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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 648/2012

(Text with EEA relevance)

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on markets in financial instruments and amending Regulation (EU) No 648/2012

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank,

Having regard to the opinion of the European Economic and Social Committee,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) The financial crisis has exposed weaknesses in the transparency of financial markets which can contribute to harmful socioeconomic effects. Strengthening transparency is one of the shared principles to strengthen the financial system as confirmed by the G20 Leaders' statement in London on 2 April 2009. In order to strengthen the transparency and improve the functioning of the internal market for financial instruments, a new framework establishing uniform requirements for the transparency of transactions in markets for financial instruments should be put in place. The framework should establish comprehensive rules for a broad range of financial instruments. It should complement requirements for the transparency of orders and transactions in respect of shares established in Directive 2004/39/EC of the European Parliament and of the Council.

(2) The High-Level Group on Financial Supervision in the EU chaired by Jacques de Larosière invited the Union to develop a more harmonised set of financial regulations. In the context of the future European supervision architecture, the European Council of 18 and 19 June 2009 stressed the need to establish a European single rule book applicable to all financial institutions in the internal market.

(3) The new legislation should as a consequence consist of two different legal instruments, a Directive and this Regulation. Together, both legal instruments should form the legal framework governing the requirements applicable to investment firms, regulated markets and data reporting services providers. This Regulation should therefore be read together with the Directive. The need to establish a single set of rules for all institutions in respect of certain requirements and to avoid potential regulatory arbitrage as well as to provide more legal certainty and less regulatory complexity for market participants warrants the use of a legal basis allowing for the creation of a Regulation. In order to remove the remaining obstacles to trade and significant distortions of competition resulting from divergences between national laws and to prevent any further likely obstacles to trade and significant distortions of competition from arising, it is therefore necessary to adopt a Regulation establishing uniform rules applicable in all Member States. This directly applicable legal act aims at contributing in a determining manner to the smooth functioning of the internal market and should, consequently, be based on Article 114 of the Treaty on the Functioning of the European Union (TFEU), as interpreted in accordance with the consistent case-law of the Court of Justice of the European Union.

(4) Directive 2004/39/EC established rules for making the trading in shares admitted to trading on a regulated market pre-trade and post-trade transparent and for reporting transactions in financial instruments admitted to trading on a regulated market to competent authorities. The directive needs to be recast in order to appropriately reflect developments in financial markets and to address weaknesses and close loopholes that were, inter alia, exposed in the financial market crisis.

(5) Provisions in respect of trade and regulatory transparency requirements need to take the form of directly applicable law applied to all investment firms that should follow uniform rules in all Union markets, in order to provide for a uniform application of a single regulatory framework, to strengthen confidence in the transparency of markets across the Union, to reduce regulatory complexity and investment firms' compliance costs, especially for financial institutions operating on a cross-border basis, and to contribute to the elimination of distortions of competition. The adoption of a regulation ensuring direct applicability is best suited to accomplish those regulatory goals and ensure uniform conditions by preventing diverging national requirements as a result of the transposition of a directive.

(6) It is important to ensure that trading in financial instruments is carried out as far as possible on organised venues and that all such venues are appropriately regulated. Under Directive 2004/39/EC, some trading systems developed which were not adequately captured by the regulatory regime. Any trading system in financial instruments, such as entities currently known as broker crossing networks, should in the future be properly regulated and be authorised under one of the types of multilateral trading venues or as a systematic internaliser under the conditions set out in this Regulation and in Directive 2014/65/EU.

(7) The definitions of regulated market and multilateral trading facility (MTF) should be clarified and remain closely aligned with each other to reflect the fact that they represent effectively the same organised trading functionality. The definitions should exclude bilateral systems where an investment firm enters into every trade on own account, even as a riskless counterparty interposed between the buyer and seller. Regulated markets and MTFs should not be allowed to execute client orders against proprietary capital. The term 'system' encompasses all those markets that are composed of a set of rules and a trading platform as well as those that only function on the basis of a set of rules. Regulated markets and MTFs are not obliged to operate a 'technical' system for matching orders and should be able to operate other trading protocols including systems whereby users are able to trade against quotes they request from multiple providers. A market which is only composed of a set of rules that governs aspects related to membership, admission of instruments to trading, trading between members, reporting and, where applicable, transparency obligations is a regulated market or an MTF within the meaning of

this Regulation and the transactions concluded under those rules are considered to be concluded under the systems of a regulated market or an MTF. The term ‘buying and selling interests’ is to be understood in a broad sense and includes orders, quotes and indications of interest. One of the important requirements concerns the obligation that the interests be brought together in the system by means of non-discretionary rules set by the system operator. That requirement means that they are brought together under the system’s rules or by means of the system’s protocols or internal operating procedures, including procedures embodied in computer software. The term ‘non-discretionary rules’ means rules that leave the regulated market or the market operator or investment firm operating an MTF with no discretion as to how interests may interact. The definitions require that interests be brought together in such a way as to result in a contract which occurs where execution takes place under the system’s rules or by means of the system’s protocols or internal operating procedures.

(8) In order to make Union financial markets more transparent and efficient and to level the playing field between various venues offering multilateral trading services it is necessary to introduce a new trading venue category of organised trading facility (OTF) for bonds, structured finance products, emissions allowances and derivatives and to ensure that it is appropriately regulated and applies non-discriminatory rules regarding access to the facility. That new category is broadly defined so that now and in the future it should be able to capture all types of organised execution and arranging of trading which do not correspond to the functionalities or regulatory specifications of existing venues. Consequently, appropriate organisational requirements and transparency rules which support efficient price discovery need to be applied. The new category encompasses systems eligible for trading clearing-eligible and sufficiently liquid derivatives. It should not include facilities where there is no genuine trade execution or arranging taking place in the system, such as bulletin boards used for advertising buying and selling interests, other entities aggregating or pooling potential buying or selling interests, electronic post-trade confirmation services, or portfolio compression, which reduces non-market risks in existing derivatives portfolios without changing the market risk of the portfolios. Portfolio compression may be provided by a range of firms which are not regulated as such by this Regulation or by Directive 2014/65/EU, such as central counterparties (CCPs), trade repositories as well as by investment firms or market operators. It is appropriate to clarify that where investment firms and market operators carry out portfolio compression certain provisions of this Regulation and of Directive 2014/65/EU are not applicable in relation to portfolio compression. Since central securities depositories (CSDs) will be subject to the same requirements as investment firms when providing certain investment services or performing certain investment activities, the provisions of this Regulation and of Directive 2014/65/EU should not be applicable to firms that are not regulated thereby when carrying out portfolio compression.

(9) That new category OTF will complement the existing types of trading venues. While regulated markets and MTFs have non-discretionary rules for the execution of transactions, the operator of an OTF should carry out order execution on a discretionary basis subject, where applicable, to the pre-transparency requirements and best execution obligations. Consequently, conduct of business rules, best execution and client order handling obligations should apply to the transactions concluded on an OTF operated by an investment firm or a market operator. In addition, any market operator authorised to operate an OTF should comply with Chapter 1 of Directive 2014/65/EU regarding conditions and procedures for authorisation of investment firms. The investment firm or the market operator operating an OTF should be able to exercise discretion at two different levels: first when deciding to place an order on the OTF or to retract it again and second when deciding not to match a specific order with the orders available in the system at a given point in time, provided that that complies with specific instructions received from clients and with best execution obligations. For the system that crosses client orders the operator should be able to decide if, when and how much of two or more orders it wants to match within the system. In accordance with Article 20(1), (2), (4) and (5) of Directive 2014/65/EU and without prejudice to Article 20(3) of Directive 2014/65/EU, the firm should be able to facilitate negotiation between clients as to bring together two or more potentially compatible trading interests in a transaction. At both discretionary levels the OTF operator must have regard to its obligations under Articles 18 and 27 of Directive 2014/65/EU. The market operator or investment firm operating an OTF should make clear to users of the venue how they will exercise discretion. Because an OTF constitutes a genuine trading platform, the platform operator should be neutral. Therefore, the investment firm or market operator operating the OTF should be subject to requirements in relation to non-discriminatory execution and neither the investment firm or market operator operating the OTF nor any entity that is part of the same group or legal person as the investment firm or market operator should be allowed to execute client orders in an OTF against its proprietary capital. For the purpose of facilitating the execution of one or more client orders in bonds, structured finance products, emission allowances and derivatives that have not been declared subject to the clearing obligation in accordance with Article 5 of Regulation (EU) No 648/2012 of the European Parliament and of the Council, an OTF operator is permitted to use matched

principal trading within the meaning of Directive 2014/65/EU provided the client has consented to that process. In relation to sovereign debt instruments for which there is not a liquid market, an investment firm or market operator operating an OTF should be able to engage in dealing on own account other than matched principal trading. When matched principal trading is used all pre-trade and post-trade transparency requirements as well as best execution obligations must be complied with. The OTF operator or any entity that is part of the same group or legal person as the investment firm or market operator should not act as systematic internaliser in the OTF operated by it. Furthermore, the operator of an OTF should be subject to the same obligations as an MTF in relation to the sound management of potential conflicts of interest.

(10) All organised trading should be conducted on regulated venues and be fully transparent, both pre and post trade. Appropriately calibrated transparency requirements therefore need to apply to all types of trading venues, and to all financial instruments traded thereon.

(11) In order to ensure more trading takes place on regulated trading venues and systematic internalisers, a trading obligation for shares admitted to trading on a regulated market or traded on a trading venue should be introduced for investment firms in this Regulation. That trading obligation requires investment firms to undertake all trades including trades dealt on own account and trades dealt when executing client orders on a regulated market, an MTF, a systematic internaliser or an equivalent third-country trading venue. However an exclusion from that trading obligation should be provided if there is a legitimate reason. Those legitimate reasons are where trades are non-systematic, ad-hoc, irregular and infrequent, or are technical trades such as give-up trades which do not contribute to the price discovery process. Such an exclusion from that trading obligation should not be used to circumvent the restrictions introduced on the use of the reference price waiver and the negotiated price waiver or to operate a broker crossing network or other crossing system. The option for trades to be done on a systematic internaliser is without prejudice to the systematic internaliser regime laid down in this Regulation. The intention is that if the investment firm itself meets the relevant criteria laid down in this Regulation to be deemed a systematic internaliser in that particular share, the trade may be dealt in that way; however, if it is not deemed a systematic internaliser in that particular share, the investment firm should still be able to undertake the trade on another systematic internaliser where that complies with its best execution obligations and the option is available to it. In addition, in order to ensure that multilateral trading with respect to shares, depositary receipts, exchange-traded funds (ETFs), certificates and other similar financial instruments is properly regulated, an investment firm that operates an internal matching system on a multilateral basis should be authorised as an MTF. It should be clarified that the best execution provisions set out in Directive 2014/65/EU should be applied in such a manner as not to impede the trading obligations under this Regulation.

(12) Trading in depositary receipts, ETFs, certificates, similar financial instruments and shares other than those admitted to trading on a regulated market 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. Transparency provisions applicable to shares admitted to trading on regulated markets should thus be extended to those financial instruments.

(13) While, in principle, acknowledging the need for a regime of waivers from pre-trade transparency to support the efficient functioning of markets, the actual waiver provisions for shares applicable on the basis of Directive 2004/39/EC and of Commission Regulation (EC) No 1287/2006, need to be scrutinised as to their continued appropriateness in terms of scope and conditions applicable. In order to ensure a uniform application of the waivers from pre-trade transparency in shares and eventually other similar financial instruments and non-equity products for specific market models and types and sizes of orders, the European Supervisory Authority (European Securities and Markets Authority), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council ('ESMA'), should assess the compatibility of individual requests for applying a waiver with rules laid down in this Regulation and in delegated acts provided for in this Regulation. ESMA's assessment should take the form of an opinion in accordance with Article 29 of Regulation (EU) No 1095/2010. In addition, the already existing waivers for shares should be reviewed by ESMA within an appropriate timeframe and an assessment should be made, following the same procedure, as to whether they are still in compliance with the rules set out in this Regulation and in delegated acts provided for in this Regulation.

(14) The financial crisis exposed specific weaknesses in the way information on trading opportunities and prices in financial instruments other than shares is available to market participants, namely in terms of timing, granularity, equal access, and reliability. Timely pre-trade and post-trade transparency requirements taking account of the different characteristics and market structures of specific types of financial instruments other than shares should thus be introduced and calibrated for different types of trading systems, including order-book, quote-driven, hybrid, periodic auction trading and voice trading

systems. In order to provide a sound transparency framework for all relevant financial instruments, these should apply to bonds, structured finance products, emission allowances and derivatives which are traded on a trading venue. Therefore, exemptions from pre-trade transparency and adaptations of the requirements in relation to deferred publication should be available only in certain defined cases.

(15) It is necessary to introduce an appropriate level of trade transparency in markets for bonds, structured finance products and derivatives in order to help the valuation of products as well as the efficiency of price formation. Structured finance products should, in particular, include asset backed securities as defined in Article 2(5) of Commission Regulation (EC) No 809/2004, comprising among others collateralised debt obligations.

(16) In order to ensure uniform applicable conditions between trading venues, the same pre-trade and post-trade transparency requirements should apply to the different types of venues. The transparency requirements should be calibrated for different types of financial instruments, including equities, bonds, and derivatives, taking into account the interests of investors and issuers, including government bond issuers, and market liquidity. The requirements should be calibrated for different types of trading, including order-book and quote-driven systems such as request for quote as well as hybrid and voice broking systems, and take account of transaction size, including turnover, and other relevant criteria.

(17) In order to avoid any negative impact on the price formation process, it is necessary to introduce an appropriate volume cap mechanism for orders placed in systems which are based on a trading methodology by which the price is determined in accordance with a reference price and for certain negotiated transactions. That mechanism should have a double cap, whereby a volume cap is applied to each trading venue that uses those waivers so that only a certain percentage of trading can be done on each trading venue, and in addition an overall volume cap is applied which if exceeded would result in the suspension of use of those waivers across the Union. In relation to the negotiated transactions, it should only apply to those transactions that are made within the current volume weighted spread reflected on the order book or the quotes of the market makers of the trading venue operating that system. It should exclude negotiated transactions in illiquid shares, depositary receipts, ETFs, certificates or other similar financial instruments, and those transactions that are subject to conditions other than the current market price as they do not contribute to the price formation process.

(18) In order to ensure that trading carried out OTC does not jeopardise efficient price discovery or a transparent level playing field between means of trading, appropriate pre-trade transparency requirements should apply to investment firms dealing on own account in financial instruments OTC insofar as it is carried out in their capacity as systematic internalisers in relation to shares, depositary receipts, ETFs, certificates or other similar financial instruments for which there is a liquid market and bonds, structured finance products, emission allowances and derivatives which are traded on a trading venue and for which there is a liquid market.

(19) An investment firm executing client orders against own proprietary capital should be deemed a systematic internaliser, unless the transactions are carried out outside a trading venue on an occasional, ad hoc and irregular basis. Thus, systematic internalisers should be defined as investment firms which, on an organised, frequent systematic and substantial basis, deal on own account by executing client orders outside a trading venue. The requirements for systematic internalisers in this Regulation should apply to an investment firm only in relation to each single financial instrument, for example on ISIN-code level, in which it is a systematic internaliser. In order to ensure an objective and effective application of the definition of systematic internaliser to investment firms, there should be a pre-determined threshold for systematic internalisation containing an exact specification of what is meant by frequent, systematic and substantial basis.

(20) While an OTF is any system or facility in which multiple third-party buying and selling interests interact in the system, a systematic internaliser should not be allowed to bring together third-party buying and selling interests. For instance, a so-called single-dealer platform, where trading always takes place against a single investment firm, should be considered a systematic internaliser, were it to comply with the requirements included in this Regulation. However, a so-called multi-dealer platform, with multiple dealers interacting for the same financial instrument, should not be considered a systematic internaliser.

(21) Systematic internalisers should be able to decide on the basis of their commercial policy and in an objective non-discriminatory way the clients to whom they give access to their quotes, distinguishing between categories of clients, and should also be entitled to take account of distinctions between clients, for example in relation to credit risk. Systematic internalisers should not be obliged to publish firm quotes, execute client orders and give access to their quotes in relation to equity transactions above standard market size and non-equity transactions above the size specific to the financial instrument. Systematic internalisers' compliance with their obligations should be checked by and information made

available to competent authorities to enable them to do so.

(22) It is not the intention of this Regulation to require the application of pre-trade transparency rules to transactions carried out on an OTC basis, other than within a systematic internaliser.

(23) Market data should be easily and readily available to users in a format as disaggregated as possible to allow investors, and data service providers serving their needs, to customise data solutions to the furthest possible degree. Therefore, pre-trade and post-trade transparency data should be made available to the public in an 'unbundled' fashion in order to reduce costs for market participants when purchasing data.

(24) Directive 95/46/EC of the European Parliament and of the Council and Regulation (EC) No 45/2001 of the European Parliament and of the Council should be fully applicable to the exchange, transmission and processing of personal data for the purposes of this Regulation, particularly Title IV, by Member States and ESMA.

(25) Considering the agreement reached by the parties to the G20 Pittsburgh summit on 25 September 2009 to move trading in standardised OTC derivative contracts to exchanges or electronic trading platforms where appropriate, a formal regulatory procedure should be defined for mandating trading between financial counterparties and large non-financial counterparties in all derivatives which have been considered to be clearing-eligible and which are sufficiently liquid to take place on a range of trading venues subject to comparable regulation and enabling participants to trade with multiple counterparties. The assessment of sufficient liquidity should take account of market characteristics at national level including elements such as the number and type of market participants in a given market, and of transaction characteristics, such as the size and frequency of transactions in that market. A liquid market in a product class of derivatives will be characterised by a high number of active market participants, including a suitable mix of liquidity providers and liquidity takers, relative to the number of traded products, which execute trades frequently in those products in sizes below a size that is large in scale. Such market activity should be indicated by a high number of resting bids and offers in the relevant derivative leading to a narrow spread for a transaction of normal market size. The assessment of sufficient liquidity should recognize that the liquidity of a derivative can vary significantly according to market conditions and its life cycle.

(26) Considering the agreement reached by the parties to the G20 in Pittsburgh on 25 September 2009 to move trading in standardised OTC derivative contracts to exchanges or electronic trading platforms where appropriate on the one hand, and the relatively lower liquidity of various OTC derivatives on the other, it is appropriate to provide for a suitable range of eligible venues on which trading pursuant to that commitment can take place. All eligible venues should be subject to closely aligned regulatory requirements in terms of organisational and operational aspects, arrangements to mitigate conflicts of interest, surveillance of all trading activity, pre-trade and post-trade transparency calibrated by financial instrument and types of trading system, and for multiple third-party trading interests to be able to interact with one another. The possibility for operators of venues to arrange transactions pursuant to that commitment between multiple third parties in a discretionary fashion should however be provided for in order to improve the conditions for execution and liquidity.

(27) The obligation to conclude transactions in derivatives pertaining to a class of derivatives that has been declared subject to the trading obligation on a regulated market, MTF, OTF or third country trading venue should not apply to the components of non-price forming post-trade risk reduction services which reduce non-market risks in derivatives portfolios including existing OTC derivatives portfolios in accordance with Regulation (EU) No 648/2012 without changing the market risk of the portfolios. In addition, while it is appropriate to make specific provision for portfolio compression, this Regulation is not intended to prevent the use of other post-trade risk reduction services.

(28) The trading obligation established for those derivatives should allow for efficient competition between eligible trading venues. Therefore those trading venues should not be able to claim exclusive rights in relation to any derivatives subject to that trading obligation preventing other trading venues from offering trading in those financial instruments. For effective competition between trading venues for derivatives, it is essential that trading venues have non-discriminatory and transparent access to CCPs. Non-discriminatory access to a CCP should mean that a trading venue has the right to non-discriminatory treatment in terms of how contracts traded on its platform are treated in terms of collateral requirements and netting of economically equivalent contracts and cross-margining with correlated contracts cleared by the same CCP, and non-discriminatory clearing fees.

(29) Competent authorities' powers should be complemented with an explicit mechanism for prohibiting or restricting the marketing, distribution and sale of any financial instrument or structured deposit giving rise to serious concerns regarding investor protection, orderly functioning and integrity of financial

markets, or commodities markets, or the stability of the whole or part of the financial system, together with appropriate coordination and contingency powers for ESMA or, for structured deposits, the European Supervisory Authority (European Banking Authority) (EBA), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council. The exercise of such powers by competent authorities and, in exceptional cases, by ESMA or EBA should be subject to the need to fulfil a number of specific conditions. Where those conditions are met, the competent authority or, in exceptional cases, ESMA or EBA should be able to impose a prohibition or restriction on a precautionary basis before a financial instrument or structured deposit has been marketed, distributed or sold to clients. Those powers do not imply any requirement to introduce or apply a product approval or licensing by the competent authority, ESMA or EBA, and do not relieve investment firms of their responsibility to comply with the all relevant requirements laid down in this Regulation and in Directive 2014/65/EU. The orderly functioning and integrity of commodity markets should be included as a criterion for intervention by competent authorities in order to enable action to be taken to counteract possible negative externalities on commodities markets from activities on financial markets. This is true, in particular, for agricultural commodity markets the purpose of which is to ensure a secure supply of food for the population. In those cases, the measures should be coordinated with the authorities competent for the commodity markets concerned.

(30) Competent authorities should notify ESMA of the details of any of their requests to reduce a position in relation to a derivative contract, of any one-off limits, as well as of any *ex-ante* position limits in order to improve coordination and convergence in how those powers are applied. The essential details of any *ex-ante* position limits applied by a competent authority should be published on ESMA's website.

(31) ESMA should be able to request information from any person regarding their position in relation to a derivative contract, to request that position to be reduced, as well as to limit the ability of persons to undertake individual transactions in relation to commodity derivatives. ESMA should then notify relevant competent authorities of measures it proposes to undertake and should publish those measures.

(32) The details of transactions in financial instruments should be reported to competent authorities to enable them to detect and investigate potential cases of market abuse, to monitor the fair and orderly functioning of markets, as well as the activities of investment firms. The scope of that oversight includes all financial instruments which are traded on a trading venue and financial instruments where the underlying is a financial instrument traded on a trading venue or where the underlying is an index or basket composed of financial instruments traded on a trading venue. The obligation should apply whether or not such transactions in any of those financial instruments were carried out on a trading venue. In order to avoid an unnecessary administrative burden on investment firms, financial instruments that are not susceptible to market abuse should be excluded from the reporting obligation. The reports should use a legal entity identifier in line with the G-20 commitments. ESMA should report to the Commission on the functioning of such reporting to the competent authorities and the Commission should take steps to propose any changes where appropriate.

(33) The operator of a trading venue should provide its competent authority with relevant financial instrument reference data. Those notifications are to be transmitted by the competent authorities without delay to ESMA, which should publish them immediately on its website to enable ESMA and competent authorities to use, analyse and exchange transaction reports.

(34) In order to serve their purpose as a tool for market monitoring, transaction reports should identify the person who has made the investment decision, as well as those responsible for its execution. In addition to the transparency regime provided for in Regulation (EU) No 236/2012 of the European Parliament and of the Council, the marking of short sales provides useful supplementary information to enable competent authorities to monitor levels of short selling. Competent authorities need to have full access to records at all stages in the order execution process, from the initial decision to trade, through to its execution. Therefore, investment firms should keep records of all their orders and all their transactions in financial instruments, and operators of platforms are required to keep records of all orders submitted to their systems. ESMA should coordinate the exchange of information among competent authorities to ensure that they have access to all records of transactions and orders, including those entered on platforms that operate outside their territory, in financial instruments under their supervision.

(35) Double reporting of the same information should be avoided. Reports submitted to trade repositories registered or recognised in accordance with Regulation (EU) No 648/2012 for the relevant financial instruments which contain all the required information for transaction reporting purposes should not need to be reported to competent authorities, but should be transmitted to them by the trade repositories. Regulation (EU) No 648/2012 should be amended to that effect.

(36) Any exchange or transmission of information by competent authorities should be in accordance with the rules on the transfer of personal data as laid down in Directive 95/46/EC. Any exchange or transmission

of information by ESMA should be in accordance with the rules on the transfer of personal data as laid down in Regulation (EC) No 45/2001, which should be fully applicable to the processing of personal data for the purposes of this Regulation.

(37) Regulation (EU) No 648/2012 lays down the criteria according to which classes of OTC derivatives should be subject to the clearing obligation. It prevents competitive distortions by requiring non-discriminatory access to CCPs offering clearing of OTC derivatives to trading venues and non-discriminatory access to the trade feeds of trading venues to CCPs offering clearing of OTC derivatives. As OTC derivatives are defined as derivative contracts whose execution does not take place on a regulated market, there is a need to introduce similar requirements for regulated markets under this Regulation. Derivatives traded on regulated markets should also be centrally cleared.

(38) In addition to requirements in Directive 2004/39/EC and in Directive 2014/65/EU that prevent Member States from unduly restricting access to post-trade infrastructure such as CCP and settlement arrangements, it is necessary that this Regulation removes various other commercial barriers that can be used to prevent competition in the clearing of financial instruments. To avoid any discriminatory practices, CCPs should accept to clear transactions executed in different trading venues, to the extent that those venues comply with the operational and technical requirements established by the CCP, including the risk management requirements. Access should be granted by a CCP if certain access criteria specified in regulatory technical standards are met. With regard to newly established CCPs that have been authorised or recognised for a period of less than three years at the point of entry into force of this Regulation, with respect to transferable securities and money market instruments, there should be the possibility for competent authorities to approve a transitional period of up to two-and-a-half years before they are exposed to full non-discriminatory access in relation to transferable securities and money market instruments. However, if a CCP chooses to avail of the transitional arrangement it should not be able to benefit from the access rights to a trading venue under this Regulation for the duration of the transitional arrangement. Furthermore, no trading venue with a close link to that CCP should be able to benefit from the access rights to a CCP under this Regulation for the duration of the transitional arrangement.

(39) Regulation (EU) No 648/2012 lays down the conditions under which non-discriminatory access between CCPs and trading venues should be granted for OTC derivatives. Regulation (EU) No 648/2012 defines OTC derivatives as derivatives whose execution does not take place on a regulated market or on a third-country market considered as equivalent to a regulated market in accordance with Article 19(6) of Directive 2004/39/EC. In order to avoid any gaps or overlaps and to ensure consistency between Regulation (EU) No 648/2012 and this Regulation, the requirements set out in this Regulation on non-discriminatory access between CCPs and trading venues apply to derivatives traded on regulated markets or on a third-country market considered as equivalent to a regulated market in accordance with Directive 2014/65/EU and all non-derivative financial instruments.

(40) Trading venues should be required to provide access including data feeds on a transparent and non-discriminatory basis to CCPs that wish to clear transactions executed on a trading venue. However, this should not necessitate the use of interoperability arrangements for clearing transactions in derivatives or create liquidity fragmentation in a way that would threaten the smooth and orderly functioning of markets. Access should only be denied by a trading venue if certain access criteria specified in regulatory technical standards are not met. With regard to exchange-traded derivatives, it would be disproportionate to require smaller trading venues, particularly those closely linked to CCPs, to comply with non-discriminatory access requirements immediately if they have not yet acquired the technological capability to engage on a level playing field with the majority of the post-trade infrastructure market. Therefore trading venues below the relevant threshold should have the option of exempting themselves, and therefore their associated CCPs, from non-discriminatory access requirements in respect of exchange-traded derivatives for a period of 30 months with the possibility of subsequent renewals. However, if a trading venue chooses to exempt itself, it should not be able to benefit from the access rights to a CCP under this Regulation for the duration of the exemption. Furthermore, no CCP with a close link to that trading venue should be able to benefit from the access rights to a trading venue under this Regulation for the duration of the exemption. Regulation (EU) No 648/2012 identifies that where commercial and intellectual property rights relate to financial services related to derivative contracts, licenses should be available on proportionate, fair, reasonable and non-discriminatory terms. Therefore, access to licences of, and information relating to, benchmarks that are used to determine the value of financial instruments should be provided to CCPs and other trading venues on a proportionate, fair, reasonable and non-discriminatory basis and any license should be on reasonable commercial terms. Without prejudice to the application of competition rules, where any new benchmark is developed following the entry into force of this Regulation an obligation to licence should start 30 months after a financial instrument referencing that benchmark commenced trading or was

admitted to trading. Access to licenses is critical to facilitate access between trading venues and CCPs under Article 35 and 36 as otherwise licensing arrangements could still prevent access between trading venues and CCPs that they have requested access to. The removal of barriers and discriminatory practices is intended to increase competition for clearing and trading of financial instruments in order to lower investment and borrowing costs, eliminate inefficiencies and foster innovation in Union markets. The Commission should continue to closely monitor the evolution of post-trade infrastructure and should, where necessary, intervene in order to prevent competitive distortions from occurring in the internal market, in particular where the refusal of access to infrastructure or to benchmarks contravenes Articles 101 or 102 TFEU. The licencing duties under this Regulation should be without prejudice to the general obligation of proprietary owners of benchmarks under Union competition law, and under Articles 101 and 102 TFEU in particular, concerning access to benchmarks that are indispensable to enter a new market. Approvals of competent authorities to not apply access rights for transitional periods are not authorisations or amendments of authorisations.

(41) The provision of services by third-country firms in the Union is subject to national regimes and requirements. Those regimes are highly differentiated and the firms authorised in accordance with them do not enjoy the freedom to provide services and the right of establishment in Member States other than the one where they are established. It is appropriate to introduce a common regulatory framework at Union level. The regime should harmonise the existing fragmented framework, ensure certainty and uniform treatment of third-country firms accessing the Union, ensure that an assessment of effective equivalence has been carried out by the Commission in relation to the prudential and business conduct framework of third countries, and should provide for a comparable level of protection to clients in the Union receiving services by third-country firms. In applying the regime the Commission and Member States should prioritise the areas covered by the G-20 commitments and agreements with the Union's largest trading partners and should have regard to the central role that the Union plays in worldwide financial markets and ensure that the application of third-country requirements does not prevent Union investors and issuers from investing in or obtaining funding from third countries or third-country investors and issuers from investing, raising capital or obtaining other financial services in Union markets unless that is necessary for objective and evidence-based prudential reasons. In carrying out the assessments, the Commission should have regard to the International Organisation of Securities Commission's (IOSCO) Objectives and Principles of Securities Regulation and its recommendations as amended and interpreted by IOSCO. Where a decision cannot be made determining effective equivalence, the provision of services by third-country firms in the Union remains subject to national regimes. The Commission should initiate the equivalence assessment on its own initiative. Member States should be able to indicate their interest that a certain third-country or certain third countries are subject to the equivalence assessment carried out by the Commission, without such indications being binding on the Commission to initiate the equivalence process. The equivalence assessment should be outcome-based; it should assess to what extent the respective third-country regulatory and supervisory framework achieves similar and adequate regulatory effects and to what extent it meets the same objectives as Union law. When initiating those equivalence assessments, the Commission should be able to prioritise among third-country jurisdictions taking into account the materiality of the equivalence finding to Union firms and clients, the existence of supervisory and cooperation agreements between the third country and the Member States, the existence of an effective equivalent system for the recognition of investment firms authorised under foreign regimes as well as the interest and willingness of the third country to engage in the equivalence assessment process. The Commission should monitor any significant changes to the regulatory and supervisory framework of the third country and review the equivalence decisions where appropriate.

(42) Under this Regulation, the provision of services without branches should be limited to eligible counterparties and professional clients per se. It should be subject to registration by ESMA and to supervision in the third country. Proper cooperation arrangements should be in place between ESMA and the competent authorities in the third country.

(43) The provisions of this Regulation regulating the provision of services or undertaking of activities by third-country firms should not affect the possibility for persons established in the Union to receive investment services by a third-country firm at their own exclusive initiative or for Union investment firms or credit institutions to receive investment services or activities from a third-country firm at their own exclusive initiative or for a client to receive investment services from a third-country firm at their own exclusive initiative through the mediation of such a credit institution or investment firm. Where a third-country firm provides services at the own exclusive initiative of a person established in the Union, the services should not be deemed as provided in the territory of the Union. Where a third-country firm solicits clients or potential clients in the Union or promotes or advertises investment services or activities together with ancillary services in the Union, it should not be deemed as a service provided at

the own exclusive initiative of the client.

(44) With regard to the recognition of third-country firms, and in accordance with the Union's international obligations under the agreement establishing the World Trade Organisation, including the General Agreement on Trade in Services, decisions determining third-country regulatory and supervisory frameworks as equivalent to the regulatory and supervisory framework of the Union should be adopted only if the legal and supervisory framework of the third country provides for an effective equivalent system for the recognition of investment firms authorised under foreign legal regimes in accordance with, amongst others, the general regulatory goals and standards set out by the G-20 in September 2009 of improving transparency in the derivatives markets, mitigating systemic risk, and protecting against market abuse. Such a system should be considered equivalent if it ensures that the substantial result of the applicable regulatory framework is similar to Union requirements and should be considered effective if those rules are being applied in a consistent manner.

(45) A range of fraudulent practices have occurred in spot secondary markets in emission allowances (EUA) which could undermine trust in the emissions trading scheme, set up by Directive 2003/87/EC of the European Parliament and of the Council, and measures are being taken to strengthen the system of EUA registries and conditions for opening an account to trade EUAs. In order to reinforce the integrity and safeguard the efficient functioning of those markets, including comprehensive supervision of trading activity, it is appropriate to complement measures taken under Directive 2003/87/EC by bringing emission allowances fully into the scope of this Regulation and Directive 2014/65/EU as well as of Regulation (EU) No 596/2014 of the European Parliament and the Council and of Directive 2014/57/EU of the European Parliament and of the Council, by classifying them as financial instruments.

(46) The Commission should be empowered to adopt delegated acts in accordance with Article 290 of TFEU. In particular, the delegated acts should be adopted in respect of the extension of the scope of certain provisions of this Regulation to third-country central banks, specific details concerning definitions, specific cost-related provisions related to the availability of market data, access to quotes, the sizes at or below which a firm shall enter into transactions with any other client to whom a quote is available, portfolio compression and the further determination of when there is a significant investor protection concern or a threat to investor protection, the orderly functioning and integrity of financial markets or commodity markets or to the stability of the whole or part of the financial system of the Union may warrant ESMA, EBA or competent authorities' action, position management powers of ESMA, the extension of the transitional period under Article 35(5) of this Regulation for a certain period of time and in respect of the exclusion of exchange-traded derivatives from the scope of certain provisions of this Regulation for a certain period of time. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(47) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission relating to the adoption of the equivalence decision concerning the third-country legal and supervisory framework for the provision of services by third-country firms or third-country trading venues for the purpose of eligibility as trading venues for derivatives subject to the trading obligation and of access of third-country CCPs and third-country trading venues to trading venues and CCPs established in the Union. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.

(48) Since the objectives of this Regulation, namely to establish uniform requirements relating to financial instruments in relation to disclosure of trade data, reporting of transactions to the competent authorities, trading of derivatives and shares on organised venues, non-discriminatory access to CCPs, trading venues and benchmarks, product intervention powers and powers on position management and position limits, provision of investment services or activities by third-country firms, cannot be sufficiently achieved by the Member States, because, although national competent authorities are better placed to monitor market developments, the overall impact of the problems related to trade transparency, transaction reporting, derivatives trading, and bans of products and practices can only be fully understood in a Union-wide context, but can rather, by reason of its scale and effects, be better achieved at the Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(49) No action taken by any competent authority or ESMA in the performance of their duties should directly or indirectly discriminate against any Member State or group of Member States as a venue for the

provision of investment services and activities in any currency. No action taken by EBA in the performance of its duties under this Regulation should directly or indirectly discriminate against any Member State or group of Member States.

(50) Technical standards in financial services should ensure adequate protection of depositors, investors and consumers across the Union. As a body with highly specialised expertise, it would be efficient and appropriate to entrust ESMA, with the elaboration of draft regulatory technical standards which do not involve policy choices, for submission to the Commission.

(51) The Commission should adopt the draft regulatory technical standards developed by ESMA regarding the precise characteristics of trade transparency requirements, regarding the monetary, foreign exchange and financial stability policy operations and the types of the certain transactions relevant under this Regulation, regarding the detailed conditions for waivers from pre-trade transparency, regarding deferred post-trade publication arrangements, regarding the obligation to make pre-trade and post-trade data available separately, regarding the criteria for the application of the pre-trade transparency obligations for systematic internalisers, regarding post-trade disclosure by investment firms, regarding the content and frequency of data requests for the provision of information for the purposes of transparency and other calculations, regarding transactions that do not contribute to the price discovery process, regarding the order data to be retained, regarding the content and specifications of transaction reports, regarding the content and specification of financial instrument reference data, regarding the types of contracts which have a direct, substantial and foreseeable effect within the Union and the cases where the trading obligation for derivatives is necessary, regarding the requirements for systems and procedures to ensure that transactions in cleared derivatives are submitted and accepted for clearing, specifying types of indirect clearing service arrangements, regarding derivatives subject to an obligation to trade on organised trading venues, regarding non-discriminatory access to a CCP and to a trading venue, regarding non-discriminatory access to and obligation to licence benchmarks, and concerning the information that the applicant third-country firm should provide to ESMA in its application for registration. The Commission should adopt those draft regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

(52) Article 95 of Directive 2014/65/EU provides for a transitional exemption for certain C6 energy derivative contracts. It is therefore necessary that the technical standards specifying the clearing obligation developed by ESMA in accordance with Article 5(2)(b) of Regulation (EU) No 648/2012 take that into account and do not impose a clearing obligation on derivative contracts which would subsequently be subject to the transitional exemption for C6 energy derivative contracts.

(53) The application of the requirements in this Regulation should be deferred in order to align applicability with the application of the transposed rules of the recast Directive and to establish all essential implementing measures. The entire regulatory package should then be applied from the same point in time. Only the application of the empowerments for implementing measures should not be deferred so that the necessary steps to draft and adopt those implementing measures can start as early as possible.

(54) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, in particular the right to the protection of personal data (Article 8), the freedom to conduct a business (Article 16), the right to consumer protection (Article 38), the right to an effective remedy and to a fair trial (Article 47), and the right not to be tried or punished twice for the same offence (Article 50), and has to be applied in accordance with those rights and principles.

(55) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and delivered an opinion on 10 February 2012,

HAVE ADOPTED THIS REGULATION:

TITLE I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter and scope

1.This Regulation establishes uniform requirements in relation to the following:

(a) disclosure of trade data to the public;

(b) reporting of transactions to the competent authorities;

(c) trading of derivatives on organised venues;

(d) non-discriminatory access to clearing and non-discriminatory access to trading in benchmarks;

(e) product intervention powers of competent authorities, ESMA and EBA and powers of ESMA on position management controls and position limits;

(f) provision of investment services or activities by third-country firms following an applicable equivalence decision by the Commission with or without a branch.

2.This Regulation applies to investment firms, authorised under Directive 2014/65/EU and credit institutions authorised under Directive 2013/36/EU of the European Parliament and of the Council when providing investment services and/or performing investment activities and to market operators including any trading venues they operate.

3.Title V of this Regulation also applies to all financial counterparties as defined in Article 2(8) of Regulation (EU) No 648/2012 and to all non-financial counterparties falling under Article 10(1)(b) of that Regulation.

4.Title VI of this Regulation also applies to CCPs and persons with proprietary rights to benchmarks.

5.Title VIII of this Regulation applies to third-country firms providing investment services or activities within the Union following an applicable equivalence decision by the Commission with or without a branch.

5a. Title II and Title III of this Regulation shall not apply to securities financing transactions as defined in point (11) of Article 3 of Regulation (EU) 2015/2365 of the European Parliament and of the Council.

6.Articles 8, 10, 18 and 21 shall not apply to regulated markets, market operators and investment firms in respect of a transaction where the counterparty is a member of the European System of Central Banks (ESCB) and where that transaction is entered into in performance of monetary, foreign exchange and financial stability policy which that member of the ESCB is legally empowered to pursue and where that member has given prior notification to its counterparty that the transaction is exempt.

7.Paragraph 6 shall not apply in respect of transactions entered into by any member of the ESCB in performance of their investment operations.

8.ESMA shall, in close cooperation with the ESCB, develop draft regulatory technical standards to specify the monetary, foreign exchange and financial stability policy operations and the types of transactions to which paragraphs 6 and 7 apply.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

9.The Commission shall be empowered to adopt delegated acts in accordance with Article 50 to extend the scope of paragraph 6 to other central banks.

To that end, the Commission shall, by 1 June 2015, submit a report to the European Parliament and to the Council assessing the treatment of transactions by third-country central banks which for the purposes of this paragraph includes the Bank for International Settlements. The report shall include an analysis of their statutory tasks and their trading volumes in the Union. The report shall:

(a) identify provisions applicable in the relevant third countries regarding the regulatory disclosure of central bank transactions, including transactions undertaken by members of the ESCB in those third

countries, and

(b) assess the potential impact that regulatory disclosure requirements in the Union may have on third-country central bank transactions.

If the report concludes that the exemption provided for in paragraph 6 is necessary in respect of transactions where the counterparty is a third-country central bank carrying out monetary policy, foreign exchange and financial stability operations, the Commission shall provide that that exemption applies to that third-country central bank.

Article 2

Definitions

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

(1) ‘investment firm’ means an investment firm as defined in Article 4(1)(1) of Directive 2014/65/EU;

(2) ‘investment services and activities’ means investment services and activities defined in Article 4(1)(2) of Directive 2014/65/EU;

(3) ‘ancillary services’ means ancillary services as defined in Article 4(1)(3) of Directive 2014/65/EU;

(4) ‘execution of orders on behalf of clients’ means execution on behalf of clients as defined in Article 4(1)(5) of Directive 2014/65/EU;

(5) ‘dealing on own account’ means dealing on own account as defined in Article 4(1)(6) of Directive 2014/65/EU;

(6) ‘market maker’ means a market maker as defined in Article 4(1)(7) of Directive 2014/65/EU;

(7) ‘client’ means a client as defined in Article 4(1)(9) of Directive 2014/65/EU;

(8) ‘professional client’ means a professional client as defined in Article 4(1)(10) of Directive 2014/65/EU;

(9) ‘financial instrument’ means a financial instrument as defined in Article 4(1)(15) of Directive 2014/65/EU;

(10) ‘market operator’ means a market operator as defined in Article 4(1)(18) of Directive 2014/65/EU;

(11) ‘multilateral system’ means a multilateral system as defined in Article 4(1)(19) of Directive 2014/65/EU;

(12) ‘systematic internaliser’ means a systematic internaliser as defined in Article 4(1)(20) of Directive 2014/65/EU;

(13) ‘regulated market’ means a regulated market as defined in Article 4(1)(21) of Directive 2014/65/EU;

(14) ‘multilateral trading facility’ or ‘MTF’ means a multilateral trading facility as defined in Article 4(1)(22) of Directive 2014/65/EU;

(15) ‘organised trading facility’ or ‘OTF’ means an organised trading facility as defined in Article 4(1)(23) of Directive 2014/65/EU;

(16) ‘trading venue’ means a trading venue as defined in Article 4(1)(24) of Directive 2014/65/EU;

(17) ‘liquid market’ means:

(a) for the purposes of Articles 9, 11, and 18, a market for a financial instrument or a class of financial instruments, where there are ready and willing buyers and sellers on a continuous basis, and where the market is assessed in accordance with the following criteria, taking into consideration the specific market structures of the particular financial instrument or of the particular class of financial instruments:

(i) the average frequency and size of transactions over a range of market conditions, having regard to

the nature and life cycle of products within the class of financial instrument;

(ii) the number and type of market participants, including the ratio of market participants to traded financial instruments in a particular product;

(iii) the average size of spreads, where available;

(b) for the purposes of Articles 4, 5 and 14, a market for a financial instrument that is traded daily where the market is assessed according to the following criteria:

(i) the free float;

(ii) the average daily number of transactions in those financial instruments;

(iii) the average daily turnover for those financial instruments;

(18) ‘ competent authority ’ means a competent authority as defined in Article 4(1)(26) of Directive 2014/65/EU;

(19) ‘credit institution’ means a credit institution as defined in Article 4(1)(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council;

(20) ‘branch’ means a branch as defined in Article 4(1)(30) of Directive 2014/65/EU;

(21) ‘close links’ means close links as defined in Article 4(1)(35) of Directive 2014/65/EU;

(22) ‘management body’ means a management body as defined in Article 4(1)(36) of Directive 2014/65/EU;

(23) ‘structured deposit’ means a structured deposit as defined in Article 4(1)(43) of Directive 2014/65/EU;

(24) ‘transferable securities’ means transferable securities as defined in Article 4(1)(44) of Directive 2014/65/EU;

(25) ‘depositary receipts’ means depositary receipts as defined in Article 4(1)(45) of Directive 2014/65/EU;

(26) ‘exchange-traded fund’ or ‘ETF’ means an exchange-traded fund as defined in Article 4(1)(46) of Directive 2014/65/EU;

(27) ‘certificates’ means those securities which are negotiable on the capital market and which in case of a repayment of investment by the issuer are ranked above shares but below unsecured bond instruments and other similar instruments;

(28) ‘structured finance products’ means those securities created to securitise and transfer credit risk associated with a pool of financial assets entitling the security holder to receive regular payments that depend on the cash flow from the underlying assets;

(29) ‘derivatives’ means those financial instruments defined in point (44)(c) of Article 4(1) of Directive 2014/65/EU; and referred to in Annex I, Section C (4) to (10) thereto;

(30) ‘commodity derivatives’ means those financial instruments defined in point (44)(c) of Article 4(1) of Directive 2014/65/EU; which relate to a commodity or an underlying referred to in Section C(10) of Annex I to Directive 2014/65/EU; or in points (5), (6), (7) and (10) of Section C of Annex I thereto;

(31) ‘CCP’ means a CCP within the meaning of Article 2(1) of Regulation (EU) No 648/2012;

(32) ‘exchange-traded derivative’ means a derivative that is traded on a regulated market or on a third-country market considered to be equivalent to a regulated market in accordance with Article 28 of this Regulation, and as such does not fall within the definition of an OTC derivative as defined in Article 2(7) of Regulation (EU) No 648/2012;

(33) ‘actionable indication of interest’ means a message from one member or participant to another within a trading system in relation to available trading interest that contains all necessary information to agree on a trade;

(34) ‘approved publication arrangement’ or ‘APA’ means an approved publication arrangement as defined in Article 4(1)(52) of Directive 2014/65/EU;

(35) ‘consolidated tape provider’ or ‘CTP’ means a consolidated tape provider as defined in Article 4(1)(53) of Directive 2014/65/EU;

(36) ‘approved reporting mechanism’ or ‘ARM’ means an approved reporting mechanism as defined in Article 4(1)(54) of Directive 2014/65/EU;

(37) ‘home Member State’ means a home Member State as defined in Article 4(1)(55) of Directive 2014/65/EU;

(38) ‘host Member State’ means a host Member State as defined in Article 4(1)(56) of Directive 2014/65/EU;

(39) ‘benchmark’ means any rate, index or figure, made available to the public or published that is periodically or regularly determined by the application of a formula to, or on the basis of the value of one or more underlying assets or prices, including estimated prices, actual or estimated interest rates or other values, or surveys and by reference to which the amount payable under a financial instrument or the value of a financial instrument is determined.

(40) ‘interoperability arrangement’ means an interoperability arrangement as defined in Article 2(12) of Regulation (EU) No 648/2012;

(41) ‘third-country financial institution’ means an entity, the head office of which is established in a third country, that is authorised or licensed under the law of that third country to carry out any of the services or activities listed in Directive 2013/36/EU, Directive 2014/65/EU; Directive 2009/138/EC of the European Parliament and of the Council, Directive 2009/65/EC of the European Parliament and of the Council, Directive 2003/41/EC of the European Parliament and of the Council or Directive 2011/61/EU of the European Parliament and of the Council;

(42) ‘third-country firm’ means a third-country firm as defined in Article 4(1)(57) of Directive 2014/65/EU;

(43) ‘wholesale energy product’ means wholesale energy products as defined in Article 2(4) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council;

(44) ‘agricultural commodity derivatives’ means derivative contracts relating to products listed in Article 1 of, and Annex I, Parts I to XX and XXIV/1 to, Regulation (EU) No 1308/2013 of the European Parliament and of the Council;

(45)
‘liquidity fragmentation’ means a situation in which:

(a) participants in a trading venue are unable to conclude a transaction with one or more other participants in that venue because of the absence of clearing arrangements to which all participants have access; or

(b) a clearing member or its clients would be forced to hold their positions in a financial instrument in more than one CCP which would limit the potential for the netting of financial exposures;

(46) ‘sovereign debt’ means sovereign debt as defined in Article 4(1)(61) of Directive 2014/65/EU;

(47) ‘portfolio compression’ means a risk reduction service in which two or more counterparties wholly or partially terminate some or all of the derivatives submitted by those counterparties for inclusion in the portfolio compression and replace the terminated derivatives with another derivative whose combined notional value is less than the combined notional value of the terminated derivatives;

(48) ‘ exchange for physical ’ means a transaction in a derivative contract or other financial instrument contingent on the simultaneous execution of an equivalent quantity of an underlying physical asset;

(49)
‘ package order ’ means an order priced as a single unit:

(a) for the purpose of executing an exchange for physical; or

(b) in two or more financial instruments for the purpose of executing a package transaction;

(50)
‘ package transaction ’ means:

(a) an exchange for physical; or

(b) a transaction involving the execution of two or more component transactions in financial

instruments and which fulfils all of the following criteria:

(i) the transaction is executed between two or more counterparties;

(ii) each component of the transaction bears meaningful economic or financial risk related to all the other components;

(iii) the execution of each component is simultaneous and contingent upon the execution of all the other components.

2.The Commission shall be empowered to adopt delegated acts in accordance with Article 50 to specify certain technical elements of the definitions laid down in paragraph 1 to adjust them to market developments.

TITLE II

TRANSPARENCY FOR TRADING VENUES

CHAPTER 1

Transparency for equity instruments

Article 3

Pre-trade transparency requirements for trading venues in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments

1.Market operators and investment firms operating a trading venue shall make public current bid and offer prices and the depth of trading interests at those prices which are advertised through their systems for shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on a trading venue. That requirement shall also apply to actionable indication of interests. Market operators and investment firms operating a trading venue shall make that information available to the public on a continuous basis during normal trading hours.

2.The transparency requirements referred to in paragraph 1 shall be calibrated for different types of trading systems including order-book, quote-driven, hybrid and periodic auction trading systems.

3.Market operators and investment firms operating a trading venue shall give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements they employ for making public the information referred to in paragraph 1 to investment firms which are obliged to publish their quotes in shares, depositary receipts, ETFs, certificates and other similar financial instruments pursuant to Article 14.

Article 4

Waivers for equity instruments

1.Competent authorities shall be able to waive the obligation for market operators and investment firms operating a trading venue to make public the information referred to in Article 3(1) for:

(a) systems matching orders based on a trading methodology by which the price of the financial instrument referred to in Article 3(1) is derived from the trading venue where that financial instrument was first

admitted to trading or the most relevant market in terms of liquidity, where that reference price is widely published and is regarded by market participants as a reliable reference price. The continued use of that waiver shall be subject to the conditions set out in Article 5.

(b) systems that formalise negotiated transactions which are:

(i) made within the current volume weighted spread reflected on the order book or the quotes of the market makers of the trading venue operating that system, subject to the conditions set out in Article 5;

(ii) in an illiquid share, depositary receipt, ETF, certificate or other similar financial instrument that does not fall within the meaning of a liquid market, and are dealt within a percentage of a suitable reference price, being a percentage and a reference price set in advance by the system operator; or

(iii) subject to conditions other than the current market price of that financial instrument;

(c) orders that are large in scale compared with normal market size;

(d) orders held in an order management facility of the trading venue pending disclosure.

2.The reference price referred to in paragraph 1(a) shall be established by obtaining:

(a) the midpoint within the current bid and offer prices of the trading venue where that financial instrument was first admitted to trading or the most relevant market in terms of liquidity; or

(b) when the price referred to in point (a) is not available, the opening or closing price of the relevant trading session.

Orders shall only reference the price referred to in point (b) outside the continuous trading phase of the relevant trading session.

3.Where trading venues operate systems which formalise negotiated transactions in accordance with paragraph 1(b)(i):

(a) those transactions shall be carried out in accordance with the rules of the trading venue;

(b) the trading venue shall ensure that arrangements, systems and procedures are in place to prevent and detect market abuse or attempted market abuse in relation to such negotiated transactions in accordance with Article 16 of Regulation (EU) No 596/2014;

(c) the trading venue shall establish, maintain and implement systems to detect any attempt to use the waiver to circumvent other requirements of this Regulation or Directive 2014/65/EU and to report attempts to the competent authority.

Where a competent authority grants a waiver in accordance with paragraph 1(b)(i) or (iii), that competent authority shall monitor the use of the waiver by the trading venue to ensure that the conditions for use of the waiver are respected.

4.Before granting a waiver in accordance with paragraph 1, competent authorities shall notify ESMA and other competent authorities of the intended use of each individual waiver and provide an explanation regarding its functioning, including the details of the trading venue where the reference price is established as referred to in paragraph 1(a). Notification of the intention to grant a waiver shall be made not less than four months before the waiver is intended to take effect. Within two months following receipt of the notification, ESMA shall issue a non-binding opinion to the competent authority in question assessing the compatibility of each waiver with the requirements established in paragraph 1 and specified in the regulatory technical standard adopted pursuant to paragraph 6. Where that competent authority grants a waiver and a competent authority of another Member State disagrees, that competent authority may refer the matter back to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010. ESMA shall monitor the application of the waivers and shall submit an annual report to the Commission on how they are applied in practice.

5.A competent authority may, either on its own initiative or upon request by another competent authority, withdraw a waiver granted under paragraph 1 as specified under paragraph 6,if it observes that the waiver is being used in a way that deviates from its original purpose or if it believes that the waiver is being used to circumvent the requirements established in this Article.

Competent authorities shall notify ESMA and other competent authorities of such withdrawal providing full reasons for their decision.

6.ESMA shall develop draft regulatory technical standards to specify the following:

(a) the range of bid and offer prices or designated market-maker quotes, and the depth of trading interest at those prices, to be made public for each class of financial instrument concerned in accordance with Article 3(1), taking into account the necessary calibration for different types of trading systems as referred to in Article 3(2);

(b) the most relevant market in terms of liquidity of a financial instrument in accordance with paragraph 1(a);

(c) the specific characteristics of a negotiated transaction in relation to the different ways the member or participant of a trading venue can execute such a transaction;

(d) the negotiated transactions that do not contribute to price formation which avail of the waiver provided for under paragraph 1(b)(iii);

(e) the size of orders that are large in scale and the type and the minimum size of orders held in an order management facility of a trading venue pending disclosure for which pre-trade disclosure may be waived under paragraph 1 for each class of financial instrument concerned;

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

7.Waivers granted by competent authorities in accordance with Article 29(2) and Article 44(2) of Directive 2004/39/EC and Articles 18, 19 and 20 of Regulation (EC) No 1287/2006 before 3 January 2018 shall be reviewed by ESMA by 3 January 2020. ESMA shall issue an opinion to the competent authority in question assessing the continued compatibility of each of those waivers with the requirements established in this Regulation and any delegated act and regulatory technical standard based on this Regulation.

Article 5

Volume Cap Mechanism

1.In order to ensure that the use of the waivers provided for in Article 4(1)(a) and 4(1)(b)(i) does not unduly harm price formation, trading under those waivers is restricted as follows:

(a) the percentage of trading in a financial instrument carried out on a trading venue under those waivers shall be limited to 4 % of the total volume of trading in that financial instrument on all trading venues across the Union over the previous 12 months.

(b) overall Union trading in a financial instrument carried out under those waivers shall be limited to 8 % of the total volume of trading in that financial instrument on all trading venues across the Union over the previous 12 months.

That volume cap mechanism shall not apply to negotiated transactions which are in a share, depositary receipt, ETF, certificate or other similar financial instrument for which there is not a liquid market as determined in accordance with Article 2(1)(17)(b) and are dealt within a percentage of a suitable reference price as referred to in Article 4(1)(b)(ii), or to negotiated transactions that are subject to conditions other than the current market price of that financial instrument as referred to in Article 4(1)(b)(iii).

2.When the percentage of trading in a financial instrument carried out on a trading venue under the waivers has exceeded the limit referred to in paragraph 1(a), the competent authority that authorised the use of those waivers by that venue shall within two working days suspend their use on that venue in that financial instrument based on the data published by ESMA referred to in paragraph 4, for a period of six months.

3.When the percentage of trading in a financial instrument carried out on all trading venues across the Union under those waivers has exceeded the limit referred to in paragraph 1(b), all competent authorities shall within two working days suspend the use of those waivers across the Union for a period of six months.

4.ESMA shall publish within five working days of the end of each calendar month, the total volume of Union trading per financial instrument in the previous 12 months, the percentage of trading in a financial instrument carried out across the Union under those waivers and on each trading venue in the previous 12 months, and the methodology that is used to derive those percentages.

5.In the event that the report referred to in paragraph 4 identifies any trading venue where trading in any financial instrument carried out under the waivers has exceeded 3,75 % of the total trading in the Union in that financial instrument, based on the previous 12 months' trading, ESMA shall publish an additional report within five working days of the 15th day of the calendar month in which the report referred to in paragraph 4 is published. That report shall contain the information specified in paragraph 4 in respect of those financial instruments where 3,75 % has been exceeded.

6.In the event that the report referred to in paragraph 4 identifies that overall Union trading in any financial instrument carried out under the waivers has exceeded 7,75 % of the total Union trading in the financial instrument, based on the previous 12 months' trading, ESMA shall publish an additional report within five working days of the 15th on the day of the calendar month in which the report referred to in paragraph 4 is published. That report shall contain the information specified in paragraph 4 in respect of those financial instruments where 7,75 % has been exceeded.

7.In order to ensure a reliable basis for monitoring the trading taking place under those waivers and for determining whether the limits referred to in paragraph 1 have been exceeded, operators of trading venues shall be obligated to have in place systems and procedures to:

(a) enable the identification of all trades which have taken place on its venue under those waivers; and

(b) ensure it does not exceed the permitted percentage of trading allowed under those waivers as referred to in paragraph 1(a) under any circumstances.

8.The period for the publication of trading data by ESMA, and for which trading in a financial instrument under those waivers is to be monitored shall start on 3 January 2017. Without prejudice to Article 4(5), competent authorities shall be empowered to suspend the use of those waivers from the date of application of this Regulation and thereafter on a monthly basis.

9.ESMA shall develop draft regulatory technical standards to specify the method, including the flagging of transactions, by which it collates, calculates and publishes the transaction data, as outlined in paragraph 4, in order to provide an accurate measurement of the total volume of trading per financial instrument and the percentages of trading that use those waivers across the Union and per trading venue.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 6

Post-trade transparency requirements for trading venues in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments

1.Market operators and investment firms operating a trading venue shall make public the price, volume and time of the transactions executed in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on that trading venue. Market operators and investment firms operating a trading venue shall make details of all such transactions public as close to real-time as is technically possible.

2.Market operators and investment firms operating a trading venue shall give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements they employ for making public the information under paragraph 1 of this Article to investment firms which are obliged to publish the details of their transactions in shares, depositary receipts, ETFs, certificates and other similar financial instruments pursuant to Article 20.

Article 7

Authorisation of deferred publication

1.Competent authorities shall be able to authorise market operators and investment firms operating a trading venue to provide for deferred publication of the details of transactions based on their type or size.

In particular, the competent authorities may authorise the deferred publication in respect of transactions that are large in scale compared with the normal market size for that share, depositary receipt, ETF, certificate or other similar financial instrument or that class of share, depositary receipt, ETF, certificate or other similar financial instrument.

Market operators and investment firms operating a trading venue shall obtain the competent authority's prior approval of proposed arrangements for deferred trade-publication, and shall clearly disclose those arrangements to market participants and the public. ESMA shall monitor the application of those arrangements for deferred trade-publication and shall submit an annual report to the Commission on how they are applied in practice.

Where a competent authority authorises deferred publication and a competent authority of another Member State disagrees with the deferral or disagrees with the effective application of the authorisation granted, that competent authority may refer the matter back to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

2.ESMA shall develop draft regulatory technical standards to specify the following in such a way as to enable the publication of information required under Article 64 of Directive 2014/65/EU:

(a) the details of transactions that investment firms, including systematic internalisers and market operators and investment firms operating a trading venue shall make available to the public for each class of financial instrument concerned in accordance with Article 6(1), including identifiers for the different types of transactions published under Article 6(1) and Article 20, distinguishing between those determined by factors linked primarily to the valuation of the financial instruments and those determined by other factors;

(b) the time limit that would be deemed in compliance with the obligation to publish as close to real time as possible including when trades are executed outside ordinary trading hours.

(c) the conditions for authorising investment firms, including systematic internalisers and market operators and investment firms operating a trading venue to provide for deferred publication of the details of transactions for each class of financial instruments concerned in accordance with paragraph 1 of this Article and with Article 20(1);

(d) the criteria to be applied when deciding the transactions for which, due to their size or the type, including liquidity profile of the share, depositary receipt, ETF, certificate or other similar financial instrument involved, deferred publication is allowed for each class of financial instrument concerned.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

CHAPTER 2

Transparency for non-equity instruments

Article 8

Pre-trade transparency requirements for trading venues in respect of bonds, structured finance products, emission allowances and derivatives

1.Market operators and investment firms operating a trading venue shall make public current bid and offer prices and the depth of trading interests at those prices which are advertised through their systems for bonds, and structured finance products, emission allowances, derivatives traded on a trading venue and package orders. That requirement shall also apply to actionable indication of interests. Market operators and investment firms operating a trading venue shall make that information available to the public on a continuous basis during normal trading hours. That publication obligation does not apply to those derivative transactions of non-financial counterparties which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the non-financial counterparty or of that group.

2.The transparency requirements referred to in paragraph 1 shall be calibrated for different types of trading systems, including order-book, quote-driven, hybrid, periodic auction trading and voice trading systems.

3.Market operators and investment firms operating a trading venue shall give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements they employ for making public the information referred to in paragraph 1 to investment firms which are obliged to publish their quotes in bonds, structured finance products, emission allowances and derivatives pursuant to Article 18.

4.Market operators and investment firms operating a trading venue shall, where a waiver is granted in accordance with Article 9(1)(b), make public at least indicative pre-trade bid and offer prices which are close to the price of the trading interests advertised through their systems in bonds, structured finance products, emission allowances and derivatives traded on a trading venue. Market operators and investment firms operating a trading venue shall make that information available to the public through appropriate electronic means on a continuous basis during normal trading hours. Those arrangements shall ensure that information is provided on reasonable commercial terms and on a non-discriminatory basis.

Article 9

Waivers for non-equity instruments

1.Competent authorities shall be able to waive the obligation for market operators and investment firms operating a trading venue to make public the information referred to in Article 8(1) for:

(a) orders that are large in scale compared with normal market size and orders held in an order management facility of the trading venue pending disclosure;

(b) actionable indications of interest in request-for-quote and voice trading systems that are above a size specific to the financial instrument, which would expose liquidity providers to undue risk and takes into account whether the relevant market participants are retail or wholesale investors;

(c) derivatives which are not subject to the trading obligation specified in Article 28 and other financial instruments for which there is not a liquid market;

(d) orders for the purpose of executing an exchange for physical;

(e) package orders that meet one of the following conditions:

  (i) at least one of its components is a financial instrument for which there is not a liquid market, unless there is a liquid market for the package order as a whole;

(ii) at least one of its components is large in scale compared with the normal market size, unless there is a liquid market for the package order as a whole;

(iii) all of its components are executed on a request-for-quote or voice system and are above the size specific to the instrument.

2.Before granting a waiver in accordance with paragraph 1, competent authorities shall notify ESMA and other competent authorities of the intended use of each individual waiver and provide an explanation regarding their functioning. Notification of the intention to grant a waiver shall be made not less than four months before the waiver is intended to take effect. Within two months following receipt of the notification, ESMA shall issue an opinion to the competent authority in question assessing the compatibility of the waiver with the requirements established in paragraph 1 and specified in the regulatory technical standards adopted pursuant to paragraph 5. Where that competent authority grants a waiver and a competent authority of another Member State disagrees, that competent authority may refer the matter back to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010. ESMA shall monitor the application of the waivers and submit an annual report to the Commission on how they are applied in practice.

2a. Competent authorities shall be able to waive the obligation referred to in Article 8(1) for each individual component of a package order.

3.Competent authorities, may, either on their own initiative or upon request by other competent authorities, withdraw a waiver granted under paragraph 1 if they observe that the waiver is being used in a way that deviates from its original purpose or if they consider that the waiver is being used to circumvent the requirements established in this Article.

Competent authorities shall notify ESMA and other competent authorities of such withdrawal without delay and before it takes effect, providing full reasons for their decision.

4.The competent authority responsible for supervising one or more trading venues on which a class of bond, structured finance product, emission allowance or derivative is traded may, where the liquidity of that class of financial instrument falls below a specified threshold, temporarily suspend the obligations referred to in Article 8. The specified threshold shall be defined on the basis of objective criteria specific to the market for the financial instrument concerned. Notification of such temporary suspension shall be published on the website of the relevant competent authority.

The temporary suspension shall be valid for an initial period not exceeding three months from the date of its publication on the website of the relevant competent authority. Such a suspension may be renewed for further periods not exceeding three months at a time if the grounds for the temporary suspension continue to be applicable. Where the temporary suspension is not renewed after that three-month period, it shall automatically lapse.

Before suspending or renewing the temporary suspension under this paragraph of the obligations referred to in Article 8, the relevant competent authority shall notify ESMA of its intention and provide an explanation. ESMA shall issue an opinion to the competent authority as soon as practicable on whether in its view the suspension or the renewal of the temporary suspension is justified in accordance with the first and second subparagraphs.

5.ESMA shall develop draft regulatory technical standards to specify the following:

(a) the parameters and methods for calculating the threshold of liquidity referred to in paragraph 4 in relation to the financial instrument. The parameters and methods for Member States to calculate the threshold shall be set in such a way that when the threshold is reached, it represents a significant decline in liquidity across all venues within the Union for the financial instrument concerned based on the criteria used under Article 2(1)(17);

(b) the range of bid and offer prices or quotes and the depth of trading interests at those prices, or indicative pre-trade bid and offer prices which are close to the price of the trading interest, to be made public for each class of financial instrument concerned in accordance with Article 8(1) and (4), taking into account the necessary calibration for different types of trading systems as referred to in Article 8(2);

(c) the size of orders that are large in scale and the type and the minimum size of orders held in an order management facility pending disclosure for which pre-trade disclosure may be waived under paragraph 1 for each class of financial instrument concerned;

(d) the size specific to the financial instrument referred to in paragraph 1(b) and the definition of request-for-quote and voice trading systems for which pre-trade disclosure may be waived under paragraph 1;

When determining the size specific to the financial instrument that would expose liquidity providers to undue risk and takes into account whether the relevant market participants are retail or wholesale investors, in accordance with paragraph 1(b), ESMA shall take the following factors into account:

(i) whether, at such sizes, liquidity providers would be able to hedge their risks;

(ii) where a market in the financial instrument, or a class of financial instruments, consists in part of retail investors, the average value of transactions undertaken by those investors;

(e) the financial instruments or the classes of financial instruments for which there is not a liquid market where pre-trade disclosure may be waived under paragraph 1.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

6. In order to ensure the consistent application of points (i) and (ii) of paragraph (1)(e), ESMA shall develop draft regulatory technical standards to establish a methodology for determining those package orders for which there is a liquid market. When developing such methodology for determining whether there is a liquid market for a package order as a whole, ESMA shall assess whether packages are standardised and frequently traded.

ESMA shall submit those draft regulatory technical standards to the Commission by 28 February 2017 .

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 10

Post-trade transparency requirements for trading venues in respect of bonds, structured finance products, emission allowances and derivatives

1.Market operators and investment firms operating a trading venue shall make public the price, volume and time of the transactions executed in respect of bonds, structured finance products, emission allowances and derivatives traded on a trading venue. Market operators and investment firms operating a trading venue shall make details of all such transactions public as close to real-time as is technically possible.

2.Market operators and investment firms operating a trading venue shall give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements they employ for making public the information under paragraph 1 to investment firms which are obliged to publish the details of their transactions in bonds, structured finance products, emission allowances and derivatives pursuant to Article 21.

Article 11

Authorisation of deferred publication

1.Competent authorities shall be able to authorise market operators and investment firms operating a trading venue to provide for deferred publication of the details of transactions based on the size or type of the transaction.

In particular, the competent authorities may authorise the deferred publication in respect of transactions that:

(a) are large in scale compared with the normal market size for that bond, structured finance product, emission allowance or derivative traded on a trading venue, or for that class of bond, structured finance product, emission allowance or derivative traded on a trading venue; or

(b) are related to a bond, structured finance product, emission allowance or derivative traded on a trading venue, or a class of bond, structured finance product, emission allowance or derivative traded on a trading venue for which there is not a liquid market;

(c) are above a size specific to that bond, structured finance product, emission allowance or derivative traded on a trading venue, or that class of bond, structured finance product, emission allowance or derivative traded on a trading venue, which would expose liquidity providers to undue risk and takes into account whether the relevant market participants are retail or wholesale investors.

Market operators and investment firms operating a trading venue shall obtain the competent authority's prior approval of proposed arrangements for deferred trade-publication, and shall clearly disclose those arrangements to market participants and the public. ESMA shall monitor the application of those arrangements for deferred trade-publication and shall submit an annual report to the Commission on how they are used in practice.

2.The competent authority responsible for supervising one or more trading venues on which a class of bond, structured finance product, emission allowance or derivative is traded may, where the liquidity of that class of financial instrument falls below the threshold determined in accordance with the methodology as referred to in Article 9(5)(a), temporarily suspend the obligations referred to in Article 10. That threshold shall be defined based on objective criteria specific to the market for the financial instrument concerned. Such temporary suspension shall be published on the website of the relevant competent authority.

The temporary suspension shall be valid for an initial period not exceeding three months from the date of its publication on the website of the relevant competent authority. Such a suspension may be renewed for further periods not exceeding three months at a time if the grounds for the temporary suspension continue to be applicable. Where the temporary suspension is not renewed after that three-month period, it shall automatically lapse.

Before suspending or renewing the temporary suspension of the obligations referred to in Article 10, the relevant competent authority shall notify ESMA of its intention and provide an explanation. ESMA shall issue an opinion to the competent authority as soon as practicable on whether in its view the suspension or the renewal of the temporary suspension is justified in accordance with the first and second subparagraphs.

3.Competent authorities may, in conjunction with an authorisation of deferred publication:

(a) request the publication of limited details of a transaction or details of several transactions in an aggregated form, or a combination thereof, during the time period of deferral;

(b) allow the omission of the publication of the volume of an individual transaction during an extended time period of deferral;

(c) regarding non-equity instruments that are not sovereign debt, allow the publication of several transactions in an aggregated form during an extended time period of deferral;

(d) regarding sovereign debt instruments, allow the publication of several transactions in an aggregated form for an indefinite period of time.

In relation to sovereign debt instruments, points (b) and (d) may be used either separately or consecutively whereby once the volume omission extended period lapses, the volumes could then be published in aggregated form.

In relation to all other financial instruments, when the deferral time period lapses, the outstanding details of the transaction and all the details of the transactions on an individual basis shall be published.

4.ESMA shall develop draft regulatory technical standards to specify the following in such a way as to enable the publication of information required under Article 64 of Directive 2014/65/EU:

(a) the details of transactions that investment firms, including systematic internalisers, and market operators and investment firms operating a trading venue shall make available to the public for each class of financial instrument concerned in accordance with Article 10(1), including identifiers for the different types of transactions published under Article 10(1) and Article 21(1), distinguishing between those determined by factors linked primarily to the valuation of the financial instruments and those determined by other factors;

(b) the time limit that would be deemed in compliance with the obligation to publish as close to real time as possible including when trades are executed outside ordinary trading hours;

(c) the conditions for authorising investment firms, including systematic internalisers, and market operators and investment firms operating a trading venue, to provide for deferred publication of the details of transactions for each class of financial instrument concerned in accordance with paragraph 1 of this Article and with Article 21(4);

(d) the criteria to be applied when determining the size or type of a transaction for which deferred publication and publication of limited details of a transaction, or publication of details of several transactions in an aggregated form, or omission of the publication of the volume of a transaction with particular reference to allowing an extended length of time of deferral for certain financial instruments depending on their liquidity, is allowed under paragraph 3.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

CHAPTER 3

Obligation to offer trade data on a separate and reasonable commercial basis

Article 12

Obligation to make pre-trade and post-trade data available separately

1.Market operators and investment firms operating a trading venue shall make the information published in accordance with Articles 3, 4 and 6 to 11 available to the public by offering pre-trade and post-trade transparency data separately.

2.ESMA shall develop draft regulatory technical standards to specify the offering of pre-trade and post-trade transparency data, including the level of disaggregation of the data to be made available to the public as referred to in paragraph 1.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 13

Obligation to make pre-trade and post-trade data available on a reasonable commercial basis

1.Market operators and investment firms operating a trading venue shall make the information published in accordance with Articles 3, 4 and 6 to 11 available to the public on a reasonable commercial basis and ensure non-discriminatory access to the information. Such information shall be made available free of charge 15 minutes after publication.

2.The Commission shall adopt delegated acts in accordance with Article 50 clarifying what constitutes a reasonable commercial basis to make information public as referred to in paragraph 1.

TITLE III

TRANSPARENCY FOR SYSTEMATIC INTERNALISERS AND INVESTMENT FIRMS TRADING OTC AND TICK SIZE REGIME FOR SYSTEMATIC INTERNALISERS

Article 14

Obligation for systematic internalisers to make public firm quotes in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments

1.Investment firms shall make public firm quotes in respect of those shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on a trading venue for which they are systematic internalisers and for which there is a liquid market.

Where there is not a liquid market for the financial instruments referred to in the first subparagraph, systematic internalisers shall disclose quotes to their clients upon request.

2.This Article and Articles 15, 16 and 17 shall apply to systematic internalisers when they deal in sizes up to standard market size. Systematic internalisers shall not be subject to this Article and Articles 15, 16 and 17 when they deal in sizes above standard market size.

3.Systematic internalisers may decide the size or sizes at which they will quote. The minimum quote size shall be at least the equivalent of 10 % of the standard market size of a share, depositary receipt, ETF, certificate or other similar financial instrument traded on a trading venue. For a particular share, depositary receipt, ETF, certificate or other similar financial instrument traded on a trading venue each quote shall include a firm bid and offer price or prices for a size or sizes which could be up to standard market size for the class of shares, depositary receipts, ETFs, certificates or other similar financial instruments to which the financial instrument belongs. The price or prices shall reflect the prevailing market conditions for that share, depositary receipt, ETF, certificate or other similar financial instrument.

4.Shares, depositary receipts, ETFs, certificates and other similar financial instruments shall be grouped in classes on the basis of the arithmetic average value of the orders executed in the market for that financial instrument. The standard market size for each class of shares, depositary receipts, ETFs, certificates and other similar financial instruments shall be a size representative of the arithmetic average value of the orders executed in the market for the financial instruments included in each class.

5.The market for each share, depositary receipt, ETF, certificate or other similar financial instrument shall be comprised of all orders executed in the Union in respect of that financial instrument excluding those that are large in scale compared to normal market size.

6.The competent authority of the most relevant market in terms of liquidity as defined in Article 26 for each share, depositary receipt, ETF, certificate and other similar financial instrument shall determine at least annually, on the basis of the arithmetic average value of the orders executed in the market in respect of that financial instrument, the class to which it belongs. That information shall be made public to all market participants and communicated to ESMA which shall publish the information on its website.

7.In order to ensure the efficient valuation of shares, depositary receipts, ETFs, certificates and other similar financial instruments and maximise the possibility of investment firms to obtain the best deal for their clients, ESMA shall develop draft regulatory technical standards to specify further the arrangements for the publication of a firm quote as referred to in paragraph 1, the determination of whether prices reflect

prevailing market conditions as referred to in paragraph 3, and of the standard market size as referred to in paragraphs 2 and 4.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 15

Execution of client orders

1.Systematic internalisers shall make public their quotes on a regular and continuous basis during normal trading hours. They may update their quotes at any time. They shall be allowed, under exceptional market conditions, to withdraw their quotes.

Member States shall require that firms that meet the definition of systematic internaliser notify their competent authority. Such notification shall be transmitted to ESMA. ESMA shall establish a list of all SIs in the Union.

The quotes shall be made public in a manner which is easily accessible to other market participants on a reasonable commercial basis.

2.Systematic internalisers shall, while complying with Article 27 of Directive 2014/65//EU, execute the orders they receive from their clients in relation to the shares, depositary receipts, ETFs, certificates and other similar financial instruments for which they are systematic internalisers at the quoted prices at the time of reception of the order.

However, in justified cases, they may execute those orders at a better price provided that the price falls within a public range close to market conditions.

3.Systematic internalisers may execute orders they receive from their professional clients at prices different than their quoted ones without having to comply with the requirements established in paragraph 2, in respect of transactions where execution in several securities is part of one transaction or in respect of orders that are subject to conditions other than the current market price.

4.Where a systematic internaliser quoting only one quote or whose highest quote is lower than the standard market size receives an order from a client of a size bigger than its quotation size, but lower than the standard market size, it may decide to execute that part of the order which exceeds its quotation size, provided that it is executed at the quoted price, except where otherwise permitted under the conditions laid down in paragraphs 2 and 3. Where the systematic internaliser is quoting in different sizes and receives an order between those sizes, which it chooses to execute, it shall execute the order at one of the quoted prices in compliance with Article 28 of Directive 2014/65/EU, except where otherwise permitted under the conditions of paragraphs 2 and 3 of this Article.

5.The Commission shall be empowered to adopt delegated acts in accordance with Article 50, clarifying what constitutes a reasonable commercial basis to make quotes public as referred to in paragraph 1.

Article 16

Obligations of competent authorities

The competent authorities shall check the following:

(a) that investment firms regularly update bid and offer prices published in accordance with Article 14 and maintain prices which reflect the prevailing market conditions;

(b) that investment firms comply with the conditions for price improvement laid down in Article 15(2).

Article 17

Access to quotes

1.Systematic internalisers shall be allowed to decide, on the basis of their commercial policy and in an objective non-discriminatory way, the clients to whom they give access to their quotes. To that end there shall be clear standards for governing access to their quotes. Systematic internalisers may refuse to enter into or discontinue business relationships with clients on the basis of commercial considerations such as the client credit status, the counterparty risk and the final settlement of the transaction.

2.In order to limit the risk of exposure to multiple transactions from the same client, systematic internalisers shall be allowed to limit in a non-discriminatory way the number of transactions from the same client which they undertake to enter at the published conditions. They may, in a non-discriminatory way and in accordance with Article 28 of Directive 2014/65//EU, limit the total number of transactions from different clients at the same time provided that this is allowable only where the number and/or volume of orders sought by clients considerably exceeds the norm.

3.In order to ensure the efficient valuation of shares, depositary receipts, ETFs, certificates and other similar financial instruments and maximise the possibility for investment firms to obtain the best deal for their clients, the Commission shall adopt delegated acts in accordance with Article 50 specifying:

(a) the criteria specifying when a quote is published on a regular and continuous basis and is easily accessible as referred to in Article 15(1) as well as the means by which investment firms may comply with their obligation to make public their quotes, which shall include the following possibilities:

  (i) through the facilities of any regulated market which has admitted the financial instrument in question to trading;

  (ii) through an APA;

  (iii) through proprietary arrangements;

(b) the criteria specifying those transactions where execution in several securities is part of one transaction or those orders that are subject to conditions other than current market price as referred to in Article 15(3);

(c) the criteria specifying what can be considered as exceptional market conditions that allow for the withdrawal of quotes as well as the conditions for updating quotes as referred to in Article 15(1);

(d) the criteria specifying when the number and/or volume of orders sought by clients considerably exceeds the norm as referred to in paragraph 2.

(e) the criteria specifying when prices fall within a public range close to market conditions as referred to in Article 15(2).

Article 17a

Tick sizes

Systematic internalisers’ quotes, price improvements on those quotes and execution prices shall comply with tick sizes set in accordance with Article 49 of Directive 2014/65/EU.

Application of tick sizes shall not prevent systematic internalisers matching orders large in scale at mid?point within the current bid and offer prices.

Article 18

Obligation for systematic internalisers to make public firm quotes in respect of bonds, structured finance products, emission allowances and derivatives

1.Investment firms shall make public firm quotes in respect of bonds, structured finance products, emission allowances and derivatives traded on a trading venue for which they are systematic internalisers and for which there is a liquid market when the following conditions are fulfilled:

(a) they are prompted for a quote by a client of the systematic internaliser;

(b) they agree to provide a quote.

2.In relation to bonds, structured finance products, emission allowances and derivatives traded on a trading venue for which there is not a liquid market, systematic internalisers shall disclose quotes to their clients on request if they agree to provide a quote. That obligation may be waived where the conditions specified in Article 9(1) are met.

3.Systematic internalisers may update their quotes at any time. They may withdraw their quotes under exceptional market conditions.

4.Member States shall require that firms that meet the definition of systematic internaliser notify their competent authority. Such notification shall be transmitted to ESMA. ESMA shall establish a list of all systematic internalisers in the Union.

5.Systematic internalisers shall make the firm quotes published in accordance with paragraph 1 available to their other clients. Notwithstanding, they shall be allowed to decide, on the basis of their commercial policy and in an objective non-discriminatory way, the clients to whom they give access to their quotes. To that end, systematic internalisers shall have in place clear standards for governing access to their quotes. Systematic internalisers may refuse to enter into or discontinue business relationships with clients on the basis of commercial considerations such as the client credit status, the counterparty risk and the final settlement of the transaction.

6.Systematic internalisers shall undertake to enter into transactions under the published conditions with any other client to whom the quote is made available in accordance with paragraph 5 when the quoted size is at or below the size specific to the financial instrument determined in accordance with Article 9(5)(d).

Systematic internalisers shall not be subject to the obligation to publish a firm quote pursuant to paragraph 1 for financial instruments that fall below the threshold of liquidity determined in accordance with Article 9(4).

7.Systematic internalisers shall be allowed to establish non-discriminatory and transparent limits on the number of transactions they undertake to enter into with clients pursuant to any given quote.

8.The quotes published pursuant to paragraph 1 and 5 and those at or below the size referred to in paragraph 6 shall be made public in a manner which is easily accessible to other market participants on a reasonable commercial basis.

9.The quoted price or prices shall be such as to ensure that the systematic internaliser complies with its obligations under Article 27 of Directive 2014/65/EU, where applicable, and shall reflect prevailing market conditions in relation to prices at which transactions are concluded for the same or similar financial instruments on a trading venue.

However, in justified cases, they may execute orders at a better price provided that the price falls within a public range close to market conditions.

10.Systematic internalisers shall not be subject to this Article when they deal in sizes above the size specific to the financial instrument determined in accordance with Article 9(5)(d).

11. In respect of a package order and without prejudice to paragraph 2, the obligations in this Article shall only apply to the package order as a whole and not to any component of the package order separately.

Article 19

Monitoring by ESMA

1.Competent authorities and ESMA shall monitor the application of Article 18 regarding the sizes at which quotes are made available to clients of the investment firm and to other market participants relative to other trading activity of the firm, and the degree to which the quotes reflect prevailing market conditions in relation to transactions in the same or similar financial instruments on a trading venue. By 3 January 2020, ESMA shall submit a report to the Commission on the application of Article 18. In the event of significant quoting and trading activity just beyond the threshold referred to in Article 18(6) or outside prevailing market conditions, ESMA shall submit a report to the Commission before that date.

2.The Commission shall adopt delegated acts in accordance with Article 50 specifying the sizes referred to in Article 18(6) at which a firm shall enter into transactions with any other client to whom the quote is made available. The size specific to the financial instrument shall be determined in accordance with the criteria set in Article 9(5)(d).

3.The Commission shall adopt delegated acts in accordance with Article 50 clarifying what constitutes a reasonable commercial basis to make quotes public as referred to in Article 18(8).

Article 20

Post-trade disclosure by investment firms, including systematic internalisers, in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments

1.Investment firms which, either on own account or on behalf of clients, conclude transactions in shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on a trading venue, shall make public the volume and price of those transactions and the time at which they were concluded. That information shall be made public through an APA.

2.The information which is made public in accordance with paragraph 1 of this Article and the time-limits within which it is published shall comply with the requirements adopted pursuant to Article 6, including the regulatory technical standards adopted in accordance with Article 7(2)(a). Where the measures adopted pursuant to Article 7 provide for deferred publication for certain categories of transaction in shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on a trading venue, that possibility shall also apply to those transactions when undertaken outside trading venues.

3.ESMA shall develop draft regulatory technical standards to specify the following:

(a) identifiers for the different types of transactions published under this Article, distinguishing between those determined by factors linked primarily to the valuation of the financial instruments and those determined by other factors;

(b) the application of the obligation under paragraph 1 to transactions involving the use of those financial instruments for collateral, lending or other purposes where the exchange of financial instruments is determined by factors other than the current market valuation of the financial instrument;

(c) the party to a transaction that has to make the transaction public in accordance with paragraph 1 if both parties to the transaction are investment firms.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 21

Post-trade disclosure by investment firms, including systematic internalisers, in respect of bonds, structured finance products, emission allowances and derivatives

1.Investment firms which, either on own account or on behalf of clients, conclude transactions in bonds, structured finance products, emission allowances and derivatives traded on a trading venue shall make public the volume and price of those transactions and the time at which they were concluded. That information shall be made public through an APA.

2.Each individual transaction shall be made public once through a single APA.

3.The information which is made public in accordance with paragraph 1 and the time-limits within which it is published shall comply with the requirements adopted pursuant to Article 10, including the regulatory technical standards adopted in accordance with Article 11(4)(a) and (b).

4.Competent authorities shall be able to authorise investment firms to provide for deferred publication, or may request the publication of limited details of a transaction or details of several transactions in an aggregated form, or a combination thereof, during the time period of the deferral or may allow the omission of the publication of the volume for individual transactions during an extended time period of deferral, or in the case of non-equity financial instruments that are not sovereign debt, may allow the publication of several transactions in an aggregated form during an extended time period of deferral, or in the case of sovereign debt instruments may allow the publication of several transactions in an aggregated form for an indefinite period of time, and may temporarily suspend the obligations referred to in paragraph 1 on the same conditions as laid down in Article 11.

Where the measures adopted pursuant to Article 11 provide for deferred publication and publication of limited details or details in an aggregated form, or a combination thereof, or for omission of the publication of the volume for certain categories of transactions in bonds, structured finance products, emission allowances and derivatives traded on a trading venue, that possibility shall also apply to those transactions when undertaken outside trading venues.

5.ESMA shall develop draft regulatory technical standards in such a way as to enable the publication of information required under Article 64 of Directive 2014/65/EU to specify the following:

(a) the identifiers for the different types of transactions published in accordance with this Article, distinguishing between those determined by factors linked primarily to the valuation of the financial instruments and those determined by other factors;

(b) the application of the obligation under paragraph 1 to transactions involving the use of those financial instruments for collateral, lending or other purposes where the exchange of financial instruments is determined by factors other than the current market valuation of the financial instrument;

(c) the party to a transaction that has to make the transaction public in accordance with paragraph 1 if both parties to the transaction are investment firms.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 22

Providing information for the purposes of transparency and other calculations

1.In order to carry out calculations for determining the requirements for the pre-trade and post-trade transparency and the trading obligation regimes imposed by Articles 3 to 11, Articles 14 to 21 and Article 32, which are applicable to financial instruments and for determining whether an investment firm is a systematic internaliser, competent authorities may require information from:

(a) trading venues;

(b) APAs; and

(c) CTPs.

2.Trading venues, APAs and CTPs shall store the necessary data for a sufficient period of time.

3.Competent authorities shall transmit to ESMA such information as ESMA requires to produce the reports referred to in Article 5(4), (5) and (6).

4.ESMA shall develop draft regulatory technical standards to specify the content and frequency of data requests and the formats and the timeframe in which trading venues, APAs and CTPs must respond to such requests in accordance with paragraph 1, the type of data that must be stored, and the minimum period of time for which trading venues, APAs and CTPs must store data in order to be able to respond to such requests in accordance with paragraph 2.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 23

Trading obligation for investment firms

1.An investment firm shall ensure the trades it undertakes in shares admitted to trading on a regulated market or traded on a trading venue shall take place on a regulated market, MTF or systematic internaliser, or a third-country trading venue assessed as equivalent in accordance with Article 25(4)(a) of Directive 2014/65/EU, as appropriate, unless their characteristics include that they:

(a) are non-systematic, ad-hoc, irregular and infrequent; or

(b) are carried out between eligible and/or professional counterparties and do not contribute to the price discovery process.

2.An investment firm that operates an internal matching system which executes client orders in shares, depositary receipts, ETFs, certificates and other similar financial instruments on a multilateral basis must ensure it is authorised as an MTF under Directive 2014/65/EU and comply with all relevant provisions pertaining to such authorisations.

3.ESMA shall develop draft regulatory technical standards to specify the particular characteristics of those transactions in shares that do not contribute to the price discovery process as referred to in paragraph 1, taking into consideration cases such as:

(a) non-addressable liquidity trades; or

(b) where the exchange of such financial instruments is determined by factors other than the current market valuation of the financial instrument.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

TITLE IV

TRANSACTION REPORTING

Article 24

Obligation to uphold integrity of markets

Without prejudice to the allocation of responsibilities for enforcing Regulation (EU) No 596/2014, competent authorities coordinated by ESMA in accordance with Article 31 of Regulation (EU) No 1095/2010 shall monitor the activities of investment firms to ensure that they act honestly, fairly and professionally and in a manner which promotes the integrity of the market.

Article 25

Obligation to maintain records

1.Investment firms shall keep at the disposal of the competent authority, for five years, the relevant data relating to all orders and all transactions in financial instruments which they have carried out, whether on own account or on behalf of a client. In the case of transactions carried out on behalf of clients, the records shall contain all the information and details of the identity of the client, and the information required under Directive 2005/60/EC of the European Parliament and of the Council. ESMA may request access to that information in accordance with the procedure and under the conditions set out in Article 35 of Regulation (EU) No 1095/2010.

2.The operator of a trading venue shall keep at the disposal of the competent authority, for at least five years, the relevant data relating to all orders in financial instruments which are advertised through their systems. The records shall contain the relevant data that constitute the characteristics of the order, including those that link an order with the executed transaction(s) that stems from that order and the details of which shall be reported in accordance with Article 26(1) and (3). ESMA shall perform a facilitation and coordination role in relation to the access by competent authorities to information under this paragraph.

3.ESMA shall develop draft regulatory technical standards to specify the details of the relevant order data required to be maintained under paragraph 2 of this Article that is not referred to in Article 26.

Those draft regulatory technical standards shall include the identification code of the member or participant which transmitted the order, the identification code of the order, the date and time the order was transmitted, the characteristics of the order, including the type of order, the limit price if applicable, the validity period, any specific order instructions, details of any modification, cancellation, partial or full execution of the order, the agency or principal capacity.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 26

Obligation to report transactions

1.Investment firms which execute transactions in financial instruments shall report complete and accurate details of such transactions to the competent authority as quickly as possible, and no later than the close of the following working day.

The competent authorities shall, in accordance with Article 85 of Directive 2014/65/EU, establish the necessary arrangements in order to ensure that the competent authority of the most relevant market in terms of liquidity for those financial instruments also receives that information.

The competent authorities shall make available to ESMA, upon request, any information reported in accordance with this Article.

2.The obligation laid down in paragraph 1 shall apply to:

(a) financial instruments which are admitted to trading or traded on a trading venue or for which a request for admission to trading has been made;

(b) financial instruments where the underlying is a financial instrument traded on a trading venue; and

(c) financial instruments where the underlying is an index or a basket composed of financial instruments traded on a trading venue

The obligation shall apply to transactions in financial instruments referred to in points (a) to (c) irrespective of whether or not such transactions are carried out on the trading venue.

3.The reports shall, in particular, include details of the names and numbers of the financial instruments bought or sold, the quantity, the dates and times of execution, the transaction prices, a designation to identify the clients on whose behalf the investment firm has executed that transaction, a designation to identify the persons and the computer algorithms within the investment firm responsible for the investment decision and the execution of the transaction, a designation to identify the applicable waiver under which the trade has taken place, means of identifying the investment firms concerned, and a designation to identify a short sale as defined in Article 2(1)(b) of Regulation (EU) No 236/2012 in respect of any shares and sovereign debt within the scope of Articles 12, 13 and 17 of that Regulation. For transactions not carried out on a trading venue, the reports shall include a designation identifying the types of transactions in accordance with the measures to be adopted pursuant to Article 20(3)(a) and Article 21(5)(a). For commodity derivatives, the reports shall indicate whether the transaction reduces risk in an objectively measurable way in accordance with Article 57 of Directive 2014/65/EU.

4.Investment firms which transmit orders shall include in the transmission of that order all the details as specified in paragraphs 1 and 3. Instead of including the mentioned details when transmitting orders, an investment firm may choose to report the transmitted order, if it is executed, as a transaction in accordance with the requirements under paragraph 1. In that case, the transaction report by the investment firm shall state that it pertains to a transmitted order.

5.The operator of a trading venue shall report details of transactions in financial instruments traded on its platform which are executed through its systems by a firm which is not subject to this Regulation in accordance with paragraphs 1 and 3.

6.In reporting the designation to identify the clients as required under paragraphs 3 and 4, investment firms shall use a legal entity identifier established to identify clients that are legal persons.

ESMA shall develop by 3 January 2016 guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 to ensure that the application of legal entity identifiers within the Union complies with

international standards, in particular those established by the Financial Stability Board.

7.The reports shall be made to the competent authority either by the investment firm itself, an ARM acting on its behalf or by the trading venue through whose system the transaction was completed, in accordance with paragraphs 1, 3 and 9.

Investment firms shall have responsibility for the completeness, accuracy and timely submission of the reports which are submitted to the competent authority.

By way of derogation from that responsibility, where an investment firm reports details of those transactions through an ARM which is acting on its behalf or a trading venue, the investment firm shall not be responsible for failures in the completeness, accuracy or timely submission of the reports which are attributable to the ARM or trading venue. In those cases and subject to Article 66(4) of Directive 2014/65/EU the ARM or trading venue shall be responsible for those failures.

Investment firms must nevertheless take reasonable steps to verify the completeness, accuracy and timeliness of the transaction reports which were submitted on their behalf.

The home Member State shall require the trading venue, when making reports on behalf of the investment firm, to have sound security mechanisms in place designed to guarantee the security and authentication of the means of transfer of information, to minimise the risk of data corruption and unauthorised access and to prevent information leakage maintaining the confidentiality of the data at all times. The home Member State shall require the trading venue to maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.

Trade-matching or reporting systems, including trade repositories registered or recognised in accordance with Title VI of Regulation (EU) No 648/2012, may be approved by the competent authority as an ARM in order to transmit transaction reports to the competent authority in accordance with paragraphs 1, 3 and 9.

Where transactions have been reported to a trade repository in accordance with Article 9 of Regulation (EU) No 648/2012 which is approved as an ARM and where those reports contain the details required under paragraphs 1, 3 and 9 and are transmitted to the competent authority by the trade repository within the time limit set in paragraph 1, the obligation on the investment firm laid down in paragraph 1 shall be considered to have been complied with.

Where there are errors or omissions in the transaction reports, the ARM, investment firm or trading venue reporting the transaction shall correct the information and submit a corrected report to the competent authority.

8.When, in accordance with Article 35(8) of Directive 2014/65/EU, reports provided for under this Article are transmitted to the competent authority of the host Member State, it shall transmit that information to the competent authorities of the home Member State of the investment firm, unless the competent authorities of the home Member State decide that they do not want to receive that information.

9.ESMA shall develop draft regulatory technical standards to specify:

(a) data standards and formats for the information to be reported in accordance with paragraphs 1 and 3, including the methods and arrangements for reporting financial transactions and the form and content of such reports;

(b) the criteria for defining a relevant market in accordance with paragraph 1;

(c) the references of the financial instruments bought or sold, the quantity, the dates and times of execution, the transaction prices, the information and details of the identity of the client, a designation to identify the clients on whose behalf the investment firm has executed that transaction, a designation to identify the persons and the computer algorithms within the investment firm responsible for the investment decision and the execution of the transaction, a designation to identify the applicable waiver under which the trade has taken place, the means of identifying the investment firms concerned, the way in which the transaction was executed, data fields necessary for the processing and analysis of the transaction reports in accordance with paragraph 3; and

(d) the designation to identify short sales of shares and sovereign debt as referred to in paragraph 3;

(e) the relevant categories of financial instrument to be reported in accordance with paragraph 2;

(f) the conditions upon which legal entity identifiers are developed, attributed and maintained, by Member States in accordance with paragraph 6, and the conditions under which those legal entity identifiers are used by investment firms so as to provide, pursuant to paragraphs 3, 4 and 5, for the designation to identify the clients in the transaction reports they are required to establish pursuant to paragraph 1;

(g) the application of transaction reporting obligations to branches of investment firms;

(h) what constitutes a transaction and execution of a transaction for the purposes of this Article.

(i) when an investment firm is deemed to have transmitted an order for the purposes of paragraph 4.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

10.By 3 January 2020, ESMA shall submit a report to the Commission on the functioning of this Article, including its interaction with the related reporting obligations under Regulation (EU) No 648/2012, and whether the content and format of transaction reports received and exchanged between competent authorities comprehensively enables monitoring of the activities of investment firms in accordance with Article 24 of this Regulation. The Commission may take steps to propose any changes, including providing for transactions to be transmitted only to a single system appointed by ESMA instead of to competent authorities. The Commission shall forward ESMA's report to the European Parliament and to the Council.

Article 27

Obligation to supply financial instrument reference data

1.With regard to financial instruments admitted to trading on regulated markets or traded on MTFs or OTFs, trading venues shall provide competent authorities with identifying reference data for the purposes of transaction reporting under Article 26.

With regard to other financial instruments covered by Article 26(2) traded on its system, each systematic internaliser shall provide its competent authority with reference data relating to those financial instruments.

Identifying reference data shall be made ready for submission to the competent authority in an electronic and standardised format before trading commences in the financial instrument that it refers to. The financial instrument reference data shall be updated whenever there are changes to the data with respect to a financial instrument. Those notifications are to be transmitted by competent authorities without delay to ESMA, which shall publish them immediately on its website. ESMA shall give competent authorities access to those reference data.

2.In order to allow competent authorities to monitor, pursuant to Article 26, the activities of investment firms to ensure that they act honestly, fairly and professionally and in a manner which promotes the integrity of the market, ESMA and the competent authorities shall establish the necessary arrangements in order to ensure that:

(a) ESMA and the competent authorities effectively receive the financial instrument reference data pursuant to paragraph 1;

(b) the quality of the data so received is appropriate for the purpose of transaction reporting under Article 26;

(c) the financial instrument reference data received pursuant to paragraph 1 is efficiently exchanged between the relevant competent authorities.

3.ESMA shall develop draft regulatory technical standards to specify:

(a) data standards and formats for the financial instrument reference data in accordance with paragraph 1, including the methods and arrangements for supplying the data and any update thereto to competent authorities and transmitting it to ESMA in accordance with paragraph 1, and the form and content of such data;

(b) the technical measures that are necessary in relation to the arrangements to be made by ESMA and the competent authorities pursuant to paragraph 2.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

TITLE V

DERIVATIVES

Article 28

Obligation to trade on regulated markets, MTFs or OTFs

1.Financial counterparties as defined in Article 2(8) of Regulation (EU) No 648/2012 and non-financial counterparties that meet the conditions referred to in Article 10(1)(b) thereof shall conclude transactions which are neither intragroup transactions as defined in Article 3 of that Regulation nor transactions covered by the transitional provisions in Article 89 of that Regulation with other such financial counterparties or other such non-financial counterparties that meet the conditions referred to in Article 10(1)(b) of Regulation (EU) No 648/2012 in derivatives pertaining to a class of derivatives that has been declared subject to the trading obligation in accordance with the procedure set out in Article 32 and listed in the register referred to in Article 34 only on:

(a) regulated markets;

(b) MTFs;

(c) OTFs; or

(d) third-country trading venues, provided that the Commission has adopted a decision in accordance with paragraph 4 and provided that the third country provides for an effective equivalent system for the recognition of trading venues authorised under Directive 2014/65/EU to admit to trading or trade derivatives declared subject to a trading obligation in that third country on a non-exclusive basis.

2.The trading obligation shall also apply to counterparties referred to in paragraph 1 which enter into derivatives transactions pertaining to a class of derivatives that has been declared subject to the trading obligation with third-country financial institutions or other third-country entities that would be subject to the clearing obligation if they were established in the Union. The trading obligation shall also apply to third-country entities that would be subject to the clearing obligation if they were established in the Union, which enter into derivatives transactions pertaining to a class of derivatives that has been declared subject to the trading obligation, provided that the contract has a direct, substantial and foreseeable effect within the Union or where such obligation is necessary or appropriate to prevent the evasion of any provision of this Regulation.

ESMA shall regularly monitor the activity in derivatives which have not been declared subject to the trading obligation as described in paragraph 1 in order to identify cases where a particular class of contracts may pose systemic risk and to prevent regulatory arbitrage between derivative transactions subject to the trading obligation and derivative transactions which are not subject to the trading obligation.

3.Derivatives declared subject to the trading obligation pursuant to paragraph 1 shall be eligible to be admitted to trading on a regulated market or to trade on any trading venue as referred to in paragraph 1 on a non-exclusive and non-discriminatory basis.

4.The Commission may, in accordance with the examination procedure referred to in Article 51(2) adopt decisions determining that the legal and supervisory framework of a third country ensures that a trading venue authorised in that third country complies with legally binding requirements which are equivalent to the requirements for the trading venues referred to in paragraph 1(a), (b) or (c) of this Article, resulting from this Regulation, Directive 2014/65/EU, and Regulation (EU) No 596/2014, and which are subject to effective supervision and enforcement in that third country.

Those decisions shall be for the sole purpose of determining eligibility as a trading venue for derivatives subject to the trading obligation.

The legal and supervisory framework of a third country is considered to have equivalent effect where that framework fulfils all the following conditions:

(a) trading venues in that third country are subject to authorisation and to effective supervision and enforcement on an ongoing basis;

(b) trading venues have clear and transparent rules regarding admission of financial instruments to trading so that such financial instruments are capable of being traded in a fair, orderly and efficient manner, and are freely negotiable;

(c) issuers of financial instruments are subject to periodic and ongoing information requirements ensuring a high level of investor protection;

(d) it ensures market transparency and integrity via rules addressing market abuse in the form of insider dealing and market manipulation;

A decision of the Commission under this paragraph may be limited to a category or categories of trading venues. In that case, a third-country trading venue is only included in paragraph 1(d) if it falls within a category covered by the Commission's decision.

5.In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards to specify the types of contracts referred to in paragraph 2 which have a direct, substantial and foreseeable effect within the Union and the cases where the trading obligation is necessary or appropriate to prevent the evasion of any provision of this Regulation.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Where possible and appropriate, the regulatory technical standards referred to in this paragraph shall be identical to those adopted under Article 4(4) of Regulation (EU) No 648/2012.

Article 29

Clearing obligation for derivatives traded on regulated markets and timing of acceptance for clearing

1.The operator of a regulated market shall ensure that all transactions in derivatives that are concluded on that regulated market are cleared by a CCP.

2.CCPs, trading venues and investment firms which act as clearing members in accordance with Article 2(14) of Regulation (EU) No 648/2012 shall have in place effective systems, procedures and arrangements in relation to cleared derivatives to ensure that transactions in cleared derivatives are submitted and accepted for clearing as quickly as technologically practicable using automated systems.

In this paragraph, 'cleared derivatives' means

(a) all derivatives which are to be cleared pursuant to the clearing obligation under paragraph 1 of this Article or pursuant to the clearing obligation under Article 4 of Regulation (EU) No 648/2012;

(b) all derivatives which are otherwise agreed by the relevant parties to be cleared.

3.ESMA shall develop draft regulatory technical standards to specify the minimum requirements for systems, procedures and arrangements, including the acceptance timeframes, under this Article taking into account the need to ensure proper management of operational or other risks.

ESMA shall have ongoing authority to develop further regulatory technical standards to update those in force if it considers that that is required as industry standards evolve.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first and second subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 30

Indirect Clearing Arrangements

1.Indirect clearing arrangements with regard to exchange-traded derivatives are permissible provided that those arrangements do not increase counterparty risk and ensure that the assets and positions of the counterparty benefit from protection with equivalent effect to that referred to in Articles 39 and 48 of Regulation (EU) No 648/2012.

2.ESMA shall develop draft regulatory technical standards to specify the types of indirect clearing service arrangements, where established, that meet the conditions referred to in paragraph 1, ensuring consistency with provisions established for OTC derivatives under Chapter II of Commission Delegated Regulation (EU) No 149/2013.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 31

Portfolio Compression

1.When providing portfolio compression, investment firms and market operators shall not be subject to the best execution obligation in Article 27 of Directive 2014/65/EU, the transparency obligations in Articles 8, 10, 18 and 21 of this Regulation and the obligation in Article 1(6) of Directive 2014/65/EU. The termination or replacement of the component derivatives in the portfolio compression shall not be subject to Article 28 of this Regulation.

2.Investment firms and market operators providing portfolio compression shall make public through an APA the volumes of transactions subject to portfolio compressions and the time they were concluded within the time limits specified in Article 10.

3.Investment firms and market operators providing portfolio compressions shall keep complete and accurate records of all portfolio compressions which they organise or participate in. Those records shall be made available promptly to the relevant competent authority or ESMA upon request.

4.The Commission may adopt by means of delegated acts in accordance with Article 50, measures specifying the following:

(a) the elements of portfolio compression,

(b) the information to be published pursuant to paragraph 2,

in such a way as to make use as far as possible of any existing record keeping, reporting or publication requirements.

Article 32

Trading obligation procedure

1.ESMA shall develop draft regulatory technical standards to specify the following:

(a) which of the class of derivatives declared subject to the clearing obligation in accordance with Article 5(2) and (4) of Regulation (EU) No 648/2012 or a relevant subset thereof shall be traded on the venues referred to in Article 28(1) of this Regulation;

(b) the date or dates from which the trading obligation takes effect, including any phase-in and the categories of counterparties to which the obligation applies where such phase-in and such categories of counterparties have been provided for in regulatory technical standards in accordance with Article 5(2)(b) of Regulation (EU) No 648/2012.

ESMA shall submit those draft regulatory technical standards to the Commission within six months after the adoption of the regulatory technical standards in accordance with Article 5(2) of Regulation (EU) No 648/2012 by the Commission.

Before submitting the draft regulatory technical standards to the Commission for adoption, ESMA shall conduct a public consultation and, where appropriate, may consult third-country competent authorities.

Power is conferred to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

2.In order for the trading obligation to take effect:

(a) the class of derivatives pursuant to paragraph 1(a) or a relevant subset thereof must be admitted to trading or traded on at least one trading venue as referred to in Article 28(1), and

(b) there must be sufficient third-party buying and selling interest in the class of derivatives or a relevant subset thereof so that such a class of derivatives is considered sufficiently liquid to trade only on the venues referred to in Article 28(1).

3.In developing the draft regulatory technical standards referred to in paragraph 1, ESMA shall consider the class of derivatives or a relevant subset thereof as sufficiently liquid pursuant to the following criteria:

(a) the average frequency and size of trades over a range of market conditions, having regard to the nature and lifecycle of products within the class of derivatives;

(b) the number and type of active market participants including the ratio of market participants to products/contracts traded in a given product market;

(c) the average size of the spreads.

In preparing those draft regulatory technical standards, ESMA shall take into consideration the anticipated impact that trading obligation might have on the liquidity of a class of derivatives or a relevant subset thereof and the commercial activities of end users which are not financial entities.

ESMA shall determine whether the class of derivatives or relevant subset thereof is only sufficiently liquid in transactions below a certain size.

4.ESMA shall, on its own initiative, in accordance with the criteria set out in paragraph 2 and after conducting a public consultation, identify and notify to the Commission the classes of derivatives or individual derivative contracts that should be subject to the obligation to trade on the venues referred to in Article 28(1), but for which no CCP has yet received authorisation under Article 14 or 15 of Regulation (EU) No 648/2012 or which is not admitted to trading or traded on a trading venue referred to in Article 28(1).

Following the notification by ESMA referred to in the first subparagraph, the Commission may publish a call for development of proposals for the trading of those derivatives on the venues referred to in Article 28(1).

5.ESMA shall in accordance with paragraph 1, submit to the Commission draft regulatory technical standards to amend, suspend or revoke existing regulatory technical standards whenever there is a material change in the criteria set out in paragraph 2. Before doing so, ESMA may, where appropriate, consult the competent authorities of third countries.

Power is conferred to the Commission to adopt regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

6.ESMA shall develop draft regulatory technical standards to specify the criteria referred to in paragraph 2(b).

ESMA shall submit drafts for those regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 33

Mechanism to avoid duplicative or conflicting rules

1.The Commission shall be assisted by ESMA in monitoring and preparing reports, at least on an annual basis, to the European Parliament and to the Council on the international application of principles laid down in Articles 28 and 29, in particular with regard to potential duplicative or conflicting requirements on market participants, and recommend possible actions.

2.The Commission may adopt implementing acts declaring that the legal, supervisory and enforcement arrangements of the relevant third country:

(a) are equivalent to the requirements resulting from Articles 28 and 29;

(b) ensure protection of professional secrecy that is equivalent to that set out in this Regulation;

(c) are being effectively applied and enforced in an equitable and non-distortive manner so as to ensure effective supervision and enforcement in that third country.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 51.

3.An implementing act on equivalence as referred to in paragraph 2 shall have the effect that counterparties entering into a transaction subject to this Regulation shall be deemed to have fulfilled the obligation contained in Articles 28 and 29 where at least one of the counterparties is established in that third country and the counterparties are in compliance with those legal, supervisory and enforcement arrangements of the relevant third country.

4.The Commission shall, in cooperation with ESMA, monitor the effective implementation by third countries, for which an implementing act on equivalence has been adopted, of the requirements equivalent to those contained in Articles 28 and 29 and regularly report, at least on an annual basis, to the European Parliament and to the Council.

Within 30 calendar days of the presentation of the report where the report reveals a significant defect or inconsistency in the application of the equivalent requirements by third-country authorities, the Commission may withdraw the recognition as equivalent of the third-country legal framework in question. Where an implementing act on equivalence is withdrawn, transactions by counterparties shall automatically be subject again to all requirements contained in Articles 28 and 29 of this Regulation.

Article 34

Register of derivatives subject to the trading obligation

ESMA shall publish and maintain on its website a register specifying, in an exhaustive and unequivocal manner, the derivatives that are subject to the obligation to trade on the venues referred to in Article 28(1), the venues where they are admitted to trading or traded, and the dates from which the obligation takes effect.

TITLE VI

NON-DISCRIMINATORY CLEARING ACCESS FOR FINANCIAL INSTRUMENTS

Article 35

Non-discriminatory access to a CCP

1.Without prejudice to Article 7 of Regulation (EU) No 648/2012, a CCP shall accept to clear financial instruments on a non-discriminatory and transparent basis, including as regards collateral requirements and fees relating to access, regardless of the trading venue on which a transaction is executed. This in particular shall ensure that a trading venue has the right to non-discriminatory treatment of contracts traded on that trading venue in terms of:

(a) collateral requirements and netting of economically equivalent contracts, where the inclusion of such contracts in the close-out and other netting procedures of a CCP based on the applicable insolvency law would not endanger the smooth and orderly functioning, the validity or enforceability of such procedures; and

(b) cross-margining with correlated contracts cleared by the same CCP under a risk model that complies with Article 41 of Regulation (EU) No 648/2012.

A CCP may require that the trading venue comply with the operational and technical requirements established by the CCP including the risk management requirements. The requirement in this paragraph does not apply to any derivative contract that is already subject to the access obligations under Article 7 of Regulation (EU) No 648/2012.

A CCP is not bound by this Article if it is connected by close links to a trading venue which has given notification under Article 36(5).

2.A request to access a CCP by a trading venue shall be formally submitted to a CCP, its relevant competent authority and the competent authority of the trading venue. The request shall specify to which types of financial instruments access is requested.

3.The CCP shall provide a written response to the trading venue within three months in the case of transferable securities and money market instruments, and within six months in the case of exchange-traded derivatives, either permitting access, under the condition that a relevant competent authority has granted access pursuant to paragraph 4, or denying access. The CCP may deny a request for access only under the conditions specified in paragraph 6(a). If a CCP denies access it shall provide full reasons in its response and inform its competent authority in writing of the decision. Where the trading venue is established in a different Member State to the CCP, the CCP shall also provide such notification and reasoning to the competent authority of the trading venue. The CCP shall make access possible within three months of providing a

positive response to the access request.

4.The competent authority of the CCP or that of the trading venue shall grant a trading venue access to a CCP only where such access:

(a) would not require an interoperability arrangement, in the case of derivatives that are not OTC derivatives pursuant to Article 2(7) of Regulation (EU) No 648/2012; or

(b) would not threaten the smooth and orderly functioning of the markets, in particular due to liquidity fragmentation, or would not adversely affect systemic risk.

Nothing in point (a) of the first subparagraph shall prevent access being granted where the request referred to in paragraph 2 requires interoperability and the trading venue and all CCPs party to the proposed interoperability arrangement have consented to the arrangement and the risks to which the incumbent CCP is exposed to arising from inter-CCP positions are collateralised at a third party.

Where the need for an interoperability arrangement is the reason or is part of the reason for denying a request, the trading venue will advise the CCP and inform ESMA which other CCPs have access to the trading venue and ESMA will publish that information so that investment firms may choose to exercise their rights under Article 37 of Directive 2014/65/EU in respect of those CCPs in order to facilitate alternative access arrangements.

If a competent authority refuses access it shall issue its decision within two months following receipt of the request referred to in paragraph 2 and provide full reasons to the other competent authority, the CCP and the trading venue including the evidence on which the decision is based.

5.As regards transferable ?ecurities and money market instruments, a CCP that has been newly established and authorised as a CCP as defined in Article 2(1) of Regulation (EU) No 648/2012 to clear under Article 17 of Regulation (EU) No 648/2012 or recognised under Article 25 of Regulation (EU) No 648/2012 or authorised under a pre-existing national authorisation regime for a period of less than three years on 2 July 2014 may, before [F23 January 2018], apply to its competent authority for permission to avail itself of transitional arrangements. The competent authority may decide that this Article does not apply to the CCP in respect of transferable securities and money market instruments, for a transitional period until 3 July 2020.

Where such a transitional period is approved, the CCP cannot benefit from the access rights under Article 36 or this Article in respect of transferable securities and money market instruments for the duration of that transitional arrangement. The competent authority shall notify members of the college of competent authorities for the CCP and ESMA when a transitional period is approved. ESMA shall publish a list of all notifications that it receives.

Where a CCP which has been approved for the transitional arrangements under this paragraph is connected by close links to one or more trading venues, those trading venues shall not benefit from access rights under Article 36 or this Article in respect of transferable securities and money market instruments for the duration of the transitional arrangement.

A CCP which is authorised during the three year period prior to entry into force, but is formed by a merger or acquisition involving at least one CCP authorised prior to that period, shall not be permitted to apply for the transitional arrangements under this paragraph.

6.ESMA shall develop draft regulatory technical standards to specify:

(a) the specific conditions under which an access request may be denied by a CCP, including the anticipated volume of transactions, the number and type of users, arrangements for managing operational risk and complexity or other factors creating significant undue risks;

(b) the conditions under which access must be permitted by a CCP, including confidentiality of information provided regarding financial instruments during the development phase, the non-discriminatory and transparent basis as regards clearing fees, collateral requirements and operational requirements regarding margining;

(c) the conditions under which granting access will threaten the smooth and orderly functioning of markets or would adversely affect systemic risk;

(d) the procedure for making a notification under paragraph 5;

(e) the conditions for non-discriminatory treatment in terms of how contracts traded on that trading venue are treated in terms of collateral requirements and netting of economically equivalent contracts and cross-margining with correlated contracts cleared by the same CCP.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 36

Non-discriminatory access to a trading venue

1.Without prejudice to Article 8 of Regulation (EU) No 648/2012, a trading venue shall provide trade feeds on a non-discriminatory and transparent basis, including as regards fees related to access, upon request to any CCP authorised or recognised by Regulation (EU) No 648/2012 that wishes to clear transactions in financial instruments that are concluded on that trading venue. That requirement does not apply to any derivative contract that is already subject to the access obligations under Article 8 of Regulation (EU) No 648/2012.

A trading venue is not bound by this Article if it is connected by close links to a CCP which has given notification that it is availing of the transitional arrangements under Article 35(5).

2.A request to access a trading venue by a CCP shall be formally submitted to a trading venue, its relevant competent authority and the competent authority of the CCP.

3.The trading venue shall provide a written response to the CCP within three months in the case of transferable securities and money market instruments, and within six months in the case of exchange-traded derivatives, either permitting access, under the condition that the relevant competent authority has granted access pursuant to paragraph 4, or denying access. The trading venue may deny access only under the conditions specified under paragraph 6(a). When access is denied the trading venue shall provide full reasons in its response and inform its competent authority in writing of the decision. Where the CCP is established in a different Member State to the trading venue, the trading venue shall also provide such notification and reasoning to the competent authority of the CCP. The trading venue shall make access possible within three months of providing a positive response to the access request.

4.The competent authority of the trading venue or that of the CCP shall grant a CCP access to a trading venue only where such access:

(a) would not require an interoperability arrangement, in the case of derivatives that are not OTC derivatives pursuant to Article 2(7) of Regulation (EU) No 648/2012; or

(b) would not threaten the smooth and orderly functioning of the markets, in particular due to liquidity fragmentation and the trading venue has put in place adequate mechanisms to prevent such fragmentation, or would not adversely affect systemic risk.

Nothing in point (a) of the first subparagraph shall prevent access being granted where the request referred to in paragraph 2 requires interoperability and the trading venue and all CCPs party to the proposed interoperability arrangement have consented to the arrangement and the risks to which the incumbent CCP is exposed to arising from inter-CCP positions are collateralised at a third party.

Where the need for an interoperability arrangement is the reason or is part of the reason for denying a request, the trading venue will advise the CCP and inform ESMA which other CCPs have access to the trading venue and ESMA will publish that information so that investment firms may choose to exercise their rights under Article 37 of Directive 2014/65/EU in respect of those CCPs in order to facilitate alternative access arrangements.

If a competent authority denies access it shall issue its decision within two months following receipt of the request referred to in paragraph 2 and provide full reasons to the other competent authority, the trading venue and the CCP including the evidence on which its decision is based.

5.As regards exchange-traded derivatives, a trading venue which falls below the relevant threshold in the calendar year preceding the entry into application of this Regulation, may, before the entry into application of this Regulation, notify ESMA and its competent authority that it does not wish to be bound by this Article for exchange-traded derivatives included within that threshold, for a period of thirty months from the application of this Regulation. A trading venue which remains below the relevant threshold in every year of that, or any further, thirty month period may, at the end of the period, notify ESMA and its competent authority that it wishes to continue to not be bound by this Article for further thirty months. Where notification is given the trading venue cannot benefit from the access rights under Article 35 or this Article for exchange-traded derivatives included within the relevant threshold, for the duration of the opt-out. ESMA shall publish a list of all notifications that it receives.

The relevant threshold for the opt-out is an annual notional amount traded of EUR 1 000 000 million. The notional amount shall be single-counted and shall include all transactions in exchange-traded derivatives concluded under the rules of the trading venue.

Where a trading venue is part of a group which is connected by close links, the threshold shall be calculated by adding the annual notional amount traded of all the trading venues in the group as a whole that are based in the Union.

Where a trading venue which has made a notification under this paragraph is connected by close links to one or more CCPs, those CCPs shall not benefit from access rights under Article 35 or this Article for exchange-traded derivatives within the relevant threshold, for the duration of the opt-out.

6.ESMA shall develop draft regulatory technical standards to specify:

(a) the specific conditions under which an access request may be denied by a trading venue, including conditions based on the anticipated volume of transactions, the number of users, arrangements for managing operational risk and complexity or other factors creating significant undue risks;

(b) the conditions under which access shall be granted, including confidentiality of information provided regarding financial instruments during the development phase and the non-discriminatory and transparent basis as regards fees related to access;

(c) the conditions under which granting access will threaten the smooth and orderly functioning of the markets, or would adversely affect systemic risk;

(d) the procedure for making a notification under paragraph 5, including further specifications for calculation of the notional amount and the method by which ESMA may verify the calculation of the volumes and approve the opt-out.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 37

Non-discriminatory access to and obligation to licence benchmarks

1.Where the value of any financial instrument is calculated by reference to a benchmark, a person with proprietary rights to the benchmark shall ensure that CCPs and trading venues are permitted, for the purposes of trading and clearing, non-discriminatory access to:

(a) relevant price and data feeds and information on the composition, methodology and pricing of that benchmark for the purposes of clearing and trading; and

(b) licences.

A licence including access to information shall be granted on a fair, reasonable and non-discriminatory basis within three months following the request by a CCP or a trading venue.

Access shall be given at a reasonable commercial price taking into account the price at which access to the benchmark is granted or the intellectual property rights are licensed on equivalent terms to another CCP, trading venues or any related persons for the purposes of clearing and trading. Different prices can be charged to different CCPs, trading venues or any related persons only where objectively justified having regard to reasonable commercial grounds such as the quantity, scope or field of use demanded.

2.Where a new benchmark is developed after 3 January 2018 the obligation to licence starts no later than 30 months after a financial instrument referencing that benchmark commenced trading or was admitted to trading. Where a person with proprietary rights to a new benchmark owns an existing benchmark, that person shall establish that compared to any such existing benchmark the new benchmark meets the following cumulative criteria:

(a) the new benchmark is not a mere copy or adaptation of any such existing benchmark and the methodology, including the underlying data, of the new benchmark is meaningfully different from any such existing benchmark; and

(b) the new benchmark is not a substitute for any such existing benchmark.

This paragraph shall be without prejudice to the application of competition rules and, in particular, Article 101 and 102 TFEU.

3.No CCP, trading venue or related entity may enter into an agreement with any provider of a benchmark the effect of which would be either:

(a) to prevent any other CCP or trading venue from obtaining access to such information or rights as referred to in paragraph 1; or

(b) to prevent any other CCP or trading venue from obtaining access to such a licence, as referred to in paragraph 1.

4.ESMA shall develop draft regulatory technical standards to specify:

(a) the information through licensing to be made available under paragraph 1(a) for the sole use of the CCP or trading venue;

(b) other conditions under which access is granted, including confidentiality of information provided;

(c) the standards guiding how a benchmark may be proven to be new in accordance with paragraph 2(a) and (b).

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 38

Access for third-country CCPs and trading venues

1.A trading venue established in a third country may request access to a CCP established in the Union only if the Commission has adopted a decision in accordance with Article 28(4) relating to that third country. A CCP established in a third country may request access to a trading venue in the Union subject to that CCP being recognised under Article 25 of Regulation (EU) No 648/2012 CCPs and trading venues established in

third countries shall only be permitted to make use of the access rights in Articles 35 to 36 provided that the Commission has adopted a decision in accordance with paragraph 3 that the legal and supervisory framework of the third country is considered to provide for an effective equivalent system for permitting CCPs and trading venues authorised under foreign regimes access to CCPs and trading venues established in that third country.

2.CCPs and trading venues established in third countries may only request a licence and the access rights in accordance with Article 37 provided that the Commission has adopted a decision in accordance with paragraph 3 of this Article that the legal and supervisory framework of that third country is considered to provide for an effective equivalent system under which CCPs and trading venues authorised in foreign jurisdictions are permitted access on a fair reasonable and non-discriminatory basis to:

(a) relevant price and data feeds and information of composition, methodology and pricing of benchmarks for the purposes of clearing and trading; and

(b) licences,

from persons with proprietary rights to benchmarks established in that third country.

3.The Commission may, in accordance with the examination procedure referred to in Article 51, adopt decisions determining that the legal and supervisory framework of a third country ensures that a trading venue and CCP authorised in that third country complies with legally binding requirements which are equivalent to the requirements referred to in paragraph 2 of this Article and which are subject to effective supervision and enforcement in that third country.

The legal and supervisory framework of a third country is considered equivalent where that framework fulfils all the following conditions:

(a) trading venues in that third country are subject to authorisation and to effective supervision and enforcement on an ongoing basis;

(b) it provides for an effective equivalent system for permitting CCPs and trading venues authorised under foreign regimes access to CCPs and trading venues established in that third country;

(c) the legal and supervisory framework of that third country provides for an effective equivalent system under which CCPs and trading venues authorised in foreign jurisdictions are permitted access on a fair reasonable and non discriminatory basis to:

  (i) relevant price and data feeds and information of composition, methodology and pricing of benchmarks for the purposes of clearing and trading; and

  (ii) licences,

from persons with proprietary rights to benchmarks established in that third country.

TITLE VII

SUPERVISORY MEASURES ON PRODUCT INTERVENTION AND POSITIONS

CHAPTER 1

Product monitoring and intervention

Article 39

Market monitoring

1.In accordance with Article 9(2) of Regulation (EU) No 1095/2010, ESMA shall monitor the market for financial instruments which are marketed, distributed or sold in the Union.

2.In accordance with Article 9(2) of Regulation (EU) No 1093/2010, EBA shall monitor the market for structured deposits which are marketed, distributed or sold in the Union.

3.Competent authorities shall monitor the market for financial instruments and structured deposits which are marketed, distributed or sold in or from their Member State.

Article 40

ESMA temporary intervention powers

1.In accordance with Article 9(5) of Regulation (EU) No 1095/2010, ESMA may, where the conditions in paragraphs 2 and 3 are fulfilled, temporarily prohibit or restrict in the Union:

(a) the marketing, distribution or sale of certain financial instruments or financial instruments with certain specified features; or

(b) a type of financial activity or practice.

A prohibition or restriction may apply in circumstances, or be subject to exceptions, specified by ESMA.

2.ESMA shall take a decision under paragraph 1 only if all of the following conditions are fulfilled:

(a) the proposed action addresses a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or commodity markets or to the stability of the whole or part of the financial system in the Union;

(b) regulatory requirements under Union law that are applicable to the relevant financial instrument or activity do not address the threat;

(c) a competent authority or competent authorities have not taken action to address the threat or the actions that have been taken do not adequately address the threat.

Where the conditions set out in the first subparagraph are fulfilled, ESMA may impose the prohibition or restriction referred to in paragraph 1 on a precautionary basis before a financial instrument has been marketed, distributed or sold to clients.

3.When taking action under this Article, ESMA shall ensure that the action:

(a) does not have a detrimental effect on the efficiency of financial markets or on investors that is disproportionate to the benefits of the action;

(b) does not create a risk of regulatory arbitrage, and

(c) has been taken after consulting the public bodies competent for the oversight, administration and regulation of physical agricultural markets under Regulation (EC) No 1234/2007, where the measure relates to agricultural commodities derivatives.

Where a competent authority or competent authorities have taken a measure under Article 42, ESMA may take any of the measures referred to in paragraph 1 without issuing the opinion provided for in Article 43.

4.Before deciding to take any action under this Article, ESMA shall notify competent authorities of the action it proposes.

5.ESMA shall publish on its website notice of any decision to take any action under this Article. The notice shall specify details of the prohibition or restriction and specify a time after the publication of the notice from which the measures will take effect. A prohibition or restriction shall only apply to action taken after the measures take effect.

6.ESMA shall review a prohibition or restriction imposed under paragraph 1 at appropriate intervals and at least every three months. If the prohibition or restriction is not renewed after that three-month period it shall

expire.

7.Action adopted by ESMA under this Article shall prevail over any previous action taken by a competent authority.

8.The Commission shall adopt delegated acts in accordance with Article 50 specifying criteria and factors to be taken into account by ESMA in determining when there is a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or commodity markets or to the stability of the whole or part of the financial system of the Union referred to in paragraph 2(a).

Those criteria and factors shall include:

(a) the degree of complexity of a financial instrument and the relation to the type of client to whom it is marketed and sold;

(b) the size or the notional value of an issuance of financial instruments;

(c) the degree of innovation of a financial instrument, an activity or a practice;

(d) the leverage a financial instrument or practice provides.

Article 41

EBA temporary intervention powers

1.In accordance with Article 9(5) of Regulation (EU) No 1093/2010, EBA may where the conditions in paragraphs 2 and 3 are fulfilled, temporarily prohibit or restrict in the Union:

(a) the marketing, distribution or sale of certain structured deposits or structured deposits with certain specified features; or

(b) a type of financial activity or practice.

A prohibition or restriction may apply in circumstances, or be subject to exceptions, specified by EBA.

2.EBA shall take a decision under paragraph 1 only if all of the following conditions are fulfilled:

(a) the proposed action addresses a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system in the Union;

(b) regulatory requirements under Union law that are applicable to the relevant structured deposit or activity do not address the threat;

(c) a competent authority or competent authorities have not taken action to address the threat or the actions that have been taken do not adequately address the threat.

Where the conditions set out in the first subparagraph are fulfilled, EBA may impose the prohibition or restriction referred to in paragraph 1 on a precautionary basis before a structured deposit has been marketed, distributed or sold to clients.

3.When taking action under this Article, EBA shall ensure that the action:

(a) does not have a detrimental effect on the efficiency of financial markets or on investors that is disproportionate to the benefits of the action; and

(b) does not create a risk of regulatory arbitrage.

Where a competent authority or competent authorities have taken a measure under Article 42, EBA may take any of the measures referred to in paragraph 1 without issuing the opinion provided for in Article 43.

4.Before deciding to take any action under this Article, EBA shall notify competent authorities of the action it proposes.

5.EBA shall publish on its website notice of any decision to take any action under this Article. The notice shall specify details of the prohibition or restriction and specify a time after the publication of the notice from which the measures will take effect. A prohibition or restriction shall only apply to action taken after the measures take effect.

6.EBA shall review a prohibition or restriction imposed under paragraph 1 at appropriate intervals and at least every three months. If the prohibition or restriction is not renewed after that three-month period it shall expire.

7.Action adopted by EBA under this Article shall prevail over any previous action taken by a competent authority.

8.The Commission shall adopt delegated acts in accordance with Article 50 to specify criteria and factors to be taken into account by EBA in determining when there is a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets and to the stability of the whole or part of the financial system of the Union referred to in paragraph 2(a).

Those criteria and factors shall include:

(a) the degree of complexity of a structured deposit and the relation to the type of client to whom it is marketed and sold;

(b) the size or the notional value of an issuance of structured deposits;

(c) the degree of innovation of a structured deposit, an activity or a practice;

(d) the leverage a structured deposit or practice provides.

Article 42

Product intervention by competent authorities

1.A competent authority may prohibit or restrict the following in or from that Member State:

(a) the marketing, distribution or sale of certain financial instruments or structured deposits or financial instruments or structured deposits with certain specified features; or

(b) a type of financial activity or practice.

2.A competent authority may take the action referred to in paragraph 1 if it is satisfied on reasonable grounds that:

(a) either

  (i) a financial instrument, structured deposit or activity or practice gives rise to significant investor protection concerns or poses a threat to the orderly functioning and integrity of financial markets or commodity markets or to the stability of whole or part of the financial system within at least one Member State; or

  (ii) a derivative has a detrimental effect on the price formation mechanism in the underlying market;

(b) existing regulatory requirements under Union law applicable to the financial instrument, structured deposit or activity or practice do not sufficiently address the risks referred to in point (a) and the issue would not be better addressed by improved supervision or enforcement of existing requirements;

(c) the action is proportionate taking into account the nature of the risks identified, the level of sophistication of investors or market participants concerned and the likely effect of the action on investors and market participants who may hold, use or benefit from the financial instrument, structured

deposit or activity or practice;

(d) the competent authority has properly consulted competent authorities in other Member States that may be significantly affected by the action;

(e) the action does not have a discriminatory effect on services or activities provided from another Member State; and

(f) it has properly consulted public bodies competent for the oversight, administration and regulation of physical agricultural markets under Regulation (EC) No 1234/2007, where a financial instrument or activity or practice poses a serious threat to the orderly functioning and integrity of the physical agricultural market.

Where the conditions set out in the first subparagraph are fulfilled, the competent authority may impose the prohibition or restriction referred to in paragraph 1 on a precautionary basis before a financial instrument or structured deposit has been marketed, distributed or sold to clients.

A prohibition or restriction may apply in circumstances, or be subject to exceptions, specified by the competent authority.

3.The competent authority shall not impose a prohibition or restriction under this Article unless, not less than one month before the measure is intended to take effect, it has notified all other competent authorities and ESMA in writing or through another medium agreed between the authorities the details of:

(a) the financial instrument or activity or practice to which the proposed action relates;

(b) the precise nature of the proposed prohibition or restriction and when it is intended to take effect; and

(c) the evidence upon which it has based its decision and upon which it is satisfied that each of the conditions in paragraph 2 are met.

4.In exceptional cases where the competent authority deems it necessary to take urgent action under this Article in order to prevent detriment arising from the financial instruments, structured deposits, practices or activities referred to in paragraph 1, the competent authority may take action on a provisional basis with no less than 24 hours' written notice, before the measure is intended to take effect, to all other competent authorities and ESMA or, for structured deposits, EBA, provided that all the criteria in this Article are met and that, in addition, it is clearly established that a one month notification period would not adequately address the specific concern or threat. The competent authority shall not take action on a provisional basis for a period exceeding three months.

5.The competent authority shall publish on its website notice of any decision to impose any prohibition or restriction referred to in paragraph 1. The notice shall specify details of the prohibition or restriction, a time after the publication of the notice from which the measures will take effect and the evidence upon which it is satisfied each of the conditions in paragraph 2 are met. The prohibition or restriction shall only apply in relation to actions taken after the publication of the notice.

6.The competent authority shall revoke a prohibition or restriction if the conditions in paragraph 2 no longer apply.

7.The Commission shall adopt delegated acts in accordance with Article 50 specifying criteria and factors to be taken into account by competent authorities in determining when there is a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or commodity markets or to the stability of the of the financial system within at least one Member State referred to in paragraph 2(a).

Those criteria and factors shall include:

(a) the degree of complexity of a financial instrument or structured deposit and the relation to the type of client to whom it is marketed, distributed and sold;

(b) the degree of innovation of a financial instrument or structured deposit, an activity or a practice;

(c) the leverage a financial instrument or structured deposit or practice provides;

(d) in relation to the orderly functioning and integrity of financial markets or commodity markets, the size or the notional value of an issuance of financial instruments or structured deposits.

Article 43

Coordination by ESMA and EBA

1.ESMA or, for structured deposits, EBA shall perform a facilitation and coordination role in relation to action taken by competent authorities under Article 42. In particular ESMA or, for structured deposits, EBA shall ensure that action taken by a competent authority is justified and proportionate and that where appropriate a consistent approach is taken by competent authorities.

2.After receiving notification under Article 42 of any action that is to be imposed under that Article, ESMA or, for structured deposits, EBA shall adopt an opinion on whether the prohibition or restriction is justified and proportionate. If ESMA or, for structured deposits, EBA considers that the taking of a measure by other competent authorities is necessary to address the risk, it shall state this in its opinion. The opinion shall be published on ESMA's or, for structured deposits, EBA website.

3.Where a competent authority proposes to take, or takes, action contrary to an opinion adopted by ESMA or EBA under paragraph 2 or declines to take action contrary to such an opinion, it shall immediately publish on its website a notice fully explaining its reasons for so doing.

CHAPTER 2

Positions

Article 44

Coordination of national position management measures and position limits by ESMA

1.ESMA shall perform a facilitation and coordination role in relation to measures taken by competent authorities pursuant to Article 69(2)(o) and (p) of Directive 2014/65/EU. In particular, ESMA shall ensure that a consistent approach is taken by competent authorities with regard to when those powers are exercised, the nature and scope of the measures imposed, and the duration and follow-up of any measures.

2.After receiving notification of any measure under Article 79(5) of Directive 2014/65/EU, ESMA shall record the measure and the reasons therefor. In relation to measures taken pursuant to Article 69(2)(o) or (p) of Directive 2014/65/EU, it shall maintain and publish on its website a database with summaries of the measures in force including details of the person concerned, the applicable financial instruments, any limits on the size of positions the persons can hold at all times, any exemptions thereto granted in accordance with Article 57 of Directive 2014/65/EU, and the reasons therefor.

Article 45

Position management powers of ESMA

1.In accordance with Article 9(5) of Regulation (EU) No 1095/2010, ESMA shall, where both conditions in paragraph 2 are satisfied, take one or more of the following measures:

(a) request from any person all relevant information regarding the size and purpose of a position or exposure entered into via a derivative;

(b) after analysing the information obtained in accordance with point (a), require any such person to reduce the size of or to eliminate the position or exposure in accordance with the delegated act referred to in paragraph 10(b);

(c) as a last resort, limit the ability of a person from entering into a commodity derivative.

2.ESMA shall take a decision under paragraph 1 only if both of the following conditions are fulfilled:

(a) the measures listed in paragraph 1 address a threat to the orderly functioning and integrity of financial markets, including commodity derivative markets in accordance with the objectives listed in Article 57(1) of Directive 2014/65/EU and including in relation to delivery arrangements for physical commodities, or to the stability of the whole or part of the financial system in the Union;

(b) a competent authority or competent authorities have not taken measures to address the threat or the measures taken do not sufficiently address the threat;

ESMA shall perform its assessment of the fulfilment of the conditions referred to in points (a) and (b) of the first subparagraph of this paragraph in accordance with the criteria and factors provided for in the delegated act referred to in paragraph 10(a) of this Article.

3.When taking measures referred to in paragraph 1 ESMA shall ensure that the measure:

(a) significantly addresses the threat to the orderly functioning and integrity of financial markets, including commodity derivative markets in accordance with the objectives listed in Article 57(1) of Directive 2014/65/EU and including in relation to delivery arrangements for physical commodities, or to the stability of the whole or part of the financial system in the Union or significantly improve the ability of competent authorities to monitor the threat as measured in accordance with the criteria and factors provided for in the delegated act referred to in paragraph 10(a) of this Article;

(b) does not create a risk of regulatory arbitrage as measured in accordance with paragraph 10(c) of this Article;

(c) does not have any of the following detrimental effects on the efficiency of financial markets that is disproportionate to the benefits of the measure: reducing liquidity in those markets, restraining the conditions for reducing risks directly related to the commercial activity of a non-financial counterparty, or creating uncertainty for market participants.

ESMA shall consult the Agency for the Cooperation of Energy Regulators established under Regulation (EC) No 713/2009 of the European Parliament and of the Council before taking any measures related to wholesale energy products.

ESMA shall consult the public bodies competent for the oversight, administration and regulation of physical agricultural markets under Regulation (EC) No 1234/2007, before taking any measure related to agricultural commodity derivatives.

4.Before deciding to undertake or renew any measure referred to in paragraph 1, ESMA shall notify relevant competent authorities of the measure it proposes. In the case of a request under points (a) or (b) of paragraph 1 the notification shall include the identity of the person or persons to whom it was addressed and the details and reasons therefor. In the event of a measure under paragraph 1(c) the notification shall include details of the person concerned, the applicable financial instruments, the relevant quantitative measures such as the maximum size of a position the person in question can enter into, and the reasons therefor.

5.The notification shall be made not less than 24 hours before the measure is intended to take effect or to be renewed. In exceptional circumstances, ESMA may make the notification less than 24 hours before the measure is intended to take effect where it is not possible to give 24 hours notice.

6.ESMA shall publish on its website notice of any decision to impose or renew any measure referred to in paragraph 1(c). The notice shall include details on the person concerned, the applicable financial instruments, the relevant quantitative measures such as the maximum size of a position the person in question can enter into, and the reasons therefor.

7.A measure referred to in paragraph 1(c) shall take effect when the notice is published or at a time specified in the notice that is after its publication and shall only apply to a transaction entered into after the measure takes effect.

8.ESMA shall review its measures referred to in paragraph 1(c) at appropriate intervals and at least every three months. If a measure is not renewed after that three month period, it shall automatically expire. Paragraphs 2 to 8 shall also apply to a renewal of measures.

9.A measure adopted by ESMA under this Article shall prevail over any previous measure taken by a competent authority under Article 69(2)(o) or (p) of Directive 2014/65/EU.

10.The Commission shall adopt in accordance with Article 50 delegated acts to specify criteria and factors to determine:

(a) the existence of a threat to the orderly functioning and integrity of financial markets, including commodity derivative markets in accordance with the objectives listed in Article 57(1) of Directive 2014/65/EU and including in relation to delivery arrangements for physical commodities, or to the stability of the whole or part of the financial system in the Union as referred to in paragraph 2(a) taking account of the degree to which positions are used to hedge positions in physical commodities or commodity contracts and the degree to which prices in underlying markets are set by reference to the prices of commodity derivatives;

(b) the appropriate reduction of a position or exposure entered into via a derivative referred to in paragraph 1(b) of this Article;

(c) the situations where a risk of regulatory arbitrage as referred to in paragraph 3(b) of this Article could arise.

Those criteria and factors shall take into account the regulatory technical standards referred to in Article 57(3) of Directive 2014/65/EU and shall differentiate between situations where ESMA takes action because a competent authority has failed to act and those where ESMA addresses an additional risk which the competent authority is not able to sufficiently address pursuant to Article 69(2)(j) or (o) of Directive 2014/65/EU.

TITLE VIII

PROVISION OF SERVICES AND PERFORMANCE OF ACTIVITIES BY THIRD-COUNTRY FIRMS FOLLOWING AN EQUIVALENCE DECISION WITH OR WITHOUT A BRANCH

Article 46

General provisions

1.A third-country firm may provide investment services or perform investment activities with or without any ancillary services to eligible counterparties and to professional clients within the meaning of Section I of Annex II to Directive 2014/65/EU established throughout the Union without the establishment of a branch where it is registered in the register of third-country firms kept by ESMA in accordance with Article 47.

2.ESMA shall register a third-country firm that has applied for the provision of investment services or performance of activities throughout the Union in accordance with paragraph 1 only where the following conditions are met:

(a) the Commission has adopted a decision in accordance with Article 47(1);

(b) the firm is authorised in the jurisdiction where its head office is established to provide the investment services or activities to be provided in the Union and it is subject to effective supervision and enforcement ensuring a full compliance with the requirements applicable in that third country;

(c) cooperation arrangements have been established pursuant to Article 47(2).

3.Where a third-country firm is registered in accordance with this Article, Member States shall not impose any additional requirements on the third-country firm in respect of matters covered by this Regulation or by Directive 2014/65/EU and shall not treat third-country firms more favourably than Union firms.

4.The third-country firm referred to in paragraph 1 shall submit its application to ESMA after the adoption by the Commission of the decision referred to in Article 47 determining that the legal and supervisory framework of the third country in which the third-country firm is authorised is equivalent to the requirements described in Article 47(1).

The applicant third-country firm shall provide ESMA with all information necessary for its registration. Within 30 working days of receipt of the application, ESMA shall assess whether the application is complete. If the application is not complete, ESMA shall set a deadline by which the applicant third-country firm is to provide additional information.

The registration decision shall be based on the conditions set out in paragraph 2.

Within 180 working days of the submission of a complete application, ESMA shall inform the applicant third-country firm in writing with a fully reasoned explanation whether the registration has been granted or refused.

Member States may allow third-country firms to provide investment services or perform investment activities together with ancillary services to eligible counterparties and professional clients within the meaning of Section I of Annex II to Directive 2014/65/EU in their territories in accordance with national regimes in the absence of the Commission decision in accordance with Article 47(1) or where such decision is no longer in effect.

5.Third-country firms providing services in accordance with this Article shall inform clients established in the Union, before the provision of any investment services, that they are not allowed to provide services to clients other than eligible counterparties and professional clients within the meaning of Section I of Annex II to Directive 2014/65/EU and that they are not subject to supervision in the Union. They shall indicate the name and the address of the competent authority responsible for supervision in the third country.

The information in the first subparagraph shall be provided in writing and in a prominent way.

Member States shall ensure that where an eligible counterparty or professional client within the meaning of Section I of Annex II to Directive 2014/65/EU established or situated in the Union initiates at its own exclusive initiative the provision of an investment service or activity by a third-country firm, this Article does not apply to the provision of that service or activity by the third-country firm to that person including a relationship specifically related to the provision of that service or activity. An initiative by such clients shall not entitle the third-country firm to market new categories of investment product or investment service to that individual.

6.Third-country firms providing services or performing activities in accordance with this Article shall, before providing any service or performing any activity in relation to a client established in the Union, offer to submit any disputes relating to those services or activities to the jurisdiction of a court or arbitral tribunal in a Member State.

7.ESMA shall develop draft regulatory technical standards to specify the information that the applicant third-country firm shall provide to ESMA in its application for registration in accordance with paragraph 4 and the format of information to be provided in accordance with paragraph 5.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 47

Equivalence decision

1.The Commission may adopt a decision in accordance with the examination procedure referred to in Article 51(2) in relation to a third country stating that the legal and supervisory arrangements of that third country ensure that firms authorised in that third country comply with legally binding prudential and business conduct requirements which have equivalent effect to the requirements set out in this Regulation, in Directive 2013/36/EU and in Directive 2014/65/EU and in the implementing measures adopted under this Regulation and under those Directives and that the legal framework of that third country provides for an effective equivalent system for the recognition of investment firms authorised under third-country legal regimes.

The prudential and business conduct framework of a third country may be considered to have equivalent effect where that framework fulfils all the following conditions:

(a) firms providing investment services and activities in that third country are subject to authorisation and to effective supervision and enforcement on an ongoing basis;

(b) firms providing investment services and activities in that third country are subject to sufficient capital requirements and appropriate requirements applicable to shareholders and members of their management body;

(c) firms providing investment services and activities are subject to adequate organisational requirements in the area of internal control functions;

(d) firms providing investment services and activities are subject to appropriate conduct of business rules;

(e) it ensures market transparency and integrity by preventing market abuse in the form of insider dealing and market manipulation

2.ESMA shall establish cooperation arrangements with the relevant competent authorities of third countries whose legal and supervisory frameworks have been recognised as effectively equivalent in accordance with paragraph 1. Such arrangements shall specify at least:

(a) the mechanism for the exchange of information between ESMA and the competent authorities of third countries concerned, including access to all information regarding the non-Union firms authorised in third countries that is requested by ESMA;

(b) the mechanism for prompt notification to ESMA where a third-country competent authority deems that a third-country firm that it is supervising and ESMA has registered in the register provided for in Article 48 infringes the conditions of its authorisation or other law to which it is obliged to adhere;

(c) the procedures concerning the coordination of supervisory activities including, where appropriate, on-site inspections.

3. A third-country firm established in a country whose legal and supervisory framework has been recognised to be effectively equivalent in accordance with paragraph 1, and which is authorised in accordance with Article 39 of Directive 2014/65/EU shall be able to provide the services and activities covered under the authorisation to eligible counterparties and professional clients within the meaning of Section I of Annex II to Directive 2014/65/EU in other Member States of the Union without the establishment of new branches. For that purpose, it shall comply with the information requirements for the cross-border provision of services and activities in Article 34 of Directive 2014/65/EU.

The branch shall remain subject to the supervision of the Member State where the branch is established in accordance with Article 39 of Directive 2014/65/EU. However, and without prejudice to the obligations to cooperate laid down in Directive 2014/65/EU, the competent authority of the Member State where the branch is established and the competent authority of the host Member State may establish proportionate cooperation agreements in order to ensure that the branch of the third-country firm providing investment services within the Union delivers the appropriate level of investor protection.

4.A third-country firm may no longer use the rights under Article 46(1) where the Commission adopts a decision in accordance with the examination procedure referred to in Article 51(2) withdrawing its decision under paragraph 1 of this Article in relation to that third country.

Article 48

Register

ESMA shall keep a register of the third-country firms allowed to provide investment services or perform investment activities in the Union in accordance with Article 46. The register shall be publicly accessible on the website of ESMA and shall contain information on the services or activities which the third-country firms are permitted to provide or perform and the reference of the competent authority responsible for their

supervision in the third country.

Article 49

Withdrawal of registration

1.ESMA shall withdraw the registration of a third-country firm in the register established in accordance with Article 48 where:

(a) ESMA has well-founded reasons based on documented evidence to believe that, in the provision of investment services and activities in the Union, the third-country firm is acting in a manner which is clearly prejudicial to the interests of investors or the orderly functioning of markets; or

(b) ESMA has well-founded reasons based on documented evidence to believe that, in the provision of investment services and activities in the Union, the third-country firm has seriously infringed the provisions applicable to it in the third country and on the basis of which the Commission has adopted the Decision in accordance with Article 47(1);

(c) ESMA has referred the matter to the competent authority of the third country and that third-country competent authority has not taken the appropriate measures needed to protect investors and the proper functioning of the markets in the Union or has failed to demonstrate that the third-country firm concerned complies with the requirements applicable to it in the third country; and

(d) ESMA has informed the third-country competent authority of its intention to withdraw the registration of the third-country firm at least 30 days before the withdrawal.

2.ESMA shall inform the Commission of any measure adopted in accordance with paragraph 1 without delay and shall publish its decision on its website.

3.The Commission shall assess whether the conditions under which a decision in accordance with Article 47(1) has been adopted continue to persist in relation to the third country concerned.

TITLE IX

DELEGATED AND IMPLEMENTING ACTS

CHAPTER 1

Delegated acts

Article 50

Exercise of the delegation

1.The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2.The power to adopt delegated acts referred to in Article 1(9), Article 2(2), Article 13(2), Article 15(5), Article 17(3), Article 19(2) and (3), Article 31(4), Article 40(8), Article 41(8), Article 42(7), Article 45(10) and Article 52(10) and (12) shall be conferred for an indeterminate period of time from 2 July 2014.

3.The delegation of power referred to in Article 1(9), Article 2(2), Article 13(2), Article 15(5), Article 17(3), Article 19(2) and (3), Article 31(4), Article 40(8), Article 41(8), Article 42(7), Article 45(10) and Article 52(10) and (12) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4.As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5.A delegated act adopted pursuant to Article 1(9), Article 2(2), Article 13(2), Article 15(5), Article 17(3), Article 19(2) and (3), Article 31(4), Article 40(8), Article 41(8), Article 42(7), Article 45(10) and Article 52(10) or (12) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.

CHAPTER 2

Implementing acts

Article 51

Committee procedure

1.The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2.Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

TITLE X

FINAL PROVISIONS

Article 52

Reports and review

1.By [F23 March 2020], the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the impact in practice of the transparency obligations established pursuant to Articles 3 to 13, in particular on the impact of the volume cap mechanism described in Article 5, including on the cost of trading for eligible counterparties and professional clients and on trading of shares of small and mid-cap companies, and its effectiveness in ensuring that the use of the relevant waivers does not harm price formation and how any appropriate mechanism for imposing sanctions for infringements of the volume cap might operate, and on the application and continued appropriateness of the waivers to pre-trade transparency obligations established pursuant to Article 4(2) and (3) and Article 9(2) to (5).

2.The report referred to in paragraph 1 shall include the impact on European equity markets of the use of the waiver under Article 4(1)(a) and (b)(i) and the volume cap mechanism under Article 5, with particular reference to:

(a) the level and trend of non-lit order book trading within the Union since the introduction of this Regulation;

(b) the impact on the pre-trade transparent quoted spreads;

(c) the impact on the depth of liquidity on lit order books;

(d) the impact on competition and on investors within the Union;

(e) the impact on trading of shares of small and mid-cap companies;

(f) developments at international level and discussions with third countries and international organisations.

3.If the report concludes that the use of the waiver under Article 4(1)(a) and (b)(i) is harmful to price formation or to trading of shares of small and mid-cap companies, the Commission shall, where appropriate, make proposals, including amendments to this Regulation, regarding the use of those waivers. Such proposals shall include an impact assessment of the proposed amendments, and shall take into account the objectives of this Regulation and the effects on market disruption and competition, and potential impacts on investors in the Union.

4.By 3 March 2020, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the functioning of Article 26, including whether the content and format of transaction reports received and exchanged between competent authorities comprehensively enable to monitor the activities of investment firms in accordance with Article 26(1). The Commission may make any appropriate proposals, including providing for transactions to be reported to a system appointed by ESMA instead of to competent authorities, which allows relevant competent authorities to access all the information reported pursuant to this Article for the purposes of this Regulation and of Directive 2014/65/EU and the detection of insider dealing and market abuse in accordance with Regulation (EU) No 596/2014.

5.By 3 March 2020, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on appropriate solutions to reduce information asymmetries between market participants as well as tools for regulators to better monitor quotation activities on trading venues. That report shall at least assess the feasibility of developing a European best bid and offer system for consolidated quotes to fulfil those objectives.

6.By 3 March 2020, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the progress made in moving trading in standardised OTC derivatives to exchanges or electronic trading platforms pursuant to Articles 25 and 28.

7.By 3 July 2020, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the development in prices for pre-trade and post-trade transparency data from regulated markets, MTFs, OTFs, APAs and CTPs.

8.By 3 July 2020, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council reviewing the interoperability provisions in Article 36 of this Regulation and of Article 8 of Regulation (EU) No 648/2012.

9.By 3 July 2020, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the application of Articles 35 and 36 of this Regulation and of Articles 7 and 8 of Regulation (EU) No 648/2012.

By 3 July 2022, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the application of Article 37.

10.By 3 July 2020, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the impact of Article 35 and 36 of this Regulation on newly established and authorised CCPs as referred to in Article 35(5) and trading venues connected to those CCPs by close links and whether the transitional arrangement provided for in Article 35(5) shall be extended, weighing the possible benefits to consumers of improving competition and the degree of choice available to market participants against the possible disproportionate effect of those provisions on newly established and authorised CCPs and the constraints of local market participants in accessing global CCPs and the smooth functioning of the market.

Subject to the conclusions of that report, the Commission may adopt a delegated act in accordance with Article 50 to extend the transitional period in accordance with Article 35(5) by a maximum of 30 months.

11.By 3 July 2020, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on whether the threshold laid down in Article 36(5) remains appropriate and whether the opt out mechanism in respect of exchange-traded derivatives is to remain available.

12.By 3 July 2016, the Commission shall, based on a risk assessment carried out by ESMA in consultation with the ESRB, submit a report to the European Parliament and to the Council assessing the need to temporarily exclude exchange-traded derivatives from the scope of Article 35 and 36. That report shall take

into account risks, if any, resulting from open access provisions regarding exchange-traded derivatives to the overall stability and orderly functioning of the financial markets throughout the Union.

Subject to the conclusions of that report, the Commission may adopt a delegated act in accordance with Article 50 to exclude exchange-traded derivatives from the scope of Articles 35 and 36 for up to thirty months following [F23 January 2018].

Article 53

Amendment of Regulation (EU) No 648/2012

Regulation (EU) No 648/2012 is amended as follows:

(1) in Article 5(2), the following subparagraph is added:

‘In the developing of the draft regulatory technical standards under this paragraph ESMA shall not prejudice the transitional provision relating to C6 energy derivative contracts as laid down in Article 95 of Directive 2014/65/EU.’;

(2) Article 7 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1.A CCP that has been authorised to clear OTC derivative contracts shall accept clearing such contracts on a non-discriminatory and transparent basis, including as regards collateral requirements and fees related to access, regardless of the trading venue. This in particular shall ensure that a trading venue has the right to non-discriminatory treatment in terms of how contracts traded on that trading venue are treated in terms of:

(a) collateral requirements and netting of economically equivalent contracts, where the inclusion of such contracts in the close-out and other netting procedures of a CCP based on the applicable insolvency law would not endanger the smooth and orderly functioning, the validity or enforceability of such procedures; and

(b) cross-margining with correlated contracts cleared by the same CCP under a risk model that complies with Article 41.

A CCP may require that a trading venue comply with the operational and technical requirements established by the CCP, including the risk-management requirements.’;

(b) the following paragraph is added:

‘6.The conditions laid down in paragraph 1 regarding non-discriminatory treatment in terms of how contracts traded on that trading venue are treated in terms of collateral requirements and netting of economically equivalent contracts and cross-margining with correlated contracts cleared by the same CCP shall be further specified by the technical standards adopted pursuant to Article 35(6)(e) of Regulation (EU) No 600/2014.’;

(3) In Article 81(3), the following subparagraph is added:

‘A trade repository shall transmit data to competent authorities in accordance with the requirements under Article 26 of Regulation (EU) No 600/2014(33)’.

Article 54

Transitional provisions

1.Third-country firms shall be able to continue to provide services and activities in Member States, in accordance with national regimes until three years after the adoption by the Commission of a decision in relation to the relevant third country in accordance with Article 47.

2.If the Commission assesses that there is not a need to exclude exchange-traded derivatives from the scope of Articles 35 and 36 in accordance with Article 52(12), a CCP or a trading venue may, before the entry into application of this Regulation, apply to its competent authority for permission to avail itself of transitional arrangements. The competent authority, taking into account the risks resulting from the application of the access rights under Article 35 or 36 as regards exchange-traded derivatives to the orderly functioning of the relevant CCP or trading venue, may decide that Article 35 or 36 would not apply to the relevant CCP or trading venue, respectively, in respect of exchange-traded derivatives, for a transitional period until 3 July 2020. Where such a transitional period is approved, the CCP or trading venue cannot benefit from the access rights under Article 35 or 36, as regards exchange-traded derivatives for the duration of that transitional period. The competent authority shall notify ESMA, and in the case of a CCP the college of competent authorities for that CCP, when a transitional period is approved.

Where a CCP which has been approved for the transitional arrangements, is connected by close links to one or more trading venues, those trading venues shall not benefit from access rights under Article 35 or 36 for exchange-traded derivatives for the duration of that transitional period.

Where a trading venue, which has been approved for the transitional arrangements, is connected by close links to one or more CCPs, those CCPs shall not benefit from access rights under Article 35 or 36 for exchange-traded derivatives for the duration of that transitional period.

Article 55

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 3 January 2018.

Notwithstanding the second paragraph, Article 1(8) and (9), Article 2(2), Article 4(6), Article 5(6) and (9),] Article 7(2), Article 9(5), Article 11(4), Article 12(2), Article 13(2), Article 14(7), Article 15(5), Article 17(3), Article 19(2) and (3), Article 20(3), Article 21(5), Article 22(4), Article 23(3), Article 25(3), Article 26(9), Article 27(3), Article 28(4), Article 28(5), Article 29(3), Article 30(2), Article 31(4), Article 32(1), (5) and(6), Article 33(2), Article 35(6), Article 36(6), Article 37(4), Article 38(3), Article 40(8), Article 41(8), Article 42(7), Article 45(10), Article 46(7), Article 47(1) and (4), Article 52(10) and (12) and Article 54(1) shall apply immediately following the entry into force of this Regulation.

Notwithstanding the second paragraph, Article 37(1), (2) and (3) shall apply from 3 January 2020.

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