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## **COMMUNICATION TO THE COMMISSION**

**on the intention to endorse with amendments the draft amendment to the regulatory technical standard submitted by ESMA on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates**

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Article 10(1) of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC, provides that where the European Parliament and the Council delegate power to the Commission to adopt regulatory technical standards, the European Securities and Markets Authority (ESMA) is required to submit draft regulatory technical standards to the Commission for endorsement. Where the Commission intends to endorse those draft regulatory technical standards with amendments it should send them back to ESMA explaining why it intends to endorse them with amendments.

Following the above procedure, on 26 March 2016, ESMA sent to the Commission a draft amendment to the regulatory technical standard on the MiFID 2 transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments (draft RTS 1 amendment).

The draft RTS 1 amendment submitted by ESMA seeks to introduce respect of the minimum tick size increments when systematic internalisers quote prices for all of the above financial instruments mentioned in Article 14 MiFIR.

It is proposed to inform ESMA that the Commission intends to endorse the draft amendment to RTS 1 once changes are introduced to reflect the RTS set out in the annex. The reasons for these changes can be summarised as follows:

- The co-legislators did not provide that quotes of systematic internalisers would need to respect tick size increments. Technical standards can therefore not be employed to achieve this result.
- There is evidence that not applying tick sizes to shares and depositary receipts risks negative repercussions on the liquidity in those two asset classes. Quoting prices outside the tick size increments might also hinder the efficient valuation and pricing of shares and depositary receipts. As efficient price formation is an important feature underpinning the introduction of tick size increments, systematic internalisers quoting prices for shares and depositary receipts below the standard market size should respect tick size increments in order to accurately reflect prevailing market conditions.
- Confining the proposed amendments to shares and depositary receipts addresses concerns about efficient price formation while remaining in line with the legislative intent not to introduce a general obligation that all quotes by systematic internalisers have to respect the tick size increments.

For those reasons, it is proposed that the Commission, acting in accordance with the procedure set out in the fifth and sixth subparagraphs of Article 10(1) of Regulation (EU) No 1095/2010, informs ESMA that it intends to endorse the draft amendment to RTS 1

submitted by ESMA once the above-mentioned concerns are taken into account and the necessary modifications are made.

The Commission is therefore invited to:

- approve the enclosed letter, in which it communicates to ESMA its intention to endorse with amendments the draft regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates; and
- authorise the Director General of Directorate General of Financial Stability, Financial Services and Capital Markets Union to sign and transmit the letter and the amended draft RTS enclosed to ESMA on behalf of the Commission.