default of the client, all information held by the client in respect of its indirect clients shall be made immediately available to the clearing member. In particular, in the event of a default of the client, the client shall provide immediately the clearing member with sufficient information to identify the indirect clients in relation to the information under paragraph 2.

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 from 3 January 2017.

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

Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]