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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 on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The Markets in Financial Instruments Regulation (Regulation (EU) No 600/2014, MiFIR) introduces pre-trade and post-trade transparency requirements in respect of bonds, structured finance products, emission allowances and derivatives, subject to certain conditions and to certain waivers.

In this context, Article 1(8), Article 9(5), Article 11(4), Article 21(5) and Article 22(4) of MiFIR, empower the Commission to adopt, following submission of a draft regulatory technical standard by the European Securities and Markets Authority (ESMA), and in accordance with Article 10 to 15 of Regulation No (EU) 1095/2010, a delegated Regulation further specifying those pre- and post-trade transparency requirements, including the thresholds, methodology for the liquidity assessment and the granting of transparency waivers and right to deferred publication and additional measures.

The draft regulatory technical standards were submitted to the Commission on 28 September 2015. On 20 April 2016, the Commission notified ESMA of its intention to endorse this draft standard subject to a number of changes in accordance with Article 10(1) of Regulation No (EU) 1095/2010. In order to remedy concerns on the persistence of liquidity in non-equity markets, the Commission proposed a more cautious approach in two areas:

-in relation to the average daily number of trades above which a bond market is deemed liquid, the Commission suggested to set the liquidity threshold initially at 15 daily trades and advocated a gradual decrease of the daily trades that denote a liquid market according to four successive thresholds (S1: 15 daily trades; S2: 10 daily trades; S3: 7 daily trades; S4: 2 daily trades);

-in relation to the calculation of the pre-trade size specific to the instrument waiver thresholds that apply to non-equity financial instruments, the Commission suggested to set this threshold initially at the 30th percentile and advocated a gradual increase according to four successive thresholds (S1: 30th percentile; S2: 40th percentile; S3: 50th percentile; S4: 60th percentile).

In both cases of the liquidity and size specific to the instrument thresholds, the Commission suggested that ESMA should, every year, submit to the Commission an assessment of the operation of the applicable thresholds, taking into account the evolution of trading volumes in the segments covered by the pre-trade transparency requirements and other relevant factors that may affect liquidity in these segments. Where appropriate, this assessment should be accompanied with the submission of an updated version of the regulatory technical standard adjusting the threshold to the next phase of the above mentioned three thresholds that remain after the initial one.

On 2 May 2016, ESMA submitted to the Commission a formal opinion on the Commission letter and a revised draft technical standard. While ESMA retained most of the amendments proposed by the Commission, ESMA proposed an automatic phase-in in four distinct steps while the Commission had suggested a more cautious approach in providing that the transition from one step to the next should be preceded by an ESMA assessment on the liquidity of non-equity markets and the operation of liquidity providers in these markets. While the Commission supports setting out a clear phase-in schedule for both the liquidity standards and the waiver

thresholds that gives clarity to market participants, the Commission is of the view that an automatic phase-in is not warranted. On the contrary, the Commission deems crucial that, before considering a transition to a subsequent threshold, ESMA carries out a comprehensive assessment analysing the evolution of trading volumes in non-equity instruments covered by the pre-trade transparency obligations, the impact on liquidity providers of the percentile thresholds used to determine the size specific to the instrument and any other relevant factors that are prone to have an influence on liquidity in non-equity markets or affect market making in these markets or segments. Once ESMA is satisfied that liquidity and market making in non-equity markets will not be negatively affected by a subsequent move, the move to the next threshold according to the phase-in should be achieved via a new regulatory technical standard.

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, the ESMA 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, the 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.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The right to adopt a delegated Regulation is provided for under Article 1(8), Article 9(5), Article 11(4), Article 21(5) and Article 22(4) of MiFIR. Under these provisions, the Commission is empowered to adopt a delegated Regulation to further specify pre-trade transparency obligations for market operators and investment firms operating a trading venue in accordance with the type of trading system they operate and sets out the relevant information requirements.

ESMA submitted to the Commission one draft regulatory technical standard bundling the five 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 all deal with pre-trade and post-trade transparency requirements applicable to trading venues, systematic internalisers and investment firms relating to bonds, structured finance products, emission allowances and derivatives.

Chapter I: Definitions

Article 1 contains definitions of what constitutes package transactions and of request-for-quote and voice-trading systems.

Chapter II: Pre-trade transparency for regulated markets, multilateral trading facilities and organised trading facilities

Articles 2 to 6 set out, with regard to pre-trade transparency, the general requirements for pre-trade transparency, the size of orders which are large in scale, the type and minimum size of orders held in an order management facility as well as the size specific to the financial instrument and classes of financial instruments for which there is not a liquid market, for all of which pre-trade obligations may be waived.

Chapter III: Post-trade transparency for trading venues and investment firms trading outside a trading venue.

Articles 7 to 12 set out post-trade requirements for investment firms trading outside the rules of a trading venue and market operators and investment firms operating a trading venue.

CHAPTER IV: Provisions common to pre-trade and post-trade transparency

It stipulates the size of transactions which are large in scale and the size specific to the financial instrument for which post-trade transparency may be deferred and further specifies the deferred publication at the discretion of the competent authorities under Article 11(3) of MiFIR. It also contains provisions for the application of post-trade transparency to certain transactions executed outside of a trading venue

Article 13 sets out the methodology to perform the transparency calculations and the liquid market definition for non-equity instruments, for example the determination of bond liquidity

Article 14 covers the temporary suspension of transparency requirements, and exemptions from transparency requirements in respect of transactions executed by a member of the ESCB.

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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 Article 1(8), Article 9(5), Article 11(4), Article 21(5) and Article 22(4) thereof,

Whereas:

- (1) A high degree of transparency is essential to ensure that investors are adequately informed as to the true level of actual and potential transactions in bonds, structured finance products, emission allowances and derivatives irrespective of whether those transactions take place on regulated markets, multilateral trading facilities (MTFs), organised trading facilities, systematic internalisers, or outside those facilities. This high degree of transparency should also establish a level playing field between trading venues so that the price discovery process in respect of particular financial instruments is not impaired by the fragmentation of liquidity, and investors are not thereby penalised.
- (2) At the same time, it is essential to recognise that there may be circumstances where exemptions from pre-trade transparency or deferrals of post-trade transparency obligations should be provided to avoid the impairment of liquidity as an unintended consequence of obligations to disclose transactions and thereby to make public risk positions. Therefore, it is appropriate to specify the precise circumstances under which waivers from pre-trade transparency and deferrals from post-trade transparency may be granted.
- (3) The provisions in this Regulation are closely linked, since they deal with specifying the pre-trade and post-trade transparency requirements that apply to trading in non-equity financial instruments. To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view for stakeholders and, in particular, those subject to the obligations, it is necessary to include these regulatory technical standards in a single Regulation.
- (4) Where competent authorities grant waivers in relation to pre-trade transparency requirements or authorise the deferral of post-trade transparency obligations, they

¹ OJ L 173, 12.6.2014, p.84.

should treat all regulated markets, multilateral trading facilities, organised trading facilities and investment firms trading outside of trading venues equally and in a non-discriminatory manner.

- (5) It is appropriate to clarify a limited number of technical terms. Those technical definitions are necessary to ensure the uniform application in the Union of the provisions contained in this Regulation and, hence, contribute to the establishment of a single rulebook for Union financial markets. Those definitions serve only for the purpose of setting out the transparency obligations for non-equity financial instruments and should be strictly limited to understanding this Regulation.
- (6) Exchange-traded-commodities (ETCs) and exchange-traded notes (ETNs) subject to this Regulation should be considered as debt instruments due to their legal structure. However, since they are traded in a similar fashion to ETFs, a similar transparency regime as that of ETFs should be applied.
- (7) In accordance with Regulation (EU) No 600/2014, a number of instruments should be considered to be eligible for a pre-trade transparency waiver for instruments for which there is not a liquid market. This requirement should also apply to derivatives subject to the clearing obligation which are not subject to the trading obligation as well as bonds, derivatives, structured finance products and emission allowances which are not liquid.
- (8) A trading venue operating a request for quote system should make public the firm bid and offer prices or actionable indications of interest and the depth attached to those prices no later than at the time when the requester is able to execute a transaction under the system's rules. This is to ensure that members or participants who are providing their quotes to the requester first are not put at a disadvantage.
- (9) The majority of liquid covered bonds are mortgage bonds issued to grant loans for financing private individuals' purchase of a home and the average value of which is directly related to the value of the loan. In the covered bond market, liquidity providers ensure that professional investors trading in large sizes are matched with home owners trading in small sizes. To avoid disruption of this function and contingent detrimental consequences for home owners, the size specific to the instrument above which liquidity providers may benefit from a pre-trade transparency waiver should be set at a the trade size below which lie 40 percent of the transactions since this trade size is deemed reflective of the average price of a home.
- (10) Information which is required to be made available as close to real time as possible should be made available as instantaneously as technically feasible, assuming a reasonable level of efficiency and of expenditure on systems on the part of the market operator Approved Publication Arrangement (APA) or investment firm concerned. The information should only be published close to the prescribed maximum time limit in exceptional cases where the systems available do not allow for a publication in a shorter period of time.
- (11) Investment firms should make public the details of transactions executed outside a trading venue through an APA. This Regulation should set out the way investment firms report their transactions to APAs and should apply in conjunction with Commission Delegated Regulation (EU) xx/xxxx².

² Commission Delegated Regulation (EU)/..... of supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the

- (12) The possibility to specify the application of the obligation of post-trade disclosure of transactions executed between two investment firms, including systematic internalisers, in bonds, structured finance products, emission allowances and derivatives which are determined by factors other than the current market valuation, such as the transfer of financial instruments as collateral, is set out in Regulation (EU) No 600/2014". Such transactions do not contribute to the price discovery process or risk blurring the picture for investors or hinder best execution and therefore this Regulation specifies the transactions determined by factors other than the current market valuation which should not be made public.
- (13) Investment firms often conduct, on own account or on behalf of clients, transactions in derivatives and other financial instruments or assets that are composed by a number of interlinked, contingent trades. Such package transactions enable investment firms and their clients to better manage their risks with the price of each component of the package transaction reflecting the overall risk profile of the package rather than the prevailing market price of each component. Package transactions can take various forms, such as exchange for physicals, trading strategies executed on trading venues or bespoke package transactions and it is important to take those specificities into account when calibrating the applicable transparency regime. It is therefore appropriate to specify for the purpose of this Regulation the conditions for applying deferrals from post-trade transparency to package transactions. Such arrangements should not be available for transactions which hedge financial instruments conducted in the normal course of the business.
- (14) Exchange for physicals are an integral part of financial markets, allowing market participants to organise and execute exchange-traded derivatives transactions which are linked directly to a transaction in the underlying physical market. They are widely used and they involve a multitude of actors, such as farmers, producers, manufacturers and processors of commodities. Typically an exchange for physical transaction will take place when a seller of a physical asset seeks to close out his corresponding hedging position in a derivative contract with the buyer of the physical asset, when the latter happens to also hold a corresponding hedge in the same derivative contract. They therefore facilitate the efficient closing out of hedging positions which are not necessary anymore.
- (15) In respect of transactions executed outside the rules of a trading venue, it is essential to clarify which investment firm is to make public a transaction in cases where both parties to the transaction are investment firms established in the Union in order to ensure the publication of transactions without duplication. Therefore, the responsibility to make a transaction public should always fall on the selling investment firm unless only one of the counterparties is a systematic internaliser and it is the buying firm.
- (16) Where only one of the counterparties is a systematic internaliser in a given financial instrument and it is also the buying firm for that instrument, it should be responsible for making the transaction public as its clients would expect it to do so and it is better placed to fill in the reporting field mentioning its status of systematic internaliser. To ensure that a transaction is only published once, the systematic internaliser should inform the other party that it is making the transaction public.

authorization, organisational requirements and the publication of transactions for data reporting services providers (OJ)

- (17) It is important to maintain current standards for the publication of transactions carried out as back-to-back trades to avoid the publication of a single transaction as multiple trades and to provide legal certainty on which investment firm is responsible for publishing a transaction. Therefore, two matching trades entered at the same time and for the same price with a single party interposed should be published as a single transaction.
- (18) Regulation (EU) No 600/2014 allows competent authorities to require the publication of supplementary details when publishing information benefitting from a deferral, or to allow deferrals for an extended time period. In order to contribute to the uniform application of these provisions across the Union, it is necessary to frame the conditions and criteria under which supplementary deferrals may be allowed by competent authorities.
- (19) Trading in many non-equity financial instruments, and in particular derivatives, is episodic, variable and subject to regular modifications of trading patterns. Static determinations of financial instruments which do not have a liquid market and static determinations of the various thresholds for the purpose of calibrating pre-trade and post-trade transparency obligations without providing for the possibility to adapt the liquidity status and the thresholds in light of changes in trading patterns would therefore not be suitable. It is therefore appropriate to set out the methodology and parameters which are necessary to perform the liquidity assessment and the calculation of the thresholds for the application of pre-trade transparency waivers and deferral of post-trade transparency on a periodic basis.
- (20) In order to ensure consistent application of the waivers to pre-trade transparency and the post-trade deferrals, it is necessary to create uniform rules regarding the content and frequency of data competent authorities may request from trading venues, APAs and Consolidated Tape Providers (CTPs) for transparency purposes. It is also necessary to specify the methodology for calculating the respective thresholds and to create uniform rules with regard to publishing the information across the Union. Rules on the specific methodology and data necessary to perform calculations for the purpose of specifying the transparency regime applicable to non-equity financial instruments should be applied in conjunction with Commission Delegated Regulation (EU) xx/xxxx³ which sets out the common elements with regard to the content and frequency of data requests to be addressed to trading venues, APAs and CTPs for the purposes of transparency and other calculations in more general terms.
- (21) For bonds other than ETCs and ETNs, transactions below EUR 100 000 should be excluded from the calculations of pre-trade and post-trade transparency thresholds, as those are considered to be of a retail size. Those retail-sized transactions should in all cases benefit from the new transparency regime and any threshold giving rise to a waiver or deferral from transparency should be set above that level.
- (22) The purpose of the exemption from transparency obligations set out in Regulation (EU) No 600/2014 is to ensure that the effectiveness of operations conducted by the Eurosystem in the performance of primary tasks as set out in the Statute of the European System of Central Banks and of the European Central Bank annexed to the Treaty on the European Union ("the Statute"), and under equivalent national

³ Commission Delegated Regulation (EU)/..... of supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the volume cap mechanism and the provision of information for the purposes of transparency and other calculations (OJ)

provisions for members of the European System of Central Banks (ESCB) in Member States whose currency is not the euro, which relies on timely and confidential transactions, is not compromised by the disclosure of information on such transactions. It is crucial for central banks to be able to control whether, when and how information about their actions is disclosed so as to maximise the intended impact and limit any unintended impact on the market. Therefore, legal certainty should be provided for the members of the ESCB and their respective counterparties as to the scope of the exemption from transparency requirements.

- (23) One of the primary ESCB responsibilities under the Treaty and the Statute and under equivalent national provisions for members of the ESCB in Member States whose currency is not the euro, is the performance of foreign exchange policy, which entails holding and managing foreign reserves to ensure that, whenever necessary, there is a sufficient amount of liquid resources available for its foreign exchange policy operations. The application of transparency requirements to foreign reserve management operations may result in unintended signals to the market, which could interfere with the foreign exchange policy of the Eurosystem and of members of the ESCB in Member States whose currency is not the euro. Similar considerations may also apply to foreign reserve management operations in the performance of monetary and financial stability policy on a case-by-case basis.
- (24) The exemption from transparency obligations for transactions where the counterparty is a member of the ESCB should not apply in respect of transactions entered into by any member of the ESCB in performance of their investment operations. This should include operations conducted for administrative purposes or for the staff of the member of the ESCB, including transactions conducted in the capacity as an administrator of a pension scheme in accordance with Article 24 of the Statute.
- (25) The temporary suspension of liquidity obligations should only be imposed in exceptional situations which represent a significant decline in liquidity across a class of financial instruments based on objective and measurable factors. It is necessary to differentiate between classes initially determined as having or not having a liquid market as a further significant decline in relative terms in a class already determined as illiquid is likely to occur more easily. Therefore, a suspension of transparency requirements in instruments determined as not having a liquid market should be imposed only if a decline by a higher relative threshold has occurred.
- (26) The pre-trade and post-trade transparency regime established by Regulation (EU) No 600/2014 should be appropriately calibrated to the market and applied in a uniform manner throughout the Union. It is therefore essential to lay down the necessary calculations to be performed, including the periods and methods of calculation. In this respect, to avoid market distorting effects, the calculation periods specified in this Regulation should ensure that the relevant thresholds of the regime are updated at appropriate intervals to reflect market conditions. It is also appropriate to provide for the centralised publication of the results of the calculations so that they are made available to all financial market participants and competent authorities in the Union in a single place and in a user-friendly manner. To that end, competent authorities should notify ESMA of the results of their calculations and ESMA should publish those calculations on its website.
- (27) In order to ensure a smooth implementation of the new transparency requirements, it is appropriate to phase-in the transparency provisions. The liquidity threshold ‘average

daily number of trades' used for the determination of bonds for which there is a liquid market should be adapted in a gradual manner.

- (28) By 30 July of the year following the date of application of Regulation (EU) No 600/2014, ESMA should, on an annual basis, submit to the Commission an assessment of the liquidity threshold determining the pre-trade transparency obligations pursuant to Articles 8 and 9 of Regulation (EU) No 600/2014, and, where appropriate, submit a revised regulatory technical standard in order to adapt the liquidity threshold.
- (29) Likewise, the trade percentiles used to determine the size specific to the instrument which allow for the pre-trade transparency obligations for non-equity instruments to be waived, should be gradually adapted.
- (30) For this purpose, ESMA should, on an annual basis, submit to the Commission an assessment of the waiver thresholds and, where appropriate, submit a revised regulatory standard to adapt the waiver thresholds applicable to non-equity instruments.
- (31) For the purpose of the transparency calculations, reference data is necessary to determine the sub-asset class to which each financial instrument belongs. Therefore, it is necessary to require trading venues to provide additional reference data to that required by Commission Delegated Regulation (EU) xx/xxxx⁴.
- (32) In the determination of financial instruments not having a liquid market in relation to foreign exchange derivatives, a qualitative assessment was required due to the lack of data necessary for a comprehensive quantitative analysis of the entire market. As a result, until data of better quality is available, foreign exchange derivatives should be considered not to have a liquid market for the purposes of this Regulation.
- (33) With a view to allowing for an effective start of the new transparency rules data should be provided by market participants for the calculation and publication of the financial instruments for which there is not a liquid market and the sizes of orders that are large in scale or above the size specific to the instrument sufficiently in advance of the date of application of Regulation (EU) No 600/2014.
- (34) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that this Regulation and the provisions laid down in Regulation (EU) No 600/2014 apply from the same date. However, to ensure that the new transparency regulatory regime can operate effectively, certain provisions of this regulation should apply from the date of its entry into force.
- (35) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the Commission.
- (36) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group

⁴ Commission Delegated Regulation (EU)/..... of 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 (OJ)

established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁵,

HAS ADOPTED THIS REGULATION:

CHAPTER I DEFINITIONS

Article 1 Definitions

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

1. 'package transaction' means either of the following:
 - (a) a transaction in a derivative contract or other financial instrument contingent on the simultaneous execution of an equivalent quantity of an underlying physical asset (Exchange for Physical or EFP);
 - (b) a transaction which involves the execution of two or more component transactions in financial instruments and:
 - (i) which is executed between two or more counterparties;
 - (ii) where each component bears meaningful economic or financial risk which is related with all the other components;
 - (iii) where the execution of each component is simultaneous and contingent upon the execution of all other components.
2. 'request-for-quote system' means a trading system where the following conditions are met:
 - (a) a quote or quotes by a member or participant are provided in response to a request for a quote submitted by one or more other members or participants;
 - (b) the quote is executable exclusively by the requesting member or participant;
 - (c) the requesting member or market participant may conclude a transaction by accepting the quote or quotes provided to it on request.
3. 'voice trading system' means a trading system where transactions between members are arranged through voice negotiation.

⁵ 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).

CHAPTER II

PRE-TRADE TRANSPARENCY FOR REGULATED MARKETS, MULTILATERAL TRADING FACILITIES AND ORGANISED TRADING FACILITIES

Article 2

(Article 8(1) and (2) of Regulation (EU) 600/2014)

Pre-trade transparency obligations

Market operators and investment firms operating a trading venue shall make public the range of bid and offer prices and the depth of trading interest at those prices, in accordance with the type of trading system they operate and the information requirements set out in Annex I

Article 3

(Article 9(1)(a) of Regulation (EU) 600/2014)

Orders which are large in scale

An order is large in scale compared with normal market size where, at the point of entry of the order or following any amendment to the order, it is equal to or larger than the minimum size of order which shall be determined in accordance with the methodology set out in Article 13.

Article 4

(Article 9(1)(a) of Regulation (EU) 600/2014)

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

1. The type of order held in an order management facility of a trading venue pending disclosure for which pre-trade transparency obligations may be waived is an order which:
 - (a) is intended to be disclosed to the order book operated by the trading venue and is contingent on objective conditions that are defined in advance by the system's protocol;
 - (b) does not interact with other trading interest prior to disclosure to the order book operated by the trading venue;
 - (c) once disclosed to the order book it interacts with other orders in accordance with the rules applicable to orders of that kind at the time of disclosure.
2. The minimum size of orders held in an order management facility of a trading venue pending disclosure for which pre-trade transparency obligations may be waived shall, at the point of entry and following any amendment, be one of the following:
 - (a) in the case of a reserve order, greater than or equal to EUR10,000;
 - (b) for all other orders, a size that is greater than or equal to the minimum tradable quantity set in advance by the system operator under its rules and protocols.
3. A reserve order referred to in paragraph 2(a) shall be considered a limit order consisting of a disclosed order relating to a portion of the quantity and a non-disclosed order relating to the remainder of the quantity, where the non-disclosed quantity is capable of execution only after its release to the order book as a new disclosed order.

Article 5
(Articles 8(4) and 9(1)(b) of Regulation (EU) 600/2014)
Size specific to the financial instrument

1. An actionable indication of interest is above the size specific to the financial instrument where, at the point of entry or following any amendment, it is equal to or larger than the minimum size of an actionable indication of interest which shall be determined in accordance with the methodology set out in Article 13.
2. Indicative pre-trade prices for actionable indications of interest that are above the size specific to the financial instrument determined in accordance with paragraph 1 and smaller than the relevant large in scale size determined in accordance with Article 3 shall be considered close to the price of the trading interests where the trading venue makes public any of the following:
 - (a) the best available price;
 - (b) a simple average of prices;
 - (c) an average price weighted on the basis of the volume, price, time or the number of actionable indications of interest.
3. Market operators and investment firms operating a trading venue shall make public the methodology for calculating pre-trade prices and the time of publication when entering and updating indicative pre-trade prices.

Article 6
(Articles 9(1)(c) of Regulation (EU) 600/2014)
The classes of financial instruments for which there is not a liquid market

A financial instrument or a class of financial instruments shall be considered not to have a liquid market if so specified in accordance with the methodology set out in Article 13.

CHAPTER III
POST-TRADE TRANSPARENCY FOR TRADING VENUES AND
INVESTMENT FIRMS TRADING OUTSIDE A TRADING VENUE

Article 7
(Article 10(1) and Article 21(1) and (5) of Regulation (EU) 600/2014)
Post-trade transparency obligations

1. Investment firms trading outside the rules of a trading venue and market operators and investment firms operating a trading venue shall make public by reference to each transaction the details set out in Tables 1 and 2 of Annex II and use each applicable flag listed in Table 3 of Annex II
2. Where a previously published trade report is cancelled, investment firms trading outside a trading venue and market operators and investment firms operating a trading venue shall make public a new trade report which contains all the details of the original trade report and the cancellation flag specified in Table 3 of Annex II.
3. Where a previously published trade report is amended, investment firms trading outside a trading venue and market operators and investment firms operating a trading venue shall make the following information public:

- (a) a new trade report that contains all the details of the original trade report and the cancellation flag specified in Table 3 of Annex II;
 - (b) a new trade report that contains all the details of the original trade report with all necessary details corrected and the amendment flag as specified in Table 3 of Annex II.
4. Post-trade information shall be made available as close to real time as is technically possible and in any case:
 - (a) for the first three years of application of Regulation (EU) No 600/2014, within 15 minutes after the execution of the relevant transaction ;
 - (b) thereafter, within 5 minutes after the execution of the relevant transaction.
5. Where a transaction between two investment firms is concluded outside the rules of a trading venue, either on own account or on behalf of clients, only the investment firm that sells the financial instrument concerned shall make the transaction public through an APA.
6. By way of derogation from paragraph 5, where only one of the investment firms party to the transaction is a systematic internaliser in the given financial instrument and it is acting as the buying firm, only that firm shall make the transaction public through an APA, informing the seller of the action taken.
7. Investment firms shall take all reasonable steps to ensure that the transaction is made public as a single transaction. For that purpose, two matching trades entered at the same time and for the same price with a single party interposed shall be considered to be a single transaction.
8. Information relating to a package transaction shall be made available with respect to each component as close to real-time as is technically possible, having regard to the need to allocate prices to particular financial instruments and shall include the package transaction flag or the exchange for physicals transaction flag as specified in Table 3 of Annex II. Where the package transaction is eligible for deferred publication pursuant to Article 8, information on all components shall be made available after the deferral period for the transaction has lapsed.

Article 8

(Article 11(1) and (3) and Article 21(4) of Regulation (EU) 600/2014)

Deferred publication of transactions

1. Where a competent authority authorises the deferred publication of the details of transactions pursuant to Article 11(1) of Regulation (EU) No 600/2014, investment firms trading outside a trading venue and market operators and investment firms operating a trading venue shall make public each transaction no later than 19:00 local time on the second working day after the date of the transaction, provided one of the following conditions is satisfied:
 - (a) the transaction is large in scale compared with the normal market size as specified in Article 9;
 - (b) the transaction is in a financial instrument or a class of financial instruments for which there is not a liquid market as specified in accordance with the methodology set out in Article 13;

- (c) the transaction is executed between an investment firm dealing on own account other than on a matched principal basis as per Article 4(1)(38) of Directive 2014/65/EU and another counterparty and is above a size specific to the instrument as specified in Article 10;
 - (d) the transaction is a package transaction which meets one of the following criteria:
 - (i) one or more of its components are financial instruments which do not have a liquid market;
 - (ii) one or more of its components are transactions in financial instruments that are large in scale compared with the normal market size as determined by Article 9;
 - (iii) the transaction is executed between an investment firm dealing on own account other than on a matched principal basis as per Article 4(1)(38) of Directive 2014/65/EU and another counterparty, and one or more of its components are transactions in financial instruments that are above the size specific to the instrument as determined by Article 10.
2. When the time limit of deferral set out in paragraph 1 has lapsed, all the details of the transaction shall be published unless an extended or an indefinite time period of deferral is granted in accordance with Article 11.
 3. Where a transaction between two investment firms, either on own account or on behalf of clients, is executed outside the rules of a trading venue, the relevant competent authority for the purposes of determining the applicable deferral regime shall be the competent authority of the investment firm responsible for making the trade public through an APA in accordance with paragraphs 5, 6 and 7 of Article 7.

Article 9

(Article 11(1)(a) of Regulation (EU) 600/2014)

Transactions which are large in scale

A transaction shall be considered large in scale compared with normal market size where it is equal to or larger than the minimum size of transaction, which shall be calculated in accordance with the methodology set out in Article 13.

Article 10

(Article 11(1)(c) of Regulation (EU) 600/2014)

The size specific to the financial instrument

A transaction shall be considered above a size specific to the financial instrument where it is equal to or larger than the minimum size of transaction, which shall be calculated in accordance with the methodology set out in Article 13.

Article 11

(Article 11(3) of Regulation (EU) 600/2014)

Transparency requirements in conjunction with deferred publication at the discretion of the competent authorities

1. Where competent authorities exercise their powers in conjunction with an authorisation of deferred publication pursuant to Article 11(3) of Regulation (EU) No 600/2014, the following shall apply:

- (a) where Article 11(3)(a) of Regulation (EU) No 600/2014 applies, competent authorities shall request the publication of either of the following information during the full period of deferral as set out in Article 8:
 - (i) all the details of a transaction laid down in Tables 1 and 2 of Annex II with the exception of details relating to volume;
 - (ii) transactions in a daily aggregated form for a minimum number of 5 transactions executed on the same day, to be made public the following working day before 09.00 local time.
 - (b) where Article 11(3)(b) of Regulation (EU) No 600/2014 applies, competent authorities shall allow the omission of the publication of the volume of an individual transaction for an extended time period of four weeks.
 - (c) in respect of non-equity instruments that are not sovereign debt and where Article 11(3)(c) of Regulation (EU) No 600/2014 applies, competent authorities shall allow, for an extended time period of deferral of four weeks, the publication of the aggregation of several transactions executed over the course of one calendar week on the following Tuesday before 09:00 local time.
 - (d) in respect of sovereign debt instruments and where Article 11(3)(d) of Regulation (EU) No 600/2014 applies, competent authorities shall allow, for an indefinite period of time, the publication of the aggregation of several transactions executed over the course of one calendar week on the following Tuesday before 09.00 local time.
2. Where the extended period of deferral set out in paragraph 1(b) has lapsed, the following requirements shall apply:
- (a) in respect of all instruments that are not sovereign debt, the publication of the full details of all individual transactions, on the next working day before 09.00 local time;
 - (b) in respect of sovereign debt instruments where competent authorities decide not to use the options provided for in Article 11(3)(b) and (d) of Regulation (EU) No 600/2014 consecutively, pursuant to the second subparagraph of Article 11(3) of Regulation (EU) No 600/2014, the publication of the full details of all individual transactions on the next working day before 09.00 local time;
 - (c) in respect of sovereign debt instruments, where competent authorities apply the options provided for in Article 11(3)(b) and (d) of Regulation (EU) No 600/2014 consecutively pursuant to the second subparagraph of Article 11(3) of Regulation (EU) No 600/2014, the publication of several transactions executed in the same calendar week in an aggregated form on the Tuesday following the expiry of the extended period of deferral of four weeks counting from the last day of that calendar week before 09:00 local time.
3. In respect of all instruments that are not sovereign debt, all the details of the transactions on an individual basis shall be published four weeks after the publication of the aggregated details in accordance with paragraph 1(c) before 09:00 local time.
4. The aggregated daily or weekly data referred to in paragraphs 1 and 2 shall contain the following information for bonds, structured finance products, derivatives and emission allowances in respect of each day or week of the calendar period concerned:

- (a) the weighted average price;
 - (b) the total volume traded as referred to in Table 4 of Annex II;
 - (c) the total number of transactions.
5. Transactions shall be aggregated per ISIN-code. Where the ISIN code is not available, transactions shall be aggregated at the level of the class of financial instruments to which the liquidity test set out in Article 13 applies.
6. Where the weekday foreseen for the publications set out in points (c) and (d) of paragraph 1, and paragraphs 2 and 3, is not a working day, the publications shall be effected on the following working day before 09:00 local time.

Article 12

(Article 21(1) of Regulation (EU) 600/2014)

Application of post-trade transparency to certain transactions executed outside a trading venue

The obligation to make public the volume and price of transactions and the time at which they were concluded as set out in Article 21(1) of Regulation (EU) No 600/2014 shall not apply to any of the following:

- (a) transactions listed in Article 2(4) of Commission Delegated Regulation (EU) .../...⁶;
- (b) transactions executed by a management company as defined in Article 2(1)(b) of Directive 2009/65/EC or an alternative investment fund manager as defined in Article 4(1)(b) of Directive 2011/61/EU which transfer the beneficial ownership of financial instruments from one collective investment undertaking to another and where no investment firm is a party to the transaction;
- (c) ‘give-up transaction’ or ‘give-in transaction’ which is a transaction where an investment firm passes a client trade to, or receives a client trade from, another investment firm for the purpose of post-trade processing;
- (d) transfers of financial instruments such as collateral in bilateral transactions or in the context of a central counterparty (CCP) margin or collateral requirements or as part of the default management process of a CCP.

CHAPTER IV PROVISIONS COMMON TO PRE-TRADE AND POST-TRADE TRANSPARENCY

Article 13

(Article 9(1) and (2), Article 11(1) and Article 22(1) of Regulation (EU) 600/2014)

Methodology to perform the transparency calculations

1. For determining financial instruments or classes of financial instruments for which there is not a liquid market for the purposes of Article 6 and point (b) of paragraph 1 of Article 8, the following methodologies shall be applied across asset classes:
- (a) static determination of liquidity for:

⁶ Commission Delegated Regulation (EU)/..... of supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities (OJ)

- (i) the asset class of securitised derivatives as defined in Table 4.1 of Annex III;
 - (ii) the following sub-asset classes of equity derivatives: stock index options, stock index futures/forwards, stock options, stock futures/forwards, stock dividend options, stock dividend futures/forwards, dividend index options, dividend index futures/forwards, volatility index options, volatility index futures/forwards, ETF options, ETF futures/forwards and other equity derivatives as defined in Table 6.1 of Annex III;
 - (iii) the asset class of foreign exchange derivatives as defined in Table 8.1 of Annex III;
 - (iv) the sub-asset classes of other interest rate derivatives, other commodity derivatives, other credit derivatives, other C10 derivatives, other contracts for difference (CFDs), other emission allowances and other emission allowance derivatives as defined in Tables 5.1, 7.1, 9.1, 10.1, 11.1, 12.1 and 13.1 of Annex III.
- (b) Periodic assessment based on quantitative and, where applicable, qualitative liquidity criteria for:
- (i) all bond types except ETCs and ETNs as defined in Table 2.1 of Annex III and as further specified in Article 17(1);
 - (ii) ETC and ETN bond types as defined in Table 2.4 of Annex III;
 - (iii) the asset-class of interest rate derivatives except the sub-asset class of other interest rate derivatives as defined in Table 5.1 of Annex III;
 - (iv) the following sub-asset classes of equity derivatives: swaps and portfolio swaps as defined in Table 6.1 of Annex III;
 - (v) the asset-class of commodity derivatives except the sub-asset class of other commodity derivatives as defined in Table 7.1 of Annex III;
 - (vi) the following sub-asset classes of credit derivatives: index credit default swaps and single name credit default swaps as defined in Table 9.1 of Annex III;
 - (vii) the asset-class of C10 derivatives except the sub-asset class of other C10 derivatives as defined in Table 10.1 of Annex III;
 - (viii) the following sub-asset classes of contracts for difference (CFDs): currency CFDs and commodity CFDs as defined in Table 11.1 of Annex III;
 - (ix) the asset-class of emission allowances except the sub-asset class of other emission allowances as defined in Table 12.1 of Annex III;
 - (x) the asset-class of emission allowance derivatives except the sub-asset class of other emission allowance derivatives as defined in Table 13.1 of Annex III.
- (c) Periodic assessment based on qualitative liquidity criteria for:
- (i) the following sub-asset classes of credit derivatives: CDS index options and single name CDS options as defined in Table 9.1 of Annex III;

- (ii) the following sub-asset classes of contracts for difference (CFDs): equity CFDs, bond CFDs, CFDs on an equity future/forward and CFDs on an equity option as defined in Table 11.1 of Annex III.
 - (d) Periodic assessment based on a two tests methodology for structured finance products as defined in Table 3.1 of Annex III.
2. For determining the size specific to the financial instrument referred to in Article 5 and the orders that are large in scale compared with normal market size referred to in Article 3, the following methodologies shall be applied:
- (a) the threshold value for:
 - (i) ETC and ETN bond types as defined in Table 2.5 of Annex III;
 - (ii) the asset class of securitised derivatives as defined in Table 4.2 of Annex III;
 - (iii) each sub-class of equity derivatives as defined in Tables 6.2 and 6.3 of Annex III;
 - (iv) each sub-class of foreign exchange derivatives as defined in Table 8.2 of Annex III;
 - (v) each sub-class considered not to have a liquid market for the asset classes of interest rate derivatives, commodity derivatives, credit derivatives, C10 derivatives and contracts for difference (CFDs) as defined in Tables 5.3, 7.3, 9.3, 10.3 and 11.3 of Annex III;
 - (vi) each sub-asset class considered not to have a liquid market for the asset classes of emission allowances and emission allowance derivatives as defined in Tables 12.3 and 13.3 of Annex III;
 - (vii) each structured finance product where Test-1 under paragraph 1(d) is not passed as defined in Table 3.2 of Annex III;
 - (viii) each structured finance product considered not to have a liquid market where only Test-1 under paragraph 1(d) is passed as defined in Table 3.3 of Annex III.
 - (b) the greater of the trade size below which lies the percentage of the transactions corresponding to the trade percentile as further specified in Article 17(3) and the threshold floor for:
 - (i) each bond type, except ETCs and ETNs, as defined in Table 2.3 of Annex III;
 - (ii) each sub-class having a liquid market for the asset classes of interest rate derivatives, commodity derivatives, credit derivatives, C10 derivatives and CFDs as defined in Tables 5.2, 7.2, 9.2, 10.2 and 11.2 of Annex III;
 - (iii) each sub-asset class having a liquid market for the asset classes of emission allowances and emission allowance derivatives as defined in Tables 12.2 and 13.2 of Annex III;
 - (iv) each structured finance product considered to have a liquid market where Test-1 and Test-2 under paragraph 1(d) are passed as defined in Table 3.3 of Annex III.

3. For the determination of the size specific to the financial instrument referred to in Article 8(1)(c) and transactions that are large in scale compared with normal market size referred to in Article 8(1)(a), the following methodologies shall be applied:
- (a) the threshold value for:
 - (i) ETC and ETN bond types as defined in Table 2.5 of Annex III;
 - (ii) the asset class of securitised derivatives as defined in Table 4.2 of Annex III;
 - (iii) each sub-class of equity derivatives as defined in Tables 6.2 and 6.3 of Annex III;
 - (iv) each sub-class of foreign exchange derivatives as defined in Table 8.2 of Annex III;
 - (v) each sub-class considered not to have a liquid market for the asset classes of interest rate derivatives, commodity derivatives, credit derivatives, C10 derivatives and contracts for difference (CFDs) as defined in Tables 5.3, 7.3, 9.3, 10.3, 11.3 of Annex III;
 - (vi) each sub-asset class considered not to have a liquid market for the asset class of emission allowances and emission allowance derivatives as defined in Tables 12.3 and 13.3 of Annex III;
 - (vii) each structured finance product where Test-1 under paragraph 1(d) is not passed as defined in Table 3.2 of Annex III;
 - (viii) each structured finance product considered not to have a liquid market where only Test-1 under paragraph 1(d) is passed as defined in Table 3.3 of Annex III.
 - (b) the trade size below which lies the percentage of the transactions corresponding to the trade percentile for each bond type, except ETCs and ETNs, as defined in Table 2.3 of Annex III;
 - (c) the greatest of the trade size below which lies the percentage of the transactions corresponding to the trade percentile, the trade size below which lies the percentage of volume corresponding to the volume percentile and the threshold floor for each sub-class considered to have a liquid market for the asset classes of interest rate derivatives, commodity derivatives, credit derivatives, C10 derivatives and CFDs as provided in Tables 5.2, 7.2, 9.2, 10.2 and 11.2 of Annex III;
 - (d) the greater of the trade size below which lies the percentage of the transactions corresponding to the trade percentile and the threshold floor for:
 - (i) each sub-asset class considered to have a liquid market for the asset classes of emission allowances and emission allowance derivatives as provided in Tables 12.2 and 13.2 of Annex III;
 - (ii) each structured finance product considered to have a liquid market where the Test-1 and Test-2 under paragraph 1(d) are passed as defined in Table 3.3 of Annex III.
4. For the purpose of paragraph 3(c) where the trade size corresponding to the volume percentile for the determination of the transaction that is large in scale compared with normal market size is higher than the 97.5 trade percentile, the trade volume shall not

be taken into consideration and the size specific to the financial instrument referred to in Article 8(1)(c) and the size of transactions large in scale compared with normal market size referred to in Article 8(1)(a) shall be determined as the greater of the trade size below which lies the percentage of the transactions corresponding to the trade percentile and the threshold floor.

5. In accordance with Commission Delegated Regulation (EU) xx/xxxx⁷ and Commission Delegated Regulation (EU) xx/xxxx⁸ competent authorities shall collect on a daily basis the data from trading venues, APAs and CTPs which is necessary to perform the calculations to determine:
 - (a) the financial instruments and classes of financial instruments not having a liquid market as set out in paragraph 1;
 - (b) the sizes large in scale compared to normal market size and the size specific to the instrument as set out in paragraphs 2 and 3.
6. Competent authorities performing the calculations for a class of financial instruments shall establish cooperation arrangements between each other as to ensure the aggregation of the data across the Union necessary for the calculations.
7. For the purpose of paragraph 1(b) and (d), paragraph 2(b) and paragraph 3(b), (c) and (d), competent authorities shall take into account transactions executed in the Union between 1 January and 31 December of the preceding year.
8. The trade size for the purpose of paragraph 2(b) and paragraph 3(b), (c) and (d) shall be determined according to the measure of volume as defined in Table 4 of Annex II. Where the trade size defined for the purpose of paragraphs 2 and 3 is expressed in monetary value and the financial instrument is not denominated in Euros, the trade size shall be converted to the currency in which that financial instrument is denominated by applying the European Central Bank Euro foreign exchange reference rate as of 31 December of the preceding year.
9. Market operators and investment firms operating a trading venue may convert the trade sizes determined according to paragraphs 2 and 3 to the corresponding number of lots as defined in advance by that trading venue for the respective sub-class or sub-asset class. Market operators and investment firms operating a trading venue may maintain such trade sizes until application of the results of the next calculations performed in accordance to paragraph 17.
10. The calculations referred to in paragraph 2(b)(i) and paragraph 3(b) shall exclude transactions with a size equal to or smaller than EUR 100 000.
11. For the purpose of the determinations referred to in paragraphs 2 and 3, points (b) of paragraph 2 and points (b), (c) and (d) of paragraph 3 shall not apply whenever the number of transactions considered for calculations is smaller than 1000, in which case the following thresholds shall be applied:
 - (a) EUR 100 000 for all bond types except ETCs and ETNs;

⁷ Commission Delegated Regulation (EU)/..... of supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities (OJ)

⁸ Commission Delegated Regulation (EU)/..... of supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the volume cap mechanism and the provision of information for the purposes of transparency and other calculations (OJ)

- (b) the threshold values defined in paragraph 2(a) and paragraph 3(a) for all financial instruments not covered in point (a) of this paragraph .
12. Except when they refer to emission allowances or derivatives thereof, the calculations referred to in paragraph 2(b) and paragraph 3(b), (c) and (d) shall be rounded up to the next:
- (a) 100 000 where the threshold value is smaller than 1 million;
 - (b) 500 000 where the threshold value is equal to or greater than 1 million but smaller than 10 million;
 - (c) 5 million where the threshold value is equal to or greater than 10 million but smaller than 100 million;
 - (d) 25 million where the threshold value is equal to or greater than 100 million.
13. For the purpose of paragraph 1, the quantitative liquidity criteria specified for each asset class in Annex III shall be determined according to Section 1 of Annex III.
14. For equity derivatives that are admitted to trading or first traded on a trading venue, that do not belong to a sub-class for which the size specific to the financial instrument referred to in Article 5 and Article 8(1)(c) and the size of orders and transactions large in scale compared with normal market size referred to in Article 3 and Article 8(1)(a) have been published and which belong to one of the sub-asset classes specified in paragraph 1(a)(ii), the size specific to the financial instrument and the size of orders and transactions large in scale compared with normal market size shall be those applicable to the smallest average daily notional amount (ADNA) band of the sub-asset class to which the equity derivative belongs.
15. Financial instruments admitted to trading or first traded on a trading venue which do not belong to any sub-class for which the size specific to the financial instrument referred to in Article 5 and Article 8(1)(c) and the size of orders and transactions large in scale compared with normal market size referred to in Article 3 and Article 8(1)(a) have been published shall be considered not to have a liquid market until application of the results of the calculations performed in accordance to paragraph 17. The applicable size specific to the financial instrument referred to in Articles 5 and Article 8(1)(c) and the size of orders and transactions large in scale compared with normal market size referred to in Article 3 and Article 8(1)(a) shall be those of the sub-classes determined not to have a liquid market belonging to the same sub-asset class.
16. After the end of the trading day but before the end of that day, trading venues shall submit to competent authorities the details included in Annex IV for performing the calculations referred to in paragraph 5 whenever the financial instrument is admitted to trading or first traded on that trading venue or whenever the details previously provided have changed.
17. Competent authorities shall ensure the publication of the results of the calculations referred to under paragraph 5 for each financial instrument and class of financial instrument by 30 April of the year following the date of application of Regulation (EU) No 600/2014 and by 30 April of each year thereafter. The results of the calculations shall apply from 1 June each year following publication.
18. For the purposes of the calculations in paragraph 1(b)(i) and by way of derogation from paragraphs 7, 15 and 17, competent authorities shall, in respect of bonds except ETCs and ETNs, ensure the publication of the calculations referred to under

paragraph 5(a) on a quarterly basis, on the first day of February, May, August and November following the date of application of Regulation (EU) No 600/2014 and on the first day of February, May, August and November each year thereafter. The calculations shall include transactions executed in the Union during the preceding calendar quarter and shall apply for the 3 month period beginning on the sixteenth day of February, May, August and November each year.

19. Bonds, except for ETCs and ETNs, that are admitted to trading or first traded on a trading venue during the first two months of a quarter shall be considered to have a liquid market as specified in Table 2.2 of Annex III until the application of the results of the calculation of the calendar quarter.
20. Bonds, except for ETCs and ETNs, that are admitted to trading or first traded on a trading venue during the last month of a quarter shall be considered to have a liquid market as specified in Table 2.2 of Annex III until the application of the results of the calculation of the following calendar quarter.

Article 14

(Article 1(6) of Regulation (EU) 600/2014)

Transactions to which the exemption in Article 1(6) of Regulation (EU) 600/2014 applies

1. A transaction shall be considered to be entered into by a member of the European System of Central Banks (ESCB) in performance of monetary, foreign exchange and financial stability policy where that transaction meets any of the following requirements:
 - (a) the transaction is carried out for the purposes of monetary policy, including an operation carried out in accordance with Articles 18 and 20 of the Statute of the European System of Central Banks and of the European Central Bank annexed to the Treaty on European Union or an operation carried out under equivalent national provisions for members of the ESCB in Member States whose currency is not the euro;
 - (b) the transaction is a foreign-exchange operation, including operations carried out to hold or manage official foreign reserves of the Member States or the reserve management service provided by a member of the ESCB to central banks in other countries to which the exemption has been extended in accordance with Article 1(9) of Regulation (EU) No 600/2014;
 - (c) the transaction is carried out for the purposes of financial stability policy.

Article 15

(Article 1(7) of Regulation (EU) 600/2014)

Transactions to which the exemption in Article 1(6) of Regulation (EU) 600/2014 does not apply

1. Article 1(6) of Regulation (EU) No 600/2014 shall not apply to the following types of transactions entered into by a member of the ESCB for the performance of an investment operation that is unconnected with that member's performance of one of the tasks referred to in Article 14:
 - (a) transactions entered into for the management of its own funds;

- (b) transactions entered into for administrative purposes or for the staff of the member of the ESCB which include transactions conducted in the capacity as administrator of a pension scheme for its staff;
- (c) transactions entered into for its investment portfolio pursuant to obligations under national law.

Article 16

(Article 9(5)(a) of Regulation (EU) 600/2014)

Temporary suspension of transparency obligations

1. For financial instruments for which there is a liquid market in accordance with the methodology set out in Article 13, a competent authority may temporarily suspend the obligations set out in Articles 8 and 10 Regulation (EU) No 600/2014 where for a class of bonds, structured finance products, emission allowances or derivatives, the total volume as defined in Table 4 of Annex II calculated for the previous 30 calendar days represents less than 40% of the average monthly volume calculated for the 12 full calendar months preceding those 30 calendar days.
2. For financial instruments for which there is not a liquid market in accordance with the methodology set out in Article 13, a competent authority may temporarily suspend the obligations referred to in Articles 8 and 10 of Regulation (EU) No 600/2014 when for a class of bonds, structured finance products, emission allowances or derivatives, the total volume as defined in Table 4 of Annex II calculated for the previous 30 calendar days represents less than 20% of the average monthly volume calculated for the 12 full calendar months preceding those 30 calendar days.
3. Competent authorities shall take into account the transactions executed on all venues in the Union for the class of bonds, structured finance products, emission allowances or derivatives concerned when performing the calculations referred to in paragraphs 1 and 2. The calculations shall be performed at the level of the class of financial instruments to which the liquidity test set out in Article 13 is applied.
4. Before competent authorities decide to suspend transparency obligations, they shall ensure that the significant decline in liquidity across all venues is not the result of seasonal effects of the relevant class of financial instruments on liquidity.

Article 17

Provisions for the liquidity assessment for bonds and for the determination of the pre-trade size specific to the instrument thresholds based on trade percentiles

1. For determining the bonds for which there is not a liquid market for the purposes of Article 6 and according to the methodology specified in Article 13(1)(b), the approach for the liquidity criterion ‘average daily number of trades’ shall be taken applying the ‘average daily number of trades’ corresponding to stage S1 (15 daily trades).
2. Corporate bonds and covered bonds that are admitted to trading or first traded on a trading venue shall be considered to have a liquid market until the application of the results of the first quarterly liquidity determination as set out in Article 13(18) where:
 - (a) the issuance size exceeds EUR 1,000,000,000 during stages S1 and S2, as determined in accordance with paragraph 6;

- (b) the issuance size exceeds EUR 500,000,000 during stages S3 and S4, as determined in accordance with paragraph 6.
3. For determining the size specific to the financial instrument for the purposes of Article 5 and according to the methodology specified in Article 13(2)(b), the approach for the trade percentile to be applied shall be used applying the trade percentile corresponding to the stage S1 (30th percentile).
4. ESMA shall, by 30 July of the year following the date of application of Regulation (EU) No 600/2014 and by 30 July of each year thereafter, submit to the Commission an assessment of the operation of the thresholds for the liquidity criterion 'average daily number of trades' for bonds as well as the trade percentiles that determine the size specific to the financial instruments covered by paragraph 8. The obligation to submit the assessment of the operation of the thresholds for the liquidity criterion for bonds ceases once S4 in the sequence of paragraph 6 is reached. The obligation to submit the assessment of the trade percentiles ceases once S4 in the sequence of paragraph 8 is reached.
5. The assessment referred to in paragraph 4 shall take into account:
- (a) the evolution of trading volumes in non-equity instruments covered by the pre-trade transparency obligations pursuant to Article 8 and 9 of Regulation (EU) No 600/2014;
 - (b) the impact on liquidity providers of the percentile thresholds used to determine the size specific to the financial instrument; and
 - (c) any other relevant factors.
6. ESMA shall, in light of the assessment undertaken in accordance with paragraphs 4 and 5, submit to the Commission an amended version of the regulatory technical standard adjusting the threshold for the liquidity criterion 'average daily number of trades' for bonds according to the following sequence:
- (a) S2 (10 daily trades) by 30 July of the year following the date of application of Regulation (EU) No 600/2014;
 - (b) S3 (7 daily trades) by 30 July of the year thereafter; and
 - (c) S4 (2 daily trades) by 30 July of the year thereafter.
7. Where ESMA does not submit an amended regulatory technical standard adjusting the threshold to the next stage according to the sequence referred to in paragraph 6, the ESMA assessment undertaken in accordance with paragraphs 4 and 5 shall explain why adjusting the threshold to the relevant next stage is not warranted. In this instance, the move to the next stage will be postponed by one year.
8. ESMA shall, in light of the assessment undertaken in accordance with paragraphs 4 and 5, submit to the Commission an amended version of the regulatory technical standard adjusting the threshold for trade percentiles according to the following sequence:
- (a) S2 (40th percentile) by 30 July of the year following the date of application of Regulation (EU) No 600/2014;
 - (b) S3 (50th percentile) by 30 July of the year thereafter; and
 - (c) S4 (60th percentile) by 30 July of the year thereafter.

9. Where ESMA does not submit an amended regulatory technical standard adjusting the threshold to the next stage according to the sequence referred to in paragraph 8, the ESMA assessment undertaken in accordance with paragraphs 4 and 5 shall explain why adjusting the threshold to the relevant next stage is not warranted. In this instance, the move to the next stage will be postponed by one year.

Article 18

Transitional provisions

1. Competent authorities shall, no later than six months prior to the date of application of Regulation (EU) No 600/2014, collect the necessary data, calculate and ensure publication of the details referred to in Article 13(5).
2. For the purposes of paragraph 1:
 - (a) the calculations shall be based on a six-month reference period commencing 18 months prior to the date of application of Regulation (EU) No 600/2014;
 - (b) the results of the calculations contained in the first publication shall be used until the results of the first regular calculations set out in Article 13(17) apply.
3. By derogation from paragraph 1, for all bonds, except ETCs and ETNs, competent authorities shall use their best endeavours to ensure publication of the results of the transparency calculations specified in paragraph 1(b)(i) of Article 13 no later than on the first day of the month preceding the date of application of Regulation (EU) No 600/2014, based on a reference period of three months commencing on the first day of the fifth month preceding the date of application of Regulation (EU) No 600/2014.
4. Competent authorities, market operators and investment firms including investment firms operating a trading venue shall use the information published in accordance with paragraph 3 until the results of the first regular calculation set out in Article 13(18) apply.
5. Bonds, except for ETCs and ETNs, which are admitted to trading or first traded on a trading venue in the three month period preceding the date of application of Regulation (EU) No 600/2014 shall be considered not to have a liquid market as set out in Table 2.2 of Annex III until the results of the first regular calculation set out in Article 13(18) apply.

Article 19

Entry into force and application

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

This Regulation shall apply from the date referred to in the second paragraph of Article 55 of Regulation (EU) No 600/2014. However, Article 18 shall apply from the date of the entry of force of this Regulation.

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

Done at Brussels, 14.7.2016

*For the Commission
The President
Jean-Claude JUNCKER*