



Brussels, 24.5.2016  
C(2016) 3014 final

**COMMISSION DELEGATED REGULATION (EU) .../...**

**of 24.5.2016**

**supplementing Directive 2014/65/EU of the European Parliament and of the Council  
with regard to regulatory technical standards for the suspension and removal of  
financial instruments from trading**

(Text with EEA relevance)

## EXPLANATORY MEMORANDUM

### **1. CONTEXT OF THE DELEGATED ACT**

Article 52(1) of Directive 2014/65/EU on markets in financial instruments ('MiFID II') requires a market operator to suspend or remove from trading financial instruments which no longer comply with the rules of the regulated market, unless such a step would be likely to cause significant damage to investors' interests or the orderly functioning of the market. Furthermore, Article 52(2) of MiFID II requires a market operator that suspends or removes from trading a financial instrument to also suspend or remove the derivatives that relate or are referenced to that financial instrument where necessary to support the objectives of the suspension or removal of the underlying instrument.

According to Article 52(2) of MiFID II the national competent authority in whose jurisdiction the suspension or removal originated has to decide whether it is necessary to expand the suspension or removal if one of the three reasons for doing so exists, i.e. suspected market abuse, a take-over bid or the non-disclosure of inside information about the issuer or financial instrument in breach of Articles 7 and 17 of Regulation (EU) No. 596/2014 on market abuse (MAR). The expansion would apply to the trading of the same financial instrument or related derivatives on other Regulated Markets, Multilateral Trading Facilities, Organised Trading Facilities and Systematic Internalisers within its jurisdiction.

In order to ensure that the obligation to suspend or remove from trading such derivatives is applied proportionately, the Commission is empowered to adopt, following the submission of a draft regulatory technical standards by the European Securities and Markets Authority ('ESMA'), a delegated Regulation to further specify the cases in which the connection between a derivative relating or referenced to a financial instrument suspended or removed from trading and the original financial instrument implies that the derivative are also suspended or removed from trading, in order to achieve the objective of the suspension or removal of the underlying financial instrument.

Under Article 32 of MiFID II the same rules as outlined above apply to the operator of an MTF or OTF that suspends or removes from trading a financial instrument and related derivatives.

The draft regulatory technical standards were submitted to the Commission on 28 September 2015. In accordance with Article 10(1) of Regulation No (EU) 1095/2010 establishing ESMA, the Commission shall decide within three months of receipt of the draft standards whether to endorse them. The Commission may also endorse the draft standards in part only, or with amendments, where the Union's interests so require, having regard to the specific procedure laid down in those Articles.

### **2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT**

In accordance with Article 10 of the Regulation (EU) 1095/2010 ESMA has carried out a public consultation on the draft regulatory technical standards. The consultation paper was published on 19 December 2014 on the ESMA website and the consultation closed on 2 March 2015. In addition, ESMA invited sought the views of the Securities and Markets Stakeholder Group (SMSG) established in accordance

with Article 37 of the ESMA Regulation. The SMSG chose not to provide advice on these issues due to the technical nature of the standards.

Together with the draft technical standards, and in accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1095/2010, ESMA has submitted its impact assessment, including the analysis of costs and benefits related to the draft technical standards. This analysis is available at [http://www.esma.europa.eu/system/files/2015-esma-1464\\_annex\\_ii\\_-\\_cba\\_-\\_draft\\_rts\\_and\\_its\\_on\\_mifid\\_ii\\_and\\_mifir.pdf](http://www.esma.europa.eu/system/files/2015-esma-1464_annex_ii_-_cba_-_draft_rts_and_its_on_mifid_ii_and_mifir.pdf).

### **3. LEGAL ELEMENTS OF THE DELEGATED ACT**

The right to adopt a Delegated Regulation is provided for under Articles 32 (2) and 52 (2) of MiFID II. Under these provisions, the Commission is empowered to adopt a delegated Regulation to establish the cases in which a derivative relating or referenced to a financial instrument suspended or removed from trading should also be suspended or removed from trading by regulated markets, MTFs and OTFs. This is to support fairly and orderly trading markets and ensure that the behaviour that a suspension is designed to prevent cannot simply transfer to a related market of financial instrument.

The inability to correctly price related derivatives, leading to a disorderly market, is strongest for the cases where a derivative has as its sole underlying a financial instrument that is suspended or removed from trading and where the price or value of the related derivative is therefore completely dependent on the prevailing price or value of that financial instrument.

ESMA submitted to the Commission one draft regulatory technical standard bundling the two empowerments in one legal act. To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view and compact access to them by persons subject to those obligations, including investors that are non-Union residents, it is desirable to include these regulatory technical standards in a single Regulation. In addition the provisions of this Regulation are closely linked in terms of substance, since they deal with specifying the suspensions and removals on different types of trading venues.

In this context, Article 1 of this Delegated Regulation requires a market operator of a regulated market and an investment firm or market operator operating an MTF or an OTF to suspend or remove a derivative from trading where that derivative is related or referenced to one financial instrument, and that financial instrument has been suspended or removed from trading. The delegated act does not apply to derivatives for which the price or value is dependent on multiple price inputs, for instance those related to an index or a basket of financial instruments.

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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<sup>1</sup>, and in particular the tenth subparagraph of Article 32(2) and the tenth subparagraph of Article 52(2) thereof,

Whereas:

- (1) The objective of a suspension or removal from trading of a financial instrument will in some cases not be achieved unless a derivative of a type referred to in points (4) to (10) of Section C of Annex I to Directive 2014/65/EU relating or referenced to that financial instrument is also suspended or removed from trading.
- (2) In determining cases where the connection is such that it is necessary to suspend or remove related derivatives, the strength of the connection between the derivative and the financial instrument that is suspended or removed from trading should be considered. In this respect, a distinction should be made between a derivative for which the formation of its price or value is dependent on the price or value of a sole underlying financial instrument, and derivatives for which the price or value is dependent on multiple price inputs, for instance, derivatives related to an index or a basket of financial instruments.
- (3) The inability to correctly price related derivatives, leading to a disorderly market, should be considered the strongest for the cases where the derivative is related or referenced to only one financial instrument. When the derivative is related or referenced to a basket of financial instruments or an index of which the suspended financial instrument is only one part, the ability of market participants to determine the correct price would be less affected. Thus the characteristics of the connection between the derivative and the underlying should be taken into account in considering the overall objective of the suspension or removal.
- (4) It should be taken into account that a market operator has to ensure fair, orderly and efficient trading in its market. Outside the scope of this Regulation, a market operator will need to make an assessment of whether the suspension or removal from trading of the underlying financial instrument endangers the fair and orderly trading of the derivative in its trading venue, including taking appropriate action such as the suspension or removal of related derivatives on its own initiative.

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<sup>1</sup> OJ L 173, 12.6.2014, p. 349.

- (5) Article 32(2) and Article 52(2) of Directive 2014/65/EU should be applied consistently to different types of trading venues. They are closely linked, since they deal with specifying the suspensions and removals on different types of trading venues. To ensure consistent application of these provisions which should enter into force at the same time, and to facilitate a comprehensive view for stakeholders and, in particular, those subject to the obligations, it is necessary to consolidate the regulatory technical standards developed under Article 32(2) and Article 52(2) of Directive 2014/65/EU in a single Regulation.
- (6) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the related national provisions transposing Directive 2014/65/EU apply from the same date.
- (7) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- (8) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>2</sup>,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

#### **Connection between a derivative related or referenced to a financial instrument suspended or removed from trading and the original financial instrument**

A market operator of a regulated market and an investment firm or market operator operating a multilateral trading facility (MTF) or an organised trading facility (OTF) shall suspend or remove a derivative referred to in points (4) to (10) of Section C of Annex I to Directive 2014/65/EU from trading where that derivative is related or referenced to only one financial instrument, and that financial instrument has been suspended or removed from trading.

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<sup>2</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

*Article 2*

**Entry into force and application**

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

It shall apply from the date that appears in the second subparagraph of Article 93(1) of Directive 2014/65/EU.

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

Done at Brussels, 24.5.2016

*For the Commission*  
*The President*  
*Jean-Claude JUNCKER*