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

of 14.7.2016

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the data standards and formats for financial instrument reference data and technical measures in relation to arrangements to be made by the European Securities and Markets Authority and competent authorities

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The Markets in Financial Instruments Regulation (EU) No 600/2014 (MiFIR) requires trading venues to provide competent authorities with identifying reference data for the purposes of transaction reporting. For the purpose of effective market monitoring by competent authorities, reference data for financial instruments should be reported in a consistent format and according to uniform standards.

Under Article 27(3) of MiFIR, ESMA is empowered to draft RTS to specify data standards and formats for the financial instrument reference data, including the methods and arrangements for supplying the data to competent authorities and transmitting it to ESMA, and the technical measures that are necessary in relation to the arrangements to be made by ESMA and the competent authorities.

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. A consultation paper was published on 19 December 2014 on the ESMA website and the consultation closed on 2 March 2015. In addition, ESMA sought the views of the Securities and Markets Stakeholder Group (MSG) established in accordance with Article 37 of the ESMA Regulation. The MSG 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.

With regard to the use of the International Securities Identification Number (ISIN) in the reported data the Commission considers that it is currently the best option for implementing a single identifier for data reporting under MiFID II/MiFIR.

Given the scope of the financial instruments to be covered (about 15 million), the use of multiple identifiers for the purposes of data reporting under MiFID II/MiFIR would lead to difficulties in obtaining a comprehensive overview of markets and render market surveillance extremely difficult as different identifiers have to be reconciled. It would also considerably increase the workload for ESMA and National Competent Authorities to analyse the data, and would lead to considerable costs due to the costs of underlying reference data.

No other identifier has the qualities of being fully harmonised, broadly standardised, enforceable and subject to robust governance framework. On the one hand, some

industry identifiers such as AII have not been subject to standardisation; whilst others are not subject to adequate governance and cost-recovery pricing since they are sponsored by private entities. Some further identifiers such as UPI are being developed, but will not be ready by the date of application of MIFIR.

ISINs are issued by National Numbering Agencies, which operate to the highest governance standards, whilst pricing the ISINs on a cost recovery model.

The National Numbering Agencies are tasked with disseminating ISINs to the local as well as the international securities industry and in so doing have to follow certain rules, such as the articles of incorporation of ANNA, the Association of National Numbering Agencies.

Taking into account concerns raised by stakeholders as well as the above considerations, the European Commission concludes that the ISIN is the most appropriate single identifier to be used for the purposes of market surveillance in the context of MiFID II/MiFIR.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The Regulation sets out the standards and formats of the reference data to be submitted by trading venues and systematic internalisers. It also lays out the methods and arrangements for submission of this data and its use by the competent authorities and transmission to ESMA as well as the necessary measures in connection to the arrangements to be made by ESMA and the competent authorities.

The regulation requires daily submission of data as this is the most proportionate way of ensuring the accuracy of data.

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(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 648/2012¹, and in particular the third subparagraph of Article 27(3) thereof,

Whereas:

- (1) For the purpose of effective market monitoring by competent authorities, reference data for financial instruments should be reported in a consistent format and according to uniform standards.
- (2) Reporting and publication of reference data in electronic, machine-readable and downloadable form and format facilitates the efficient use and exchange of that data.
- (3) Promptly receiving reference data in respect of all financial instruments that are admitted to trading or that are traded on a trading venue or via a systematic internaliser, enables competent authorities and the European Securities and Markets Authority (ESMA) to ensure data quality and effective market monitoring and thus contributing to market integrity.
- (4) To ensure that trading venues and systematic internalisers submit complete and accurate reference data and that competent authorities are able to effectively receive and use such data in a timely manner, appropriate submission timelines should be established. Adequate time should be allowed to identify inaccuracies or incompleteness thereof prior to publication. To ensure that reference data submitted is consistent with the corresponding information reported in accordance with Article 26 of Regulation (EU) No 600/2014, reference data in respect of a given day should be used by competent authorities to validate and exchange the reports of transactions executed on that same day.
- (5) In accordance with Article 27(2) of Regulation (EU) No 600/2014 senders and recipients of reference data have to ensure the effective receipt, efficient exchange and quality of the data and its consistency with corresponding transaction reports provided in Article 26 of that Regulation. Trading venues and systematic internalisers should therefore provide complete and accurate reference data and should promptly inform

¹ OJ L 173, 12.6.2014, p. 84.

competent authorities of identified incompleteness or inaccuracy in data already provided. They should also maintain adequate systems and controls for the purpose of accurate, complete and timely provision of reference data.

- (6) For the purposes of efficient use and exchange of reference data, and in order to ensure that reference data are consistent with corresponding data provided in transaction reports, trading venues and systematic internalisers must base the identification of financial instruments and legal entities to be included in the reference data on uniform accepted standards. In particular, and in order to ensure that reference data are matched with corresponding transaction reports, trading venues and systematic internalisers should ensure that International Securities Identifying Number codes in accordance with ISO 6166 pertaining to the financial instruments being reported are obtained and included in the reported data.
- (7) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the provisions laid down in Regulation (EU) No 600/2014 apply from the same date.
- (8) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the Commission.
- (9) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council²,

HAS ADOPTED THIS REGULATION:

Article 1

Content, standards, form and format of reference data

Trading venues and systematic internalisers shall provide competent authorities with all details of financial instrument reference data ('reference data') referred to in Table 3 of the Annex that pertain to the financial instrument concerned. All details provided shall be submitted in accordance with the standards and formats specified in Table 3 of the Annex, in an electronic and machine-readable form and in a common XML template in accordance with the ISO 20022 methodology.

Article 2

Timing for provision of reference data to competent authorities

1. Trading venues and systematic internalisers shall provide their competent authority by 21:00 CET on each day they are open for trading with the reference data for all financial instruments that are admitted to trading or that are traded, including where orders or quotes are placed through their system, before 18:00 CET on that day.
2. Where a financial instrument is admitted to trading or traded, including where an order or a quote is placed for the first time, after 18:00 CET on a day on which a trading venue or systematic internaliser is open for trading, the reference data in

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

respect of the financial instrument concerned shall be provided by 21:00 CET on the next day on which the trading venue or systematic internaliser concerned is open for trading.

Article 3

Identification of financial instruments and legal entities

1. Prior to the commencement of trading in a financial instrument in a trading venue or systematic internaliser, the trading venue or systematic internaliser concerned shall obtain the ISO 6166 International Securities Identifying Number ('ISIN') code for the financial instrument.
2. Trading venues and systematic internalisers shall ensure that legal entity identifier codes included in the reference data provided comply with the ISO 17442:2012 standard, pertain to the issuer concerned, and are listed in the Global Legal Entity Identifier database maintained by the Central Operating Unit appointed by the The Legal Entity Identifier Regulatory Oversight Committee.

Article 4

Arrangements to ensure effective receipt of reference data

1. Competent authorities shall monitor and assess the completeness of the reference data they receive from a trading venue or systematic internaliser, and the compliance of that data with the standards and formats specified in Table 3 of the Annex.
2. Following receipt of reference data in respect of each day on which trading venues and systematic internalisers are open for trading, competent authorities shall notify trading venues and systematic internalisers of any incompleteness in that data and of any failure to deliver reference data by the deadlines set out in Article 2.
3. ESMA shall monitor and assess the completeness of reference data it receives from competent authorities, and compliance of the data with the standards and formats specified in Table 3 of the Annex.
4. Following receipt of reference data from competent authorities, ESMA shall notify them of any incompleteness in that data and of any failure to deliver reference data by the deadlines set out in Article 7(1).

Article 5

Arrangements to ensure the quality of the reference data

Competent authorities shall conduct quality assessments regarding the content and accuracy of the reference data received pursuant to Article 27(1) of Regulation (EU) No 600/2014 on at least a quarterly basis.

Article 6

Methods and arrangements for supplying reference data

1. Trading venues and systematic internalisers shall ensure that they provide complete and accurate reference data to their competent authorities pursuant to Articles 1 and 3.
2. Trading venues and systematic internalisers shall put methods and arrangements in place that enable them to identify incomplete or inaccurate reference data previously

submitted. A trading venue or systematic internaliser detecting that submitted reference data is incomplete or inaccurate shall promptly notify its competent authority and transmit to the competent authority complete and correct relevant reference data without undue delay.

Article 7

Arrangements for efficient exchange and publication of reference data

1. Competent authorities shall transmit complete and accurate reference data to ESMA each day no later than 23:59 CET using the secure electronic communication channel established for that purpose between competent authorities and ESMA.
2. On the day following receipt of reference data in accordance with paragraph 1, ESMA shall consolidate the data received from each competent authority.
3. ESMA shall make the consolidated data available to all competent authorities by 08:00 CET on the day following its receipt using the secure electronic communication channels referred to in paragraph 1.
4. Competent authorities shall use the consolidated data in respect of a given day to validate the transaction reports in respect of transactions executed on that given day and reported pursuant to Article 26 of Regulation (EU) No 600/2014.
5. Each competent authority shall use the consolidated data for a given day to exchange transaction reports submitted on that given day in accordance with the second subparagraph of Article 26(1) of Regulation (EU) No 600/2014.
6. ESMA shall publish the reference data in an electronic, downloadable and machine readable form.

Article 8

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in *the Official Journal of the European Union*. This Regulation shall apply from the date referred to in the second paragraph of Article 55 of Regulation (EU) No 600/2014.

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

Done at Brussels, 14.7.2016

For the Commission
The President
Jean-Claude JUNCKER