



Brussels, 14.7.2016
C(2016) 4390 final

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 shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The Markets in Financial Instruments Regulation (Regulation (EU) No 600/2014 'MiFIR') introduced pre-trade and post-trade requirements for regulated markets (RMs) and multilateral trading facilities (MTFs) offering trading in shares admitted to trading on a regulated market and for systematic internalisers (SIs) in the same asset class. It also introduced post-trade transparency requirements for investment firms in such shares. Based on the experience with MiFID I and considering that trading in shares traded only on MTFs, depositary receipts, ETFs, certificates and other similar financial instruments takes place in largely the same fashion, and fulfils a nearly identical economic purpose, as trading in shares admitted to trading on a regulated market, MiFIR extends its provisions to the former. In addition, MiFIR introduces an on-venue trading obligation for shares, except where there are legitimate reasons for some transactions to be excluded from this obligation.

In this context, Articles 4(6), 7(2), 14(7), 20(3), 22(4) and 23(3) of MiFIR empower the Commission to adopt, following submission of draft standards by the European Securities and Markets Authority (ESMA), and in accordance with Article 10 to 15 of Regulation No (EU) 1095/2010, delegated acts to further specify the pre-trade and post-trade transparency obligations to be met by trading venues and SIs in this new environment, including the characteristics of the trades excluded from the trading obligation.

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 the 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 (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

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The right to adopt a delegated Regulation is provided for under Articles 4(6), Article 7(2), Article 14(7), Article 20(3), Article 22(4) and Article 23(3) of MiFIR. Under these provisions, the Commission is empowered to adopt a delegated Regulation to further specify pre-trade and post-trade transparency obligations for trading venues, systematic internalisers and investment firms trading outside a trading venue, including the characteristics of the trades excluded from the trading obligation.

ESMA submitted to the Commission one draft regulatory technical standard bundling the six 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 on 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 for equity instruments applicable to trading venues, systematic internalisers and investment firms trading outside a trading venue.

Article 1 defines the terms: ‘portfolio trade’, ‘give up’ or ‘give in’ and ‘securities financing transaction’.

Article 2 covers transactions not contributing to the price discovery process.

Articles 3 to 8 set out the pre-trade transparency obligations for trading venues such as the most relevant market in terms of liquidity, the specific characteristics of negotiated transactions, the negotiated transactions subject to conditions other than the current market price, the size of orders which are large in scale and the type and minimum size of orders held in an order management facility.

Articles 9 to 11 set out the pre-trade transparency requirements for systematic internalisers and investment firms trading outside a trading venue such as the arrangements for the publication of a firm quote, the prices reflecting prevailing market conditions and the standard market size.

Articles 12 to 16 set out the post-trade transparency obligations for trading venues and investment firms trading outside a trading venue.

Article 17 details the provisions common to pre-trade and post-trade transparency calculations such as the methodology, date of publication and date of application of the transparency calculations.

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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 4(6), Article 7(2), Article 14(7), Article 20(3), Article 22(4) and Article 23(3) thereof,

Whereas:

- (1) A high degree of transparency is essential to ensure that investors are adequately informed as to the true level of actual and potential transactions in shares, depositary receipts, exchange-traded funds (ETFs), certificates and other similar financial instruments irrespective of whether those transactions take place on regulated markets, multilateral trading facilities (MTFs), and by systematic internalisers, or outside those facilities. This high degree of transparency should also ensure that the price discovery process in respect of particular financial instruments traded on different trading venues is not impaired by the fragmentation of liquidity, and investors are not thereby penalised.
- (2) At the same time, it is essential to recognise that there may be circumstances where exemptions from pre-trade transparency or deferrals from post-trade transparency obligations should be provided to avoid the impairment of liquidity as an unintended consequence of obligations to disclose orders and transactions and thereby to make public risk positions. Therefore, it is appropriate to specify the precise circumstances under which waivers from pre-trade transparency and deferrals from post-trade transparency may be granted.
- (3) The provisions in this Regulation are closely linked since they deal with the transparency requirements applicable to trading venues and investment firms in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments. To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view and efficient access for stakeholders, in particular those subject to the obligations, it is appropriate to include them in a single Regulation.

¹ OJ L 173, 12.6.2014, p. 84.

- (4) Where competent authorities grant waivers in relation to pre-trade transparency requirements or authorise the deferral of post-trade transparency obligations, they should treat all regulated markets, multilateral trading facilities and investment firms trading outside of trading venues equally and in a non-discriminatory manner.
- (5) It is appropriate to provide for clarification of a limited number of technical terms. Those technical definitions are necessary to ensure the uniform application in the Union of the provisions contained in this Regulation and, hence, contribute to the establishment of a single rulebook for financial markets in the Union. Those definitions are purely functional for the purpose of setting out the transparency obligations for equity and equity-like financial instruments and should be strictly limited to understanding this Regulation.
- (6) Regulation (EU) No 600/2014 brings within the scope of the transparency regime equity-like instruments such as depositary receipts, ETFs and certificates, as well as shares and other equity-like instruments only traded on an MTF. It is necessary, in order to establish a comprehensive and uniform transparency regime, to calibrate the content of the pre-trade information to be made public by trading venues.
- (7) A trading venue operating a request for quote (RFQ) system should at least make public the firm bids and offer prices or actionable indications of interest and the depth attached to those prices no later than at the time when the requester is able to execute a transaction under the system's rules. This is to ensure that members or participants who are providing their quotes to the requester first are not put at a disadvantage.
- (8) The specific methodology and data necessary to perform calculations for the purpose of specifying the transparency regime applicable to equity and equity-like financial instruments should be applied in conjunction with the common elements with regard to the content and frequency of data requests to be addressed to trading venues, Approved Publication Arrangements (APAs) and Consolidated Tape Providers (CTPs) for the purposes of transparency and other calculations laid down in Commission Delegated Regulation (EU) xx/xxx of xxx².
- (9) The pre-trade and post-trade transparency regime established by Regulation (EU) No 600/2014 should be appropriately calibrated to the market and applied in a uniform manner throughout the Union. In particular, a static determination of the most relevant markets in terms of liquidity, the sizes of orders that are large in scale and standard market sizes would not adequately capture regular modifications of trading patterns affecting equity and equity-like instruments. Therefore, it is essential to lay down the necessary calculations to be performed, including the periods of time to be taken into account when making calculations and the periods of time during which the results of these calculations are applicable, methods of calculation as well as the identification of the competent authority responsible for performing the calculations in accordance with the determination of the relevant competent authority for the purpose of Article 26 of Regulation (EU) No 600/2014 as specified in the Commission Delegated Regulation (EU) xx/xxx of xxx³. In this respect, to avoid market distortion effects, the calculation periods should ensure that the relevant thresholds of the regime are updated at

² Commission Delegated Regulation (EU) xx/xxx of xxx supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to technical standards on the volume cap mechanism and the provision of information for the purposes of transparency and other calculations.

³ Commission Delegated Regulation (EU) xx/xxx of xxx on reporting obligations under Article 26 of MiFIR.

appropriate intervals to reflect market conditions. It is also appropriate to provide for the centralised publication of the results of the calculations so that they are made available to all financial market participants and competent authorities in the Union in a single place and in a user-friendly manner. To that end, competent authorities should notify ESMA of the results of their calculations and ESMA should publish those calculations on its website.

- (10) In order to carry out the calculations for determining the requirements for the pre-trade and post-trade transparency in accordance with Article 22(1) of Regulation (EU) No 600/2014, the content, frequency of data requests and the formats and timeframe in which trading venues, APAs and CTPs must respond to such requests in accordance with Article 22(4) of Regulation (EU) No 600/2014 should be developed. The results of the calculations made on the basis of the data collected according to Article 22(1) of Regulation (EU) No 600/2014 need to be published in order to inform market participants of those results and achieve pre- and post-trade transparency in practice. It is also appropriate to provide for the centralised publication of the results of the calculations so that they are made available to all financial market participants and competent authorities in the Union in a single place and in a user-friendly manner. To that end, competent authorities should notify European Securities and Markets Authority (ESMA) of the results of their calculations and then ESMA should publish those calculations on its website.
- (11) For ETFs, and contrary to shares, depositary receipts, certificates and other similar financial instruments, the average daily turnover does not appear as an appropriate proxy for the calibration of the large-in-scale thresholds. For these instruments, the measure of actual liquidity is not adequately captured by the average daily turnover since the creation and redemption mechanisms inherent to ETFs allow to access additional and non-displayed liquidity. In order to reduce the risk of circumvention, it is also important that two ETFs on the same underlying have the same large-in-scale thresholds regardless of whether they have similar average daily turnover or not. Therefore, a single large-in-scale threshold for all ETFs should be established which should apply regardless of their underlying or of their liquidity.
- (12) Information which is required to be made available as close to real time as possible should be made available as instantaneously as technically possible, assuming a reasonable level of efficiency and of expenditure on systems on the part of the person concerned. The information should only be published close to the prescribed maximum time limit in exceptional cases where the systems available do not allow for publication in a shorter period of time.
- (13) Investment firms should make public the details of transactions executed outside a trading venue through an APA. Therefore, the way investment firms report the details of the transactions to APAs should be laid down and those provisions should apply in conjunction with the requirements applicable to APAs specified in Commission Delegated Regulation (EU) .../...⁴reference to RTS under Articles 61, 64 65, 66 MIFID.
- (14) Investors need to have reliable and timely information about the level of trading interest in financial instruments. Information on certain types of transactions such as the transfer of financial instruments as collateral would not provide meaningful information to investors in respect of the level of genuine trading interest in a financial

⁴ Commission Delegated Regulation (EU) .../...on authorisation, organisational requirements and the publication of transactions for data reporting services providers.

instrument. Requiring investment firms to make public those transactions would cause significant operational challenges and costs without improving the price formation process. Therefore, post-trade transparency obligations in respect of transactions executed outside a trading venue should only apply in the case of a purchase or sale of a share, depositary receipt, ETF, certificate or other similar financial instrument. It is essential that certain transactions such as those involving the use of any such instruments for collateral lending or other purposes where the exchange is determined by factors other than the current market valuation should not be published as they do not contribute to the price discovery process and would risk leading to investor confusion and hinder best execution.

- (15) In respect of transactions executed outside the rules of a trading venue, it is essential to clarify which investment firm is to make public a transaction in cases where both parties to the transaction are investment firms established in the Union in order to ensure the publication of transactions without duplication. Therefore, the responsibility to make a transaction public should always fall on the selling investment firm unless only one of the counterparties is a systematic internaliser and it is the buying firm.
- (16) Where only one of the counterparties is a systematic internaliser in a given financial instrument and it is also the buying firm for that instrument, it should be responsible for making the transaction public as its clients would expect it to do so and it is better placed to fill in the reporting field mentioning its status of systematic internaliser. To ensure that a transaction is only published once, the systematic internaliser should inform the other party that it is making the transaction public.
- (17) It is important to maintain current standards for the publication of transactions carried out as back-to-back trades to avoid the publication of a single transaction as multiple trades and to provide legal certainty on which investment firm is responsible for publishing a transaction. Therefore, two matching trades entered at the same time and for the same price with a single party interposed should be published as a single transaction.
- (18) To ensure that the new transparency regulatory regime can operate effectively, it is appropriate to provide for the collection of certain data and for an early publication of the most relevant markets in terms of liquidity, the sizes of orders that are large in scale, the deferred publication thresholds and standard market sizes.
- (19) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions of this Regulation and the provisions laid down in Regulation (EU) No 600/2014 apply from the same date. However, to ensure that the new transparency regulatory regime can operate effectively, certain provisions of this Regulation should apply from the date of its entry into force.
- (20) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- (21) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group

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

HAS ADOPTED THIS REGULATION:

CHAPTER I GENERAL

Article 1

Definitions

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

- (1) ‘portfolio trade’ means transactions in five or more different financial instruments where those transactions are traded at the same time by the same client and as a single lot against a specific reference price;
- (2) ‘give-up transaction’ or ‘give-in transaction’ means a transaction where an investment firm passes a client trade to, or receives a client trade from, another investment firm for the purpose of post-trade processing;
- (3) ‘securities financing transaction’ means a securities financing transaction as defined in Regulation (EU) [Article 3(6) of Regulation on reporting and transparency of securities financing transactions];
- (4) ‘systematic internaliser’ means an investment firm as defined in Article 4(1)(20) of Directive 2014/65/EU of the European Parliament and of the Council.

Article 2

Transactions not contributing to the price discovery process

(Article 23(1) of Regulation (EU) No 600/2014)

A transaction in shares does not contribute to the price discovery process where any of the following circumstances apply:

- (a) the transaction is executed by reference to a price that is calculated over multiple time instances according to a given benchmark, including transactions executed by reference to a volume-weighted average price or a time-weighted average price;
- (b) the transaction is part of a portfolio trade;
- (c) the transaction is contingent on the purchase, sale, creation or redemption of a derivative contract or other financial instrument where all the components of the trade are to be executed only as a single lot;
- (d) the transaction is executed by a management company as defined in Article 2(1)(b) of Directive 2009/65/EC of the European Parliament and of the Council⁶, or an alternative investment fund manager as defined in Article

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).

⁶ Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p.32).

4(1)(b) of Directive 2011/61/EU of the European Parliament and of the Council⁷, which transfers the beneficial ownership of shares from one collective investment undertaking to another and where no investment firm is a party to the transaction;

- (e) the transaction is a give-up transaction or a give-in transaction;
- (f) the purpose of the transaction is to transfer shares as collateral in bilateral transactions or in the context of central counterparty (CCP) margin or collateral requirements or as part of the default management process of a CCP;
- (g) the transaction results in the delivery of shares in the context of the exercise of convertible bonds, options, covered warrants or other similar derivatives;
- (h) the transaction is a securities financing transaction;
- (i) the transaction is carried out under the rules or procedures of a trading venue, a CCP or a central securities depository to effect a buy-in of unsettled transactions in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council⁸.

CHAPTER II

PRE-TRADE TRANSPARENCY

SECTION 1

PRE-TRADE TRANSPARENCY FOR TRADING VENUES

Article 3

Pre-trade transparency obligations

(Article 3(1) and (2) of Regulation (EU) No 600/2014)

1. Market operators and investment firms operating a trading venue shall make public the range of bid and offer prices and the depth of trading interest at those prices. The information is to be made public in accordance with the type of trading systems they operate as set out in Table 1 of Annex I.
2. The transparency requirements referred to in paragraph 1 shall also apply to any 'actionable indication of interest' as defined in Article 2(1)(33) and pursuant to Article 8 of Regulation (EU) No 600/2014.

Article 4

Most relevant market in terms of liquidity

(Article 4(1)(a) of Regulation (EU) No 600/2014)

1. For the purposes of Article 4(1)(a) of Regulation (EU) No 600/2014, the most relevant market in terms of liquidity for a share, depositary receipt, ETF, certificate or other similar financial instrument shall be considered to be the trading venue with the highest turnover within the Union for that financial instrument.

⁷ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p.1).

⁸ Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).

2. For the purpose of determining the most relevant markets in terms of liquidity in accordance with paragraph 1, competent authorities shall calculate the turnover in accordance with the methodology set out in Article 17(4) in respect of each financial instrument for which they are the competent authority and for each trading venue where that financial instrument is traded.
3. The calculation referred to in paragraph 2 shall have the following characteristics:
 - (a) it shall include, for each trading venue, transactions executed under the rules of that trading venue excluding reference price and negotiated transactions flagged as set out in Table 4 of Annex I and transactions executed on the basis of at least one order that has benefitted from a large-in-scale waiver and where the transaction size is above the applicable large-in-scale threshold as determined in accordance with Article 7;
 - (b) it shall cover either the preceding calendar year or, where applicable, the period of the preceding calendar year during which the financial instrument was admitted to trading or traded on a trading venue and was not suspended from trading.
4. Until the most relevant market in terms of liquidity for a specific financial instrument is determined in accordance with the procedure specified in paragraphs 1 to 3, the most relevant market in terms of liquidity shall be the trading venue where that financial instrument is first admitted to trading or first traded.
5. Paragraphs 2 and 3 shall not apply to shares, depositary receipts, ETFs, certificates and other similar financial instruments which were first admitted to trading or first traded on a trading venue four weeks or less before the end of the preceding calendar year.

Article 5

Specific characteristics of negotiated transactions

(Article 4(1)(b) of Regulation (EU) No 600/2014)

A negotiated transaction in shares, depositary receipts, ETF, certificates or other similar financial instruments shall be considered to be a transaction which is negotiated privately but reported under the rules of a trading venue and where any of the following circumstances applies:

- (a) two members or participants of that trading venue are involved in any of the following capacities:
 - (i) one is dealing on own account when the other is acting on behalf of a client;
 - (ii) both are dealing on own account;
 - (iii) both are acting on behalf of a client.
- (b) one member or participant of that trading venue is either of the following:
 - (i) acting on behalf of both the buyer and seller;
 - (ii) dealing on own account against a client order.

Article 6

Negotiated transactions subject to conditions other than the current market price

(Article 4(1)(b) of Regulation (EU) No 600/2014)

A negotiated transaction in shares, depositary receipts, ETFs, certificates and other similar financial instruments shall be subject to conditions other than the current market price of the financial instrument where any of the following circumstances applies:

- (a) the transaction is executed in reference to a price that is calculated over multiple time instances according to a given benchmark, including transactions executed by reference to a volume-weighted average price or a time-weighted average price;
- (b) the transaction is part of a portfolio trade;
- (c) the transaction is contingent on the purchase, sale, creation or redemption of a derivative contract or other financial instrument where all the components of the trade are meant to be executed as a single lot;
- (d) the transaction is executed by a management company as defined in Article 2(1)(b) of Directive 2009/65/EC or an alternative investment fund manager as defined in Article 4(1)(b) of Directive 2011/61/EU which transfers the beneficial ownership of financial instruments from one collective investment undertaking to another and where no investment firm is a party to the transaction;
- (e) the transaction is a give-up transaction or a give-in transaction;
- (f) the transaction has as its purpose the transferring of financial instruments as collateral in bilateral transactions or in the context of a CCP margin or collateral requirements or as part of the default management process of a CCP;
- (g) the transaction results in the delivery of financial instruments in the context of the exercise of convertible bonds, options, covered warrants or other similar financial derivative;
- (h) the transaction is a securities financing transaction;
- (i) the transaction is carried out under the rules or procedures of a trading venue, a CCP or a central securities depository to effect buy-in of unsettled transactions in accordance with Regulation (EU) No 909/2014;
- (j) any other transaction equivalent to one of those described in points (a) to (i) in that it is contingent on technical characteristics which are unrelated to the current market valuation of the financial instrument traded.

Article 7

Orders that are large in scale

(Article 4(1)(c) of Regulation (EU) No 600/2014)

1. An order in respect of a share, depositary receipt, certificate or other similar financial instrument shall be considered to be large in scale where the order is equal to or larger than the minimum size of orders set out in Tables 1 and 2 of Annex II.
2. An order in respect of an ETF shall be considered to be large in scale where the order is equal to or larger than EUR 1,000,000.

3. For the purpose of determining orders that are large in scale, competent authorities shall calculate, in accordance with paragraph 4, the average daily turnover in respect of shares, depositary receipts, certificates and other similar financial instruments traded on a trading venue.
4. The calculation referred to in paragraph 3 shall have the following characteristics:
 - (a) it shall include transactions executed in the Union in respect of the financial instrument, whether traded on or outside a trading venue;
 - (b) it shall cover the period beginning on 1 January of the preceding calendar year and ending on 31 December of the preceding calendar year or, where applicable, that part of the calendar year during which the financial instrument was admitted to trading or traded on a trading venue and was not suspended from trading.

Paragraphs 3 and 4 shall not apply to shares, depositary receipts, certificates and other similar financial instruments first admitted to trading or first traded on a trading venue four weeks or less before the end of the preceding calendar year.

5. Unless the price or other relevant conditions for the execution of an order are amended, the waiver referred to in Article 4(1) of Regulation (EU) No 600/2014 shall continue to apply in respect of an order that is large in scale when entered into an order book but that, following partial execution, falls below the threshold applicable for that financial instrument as determined in accordance with paragraphs 1 and 2.
6. Before a share, depositary receipt, certificate or other similar financial instrument is traded for the first time on a trading venue in the Union, the competent authority shall estimate the average daily turnover for that financial instrument taking into account any previous trading history of that financial instrument and of other financial instruments that are considered to have similar characteristics, and ensure publication of that estimate.
7. The estimated average daily turnover referred to in paragraph 6 shall be used for the calculation of orders that are large in scale during a six-week period following the date that the share, depositary receipt, certificate or other similar financial instrument was admitted to trading or first traded on a trading venue.
8. The competent authority shall calculate and ensure publication of the average daily turnover based on the first four weeks of trading before the end of the six-week period referred to in paragraph 7.
9. The average daily turnover referred to in paragraph 8 shall be used for the calculation of orders that are large in scale and until an average daily turnover calculated in accordance with paragraph 3 applies.
10. For the purposes of this Article, the average daily turnover shall be calculated by dividing the total turnover for a particular financial instrument as specified in Article 17(4) by the number of trading days in the period considered. The number of trading days in the period considered is the number of trading days on the most relevant market in terms of liquidity for that financial instrument as determined in accordance with Article 4.

Article 8

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

(Article 4(1)(d) of Regulation (EU) No 600/2014)

1. The type of order held in an order management facility of a trading venue pending disclosure for which pre-trade transparency obligations may be waived is an order which:
 - (a) is intended to be disclosed to the order book operated by the trading venue and is contingent on objective conditions that are pre-defined by the system's protocol;
 - (b) cannot interact with other trading interests prior to disclosure to the order book operated by the trading venue;
 - (c) once disclosed to the order book, interacts with other orders in accordance with the rules applicable to orders of that kind at the time of disclosure.
2. Orders held in an order management facility of a trading venue pending disclosure for which pre-trade transparency obligations may be waived shall, at the point of entry and following any amendment, have one of the following sizes:
 - (a) in the case of a reserve order, a size that is greater than or equal to EUR 10,000;
 - (b) for all other orders, a size that is greater than or equal to the minimum tradable quantity set in advance by the system operator under its rules and protocols.
3. A reserve order as referred to in paragraph 2(a) shall be considered a limit order consisting of a disclosed order relating to a portion of a quantity and a non-disclosed order relating to the remainder of the quantity where the non-disclosed quantity is capable of execution only after its release to the order book as a new disclosed order.

SECTION 2

PRE-TRADE TRANSPARENCY FOR SYSTEMATIC INTERNALISERS AND INVESTMENT FIRMS TRADING OUTSIDE A TRADING VENUE

Article 9

Arrangements for the publication of a firm quote

(Article 14(1) of Regulation (EU) No 600/2014)

Any arrangement that a systematic internaliser adopts in order to comply with the obligation to make public firm quotes shall satisfy the following conditions:

- (a) the arrangement includes all reasonable steps necessary to ensure that the information to be published is reliable, monitored continuously for errors, and corrected as soon as errors are detected;
- (b) the arrangement complies with technical arrangements equivalent to those specified for Approved Publication Arrangements (APAs) in Article 15 of Delegated Regulation (EU) .../...[supplementing Directive 2014/65/EU of the European Parliament and the Council with regard to regulatory technical standards on the authorization, organisational requirements and the publication of transactions for data reporting services providers] that facilitate the consolidation of the data with similar data from other sources;

- (c) the arrangement makes the information available to the public on a non-discriminatory basis;
- (d) the arrangement includes the publication of the time the quotes have been entered or amended in accordance with Article 50 of Directive 2014/65/EU as specified in Commission Delegated Regulation (EU) [on clock synchronisation].

Article 10

Prices reflecting prevailing market conditions

(Article 14(3) of Regulation (EU) No 600/2014)

The prices published by a systematic internaliser shall reflect prevailing market conditions where they are close in price, at the time of publication, to quotes of equivalent sizes for the same financial instrument on the most relevant market in terms of liquidity as determined in accordance with Article 4 for that financial instrument.

Article 11

Standard market size

(Article 14(2) and (4) of Regulation (EU) 600/2014)

1. The standard market size for shares, depositary receipts, ETFs, certificates and other similar financial instruments for which there is a liquid market shall be determined on the basis of the average value of transactions for each financial instrument calculated in accordance with paragraphs 2 and 3 and in accordance with Table 3 of Annex II.
2. For the purpose of determining the standard market size which is applicable to a specific financial instrument as set out in paragraph 1, competent authorities shall calculate the average value of transactions in respect of all the shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on a trading venue for which there is a liquid market and for which they are the competent authority.
3. The calculation referred to in paragraph 2 shall have the following characteristics:
 - (a) it shall take into account the transactions executed in the Union in respect of the financial instrument concerned whether executed on or outside a trading venue;
 - (b) it shall cover either the preceding calendar year or, where applicable, the period of the preceding calendar year during which the financial instrument was admitted to trading or traded on a trading venue and was not suspended from trading;
 - (c) it shall exclude post-trade large-in-scale transactions as set out in Table 4 of Annex I.

Paragraphs 2 and 3 shall not apply to shares, depositary receipts, ETFs, certificates and other similar financial instruments first admitted to trading or first traded on a trading venue four weeks or less before the end of the preceding calendar year.

4. Before a share, depositary receipt, ETF, certificate or other similar financial instrument is traded for the first time on a trading venue in the Union, the competent authority shall estimate the average daily turnover for that financial instrument taking into account any previous trading history of that financial instrument and of other

financial instruments that are considered to have similar characteristics, and ensure publication of that estimate.

5. The estimated average value of transactions laid down in paragraph 4 shall be used as the standard market size for a share, depositary receipt, ETF, certificate or other similar financial instrument during a six-week period following the date that the share, depositary receipt, ETF, certificate or other similar financial instrument was first admitted to trading or first traded on a trading venue.
6. The competent authority shall calculate and ensure publication of the average value of transactions based on the first four weeks of trading before the end of the six-week period referred to in paragraph 5.
7. The average value of transactions in paragraph 6 shall apply immediately after its publication and until a new average value of transactions calculated in accordance with paragraphs 2 and 3 applies.
8. For the purposes of this Article, the average value of transactions shall be calculated by dividing the total turnover for a particular financial instrument as set out in Article 17(4) by the total number of transactions executed for that financial instrument in the period considered.

CHAPTER III

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

Article 12

Post-trade transparency obligations

(Article 6(1) and Article 20(1) and (2) of Regulation (EU) No 600/2014)

1. Market operators and investment firms operating a trading venue and investment firms trading outside the rules of a trading venue shall make public the details of each transaction by applying reference tables 2, 3 and 4 of Annex I.
2. Where a previously published trade report is cancelled, investment firms trading outside a trading venue and market operators and investment firms operating a trading venue shall make public a new trade report which contains all the details of the original trade report and the cancellation flag specified in Table 4 of Annex I.
3. Where a previously published trade report is amended, market operators and investment firms operating a trading venue and investment firms trading outside a trading venue shall make the following information public:
 - (a) a new trade report that contains all the details of the original trade report and the cancellation flag specified in Table 4 of Annex I;
 - (b) a new trade report that contains all the details of the original trade report with all necessary details corrected and the amendment flag specified in Table 4 of Annex I.
4. Where a transaction between two investment firms is concluded outside the rules of a trading venue, either on own account or on behalf of clients, only the investment firm that sells the financial instrument concerned shall make the transaction public through an APA.

5. By way of derogation from paragraph 4, where only one of the investment firms party to the transaction is a systematic internaliser in the given financial instrument and it is acting as the buying firm, only that firm shall make the transaction public through an APA, informing the seller of the action taken.
6. Investment firms shall take all reasonable steps to ensure that the transaction is made public as a single transaction. For that purpose, two matching trades entered at the same time and for the same price with a single party interposed shall be considered to be a single transaction.

Article 13

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

(Article 20(1) of Regulation (EU) No 600/2014)

The obligation in Article 20(1) of Regulation (EU) 600/2014 shall not apply to the following:

- (a) excluded transactions listed under Article 2(5) of Commission Delegated Regulation (EU) xxx/20xx⁹ where applicable;
- (b) transactions executed by a management company as defined in Article 2(1)(b) of Directive 2009/65/EC or an alternative investment fund manager as defined in Article 4(1)(b) of Directive 2011/61/EU which transfers the beneficial ownership of financial instruments from one collective investment undertaking to another and where no investment firm is a party to the transaction;
- (c) give-up transactions and give-in transactions;
- (d) transfers of financial instruments as collateral in bilateral transactions or in the context of a CCP margin or collateral requirements or as part of the default management process of a CCP.

Article 14

Real time publication of transactions

(Article 6(1) of Regulation (EU) No 600/2014)

1. For transactions that take place on a given trading venue, post-trade information shall be made public in the following circumstances:
 - (a) where the transaction takes place during the daily trading hours of the trading venue, as close to real-time as is technically possible and in any case within one minute of the relevant transaction;
 - (b) where the transaction takes place outside the daily trading hours of the trading venue, before the opening of the next trading day for that trading venue.
2. For transactions that take place outside a trading venue, post-trade information shall be made public in the following circumstances:
 - (a) where the transaction takes place during the daily trading hours of the most relevant market in terms of liquidity determined in accordance with Article 4 for the share, depositary receipt, ETF, certificate or other similar financial instrument concerned, or during the investment firm's daily trading hours, as

⁹ Commission Delegated Regulation (EU) xxx/20xx on reporting obligations under Article 26 of Regulation (EU) 600/2014.

close to real-time as is technically possible and in any case within one minute of the relevant transaction;

- (b) where the transaction takes place in any case not covered by point (a), immediately upon the commencement of the investment firm's daily trading hours and at the latest before the opening of the next trading day of the most relevant market in terms of liquidity determined in accordance with Article 4.
3. Information relating to a portfolio trade shall be made public with respect to each constituent transaction as close to real-time as is technically possible, having regard to the need to allocate prices to particular shares, depositary receipts, ETFs, certificates and other similar financial instruments. Each constituent transaction shall be assessed separately for the purposes of determining whether deferred publication in respect of that transaction is applicable pursuant to Article 15.

Article 15

Deferred publication of transactions

(Article 7(1) and 20(1) and (2) of Regulation (EU) No 600/2014)

1. Where a competent authority authorises the deferred publication of the details of transactions pursuant to Article 7(1) of Regulation (EU) No 600/2014, market operators and investment firms operating a trading venue and investment firms trading outside a trading venue shall make public each transaction no later than at the end of the relevant period set out in Tables 4, 5 and 6 of Annex II provided that the following criteria are satisfied:
 - (a) the transaction is between an investment firm dealing on own account other than through matched principal trading and another counterparty;
 - (b) the size of the transaction is equal to or exceeds the relevant minimum qualifying size specified in Tables 4, 5 or 6 of Annex II, as appropriate.
2. The relevant minimum qualifying size for the purposes of point (b) in paragraph 1 shall be determined in accordance with the average daily turnover calculated as set out in Article 7.
3. For transactions for which deferred publication is permitted until the end of the trading day as specified in Tables 4, 5 and 6 of Annex II, investment firms trading outside a trading venue and market operators and investment firms operating a trading venue shall make public the details of those transactions either:
 - (a) as close to real-time as possible after the end of the trading day which includes the closing auction, where applicable, for transactions executed more than two hours before the end of the trading day;
 - (b) no later than noon local time on the next trading day for transactions not covered in point (a).

For transactions that take place outside a trading venue, references to trading days and closing auctions shall be those of the most relevant market in terms of liquidity as determined in accordance with Article 4.

4. Where a transaction between two investment firms is executed outside the rules of a trading venue, the competent authority for the purpose of determining the applicable deferral regime shall be the competent authority of the investment firm responsible

for making the trade public through an APA in accordance with paragraphs 5 and 6 of Article 12.

Article 16

References to trading day and daily trading hours

1. A reference to a trading day in relation to a trading venue shall be a reference to any day during which that trading venue is open for trading.
2. A reference to daily trading hours of a trading venue or an investment firm shall be a reference to the hours which the trading venue or investment firm establishes in advance and makes public as its trading hours.
3. A reference to the opening of the trading day at a given trading venue shall be a reference to the commencement of the daily trading hours of that trading venue.
4. A reference to the end of the trading day at a given trading venue shall be a reference to the end of the daily trading hours of that trading venue.

CHAPTER IV

PROVISIONS COMMON TO PRE-TRADE AND POST-TRADE TRANSPARENCY CALCULATIONS

Article 17

Methodology, date of publication and date of application of the transparency calculations

(Article 22(1) of Regulation (EU) No 600/2014)

1. At the latest 14 months after the date of the entry into application of Regulation (EU) No 600/2014 and by 1 March of each year thereafter, competent authorities shall, in relation to each financial instrument for which they are the competent authority, collect the data, calculate and ensure publication of the following information:
 - (a) the trading venue which is the most relevant market in terms of liquidity as set out in Article 4(2);
 - (b) the average daily turnover for the purpose of identifying the size of orders that are large in scale as set out in Article 7(3);
 - (c) the average value of transactions for the purpose of determining the standard market size as set out in Article 11(2).
2. Competent authorities, market operators and investment firms including investment firms operating a trading venue shall use the information published in accordance with paragraph 1 for the purposes of points (a) and (c) of Article 4(1) and paragraphs 2 and 4 of Article 14 of Regulation (EU) No 600/2014, for a period of 12 months from 1 April of the year in which the information is published.

Where the information referred to in the first subparagraph is replaced by new information pursuant to paragraph 3 during the 12-month period referred to therein, competent authorities, market operators and investment firms including investment firms operating a trading venue shall use that new information for the purposes of points (a) and (c) of Article 4(1) and paragraphs 2 and 4 of Article 14 of Regulation (EU) No 600/2014.

3. Competent authorities shall ensure that the information to be made public pursuant to paragraph 1 is updated on a regular basis for the purposes of Regulation (EU) No 600/2014 and that all changes to a specific share, depositary receipt, ETF, certificate or other similar financial instrument which significantly affects the previous calculations and the published information are included in such updates.
4. For the purposes of the calculations referred to in paragraph 1, the turnover in relation to a financial instrument shall be calculated by summing the results of multiplying, for each transaction executed during a defined period of time, the number of units of that instrument exchanged between the buyers and sellers by the unit price applicable to such transaction.
5. After the end of the trading day, but before the end of the day, trading venues shall submit to competent authorities the details set out in Tables 1 and 2 of Annex III whenever the financial instrument is admitted to trading or first traded on that trading venue or whenever those previously submitted details have changed.

Article 18

Reference to competent authorities

(Article 22(1) of Regulation (EU) No 600/2014)

The competent authority for a specific financial instrument responsible for performing the calculations and ensuring the publication of the information referred to in Articles 4, 7, 11 and 17 shall be the competent authority of the most relevant market in terms of liquidity in Article 26 of Regulation (EU) No 600/2014 and specified in Article 16 of Commission Delegated Regulation (EU) .../...¹⁰.

Article 19

Transitional provisions

1. By way of derogation from Article 17(1), competent authorities shall collect the data, calculate and ensure publication immediately upon their completion in accordance with the following timeframe:
 - (a) where the date on which financial instruments are traded for the first time on a trading venue within the Union is a date not less than ten weeks prior to the date of application of Regulation (EU) No 600/2014, competent authorities shall publish the result of the calculations no later than four weeks prior to the date of application of Regulation (EU) No 600/2014;
 - (b) where the date on which financial instruments are traded for the first time on a trading venue within the Union is a date falling within the period commencing ten weeks prior to the date of application of Regulation (EU) No 600/2014 and ending on the day preceding the date of application of Regulation (EU) No 600/2014, competent authorities shall publish the result of the calculations no later than the date of application of Regulation (EU) No 600/2014.
2. The calculations referred to in paragraph 1 shall be performed as follows:
 - (a) where the date on which financial instruments are traded for the first time on a trading venue within the Union is a date not less than sixteen weeks prior to the date of application of Regulation (EU) 600/2014, the calculations shall be

¹⁰ Commission Delegated Regulation (EU) .../... on reporting obligations under Article 26 of MiFIR.

- based on data available for a forty-week reference period commencing fifty-two weeks prior to the date of application of Regulation (EU) 600/2014;
- (b) where the date on which financial instruments are traded for the first time on a trading venue within the Union is a date within the period commencing sixteen weeks prior to the date of application of Regulation (EU) No 600/2014 and ending ten weeks prior to the date of application of Regulation (EU) No 600/2014, the calculations shall be based on data available for the first four week trading period of that financial instrument;
 - (c) where the date on which financial instruments are traded for the first time on a trading venue within the Union is a date falling within the period commencing ten weeks prior to the date of application of Regulation (EU) No 600/2014 and ending on the day preceding the date of application of Regulation (EU) No 600/2014, the calculations shall be based on the previous trading history of those financial instruments or other financial instruments considered to have similar characteristics to those financial instruments.
3. Competent authorities, market operators and investment firms including investment firms operating a trading venue shall use the information published in accordance with paragraph 1 for the purposes of points (a) and (c) of Article 4(1) and paragraphs 2 and 4 of Article 14 of Regulation (EU) No 600/2014 for a period of fifteen months commencing on the date of application of that Regulation.
4. During the period referred to in paragraph 3, competent authorities shall ensure the following with regard to the financial instruments referred to in points (b) and (c) of paragraph 2:
- (a) that the information published in accordance with paragraph 1 remains appropriate for the purposes of points (a) and (c) of Article 4(1) and paragraphs 2 and 4 of Article 14 of Regulation (EU) No 600/2014;
 - (b) that the information published in accordance with paragraph 1 is updated on the basis of a longer trading period and a more comprehensive trading history, where necessary.

Article 20

Entry into force and application

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

This Regulation shall apply from the date referred to in the second paragraph of Article 55 of Regulation (EU) No 600/2014.

However Article 19 shall apply from the date of entry into force of this Regulation.

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

Done at Brussels, 14.7.2016

For the Commission
The President
Jean-Claude JUNCKER