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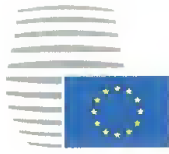
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INFORMATION NOTE

From: General Secretariat of the Council
To: Delegations

Subject: Proposal for a Regulation (EU) of the European Parliament and of the Council of amending Regulation (EU) No 600/2014 as regards enhancing data transparency, removing obstacles to the emergence of consolidated tapes, optimising the trading obligations and prohibiting receiving payments for forwarding client orders
and
Proposal for the Directive (EU) 2023/ of the European Parliament and of the Council of amending Directive 2014/65/EU on markets in financial instruments
- Letter to the Chair of the European Parliament Committee on Economic and Monetary Affairs

Following the Permanent Representatives' Committee meeting of 18 October 2023 which endorsed the final compromise texts with a view to agreement, delegations are informed that the Presidency has sent the attached letter, together with its Annex, to the Chair of the European Parliament Committee on Economic and Monetary Affairs.



Council of the European Union
General Secretariat

Ms Irene TINAGLI
Chair of the Committee on Economic and Monetary Affairs
European Parliament
Rue Wiertz 60
B-1047 Brussels

Brussels,

Subject: Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 600/2014 as regards enhancing data transparency, removing obstacles to the emergence of consolidated tapes, optimising the trading obligations and prohibiting receiving payments for forwarding client orders;
and
Proposal for the Directive of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments

Dear Ms TINAGLI,

Following the informal negotiations between the representatives of the three institutions, a draft overall compromise package was agreed today by the Permanent Representatives' Committee.

I am therefore now in a position to confirm that, should the European Parliament adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the form set out in the compromise package contained in the Annex to this letter (subject to revision by the legal linguists of both institutions), the Council would, in accordance with Article 294, paragraph 4 of the Treaty, approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the European Parliament's position.

On behalf of the Council I also wish to thank you for your close cooperation which should enable us to reach agreement on this file at first reading.

Yours sincerely,

Marcos ALONSO ALONSO
Chair of the
Permanent Representatives Committee

Copy: Ms Mairéad McGUINNESS, Commissioner
Ms Danuta Maria HÜBNER, European Parliament Rapporteur

REGULATION (EU) 2023/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

amending Regulation (EU) No 600/2014 as regards enhancing data transparency, removing obstacles to the emergence of consolidated tapes, optimising the trading obligations and prohibiting receiving payments for forwarding client orders

(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 Bank¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with the ordinary legislative procedure,

¹ OJ C 286, 27.7.2022, p. 17.

² OJ C 290, 29.7.2022, p. 68.

Whereas:

- (1) In its 2020 CMU Action Plan³, the Commission announced its intention to table a legislative proposal to create a centralised data base which was meant to provide a comprehensive view on prices and volume of equity and equity-like financial instruments traded throughout the Union across a multitude of trading venues (‘consolidated tape’). On 2 December 2020, in its conclusion on the Commission’s CMU Action Plan⁴, the Council encouraged the Commission to stimulate more investment activity inside the Union by enhancing data availability and transparency by further assessing how to tackle the obstacles to establishing a consolidated tape in the Union.
- (2) In its roadmap on ‘The European economic and financial system: fostering openness, strength and resilience’ of 19 January 2021⁵, the Commission confirmed its intention to improve, simplify and further harmonise capital markets’ transparency, as part of the review of Directive 2014/65/EU of the European Parliament and of the Council⁶ and of Regulation (EU) No 600/2014 *of* the European Parliament and of the Council⁷. As part of efforts to strengthen the international role of the Euro, the Commission also announced that such reform would include the design and implementation of a consolidated tape, in particular for corporate bond issuances to increase the liquidity of secondary trading in euro-denominated debt instruments.

³ COM/2020/590 final.

⁴ Council Conclusions on the Commission’s CMU Action Plan, 12898/1 of /20 REV 1 EF 286 ECOFIN 1023: <https://data.consilium.europa.eu/doc/document/ST-12898-2020-REV-1/en/pdf>;

⁵ COM/2021/32 final.

⁶ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

⁷ 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 (OJ L 173, 12.6.2014, p. 84).

- (3) Regulation (EU) No 600/2014 of the European Parliament and of the Council⁸ provides for a legislative framework for ‘consolidated tape providers’ or ‘CTPs’, both for equity and non-equity *instruments*. Those CTPs are currently responsible for collecting from trading venues and approved publication arrangements (‘APAs’) market data about financial instruments and consolidating those data into a continuous electronic live data stream, which provides market data per financial instrument. The idea behind the introduction of a CTP was that market data from trading venues and APAs would be made available to the public in a consolidated manner, including all of the Union’s trading markets, using identical data tags, formats and user interfaces.

⁸ 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 (OJ L 173, 12.6.2014, p. 84).

- (4) To date, however, no supervised entity has applied for authorisation to act as a CTP. *In its report of 5 December 2019 on the development in prices for pre- and post-trade data and on the consolidated tape for equity instruments*, ESMA has identified three main obstacles that have prevented supervised entities to apply for registration as a CTP. First, a lack of clarity as to how the CTP is to procure market data from the various execution venues or from the data reporting service providers concerned. Second, insufficient quality in terms of harmonisation of the data reported by those execution venues to allow for a cost-efficient consolidation. Third, a lack of commercial incentives to apply for authorisation as a CTP. It is therefore necessary to remove those obstacles. Such removal requires, first, that all trading venues and *APAs* provide CTPs with market data **■**. It secondly requires an improvement of the data quality by harmonising the data reports that trading venues and *APAs* should submit to the *data center of the CTPs*.

- (5) Article 1(7) of Directive 2014/65/EU of the European Parliament and of the Council⁹ requires operators of systems in which multiple third-party buying and selling trading interests in financial instruments are able to interact ('multilateral systems') to operate in accordance with the requirements concerning regulated markets¹⁰, multilateral trading facilities ('MTFs'), or organised trading facilities ('OTFs'). The placement of that requirement in Directive 2014/65/EU has left room for varying interpretations of that requirement, which has led to an uneven playing field between multilateral systems that are licensed as *a regulated market*, MTF or OTF, and multilateral systems that are not licensed as such. In order to ensure a uniform application of that requirement, it should be introduced in Regulation (EU) No 600/2014.

⁹ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

- (7) Dark trading is trading without pre-trade transparency, using the reference price waiver laid down in Article 4(1), point (a) of Regulation (EU) No 600/2014 and the negotiated trade waiver laid down in Article **4(1), point (b)(i)** of that Regulation. The use of both waivers is capped by the double volume cap, **which** is a mechanism that limits the level of dark trading to a certain proportion of total trading in an equity instrument. The amount of dark trading in an equity instrument on an individual venue **is not to** exceed **4 %** of total trading in that instrument in the Union. When this threshold is **exceeded**, dark trading in that instrument on that venue is suspended. Secondly, the amount of dark trading in an equity instrument in the Union **is not to** exceed **8 %** of total trading in that instrument in the Union. When this threshold is **exceeded**, all dark trading **under those waivers** in that instrument is suspended. The venue specific threshold leaves room for continued use of those waivers on other platforms on which trading in that equity instrument is not yet suspended, until the Union wide threshold is **exceeded**. This causes complexity in terms of monitoring the levels of dark trading and of enforcing the suspension. To simplify the double volume cap while keeping its effectiveness, the new single volume cap should rely solely on the EU-wide threshold **set at 7 % in respect of the reference price waiver and not cover the negotiated trade waiver. ESMA should regularly assess the volume cap threshold, taking into account financial stability considerations, international best practices, the competitiveness of Union firms, the significance of the market impact and the efficiency of the price formation, and formulate its suggestions in a report to the Commission. On that basis, the Commission should have the power to adjust the volume cap threshold through a delegated act. ESMA should also assess the appropriateness of the volume cap and the necessity to remove it or to extend it to other trading systems or execution venues which derive their prices from a reference price.**

- (7a)** *Article 8 of Regulation (EU) No 600/2014 introduced pre-trade transparency requirement in respect of non-equity instrument imposed on MTFs, OTFs or regulated markets, regardless of the trading system. The benefits were clear for trading venues that operate a central limit order book or periodic auction systems, where bids and offers are anonymous, firm and truly multilateral. Other trading systems, notably voice trading and request-for-quote-systems, provide requestors with tailor-made quotes, which have marginal informational value to other market participants. To reduce the regulatory burden imposed on trading venues and to simplify the applicable waivers, the requirement to publish firm or indicative quotes should only apply to central limit order books and periodic auction trading systems. In order to accommodate for limiting the pre-trade transparency to central limit order books and auction systems, the waiver requirements in Article 9 should be revised. The waiver that is available above a ‘size specific to the instrument’ for request for quote systems and for voice trading systems, should be removed.*
- (7b)** *Articles 18 and 19 of Regulation (EU) No 600/2014 set out pre-trade transparency requirements applicable to systematic internalisers in respect of non-equity instruments when providing firm or indicative quotes to their clients. Those quotes are tailored to individual clients and have marginal informational value to other clients. Therefore those requirements should be removed. Nevertheless, systematic internalisers might fulfil pre-trade transparency requirements on a voluntary basis, for example to address needs of their retail clients.*

(7c) *Currently the transparency regime for derivatives is part of the broader non-equity category for transparency, commingling together different types of financial instruments with on the one hand mostly securities (bonds) and on the other hand mostly contracts (derivatives). Transparency for non-equities, as well as for equities, relies on the concept of ‘traded on a trading venue’.. For certain derivatives this concept has proven to be problematic due to their lack of fungibility as well as due to the lack of appropriate identifying reference data. For that reason, the scope of derivatives transparency should not rely on the concept of ‘traded on a trading venue’, but instead on predefined characteristics of the derivatives. Such derivatives should be subject to transparency requirements, regardless of them being traded on or off venue. The derivatives to which transparency requirements apply should be those that are sufficiently standardised so that the data published in relation to them is meaningful for market participants beyond the contracting parties. This means that all exchange-traded derivatives should remain subject to transparency requirements. Other derivatives should be subject to transparency requirements where they are under the scope of the clearing obligations set out in Regulation (EU) No 648/2012, for which a degree of standardisation is a pre-requisite, and are centrally cleared. This ensures that transactions that are considered unsuitable for the clearing obligation, such as intra group transactions, are not subject to the transparency requirements either. Specifically for interest rate derivatives, only those that are the most standardised and liquid currency and tenor combinations should be in scope. Furthermore, recent market events have shown that lack of transparency in certain credit default swaps referencing globally systemically important banks or referencing an index comprising such banks might fuel speculation on the creditworthiness of such banks. Such credit default swaps should therefore also be subject to transparency requirements when they are centrally cleared even if they are not subject to the clearing obligation. The Commission should be empowered to amend the conditions for determining which derivatives should be subject to transparency requirements in case market developments require so.*

- (8) Article 10 of Regulation (EU) No 600/2014 contains requirements for trading venues to publish information related to transactions in non-equity instruments, including the price and the volume. Article 11 of that Regulation contains the grounds for national competent authorities to allow for delayed publication of those details. Deferred publication of those details is allowed where a transaction is above the large-in-scale ■ size threshold, is in an instrument for which there is no liquid market, or ■ is above the size specific to the instrument threshold in case the transaction involves liquidity providers. National competent authorities have discretion in the duration of the deferred period and in the details of the transactions that may be deferred. That discretion has led to differing practices among the Member States and to ineffective *and complex* post-trade transparency *regime*. To ensure transparency towards all types of investors, it is necessary to harmonise the deferral regime at the level of the European Union, remove discretion at national level and facilitate market data consolidation. It is therefore appropriate to reinforce post-trade transparency requirements by removing the discretion for competent authorities.

- (9) To ensure an adequate level of transparency, the price *and the volume of bond, structured finance product and emission allowance* transaction should be published as close to real time as possible. ■ In order not to expose liquidity providers in *such transactions* to undue risk, it should be possible to *defer the publication of certain details of the transactions*. *With regard to bonds, the categories of transactions for which deferrals are allowed should be determined considering the size of the transactions and the liquidity of the financial instruments concerned. The exact details of the deferral regime should be determined by means of regulatory technical standards which should be regularly reviewed in order to gradually decrease the applicable deferral duration. For the purpose of having a more stable transparency regime, a static determination of liquidity for the classes of non-equity instruments is needed. The draft regulatory technical standards developed by ESMA should specify which issuance sizes correspond to a liquid or illiquid market in bonds until its maturity, from which transaction size in either a liquid or illiquid bond a deferral may be applied and what the duration of the deferral should be, up to a maximum defined by this Regulation. In order to have an appropriate level of transparency for covered bonds, it is appropriate for the issuance size of such bonds to be determined in accordance with the criteria set out in COMMISSION DELEGATED REGULATION (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council (“LCR”). With regard to structured finance products and emission allowances, ESMA should specify the classes that have a liquid or illiquid market, which should not rely on frequent assessments. ESMA should define the applicable categories and duration of the deferrals. ESMA should apply the determination of liquid and illiquid markets in bonds, emission allowances and structured finance products also for the application of the pre-trade transparency waiver. Competent authorities should have the power to extend the period of deferred publication of the details of transactions executed in respect of the sovereign debt instruments issued by their respective Member State. It is appropriate for such an extension to be applicable throughout the Union. With regards to transactions in sovereign debt instruments not issued by Members States, such extensions should be established by means of regulatory technical standards.*

(9a) *The heterogeneity of derivatives should also result in a deferral regime that is separate from other non-equity instruments. While the duration of deferrals should also be determined, by means of regulatory technical standards, based on the size of the transaction and liquidity of the class of derivatives, ESMA should determine which classes are liquid or illiquid as well as above which size of the transaction and for which duration it should be possible to defer the publication of details of the transaction. ESMA should apply the determination of liquid and illiquid markets also for the application of the pre-trade transparency waiver.*

- (10) Article 13 of Regulation (EU) No 600/2014 requires market operators and investment firms operating a trading venue to make the pre-trade and post-trade information on transactions in financial instruments available to the public on a reasonable commercial basis ('RCB'), and to ensure non-discriminatory access to that information. That Article has, however, not delivered on its objectives. The information provided by trading venues, APAs and systematic internalisers on a reasonable commercial basis does not enable users to understand market data policies and how the price for market data is set. ESMA issued guidelines explaining how the concept of RCB should be applied. These guidelines should be converted to legal obligations ***and strengthened, to ensure that it is not possible for trading venues, APAs, CTPs and SIs to charge for market data in line with the value that the market data represents to individual users.*** Due to the high level of detail required to specify RCB and the required flexibility in amending the applicable rules based on the ***fast-changing*** data landscape, ESMA should be empowered to develop draft regulatory technical standards specifying how RCB should be applied, thereby further strengthening the harmonised and consistent application of Article 13 of Regulation (EU) No 600/2014. ***Furthermore, ESMA should monitor and assess developments in market data policies and price-setting of market but also compliance with the rules. ESMA should provide the necessary updates based on the assessment.***

- (11) In order to reinforce the price formation process and to maintain a level playing field between trading venues and systematic internalisers, Article 14 of Regulation (EU) No 600/2014 requires systematic internalisers to make public all quotes in equity instruments placed by that systematic internaliser below the standard market size. Systematic internalisers are free to decide which sizes they quote, as long as they quote at a minimum size of 10 % of the standard market size. That possibility, however, has led to very low levels of pre-trade transparency provided by systematic internalisers in equity instruments, and has hampered the achievement of a level playing field. It is therefore necessary to require systematic internalisers to publish firm quotes relating to a minimum *size to be determined by means of regulatory technical standards. When developing those draft regulatory technical standards, it is appropriate for ESMA to consider the following objectives: increasing pre-trade transparency of equity instruments for the benefit of end-investors; maintaining a level playing field between trading venues and systematic internalisers; providing end investors with an adequate choice of trading options; and ensuring that the trading landscape in the Union remains attractive and competitive both domestically and internationally. In order to make systematic internalisers more competitive, they should be allowed to match at midpoint at any size.*

(12b) *Under the current legal framework, when one of the two parties to a transaction is a systematic internaliser, the systematic internaliser is required to report a trade to an APA, while its counterparty is not required to do so. This has led many investment firms to opt in to the status of systematic internaliser in particular for the purpose of reporting the trades for their clients, while the firms were not dealing on own account on a systematic basis, thereby adding disproportionate requirements to these firms. Therefore, it is appropriate to introduce a status of a designated publishing entity that would allow an investment firm to be responsible for making a transaction public through an APA without having the need to take the status of systematic internaliser. Furthermore, the designated publishing entities should notify themselves to the competent authorities and ESMA should maintain a public register of such designated publishing entities by class of financial instruments so that market participants have a capacity to identify them.*

- (13) Market participants need core market data to be able to make informed investment decisions. Pursuant to the current Article 27h of Regulation (EU) 600/2014, sourcing data about certain financial instruments directly from trading venues and APAs requires that consolidated tape providers enter into separate licensing agreements with all those data contributors. That process is burdensome, costly and time consuming. It has been one of the obstacles to consolidated tape providers emerging *in any asset class*. This obstacle should be removed in order to enable consolidated tape providers to obtain the data and to overcome licencing issues. Trading venues and APAs (‘data contributors’) should be required to submit their data to consolidated tape providers, and to use harmonised templates respecting high-quality data standards to do so. *Data contributors should also provide regulatory data to keep investors informed about the status of the system matching orders, such as if a market outage has occurred, and of the status of the financial instrument, such as suspensions or trading halts.*

(13a) Only CTPs selected and authorised by ESMA should be able to collect ■ data from the individual data sources in accordance with the mandatory contribution rule. To make the ■ data useful for investors, ■ data contributors should be required to provide the CTP with ■ data as close *to real time* as technically possible ■ .

(14) Title II and III of Regulation (EU) *No* 600/2014 require trading venues, APAs, investment firms and systematic internalisers ■ to publish pre-trade data on financial instruments, including bid and offer prices and post-trade data on transactions, including the price and volume at which a transaction in a specific instrument has been concluded. Market participants are not obliged to use the consolidated core market data provided by the CTP. The requirement to publish those pre-trade and post-trade data should therefore remain applicable to enable market participants to access market data. However, to avoid undue burden on market data contributors, it is appropriate to align the requirement for market data contributors to publish data as much as possible with the requirement to contribute data to the CTP.

- (15) Due to the disparate quality of market data, it is difficult for market participants to compare those data, which *devoid* data consolidation of much added value. It is of the utmost importance for the proper functioning of the transparency regime set out in Title II and III of Regulation (EU) *No* 600/2014 and for the consolidation of data by consolidated tape providers that market data are of high quality. It is therefore appropriate to require that those market data comply with high quality standards in terms of both substance and format. It should be possible to change the substance and the format of the data within a short time to allow for changing market practices and insights. Therefore the requirements for the quality *and substance* of data should, *where necessary, be* specified by *means of regulatory technical standards* and should take into account *prevailing industry standards and practices, international developments and standards agreed at the Union or international level, as well as* the advice of a dedicated *expert stakeholder* group, *established by the Commission and tasked with providing advice on the quality and substance of data and quality of the transmission protocol. ESMA should be closely involved in the work of that expert stakeholder group.*

- (16) To better monitor reportable events, Directive 2014/65/EU harmonised the synchronisation of business clocks for trading venues and their members. To ensure that, in the context of the consolidation of market data, timestamps reported by different entities can be compared meaningfully, it is appropriate to extend the requirements for harmonisation of the synchronisation of business clocks to *designated publishing entities*, systematic internalisers, APAs and consolidated tape providers. Due to the level of technical expertise required to specify the requirements for application of a synchronized business clock, ESMA should be empowered to develop draft regulatory technical standards to specify the accuracy with which the clocks should be synchronized.

- (17) Article 23 of Regulation (EU) No 600/2014 requires that *most of the* trading in shares takes place on trading venues or systematic internalisers ('share trading obligation'). This requirement does not apply to trades in shares which are non-systematic, ad hoc, or irregular and infrequent. It is *currently* not *sufficiently* clear when this exemption applies. ESMA therefore clarified this by making a distinction between shares on the basis of their International Securities Identification Number (ISIN). Pursuant to that distinction, only shares with an EEA ISIN *and which are traded on a trading venue* are subject to the share trading obligation. That approach provides clarity to market participants trading in shares. It is therefore appropriate to incorporate ESMA's current practice in Regulation (EU) No 600/2014, while simultaneously removing the exemption for trades in shares which are non-systematic, ad-hoc or irregular and infrequent.

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- (19) Reporting in financial markets – in particular transaction reporting – is already highly automated and data is more standardised. Some inconsistencies between frameworks have already been resolved in the European Market Infrastructure Regulation (EMIR), Refit and Securities Financing Transactions Regulation (SFTR). The empowerments for ESMA should be aligned to adopt technical standards and ensure greater consistency in transaction reporting between the EMIR, SFTR and MiFIR frameworks. This will improve transaction data quality and avoid unnecessary additional costs for the industry. ***Furthermore, the transaction reporting should allow for a broad exchange of transaction data among national competent authorities, in order to adequately reflect the latter's evolving supervisory needs to monitor the most recent market developments and potential related risks.***

(19a) Currently investment firms are required to report their transactions to their competent authority in any financial instrument traded on a trading venue or if the underlying is traded on a trading venue or is an index or basket composed of financial instruments that are traded on a trading venue, regardless of the transaction being executed on venue or OTC. The concept of ‘traded on a trading venue’ has proven problematic in the case of OTC derivatives, for the same reason it has proven problematic in the case of applicable transparency requirements. Therefore, the new scope for transaction reporting of derivatives clarifies that transactions in OTC derivatives executed on venue shall be reported, and those transactions in OTC derivatives executed off-venue shall only be reported if they are subject to transparency requirements, or if the underlying is traded on a trading venue or is an index or basket composed of financial instruments that are traded on a trading venue.

(19b) *Trading venues should be obliged to provide ESMA with reference data for transparency purposes including identifiers of OTC derivatives. The identifier currently used for derivatives (ISIN) has proved cumbersome and ineffective for public transparency and should be remedied by using identifying reference data based on a globally agreed unique product identifier, such as the ISO 4914 Unique Product Identifier (UPI).. The UPI has been developed as an identification tool for OTC derivative products, with the intention to bring increased transparency and aggregation of data across the global OTC derivative markets. However, this unique identifier may not be sufficient and may need to be complemented by additional identifying data. Therefore, the Commission should specify by means of a delegated act the identifying reference data to be used with regard to OTC derivatives, including a unique identifier and any additional identifying reference data. In relation to the identifier to be used for the purpose of transaction reporting under the Regulation (EU) No 600/2014, the Commission should specify the most appropriate identifiers of OTC derivatives, which might be different to the identifier determined for transparency requirements, taking into account the different purposes of these requirements, in particular as regards supervision of market abuse performed by regulators.*

- (20) Competition among consolidated tape providers ensures that the consolidated tape is provided in the most efficient way and under the best conditions for users. However, no entity has, up until now, applied to act as a consolidated tape provider. It is therefore considered appropriate to empower ESMA to periodically **organise** a competitive selection procedure to select a single entity which is able to provide the consolidated tape for each specified asset class **for a limited period of time**. **Initially**, ESMA should **start the selection procedure concerning the consolidated tape for bonds**. **Within six months after launching** that selection procedure, ESMA should **initiate the selection procedure for a CTP for shares and ETFs**. **Lastly, ESMA should start the selection procedure for the CTP on OTC derivatives within three months after the adoption of the delegated act specifying the appropriate OTC derivatives identifier for transparency purposes and not earlier than six months after the initiation of the selection procedure for a CTP for shares and ETFs**.

(20a) *The selection procedure is aimed at awarding the right to operate a consolidated tape for a period of five years. . It is subject to the rules laid down in the Regulation (EU, Euratom) 2018/1046 on the financial rules applicable to the general budget of the Union. ESMA should for all classes select a candidate based on its technical abilities to operate a CTP, including its ability to ensure business continuity and resilience, as well as its use of modern interfaces, the organisation of its management and decision making processes, its methods for ensuring data quality, the costs required for developing and operating a CTP, the simplicity of the licenses that users have to enter into in order to receive the consolidated data, including the amount of licensing types for various use cases or users, the level of fees charged to users and its processes for mitigating energy consumption. Specifically for the CTP for bonds, when selecting the CTP, ESMA should take into account the existence of a fair and equitable scheme for revenue distribution that acknowledges the role that smaller trading venues play in providing companies the opportunity to issue debt to finance their activities. For shares and ETFs, ESMA should require the CTP to be able to display the European best bid and offer, with no dissemination of the market identifier code of the venue. By July 2026, the European Commission should make an assessment of this level of pre-trade information for the functioning and competitiveness of the Union markets and may accompany this assessment, where appropriate, with a legislative proposal on the design of the consolidated tape.*

- (20b) *A selected applicant should without undue delay apply for authorisation. Within 20 working days of such application ESMA should assess if the application is complete and notify the applicant accordingly. Within three months of reception of a complete application, ESMA should either authorise or refuse authorisation through a reasoned decision. ESMA should base its decision to authorise or to refuse authorisation on its assessment on whether or not the applicant will be able to operate a CTP in compliance with all requirements within a reasonable time, and the reasoned decision should specify the conditions of operation of the consolidated tape, in particular the level of fees. In order to ensure an orderly start of operation, ESMA may allow the applicant a reasonable period after authorisation to complete the development of the consolidated tape.*
- (21) According to data presented in the impact assessment accompanying the proposal for this Regulation, the expected revenue generation for the consolidated tape will vary depending on the precise features of the tape. The *CTPs should not be prevented* from making a necessary margin to maintain a viable business model. *Retail investors, academics and civil society organisations* using the *data for research purposes as well as public authorities for the execution of regulatory and supervisory competences, should have free access to the* core market data *and regulatory data. The CTP should ensure that the information provided to retail investors is easily accessible and displayed in a user-friendly and human readable format.*

- (22) ■ Trading venues *facilitating the trading of shares via a pre-trade transparent order book play a key role in the price formation process.* This is particularly true *for small* regulated markets *and SME Growth Markets ('small trading venues')* *which are generally the main centre of liquidity for the securities they offer for trading.* *The data that such small trading venues* contributes to the consolidated tape therefore plays a more determining role in the price formation for the shares *these trading venues admit* to trading. *Notwithstanding the possibility granted to these regulated markets to not contribute to the consolidated tape, it is deemed appropriate to grant, to those regulated markets that decide to opt-in to the consolidated tape,* preferential treatment in the revenue participation scheme, to allow these *small trading venues* to maintain their local admissions and safeguard a rich and vibrant ecosystem in line with the objectives of the Capital Markets Union.

- (23) Small regulated markets *and SME Growth Markets* are *trading venues* which admit shares of issuers for which trading in the secondary market tends to be less liquid than the trading of shares admitted to trading on larger regulated markets. In order to avoid *the negative impact the consolidated tape might have on these small trading venues, even though their inclusion in the consolidated tape might have positive effects on their viability and the liquidity of the securities traded on these venues, an opt-in mechanism for the trading venues where trading volume of shares is equal or below 1 % of the annual trading volume of shares in the Union should be established. Two alternative conditions should complement the first threshold. Either the considered venue is not part of a group with a trading venue with an annual trading volume in shares exceeding 1 % of the total trading volume in shares, or the concentration of the trading is very high in the considered venue (85 % of the total annual trading volume of shares are traded in the trading venue where they were initially admitted to trading). Only a few trading venues fulfil these criteria, therefore, only a small percentage of trading in the Union would not be compulsorily requested to provide data to the CTP. The trading venues benefiting from the opt-out would have the opportunity to join in, and if they decide to join, they should notify the CTP as well as ESMA about this decision. This decision is irrevocable and all the data – for shares as well as ETF – will be part of the CT afterwards.*

- (24) *The CTP should redistribute part of the revenues generated by the consolidated tape of shares and ETFs to certain trading venues in accordance with a redistribution scheme based on three criteria. By means of a regulatory technical standard the weight of these criteria should be determined. In order to incentivise small trading venues to opt-in to the mandatory contribution of data to the consolidated tape for shares and ETFs, the first criterion should benefit from the highest weight and should apply to the total annual trading volume of small trading venues, namely regulated markets and SME growth markets that have 1 % or less of the annual trading volume of shares in the Union. The second criterion should receive the second highest weight and should remunerate data contributors that have provided initial admission of shares or ETFs in the five years before ... [the date of entry into force of this amending Regulation] or thereafter. Considering the limited number of listings on small trading venues, the CTP should apply the relevant weight on the total annual trading volume of such venues, whereas for other venues the CTP should apply it to the trading volume pertaining to the shares and ETFs that have been initially admitted to trading in the five years since this review has been adopted and thereafter. The third criterion, which should receive the lowest weight of the three criteria, should remunerate the trading that derives from pre-trade transparent orders that contributes to the price formation process and provides pre-trade data to the CTP.*
- (24a) *The effectiveness of a consolidated tape depends on the quality of the data transmitted to it by data contributors. In order to ensure a high level of data quality, ESMA should set out the conditions under which the CTP is allowed to temporarily suspend the redistribution of revenue in case the CTP proves that a data contributor has seriously and repeatedly breached the quality standards set out in this Regulation. Where that data contributor had complied with the data requirements, such data contributor should receive the share of the revenue to which they were entitled plus interest.*

- (26) In order to safeguard market participants' continued trust in the consolidated tape **CTPs** should periodically make a series of public reports concerning compliance with their obligations under this Regulation, in particular on performance statistics and incident reports relating to data quality and **data** systems. Due to the highly technical nature of the substance of the report, **the content, timing, format and terminology of the reporting obligations should be determined by means of a regulatory technical standard.**
- (27) The requirement that trade reports should be made available free of **charge** after 15 minutes currently applies to all trading venues, APAs and CTPs. For CTPs that requirement **prevents** the commercial viability of a potential CTP, since certain potential clients could prefer waiting for the free **core market** data rather than subscribing to the consolidated tape. This is in particular the case for bonds and **OTC** derivatives that are in general not traded frequently and for which the data has often kept most of its value after 15 minutes. **Therefore**, while the requirement to deliver the **core market** data for free after 15 minutes should remain in place for trading venues and APAs, it should be abandoned for CTPs to **ensure their viability.**

(28) Article 28 of Regulation (EU) No 600/2014 requires that OTC derivatives that are subject to the clearing obligation are traded on trading venues. Regulation (EU) 2019/834 of the European Parliament and of the Council¹⁰ amended Regulation (EU) No 648/2012 of the European Parliament and of the Council¹¹ to reduce the scope of the entities that are subject to the clearing obligation. In light of the close interconnection between the clearing obligation under Regulation (EU) No 648/2012 and the derivatives trading obligation under Regulation (EU) No 600/2014, and to ensure greater legal coherence and to simplify the legal framework, it is necessary and appropriate to re-align the derivatives trading obligation with the clearing obligation for derivatives. Without that alignment, certain smaller financial counterparties and non-financial counterparties would no longer be captured by the clearing obligation but continue to be captured by the trading obligation.

¹⁰ Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (OJ L 141, 28.5.2019, p. 42).

¹¹ Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

(29a) Post trade risk reduction services (PTRRS) are an essential tool of risk management with respect to OTC derivatives. PTRRS rely on technical transactions that are pre-arranged, non-price forming, market risk neutral, and that achieve a reduction in the risk in each of the portfolios. Portfolio compression services that are today exempt from best execution and transparency requirements are only a subset of PTRRS. In light of their technical and non-price forming nature, the transactions on OTC derivatives that are formed and established as result of PTRRS should not be subject to the derivatives trading obligation. Taking into account that PTRRS providers do not capture trading interest, they should not be considered to operate a multilateral system. There is likewise no rationale for making them pre- or post-trade transparent or to verify best execution so they should, finally, be exempted from those requirements. The Commission should be empowered to specify what constitutes post-trade risk reduction services and the particulars of the transactions to be recorded.

(29) Article 6a of Regulation (EU) No 648/2012 provides for a mechanism to temporarily suspend the clearing obligation where the criteria on the basis of which specific classes of OTC derivatives have been made subject to the clearing obligation are no longer met, or where such suspension is considered necessary to avoid a serious threat to financial stability in the Union. Such suspension may, however, prevent counterparties from being able to comply with their trading obligation, laid down in Regulation (EU) 600/2014 because the clearing obligation is a pre-requisite to the trading obligation. It is therefore necessary to lay down that, where the suspension of the clearing obligation would lead to a material change in the criteria for the trading obligation, it should be possible to concurrently suspend the trading obligation for the same class or classes of OTC derivatives that are subject to the suspension of the clearing obligation. ***ESMA should also have the possibility to request to the Commission the suspension of the derivatives trading obligation, where such a suspension is necessary to avoid or address adverse effects to liquidity or serious threat to financial stability and to ensure the orderly functioning of financial markets in the Union.***

(30) An ad-hoc suspension mechanism is necessary to ensure that the Commission may swiftly react to significant changes in market conditions that may have a material effect on the trading of derivatives and their counterparties. Where such market conditions are present, and upon the request of the competent authority of a Member State, the Commission should be able to suspend the trading obligation, independently from any suspension of the clearing obligation. Such a suspension of the trading obligation should be possible where the activities of an EU investment firm with a non-EEA counterparty are unduly affected by the scope of the EU trading obligation on derivatives and where that investment firm acts as a market-maker in the category of derivatives subject to the trading obligation. The issue of overlapping DTOs is particularly acute when trading with counterparties domiciled in a third-country jurisdiction that applies its own DTO. This suspension would also help EU counterparties remaining competitive on global markets. When deciding upon the suspension of the trading obligation, the Commission should take into consideration the impact of such suspension on the clearing obligation laid down in Regulation (EU) No 648/2012.

(31) Open access provisions for exchange-traded derivatives *might* reduce attractiveness to invest in new products as competitors *might* be able to get access without the upfront investment. The application of the open access regime for exchange-traded derivatives, laid down in Article 35 and 36 of Regulation (EU) No 600/2014, *might* thus limit *investment* in these products, by removing incentives for regulated markets to create new exchange-traded derivatives. It should therefore be laid down that *the* regime should not apply to the CCP or trading venue concerned in respect of exchange-traded derivatives, thus fostering innovation and the development of exchange-traded derivatives in the Union.

(32) Financial intermediaries should strive to achieve the best possible price and the highest possible likelihood of execution for trades that they execute on behalf of their clients. To that end, financial intermediaries should select the trading venue or counterparty for executing their client trades solely on the basis of achieving best execution for their clients. It should be incompatible with that principle of best execution that a financial intermediary, *when acting on behalf of its retail clients or clients that have opted into the professional client regime, receives a fee, a commission or any non-monetary benefit from a third party in exchange for forwarding client orders for execution by any third party. Investment firms should therefore be prohibited from receiving such payment. This prohibition is rendered necessary in light of the divergent practices by national competent authorities across the Union in their application and supervision of best execution requirements as laid out in Article 27 of Directive 2014/65/EU. It should be possible for a Member State where investment firms carried out such activity before ... [the date of entry into force of this amending Regulation] to exempt investment firms under its jurisdiction from this prohibition only until 30 June 2026 when those investment firms provide these services to clients domiciled or established in that Member State.*

(32a) *In order to ensure the flexibility necessary to adapt to developments in the financial markets, and to specify certain technical elements of Regulation No 600/2014, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of adjusting the volume cap threshold; amending the conditions for determining which derivatives are subject to transparency requirements; specifying the identifying reference data to be used with regards to OTC derivatives; specifying what constitute post-trade risk reduction services for the purposes of Regulation (EU) No 600/2014; specifying the details of transactions to be recorded by investment firms and market operators that are providers of post-trade risk reduction services; extending the obligation to report transactions to AIFMs and management companies which provide investment services and activities and which execute transactions in financial instruments. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making¹². In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.*

¹² *OJ L 123, 12.5.2016, p. 1.*

(32b) *In order to ensure uniform conditions for the implementation of Regulation No 600/2014, in particular with regard to the suspension of the trading obligation for OTC derivatives, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹³.*

¹³ ***Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).***

(33) The Commission should *be empowered to* adopt the draft regulatory technical standards developed by ESMA *with regard to: the characteristics of central limit order books and periodic auctions trading systems;* the precise characteristics of the deferral regime for non-equity transactions; the provision of information on a reasonable commercial basis; *the threshold for the application of the pre-trade transparency obligations for systematic internalisers and the minimum quote sizes for systematic internalisers; the quality and the substance of the data for the operation of the consolidated tapes, the quality of the transmission protocol, and measures to address erroneous trade reporting and enforcement standards in relation to data quality, including arrangements regarding cooperation between data contributors and the CTP;* the application of the synchronised business clocks by trading venues, systematic internalisers, *designated publishing entities*, APAs and CTPs; *the conditions for linking specific transactions and the means of the identification of aggregated orders resulting in the execution of a transaction, and the dates by which transactions are to be reported; the information to be provided by applicants for authorisation as CTP; the weights assigned to the criteria for the application of the revenue distribution scheme, and the method for calculating the amount of the revenue to be redistributed to each data contributor under that scheme;* and *the content, timing, format and terminology of the reporting obligation of CTPs.* 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.

(33a) *The Commission should be empowered to adopt the implementing technical standards developed by ESMA with regard to the content and format of the notification to be submitted to Member States by firms that meet the definition of systematic internaliser; and the standard forms, templates and procedures for the notification or provision of information by applicants for authorisation as CTP. The Commission should adopt those implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010.*

- (34) Since the objectives of this Regulation, namely to facilitate the emerging of a consolidated tape provider ■ for each asset classes and to amend certain aspects of the existing legislation in order to improve transparency on markets in financial instruments but also to further enhance the level playing field between regulated markets and systematic internalisers, *as well as enhance the international competitiveness of the Union's capital markets*, cannot be sufficiently achieved by the Member States, but can rather, by reason of its scale and effects, be better achieved at the Union level, measure should be adopted at Union level, 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.
- (35) This Regulation furthermore respects the fundamental rights and observes the principles recognised in the Charter, in particular the freedom to conduct a business and the right to consumer protection.
- (36) *Regulation (EU) No 600/2014 should therefore be amended accordingly,*

HAVE ADOPTED THIS REGULATION:

Article 1
Amendments to Regulation (EU) No 600/2014

(1) Article 1 is amended as follows:

(a) paragraph 3 is replaced by the following:

‘3. Title V of this Regulation also *applies* to all financial counterparties and non-financial counterparties *that are subject to the clearing obligation under Title II* of Regulation (EU) No 648/2012.’;

(b) the following paragraph is inserted:

‘**5b** All multilateral systems shall operate either in accordance with the provisions of Title II of Directive 2014/65/EU concerning MTFs or OTFs, or the provisions of Title III of that Directive concerning regulated markets.

Systematic internalisers shall operate in accordance with Title III of this Regulation.

Without prejudice to Articles 23 and 28, all investment firms concluding transactions in financial instruments which are not concluded on multilateral systems or systematic internalisers shall comply with Articles 20 *and 21* of this Regulation.’;

(c) paragraphs 6, 7 and 8 are replaced by the following:

‘6. Articles 8, 8a, 8b, 10 and 21 shall not apply to regulated markets, market operators and investment firms in respect of a transaction entered into by a member of the European System of Central Banks (ESCB), where that member has given prior notification to its counterparty that the transaction is exempt, and where any of the following applies:

- (a) the member of the ESCB is a member of the Eurosystem acting under Chapter IV of Protocol (No 4) on the Statute of the European System of Central Banks, with the exception of Article 24 of that Statute;**
- (b) the member of the ESCB is not a member of the Eurosystem and the transaction is entered into in performance of monetary or foreign exchange policy, including operations carried out to hold or manage official foreign reserves, which that member of the ESCB is legally empowered to pursue; or**
- (c) the transaction is entered into in performance of financial stability policy, which that member of the ESCB is legally empowered to pursue.**

7. *Paragraph 6 shall not apply in respect of transactions entered into by a member of the ESCB which is not a member of the Eurosystem, 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 with regard to members of the ESCB which are not members of the Eurosystem.*

ESMA shall submit those draft regulatory technical standards to the Commission by ... [24 months after the date of entry into force of this amending Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting 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.’;

(2) in Article 2, paragraph 1 is amended as follows:

(a) point (11) is replaced by the following:

‘(11) ‘multilateral system’ means any system or facility in which multiple third-party buying and selling trading *interests* in financial instruments are able to interact in the system;’;

(b) the following point ■ is inserted:

‘(16a) ‘designated publishing entity’ means an investment firm responsible for making transactions public through an APA in accordance with Articles 20(1) and 21(1);’;

(c) *point (17) is replaced by the following:*

‘(17) ‘liquid market’ means:

(a) for the purposes of Articles 9, 11 and 11a:

(i) as regards bonds a market where there are ready and willing buyers and sellers on a continuous basis, and where the market is assessed according to the issuance size of the bond;

(ii) as regards a financial instrument or a class of financial instruments other than those referred to in point (i), a market 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:

- 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;**
- the number and type of market participants, including the ratio of market participants to traded financial instruments in a particular product;**
- the average size of spreads, where available;**
- the issuance size, where appropriate.**

(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) market capitalisation of that financial instrument;

(ii) the average daily number of transactions in that financial instrument;

(iii) the average daily turnover for that financial instrument;’;

(d) the following point is inserted:

‘(32a) ‘OTC derivative’ means an OTC derivative as defined in Article 2(7) of Regulation (EU) No 648/2012;’;

(e) point (35) is replaced by the following:

‘(35) ‘consolidated tape provider’ or ‘CTP’ means a person authorised in accordance with Title IVa, Chapter 1 of this Regulation to provide the service of collecting **■ data ■ from *trading venues and APAs*, and of consolidating those data into a continuous electronic live data stream providing *regulatory data and core market data*;’;**

(g) the following points ■ are inserted:

‘(36b) ‘core market data’ means:

- (a) all of the following data *on a given share or ETF at any given timestamp*:
 - (i) *for continuous order books, the European best bid and offer with the corresponding volume;*
 - (ii) *for auction systems, the price at which the trading algorithm would be best satisfied and the volume potentially executed at that price by participants in that system;*
 - (iii) the transaction price and volume executed at *that* price;
 - (iv) *for transactions, the type of trading systems, and the applicable waivers and deferrals;*
 - (v) *except for the information referred to in points (i) and (ii), the ■ identifier code uniquely identifying the trading venue and, for other execution venues, the identifier code identifying the type of execution venue;*
 - (vi) the standardised instrument identifier that applies across venues;

(vii) the timestamp information on **█** the following, *as applicable*:

- the **█** execution of the *transaction and any amendment thereto*;
- *the entry of the best bids and offers into the order book*;
- *the indication, in an auction system, of the prices or volumes*;
- *the publication by the trading venues of the elements listed in the first, second and third indents*;
- the dissemination of *core* market data **█** ;

█ (b) all of the following data on *a given bond or OTC derivative at any given timestamp*:

- (i) the transaction price and quantity *or* size executed at *that* price;
- (ii) the **█** identifier code *uniquely* identifying the *trading venue and, for other execution venues, the identifier code identifying the type of* execution venue;
- (iii) *for bonds, the* standardised instrument identifier that applies across venues;
- (iv) *for OTC derivatives, the identifying reference data as referred to in Article 27(1), second subparagraph*;

- (v) the timestamp information on all of the following:
 - the execution of the *transaction and any amendment thereto*;
 - the publication *by the trading venues* of the *transaction*;
 - the dissemination of *core* market data ;
- (vi) the *type of trading system* and the applicable waivers or deferrals;

(36c) ‘regulatory data’ means data related to the status of systems matching orders in financial instruments *and data related to the trading status* of *individual* financial instruments;’;

(3) Article 4 is amended as follows:

(a) *in* paragraph 1, *point (b)(i)* is replaced by the following:

‘(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;’;

(b) *in* paragraph 6, *first subparagraph, point (a)* is replaced by 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), and the details of pre-trade data;’;

(4) Article 5 is amended as follows:

(a) the title is replaced by the following:

‘**Volume cap**’;

(b) paragraph 1 is replaced by the following:

‘1. Trading venues shall suspend their use of the *waiver* referred to in Article 4(1), point (a), **where** the percentage of *trading* in a financial instrument *in the Union* carried out under *the waiver* exceeds 7 % of the total volume of *trading* in that financial instrument in the Union. Trading venues shall base their decision to suspend the use of *the waiver* on the data published by ESMA in accordance with paragraph 4, and shall take such decision within two working days after *the* publication of those data and for a period of *three* months.’;

(c) paragraph 2 and 3 are deleted;

(d) paragraph 4 is replaced by the following:

‘4. ESMA shall publish within *seven* working days of the end of *March, June, September and December* of each calendar *year* the total volume of **trading in the Union** per financial instrument in the previous 12 months, the percentage of trading in a financial instrument carried out across the Union under the *waiver* referred to in Article 4(1), point (a), and **the methodology that is used to derive those percentages.**’;

(e) *paragraphs 5 and 6 are* deleted;

(f) *paragraphs 7, 8 and 9 are* replaced by the following:

‘7. ***In order*** to ensure a reliable basis for monitoring the trading taking place under the ***waiver*** referred to in Article 4(1), point (a), **■** and for determining whether the limits referred to in paragraph 1 have been exceeded, operators of trading venues shall have in place systems and procedures to enable the identification of all trades which have taken place on their venue under ***the waiver***.

8. ***The period for the publication of trading data by ESMA, and for which trading in a financial instrument under the waiver is to be monitored, shall start on ... [18 months after the date of entry into force of this amending Regulation].***

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 the waiver across the Union.***

ESMA shall submit those draft regulatory technical standards to the Commission by ... [12 months after the date of entry into force of this amending Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting 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 ... [42 months after the date of entry into force of this amending Regulation], and every year thereafter, ESMA shall submit to the Commission a report assessing the volume cap threshold set out in paragraph 1, taking into account financial stability, international best practices, the competitiveness of Union firms, the significance of the market impact and the efficiency of the price formation.*

The Commission is empowered to adopt delegated acts in accordance with Article 50 to amend this Regulation by adjusting the volume cap threshold set out in paragraph 1. For the purpose of this subparagraph, the Commission shall take into account the report from ESMA referred to in the first subparagraph, international developments and standards agreed at Union or international level.’;

(5) *Article 8 is amended as follows:*

(a) the title is replaced by the following:

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

(b) paragraphs 1 and 2 are replaced by the following:

- 1. When applying a central limit order book or a periodic auction trading system, 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 in respect of bonds, structured finance products and emission allowances. Those market operators and investment firms 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.’;*

(c) paragraphs 3 and 4 are deleted;

(6) *the following article is inserted:*

'Article 8a

Pre-trade transparency requirements for trading venues in respect derivatives

1. *When applying a central limit order book or a periodic auction trading system, market operators operating a regulated market shall make public current bid and offer prices and the depth of trading interests at those prices which are advertised through their systems in respect of exchange-traded derivatives. Those market operators shall make that information available to the public on a continuous basis during normal trading hours.*

2. *When applying a central limit order book or a periodic auction trading system, market operators and investment firms operating an MTF or OTF shall make public current bid and offer prices and the depth of trading interests at those prices which are advertised through their systems in respect of OTC derivatives that are denominated in euro, Japanese yen, US dollar or pound sterling and that:*
 - (a) *are subject to the clearing obligation under Article 5(2) of Regulation (EU) No 648/2012 and are centrally cleared, and, in respect of interest rate derivatives, have a contractually agreed tenor of 1, 2, 3, 5, 7, 10, 12, 15, 20, 25 or 30 years;*

- (b) are single-name credit default swaps that reference a global systemically important bank and that are centrally cleared; or*
- (c) are credit default swaps that reference an index comprising global systemically important banks and that are centrally cleared.*

Those market operators and investment firms shall make that information available to the public on a continuous basis during normal trading hours.

- 3. The transparency requirements referred to in paragraphs 1 and 2 shall be calibrated for different types of trading systems.*
- 4. The Commission is empowered to adopt delegated acts in accordance with Article 50 to amend paragraph 2, first subparagraph, as regards the OTC derivatives subject to the transparency requirements set out in that subparagraph in view of market developments.*

Article 8b

Pre-trade transparency for trading venues in respect of package orders

- 1. When applying a central limit order book or a periodic auction trading system, 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 in respect of package orders composed of bonds, structured finance products, emission allowances or derivatives. Those market operators and investment firms shall make that information available to the public on a continuous basis during normal trading hours.***
- 2. The transparency requirements referred to in paragraphs 1 shall be calibrated for different types of trading systems.***

(7) Article 9 is amended as follows:

(a) *the title is replaced by the following:*

‘Waivers for bonds, structured finance products, emission allowances, derivatives and package orders’;

(b) paragraph 1 is amended as follows:

(i) the introductory wording is replaced by the following:

‘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), Article 8a(1) and (2) and 8b(1) for:’;

(ii) point (b) is deleted;

(iii) point (c) is replaced by the following:

‘(c) OTC derivatives which are not subject to the trading obligation as referred to in Article 28 and for which there is not a liquid market, and other financial instruments for which there is not a liquid market;’;

(iv) in point (e), point (iii) is deleted;

(bi) paragraph 2a is replaced by the following:

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

(c) *in paragraph 3, the first subparagraph is replaced by the following:*

‘Competent authorities may, either on their own initiative or upon request by other competent authorities or by ESMA, 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.’;

(d) *paragraph 4 is amended as follows:*

(i) *the first subparagraph is replaced by the following:*

‘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 and shall be notified to ESMA. ESMA shall also publish that temporary suspension on its website.’;

(ii) *the third subparagraph is replaced by the following:*

‘Before suspending or renewing the temporary suspension under this paragraph of the obligations referred to in Article 8 or Article 8a, 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.’;

(e) *paragraph 5 is amended as follows:*

(i) *the first subparagraph is amended as follows:*

– *point (b) is replaced by the following:*

‘(b) the range of bid and offer prices and the depth of trading interests at those prices to be made public for each class of financial instrument concerned in accordance with Article 8(1), Article 8a(1) and (2) and 8b(1), taking into account the necessary calibration for different types of trading systems as referred to in Article 8(2), Article 8a(3) and 8b(2);’;

- *point (d) is deleted;*
- *the following point is added:*
 - ‘(f) the characteristics of central limit order books and periodic auctions trading systems;’;*

(ii) the second and third subparagraphs are replaced by the following:

‘ESMA shall submit those draft regulatory technical standards to the Commission by ... [12 months after the date of entry into force of this amending Regulation].

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

(8) *Article 10 is replaced by the following:*

‘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 and emission allowances traded on a trading venue. Those requirements shall also apply to transactions executed in respect of exchange-traded derivatives and in respect of OTC derivatives as referred to in Article 8a(2). 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, pursuant to Article 21, to publish the details of their transactions in bonds, structured finance products, emission allowances and OTC derivatives as referred to in Article 8a(2).’;*

3. *Information relating to a package transaction shall be made available with respect to each component as close to real-time as is technically possible, having regard to the need to allocate prices to particular financial instruments and shall include a flag to identify that the component belongs to a package.*

Where a component of the package transaction is eligible for deferred publication pursuant to Article 11 or 11a, information on the component shall be made available after the deferral period for the transaction has lapsed.

(9) *Article 11 is amended as follows:*

(a) the title is replaced by the following:

‘Deferred publication for bonds, structured finance products or emission allowances’;

(b) paragraph 1 is replaced by the following:

- ‘1. Market operators and investment firms operating a trading venue may defer the publication of the details of transactions executed in respect of bonds, structured finance products or emission allowances traded on a trading venue, including the price and the volume, in accordance with paragraphs 2, 3 and 4.*

Market operators and investment firms operating a trading venue shall clearly disclose the arrangements for deferred publication to market participants and the public. ESMA shall monitor the application of those arrangements for deferred publication and shall submit a report every two years to the Commission on how they are used in practice.

1a. The arrangements for deferred publication with regard to bonds shall be organised by using five categories:

- (a) category 1: transactions of a medium size in a financial instrument for which there is a liquid market;*
- (b) category 2: transactions of a medium size in a financial instrument for which there is not a liquid market;*
- (c) category 3: transactions of a large size in a financial instrument for which there is a liquid market;*
- (d) category 4: transactions of a large size in a financial instrument for which there is not a liquid market;*
- (e) category 5: transactions of a very large size.*

- 1b. *The arrangements for deferred publication with regard to structured finance products or emission allowances traded on a trading venue shall be organised pursuant to the regulatory technical standards referred to in paragraph 4, point (e).***

When the deferral time period lapses, all the details of the transactions on an individual basis shall be published.’;

- (c) *paragraphs 2, 3 and 4 are replaced by the following:***

- ‘2. *The competent authority responsible for supervising one or more trading venues on which a class of bonds, structured finance products or emission allowances 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), point (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 and shall be notified to ESMA. ESMA shall also publish that temporary suspension on its website.

ESMA may, in case of an emergency, such as a significant adverse effect on the liquidity of a class of bond, structured finance product or emission allowance traded in the Union, extend the maximum deferral durations set in accordance with the regulatory technical standards adopted pursuant to paragraph 4, point (d). Before deciding on such an extension, ESMA shall consult with any competent authority responsible for supervising one or more trading venues on which that class of bonds, structured finance products or emission allowances is traded. Such extension shall be published on the ESMA website.

The temporary suspension referred to in the first subparagraph or the extension referred to in the third subparagraph 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 or ESMA, respectively. Such a suspension or extension may be renewed for further periods not exceeding three months at a time if the grounds for the temporary suspension or extension continue to be applicable.

Before suspending or renewing the temporary suspension as referred to in the first subparagraph, 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 third subparagraphs.

3. *In addition to the deferred publication as referred to in paragraph 1, the competent authority of a Member State may allow, with regard to transactions in sovereign debt instruments issued by that Member State:*
- (a) the omission of the publication of the volume of an individual transaction for an extended time period not exceeding six months; or*
 - (b) the publication of the details of several transactions in an aggregated form for an extended time period not exceeding six months.*

With regard to transactions in sovereign debt instruments not issued by a Member State, decisions in accordance with the first subparagraph shall be taken by ESMA.

ESMA shall publish on its website the list of deferrals allowed pursuant the first and second subparagraphs. ESMA shall monitor the application of those arrangements for deferred publication and shall submit a report every two years to the Commission on how they are used in practice.

When the deferral time period lapses, all the details of the transactions on an individual basis shall be published.

4. ESMA shall, after consulting the expert stakeholder group established by Article 22b, develop draft regulatory technical standards to specify the following in such a way as to enable the publication of information required under this Article and under Article 27g:

(a) the details of transactions that investment firms and market operators shall make available to the public for each class of financial instrument as referred to in paragraph 1 of this Article, 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 technically possible including when trades are executed outside normal trading hours;*
- (ba) for which structured finance products or emission allowances traded on a trading venue a liquid market exists;*
- (bb) what constitutes a liquid and a illiquid market for bonds,, expressed as thresholds determined according to the issuance size of those bonds;*
- (c) what constitutes a transaction of a medium, large and very large size in a liquid and illiquid class of bond as referred to in paragraph 1a based on quantitative and qualitative analysis and taking into account the criteria in Article 2(1), point (17)(a), and other relevant criteria where applicable;*
- (d) with regards to classes of bonds, the price and volume deferrals applicable to each of the five categories set out in the paragraph 1a, third subparagraph, points (a) to (e), applying the following maximum durations:*
 - (i) for transactions in category 1: a price deferral and a volume deferral not exceeding 15 minutes;*

- (ii) for transactions in category 2: a price deferral and a volume deferral not exceeding the end of the trading day;*
- (iii) for transactions in category 3: a price deferral not exceeding the end of the first trading day after the transaction date and a volume deferral not exceeding one week after the transaction date;*
- (iv) for transactions in category 4: a price deferral not exceeding the end of the second trading day after the transaction date and a volume deferral not exceeding two weeks after the transaction date;*
- (v) for transactions in category 5: a price deferral and a volume deferral not exceeding four weeks after the transaction date.*
- (e) the arrangements for deferred publication with regards to structured financed products and emission allowances based on quantitative and qualitative analysis and taking into account the criteria in Article 2(1), point (17)(a), and other relevant criteria where applicable;*

(f) the criteria to be applied when determining the size or type of a transaction in sovereign bonds for which the following is allowed under paragraph 3:

(i) omission of the publication of the volume of a transaction for an extended time period; or

(ii) publication of details of several transactions in an aggregated form.

For each of the categories set out under paragraph 1, third subparagraph, points (a) to (e), ESMA shall regularly update the draft regulatory technical standards referred to in the first subparagraph, point (d), of this paragraph in order to recalibrate the applicable deferral duration with the aim of gradually decreasing it where appropriate. No later than one year after the decreased deferral durations become applicable, ESMA shall perform a quantitative and qualitative analysis to assess the effects of the decrease. Where available, ESMA shall use the post-trade transparency data published by the consolidated tape for this purpose. If adverse effects to the financial instruments appear, ESMA shall update the draft regulatory technical standards referred to in the first subparagraph of this paragraph to increase the deferral duration back to the previous level.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by ... [9 months after the date of entry into force of this amending Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first and second subparagraphs in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.’;

(10) *the following article is inserted:*

‘Article 11a

Deferred publication for derivatives

- 1. Market operators and investment firms operating a trading venue may defer the publication of the details of transactions executed in respect of exchange-traded derivatives and in respect of OTC derivatives as referred to in Article 8a(2), including the price and the volume, in accordance with paragraphs 2 and 3.*

Market operators and investment firms operating a trading venue shall clearly disclose the arrangements for deferred publication to market participants and the public. ESMA shall monitor the application of those arrangements for deferred publication and shall submit a report every two years to the Commission on how they are used in practice.

The arrangements for deferred publication shall be organised by using five categories of transactions related to a class of exchange-traded derivatives or of OTC derivatives as referred to in Article 8a(2):

- (a) category 1: transactions of a medium size in a financial instrument for which there is a liquid market;*
- (b) category 2: transactions of a medium size in a financial instrument for which there is not a liquid market;*
- (c) category 3: transactions of a large size in a financial instrument for which there is a liquid market;*
- (d) category 4: transactions of a large size in a financial instrument for which there is not a liquid market;*
- (e) category 5: transactions of a very large size.*

When the deferral time period lapses, all the details of the transactions on an individual basis shall be published.

2. *The competent authority responsible for supervising one or more trading venues on which a class of exchange-traded derivatives or of derivatives as referred to in Article 8a(2) 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), point (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 and shall be notified to ESMA. ESMA shall also publish that temporary suspension on its website.

ESMA may, in case of an emergency, such as a significant adverse effect on the liquidity of a class of exchange-traded derivatives or of derivatives as referred to in Article 8a(2) traded in the Union, extend the maximum deferral durations set in accordance with the regulatory technical standards adopted pursuant to paragraph 3, point (e). Before deciding on such an extension, ESMA shall consult with any competent authority responsible for supervising one or more trading venues on which that class of exchange-traded derivatives or of derivatives as referred to in Article 8a(2), is traded. Such extension shall be published on the ESMA website.

The temporary suspension referred to in the first subparagraph or the extension referred to in the third subparagraph 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 or ESMA, respectively. Such a suspension or extension may be renewed for further periods not exceeding three months at a time if the grounds for the temporary suspension or extension continue to be applicable.

Before suspending or renewing the temporary suspension as referred to in the first subparagraph, 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 third subparagraphs.

3. *ESMA shall, after consulting the expert stakeholder group established by Article 22b, develop draft regulatory technical standards to specify the following in such a way as to enable the publication of information required under this Article and under Article 27g:*

- (a) the details of transactions that investment firms and market operators shall make available to the public for each class of derivatives as referred to in paragraph 1 of this Article, 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 derivatives 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 technically possible including when trades are executed outside ordinary trading hours;*
- (ba) for which derivatives a liquid market exists;*
- (c) what constitutes a transaction of a medium, large and very large size in a liquid or illiquid derivative as referred to in paragraph 1, third subparagraph, based on a quantitative and qualitative analysis and taking into account the criteria in Article 2(1), point (17)(a), and other relevant criteria where applicable;*
- (d) the price and volume deferrals applicable to each of the five categories set out in the paragraph 1, third subparagraph, points (a) to (e), based on a quantitative and qualitative analysis and taking into account the criteria in Article 2(1), point (17)(a), the size of the transaction and other relevant criteria where applicable.*

For each of the categories set out under paragraph 1, third subparagraph, points (a) to (e), ESMA shall regularly update the draft regulatory technical standards referred to in the first subparagraph of this paragraph to recalibrate the applicable deferral duration with the aim of gradually decreasing it where appropriate. No later than one year after the decreased deferral durations become applicable, ESMA shall perform a quantitative and qualitative analysis to assess the effects of the decrease. Where available, ESMA shall use the post-trade transparency data published by the consolidated tape for this purpose. If adverse effects to the financial instruments appear, ESMA shall update the draft regulatory technical standards referred to in the first subparagraph of this paragraph to increase the deferral duration back to the previous level.

ESMA shall submit those draft regulatory technical standards to the Commission by ... [18 months after the date of entry into force of this amending Regulation].

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

ESMA shall review the regulatory technical standards in conjunction with the expert stakeholder group under Article 22b and amend the standards to take into account substantial changes in calibration of categories under the first subparagraph point (d) and second subparagraph of this paragraph.’;

(11) *in Article 12, paragraph 1 is replaced by the following:*

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

(12) *Article 13 is replaced by the following:*

‘Article 13

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

1. Market operators and investment firms operating a trading venue, APAs and CTPs shall make available to the public the information published in accordance with Articles 3, 4, 6 to 11a, 14, 20, 21, 27g and 27h, on a reasonable commercial basis including unbiased and fair contractual terms.

Those market operators and investment firms, APAs and CTPs shall ensure non-discriminatory access to such information. The data policies of those market operators and investment firms, APAs and CTPs shall be made public free of charge in a manner which is easy to access and to understand.

2. *Market operators and investment firms operating a trading venue and APAs shall make the information referred to in paragraph 1 available free of charge 15 minutes after publication in a format that is machine readable and utilisable for all users, including retail investors.*
3. *The reasonable commercial basis shall include the level of fees and other contractual terms. The level of fees shall be determined by the cost of producing and disseminating the information referred to in paragraph 1 and a reasonable margin.*
4. *Market operators and investment firms operating a trading venue, APAs and CTPs shall, upon request, provide their competent authority with information on the actual costs of producing and disseminating the information referred to in paragraph 1, including a reasonable margin.*
5. ESMA shall develop draft regulatory technical standards to specify:
 - (a) *what constitutes unbiased and fair contractual terms accordance with paragraph 1;*
 - (b) *what constitutes non-discriminatory access to data in accordance with paragraph 1;*

- (c) *the uniform content, format and terminology of the data policies to be made public in accordance with paragraph 1;*
- (d) *the data access, content and format of the information to be provided in accordance with paragraph 2;*
- (e) *elements to be included in the calculation of cost and margin as referred to in paragraph 3;*
- (f) *the uniform content, format and terminology of the information to be provided to the competent authorities in accordance with paragraph 4.*

ESMA shall, every two years, monitor the developments in the cost of data and shall where appropriate update the regulatory technical standards in light of the result of its assessment.

ESMA shall submit those draft regulatory technical standards to the Commission by ... [*nine months after the date of entry into force of this amending Regulation*].

Power is delegated to the Commission to *supplement this Regulation by adopting* the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.?’;

(13) Article 14 is amended as follows:

(a) paragraphs 2 and 3 are replaced by the following:

‘2. This Article and Articles 15, 16 and 17 shall apply to systematic internalisers when they deal in sizes up to **and including** the **threshold determined in the regulatory technical standards adopted pursuant to paragraph 7, point (b), of this Article.**

3. **The minimum quote size of systematic internalisers’ shall be determined in the regulatory technical standards adopted pursuant to paragraph 7, point (c).** 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 ■ for a size ■ which could be up **to that threshold**. The price ■ shall reflect the prevailing market conditions for that share, depositary receipt, ETF, certificate or **other similar** financial instrument ■.’;

(b) **paragraph 7 is replaced by the following:**

‘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:**

- (a) the arrangements for the publication of a firm quote as referred to in paragraph 1;*
- (b) the determination of the threshold below which this Article and Articles 15, 16 and 17 apply, which shall take into account the international best practices, the competitiveness of Union firms, the significance of the market impact and the efficiency of the price formation and which shall not be below twice the standard market size;*
- (c) the determination of the minimum quote sizes as referred to in paragraph 3, which shall not exceed 90 % of the threshold referred to in point (b) and which shall not be below the standard market size;*
- (d) the determination of whether prices reflect prevailing market conditions as referred to in paragraph 3; and*
- (e) the standard market size as referred to in paragraph 4.*

ESMA shall submit those draft regulatory technical standards to the Commission by ... [12 months after the date of entry into force of this amending Regulation].

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

(14) *Article 15 is amended as follows:*

(a) *in paragraph 1, the following subparagraph is added:*

‘Systematic internalisers shall establish and implement transparent and non-discriminatory rules and objective criteria for the efficient execution of orders. They shall have arrangements for the sound management of their technical operations, including the establishment of effective contingency arrangements to cope with risks of systems disruption.’;

(b) *paragraph 5 is replaced by the following:*

‘5. ESMA shall develop draft implementing technical standards to determine the content and format of the notification referred to in paragraph 1, second subparagraph.’

ESMA shall submit those draft implementing technical standards to the Commission by ... [12 months after the date of entry into force of this amending Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’;

(15) *Article 16 is replaced by the following:*

‘Article 16

Obligations of competent authorities

The competent authorities shall check that systematic internalisers comply with the conditions for order execution laid down in Article 15(1) and with the conditions for price improvement laid down in Article 15(2).’;

(16) *Article 17a is replaced by the following:*

‘Article 17a

Tick sizes

1. *Systematic internalisers’ quotes, price improvements on those quotes and execution prices shall comply with the tick sizes set in accordance with Article 49 of Directive 2014/65/EU.*
2. *The requirements set out in Article 15(2) of this Regulation and Article 49 of Directive 2014/65/EU, shall not prevent systematic internalisers from matching orders **at midpoint** within the current bid and offer prices ■ .’;*

(17) Articles 18 and 19 are deleted;

(18) Article 20 is amended as follows:

(a) the following paragraph is inserted:

‘1a. Each individual transaction shall be made public once through a single APA.’;

(b) in paragraph 3, point (c) is deleted;

(19) Article 21 is amended as follows:

(-a) the title is replaced by the following:

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

(a) paragraph 1 is replaced by the following:

‘1. Investment firms which, either on own account or on behalf of clients, conclude transactions in bonds, structured finance products and emission allowances traded on a trading venue or OTC derivatives as specified in Article 8a(2), 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.’;

(b) paragraph 3 is replaced by the following:

‘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), points (a) and (b) and Article 11a(3), points (a) and (b).’;

(c) paragraph 4 is replaced by the following:

‘4. With regards to bonds, structured finance products and emission allowances traded on a trading venue, investment firms may defer publication of price or volume on the same conditions as laid down in Article 11.’

4a. With regards to OTC derivatives as referred to in Article 8a(2), investment firms may defer publication of price or volume on the same conditions as laid down in 11a.’;

(d) in paragraph 5, the first subparagraph is amended as follows:

(i) the introductory wording is replaced by the following:

‘5. ESMA shall develop draft regulatory technical standards in such a way as to enable the publication of information required under Article 27g to specify the following:’;

(ii) point (c) is deleted;

(20) *the following article is inserted:*

'Article 21a

Designated publishing entities

1. *Competent authorities shall grant investment firms the status of designated publishing entity for specific classes of financial instruments, as requested by those investment firms. The competent authority shall communicate such requests to ESMA.*
2. *Where only one party to a transaction is a designated publishing entity in accordance with paragraph 1 of this Article, that party shall be responsible for making transactions public through an APA in accordance with Article 20(1) or Article 21(1).*
3. *Where neither of the parties to a transaction, or both of the parties to a transaction are designated publishing entities in accordance with paragraph 1, only the entity that sells the financial instrument concerned shall be responsible for making the transaction public through an APA in accordance with Article 20(1) or Article 21(1).*
4. *ESMA shall by ... [6 months after the date of entry into force of this amending Regulation] establish and regularly update a register of all designated publishing entities, specifying their identity and the classes of financial instruments for which they are designated publishing entities. ESMA shall publish that register on its website.'*

(21) *in Article 22(1), the introductory wording is replaced by the following:*

‘In order to carry out calculations for determining the requirements for the pre- and post-trade transparency and the trading obligation regimes referred to in Articles 3 to 11a, 14 to 21 and 32, which are applicable to financial instruments, and to prepare reports to the Commission in accordance with Article 4(4), Article 7(1), Article 9(2), Article 11(3) and Article 11a(1), ESMA and competent authorities may require information from:’;

(22) the following *articles* are inserted:

‘Article 22a

Transmission of ■ *data to the CTP*

1. *Trading venues and APAs* (‘data contributors’) shall, with regard to shares, ETFs and bonds that are traded on a trading venue, and with regard to OTC derivatives *as referred to in Article 8a(2) transmit to the data centre of the CTP as close to real-time as is technically possible the regulatory data and the data required under Article 3(1), without prejudice to Article 4, and under Article 6(1), Article 10(1), and Articles 20 and 21, and, where regulatory technical standards are adopted pursuant to Article 22b(3), point (a), in accordance with the requirements specified therein.* Those ■ data shall be provided in a harmonised format, through a high quality transmission protocol ■ .

2. *An investment firm operating a SME growth market, or a market operator, whose annual trading volume of shares represents 1 % or less of the annual trading volume of shares in the Union shall not be required to provide its data to the CTP if:*
- (a) that investment firm or market operator is not a part of a group comprising or having close links with an investment firm or a market operator whose annual trading volume of shares represents more than 1 % of the annual trading volume of shares in the Union; or*
 - (b) the regulated market or SME growth market operated by that investment firm or market operator accounts for more than 85 % of the annual trading volume in shares that were initially admitted to trading on that regulated market or SME growth market.*
3. *Notwithstanding paragraph 2, an investment firm operating a SME growth market, or a market operator, that meets the conditions set out in that paragraph may decide to provide data to the CTP in accordance with paragraph 1, and in that case it shall notify ESMA and the CTP accordingly. Such investment firm or market operator shall start providing data to the CTP within 30 working days of the date of the notification to ESMA.*

4. ***ESMA shall publish on its website and keep up to date the list of investment firms operating SME growth markets and market operators that meet the conditions set out in paragraph 2, indicating also those who have decided to apply paragraph 3.***
5. Each CTP shall **█** choose, from among the types of ***transmission protocols*** that the **█** data contributors offer to other users, which ***transmission protocol is to be used for the direct transmission of the data referred to in paragraph 1 to the data centre of the CTP.***
6. Data contributors shall not receive any remuneration for ***providing*** the **█** data referred to in paragraph 1 and the transmission protocol referred to in paragraph 5 other than the revenue received under Article 27h(1a) and (5).
7. Data contributors shall, ***where applicable, apply the deferrals*** laid down in Articles **█** 7, 11, 11a, Article 20(2) and Article 21(4) to the data to be provided to the CTP.
8. ***Where the CTP deems the quality of the data insufficient, it shall notify the competent authority of the data contributor to this effect. That competent authority shall take the necessary measures in accordance with Article 38g of this Regulation and Articles 69 and 70 of Directive 2014/65/EU.’;***

Article 22b

■ *Data quality*

1. *The data provided to the CTP in accordance with Article 22a(1) and the data disseminated by the CTP in accordance with Article 27h(1), point (d), shall comply with the regulatory technical standards adopted in accordance with Article 4(6), point (a), Article 7(2), point (a), Article 11(4), point (a), and Article 11a(3), unless provided otherwise in the regulatory technical standards adopted in accordance with paragraph 3, points (a) and (b), of this Article.*
2. The Commission shall *establish* an expert stakeholder group by ... [*three months after the date of entry into force of this amending Regulation*] to provide advice on the quality and the substance of ■ data ■ and the quality of the transmission protocol referred to in Article 22a(1). The expert stakeholder group *and ESMA shall work closely together. The expert stakeholder group shall make its advice public.*

The expert stakeholder group shall be composed of members with a sufficiently wide range of expertise, skills, knowledge and experience to provide adequate advice.

Members of the expert stakeholder group shall be selected following an open and transparent selection procedure. In selecting the members of the expert stakeholder group, the Commission shall ensure that they reflect the diversity of market participants across the Union.

The expert stakeholder group shall elect a Chair from among its members. The position of the Chair shall be held for a period of two years. The European Parliament may invite the Chair of the expert stakeholder group to make a statement before it and answer any questions from its members whenever so requested.

3. *ESMA shall develop draft regulatory technical standards to specify the quality of the transmission protocol, measures to address erroneous trade reporting and enforcement standards in relation to data quality, including arrangements regarding cooperation between data contributors and the CTP, and where necessary, the quality and the substance of the data for the operation of the consolidated tapes.*

Those *draft regulatory technical standards* shall in particular specify all of the following:

- (a) *minimum requirements for the quality of the transmission protocols referred to in Article 22a(5);*
- (b) *the presentation of the core market data to be disseminated by the CTP, in accordance with prevailing industry standards and practices;*
- (c) *what constitutes the transmission of market data “as close to real time as technically possible”;*
- (d) *where necessary, the data needed to be provided to the CTP to be operational, taking into account the advice of the expert stakeholder group referred to in paragraph 2 including the substance and the format of those data, in accordance with prevailing industry standards and practices;*

For the purposes of the first subparagraph, *ESMA* shall take into account the advice from the expert *stakeholder* group established in accordance with paragraph 2, international developments, and standards agreed at Union or international level. *ESMA* shall ensure that the *draft regulatory technical standards* take into account the reporting requirements laid down in Articles 3, 6, 8, *8a*, 10, *11*, *11a*, 14, 20, 21 and 27g.

ESMA shall submit those draft regulatory technical standards to the Commission by ... [nine months after the date of entry into force of this amending Regulation].

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

Article 22c

Synchronisation of business clocks

1. Trading venues and their members or participants, systematic internalisers, ***designated publishing entities***, APAs and CTPs shall synchronise their business clocks to record the date and time of any reportable event.
2. ESMA shall, in accordance with international standards, develop draft regulatory technical standards to specify the level of accuracy to which clocks are to be synchronised.

ESMA shall submit those draft regulatory technical standards to the Commission by ... ***[nine months after the date of entry into force of this amending Regulation].***

Power is delegated to the Commission **to supplement this Regulation by adopting** the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010. ’;

(23) in Article 23, paragraph 1 is replaced by the following:

- ‘1. An investment firm shall ensure that the trades it undertakes in shares **which have** an EEA International Securities Identification Number (ISIN) **and which are traded on a trading venue** shall take place on a regulated market, **an MTF, a systematic internaliser or a third-country trading venue** assessed as equivalent in accordance with Article 25(4), point (a), of Directive 2014/65/EU, as appropriate, unless:
 - (a) those shares are traded on a third-country venue in the local currency **or in a non-EEA currency**; or
 - (b) those trades are carried out between eligible counterparties, between professional counterparties or between eligible and professional counterparties and do not contribute to the price discovery process.’;

(24) *Article 25 is amended as follows:*

(a) *paragraph 2 is replaced by the following:*

‘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 in an electronic and machine-readable format and using a common template. 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.’;

(b) *in paragraph 3, the first subparagraph is replaced by the following:*

‘ESMA shall develop draft regulatory technical standards to specify the details and formats of the relevant order data that are required to be maintained under paragraph 2 of this Article and that are not referred to in Article 26.’;

(25) *Article 26 is amended as follows:*

(a) *in paragraph 1, the second and third subparagraphs are replaced by the following:*

‘The competent authorities shall, in accordance with Article 85 of Directive 2014/65/EU, establish the necessary arrangements in order to ensure that the following competent authorities also receive that information:

- (i) the competent authority of the most relevant market in terms of liquidity for those financial instruments;*
- (ii) the competent authorities responsible for the supervision of the transmitting investment firms;*
- (iii) the competent authorities responsible for the supervision of the branches which have been part of the transaction; and*
- (iv) the competent authority responsible for the supervision of the trading venues used.*

The competent authority referred to in the first subparagraph shall without undue delay make available to ESMA any information reported in accordance with this Article.’;

(b) paragraph 2 is replaced by the following:

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, irrespective of whether or not such transactions are carried out on the trading venue, with exception of transactions in OTC derivatives other than those referred in Article 8a(1a), to which the obligation shall apply only when executed on a trading venue;**
- (b) financial instruments where the underlying is a financial instrument traded on a trading venue, irrespective of whether or not such transactions are carried out on the trading venue;**
- (c) financial instruments where the underlying is an index or a basket composed of financial instruments traded on a trading venue, irrespective of whether or not such transactions are carried out on the trading venue;**
- (d) OTC derivatives referred to in Article 8a(2), irrespective of whether or not such transactions are carried out on the trading venue;**

(c) *paragraph 3 is replaced by the following:*

‘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 effective dates, the transaction prices, a designation to identify the parties 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 entity subject to the reporting obligation, and means of identifying the investment firms concerned. Reports on a transaction made at the trading venue shall include a transaction identification code generated and disseminated by the trading venue to both buying and selling members of the trading venue.

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), point (a), and Article 21(5), point (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.’;

(d) paragraph 5 is replaced by the following:

‘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 any member, participant or user which is not subject to this Regulation in accordance with paragraphs 1 and 3.’;

(e) in paragraph 8, the following subparagraph is inserted before the first subparagraph:

‘An investment firm shall report transactions executed wholly or partly through its branch to the competent authority of the home Member State of the investment firm. The branch of a third country firm shall submit its transaction reports to the competent authority which authorised the branch. Where a third country firm has set up branches in more than one Member State, those branches shall define the competent authority that is to receive all the transaction reports.’;

(f) paragraph 9 is amended as follows:

(i) the first subparagraph is amended as follows:

- *point (c) is replaced by the following:*
 - ‘(c) the references of the financial instruments bought or sold, the quantity, the dates and times of execution, the effective dates, the transaction prices, the information and details of the identity of the client, a designation to identify the parties 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, 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;’;*
- *point (d) is deleted;*
- *point (e) is replaced by the following:*
 - ‘(e) the relevant categories of indices to be reported in accordance with paragraph 2;’;*

– *the following points are added:*

‘(j) the conditions for linking specific transactions and the means of the identification of aggregated orders resulting in the execution of a transaction; and

(k) the date by which transactions are to be reported.’;

(ii) the second and third subparagraphs are replaced by the following:

*‘When **developing** those regulatory technical standards, ESMA shall take into account international developments and standards agreed upon at Union or global level, and **the consistency of those draft regulatory technical standards** with the reporting requirements laid down in Regulation (EU) No 648/2012 and Regulation (EU) 2015/2365.*

ESMA shall submit those draft regulatory technical standards to the Commission by ... [18 months after the date of entry into force of this amending Regulation].

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

(g) the following paragraph is added:

‘11. By [**four years after the date of entry into force of this amending Regulation**], ESMA shall submit to the Commission a report assessing the feasibility of more integration in transaction reporting and streamlining of data flows under Article 26 of this Regulation to:

- (a) reduce duplicative or inconsistent requirements for transaction data reporting, and in particular duplicative or inconsistent requirements laid down in this Regulation **■**, Regulation (EU) **No 648/2012** and Regulation (EU) 2015/2365, **and in other relevant Union law;**
- (b) improve data standardisation and efficient sharing and use of data reported within any Union reporting framework by any relevant **Union or national** competent authority **■**.

When preparing the report, ESMA shall, where relevant, work in close cooperation with the other bodies of the European System of Financial Supervision and the European Central Bank.’;

(26) Article 27 ■ is amended as follows:

(a) *in paragraph 1, the first and second subparagraphs are replaced by the following:*

‘With regard to financial instruments admitted to trading or traded on a trading venue or where the issuer has approved trading of the issued instrument or where a request for admission to trading has been made, trading venues shall provide ESMA with identifying reference data for the purpose of transaction reporting under Article 26 and of the transparency requirements under Articles 3, 6, 8, 8a, 10, 14, 20 and 21.

With regard to OTC derivatives, identifying reference data shall be based on a globally agreed unique product identifier and on any other relevant identifying data.

With regard to OTC derivatives not covered by the first subparagraph that fall within the scope of Article 26(2), each designated publishing entity, , shall provide ESMA with the identifying reference data.’;

(b) *paragraph 3 is amended as follows:*

(i) the following point ■ is added:

‘(c) the date by which reference data are to be reported.’;

(ii) the following subparagraph is inserted after the first subparagraph:

‘When drafting those draft regulatory technical standards, ESMA shall take into account international developments and standards agreed upon at Union or global level, and the consistency of those draft regulatory technical standards with the reporting requirements laid down in Regulation (EU) **No 648/2012** and Regulation (EU) 2015/2365.’;

(c) *the following paragraph is added:*

‘5. By ... [three months after the date of entry into force of this amending Regulation], the Commission shall adopt a delegated act in accordance with Article 50 in order to supplement this Regulation by specifying the identifying reference data to be used with regards to OTC derivatives for the purposes of the transparency requirements set out in Articles 8a(1a), 10 and 21.’;

The Commission is empowered to adopt delegated acts in accordance with Article 50 in order to supplement this Regulation by specifying the identifying reference data to be used with regards to OTC derivatives for the purposes of Article 26.

(27) *Article 27d is amended as follows:*

(a) *the title is replaced by the following:*

‘Procedures for granting and refusing applications for authorisation of ARMs and APAs’;

(b) *paragraphs 1, 2 and 3 are replaced by the following:*

- 1. The applicant APA or ARM shall submit an application providing all information necessary to enable ESMA, or the national competent authority where relevant, to confirm that the APA or ARM has established, at the time of initial authorisation, all the necessary arrangements to meet its obligations under the provisions of this Title, including a programme of operations setting out, inter alia, the types of services envisaged and the organisational structure.*
- 2. ESMA, or the national competent authority where relevant, shall assess whether the application for authorisation is complete within 20 working days of receipt of the application.*

Where the application is not complete, ESMA, or the national competent authority where relevant, shall set a deadline by which the APA or ARM is to provide additional information.

After assessing an application as complete, ESMA, or the national competent authority where relevant, shall notify the APA or ARM accordingly.

3. *ESMA, or the national competent authority where relevant, shall, within six months from the receipt of a complete application, assess the compliance of the APA or ARM with this Title. It shall adopt a reasoned decision granting or refusing authorisation and shall notify the applicant APA or ARM accordingly within five working days.’;*

(c) in paragraph 4, point (b) is replaced by the following:

‘(b) the information included in the notifications under Article 27f(2) as regards APAs and ARMs.’;

(d) *in paragraph 5, the first subparagraph is replaced by the following;*

‘ESMA shall develop draft implementing technical standards to determine standard forms, templates and procedures for the notification or provision of information provided for in paragraph 1 of this Article and in Article 27f(2) as regards for APAs and ARMs.’;

(28) the following *articles are* inserted:

‘Article 27da

Procedure for the selection of a single CTP for each asset class

1. *For each of the following asset classes, ESMA shall organise a separate selection procedure for the appointment of a single CTP for a period of five years:*

(a) *bonds;*

(b) *shares and ETFs; and*

(c) *OTC derivatives* ■ *or relevant subclasses of OTC derivatives* ■ .

ESMA shall initiate the first selection procedure under the first subparagraph, point (a), by ... [nine months after the date of entry into force of this amending Regulation].

ESMA shall initiate the first selection procedure under the first subparagraph, point (b), within six months of the initiation of the selection procedure under the first subparagraph, point (a).

ESMA shall initiate the first selection procedure under the first subparagraph, point (c), within three months of the application of the delegated act referred to in Article 27(5) and not earlier than six months after the initiation of the selection procedure under point (b).

ESMA shall initiate subsequent selection procedures under the first subparagraph, points (a), (b) and (c), in time to allow the provision of the consolidated tape to continue without disruption.

2. For each of the asset classes referred to in paragraph 1, ESMA shall *select the applicant deemed suitable for operating the consolidated tape* on the basis of the following criteria:
 - (a) the technical ability of the *applicant* to provide a resilient consolidated tape throughout the Union;
 - (b) the capacity of the *applicant* to comply with the organisational requirements laid down in Article 27h;

- (c) *the ability of the applicant to receive, consolidate and disseminate, as applicable, pre-trade and post-trade data for shares and ETFs and post-trade data for bonds and OTC derivatives;*
- (d) *the adequacy of the governance structure of the applicant;*
- (e) the speed at which the *applicant* can disseminate core market data;
- (f) *the appropriateness of the applicant's methods and arrangements to ensure data quality;*
- (g) the total expenditure needed by the *applicant* to develop the consolidated tape and the costs of operating the consolidated tape on an ongoing basis;
- (h) the level of the fees that the applicant intends to charge to the different types of users of the core market data, *the simplicity of its fee and licensing models, and compliance with Article 13;*
- (ha) *for the consolidated tape for bonds, the existence of a scheme for revenue distribution as described in Article 27h(1a);*
- (i) *the use of modern interface technologies by the applicant* for the provision of the core market data and for connectivity;

- (j) the appropriateness of the arrangements put in place by the applicant to preserve records for the purposes of Article 27ha(3);*
 - (k) the ability of the applicant to ensure resilience and business continuity, and the process that the applicant intends to put in place to mitigate and address outages and cyber-risk;*
 - (l) the process the applicant intends to put in place to mitigate the energy consumption generated by the collection, processing and storage of data;*
 - (m) where an application is submitted by joint applicants, the necessity, in terms of technical and logistical capacity, for each of the applicants to apply jointly.*
- 3. The applicant shall provide all the information necessary to enable ESMA to confirm that the applicant has put in place, at the time of the application, all the necessary arrangements to fulfil the criteria set out in paragraph 2 of this Article and to comply with the organisational requirements set out in Article 27h.*
- 4. Within six months from the initiation of each selection procedure referred to in paragraph 1, ESMA shall adopt a reasoned decision selecting the applicant deemed suitable for operating the consolidated tape and inviting it to submit without undue delay an application for authorisation.*

5. *Where no applicant has been selected under this Article or authorised under Article 27db, ESMA shall initiate a new selection procedure within six months from the end of the unsuccessful selection or authorisation procedure.*

Article 27db

Procedures for granting and refusing applications for authorisation of CTPs

1. *The applicant for authorisation referred to in Article 27da(4) shall provide all the information necessary to enable ESMA to confirm that the applicant has put in place, at the time of the application for authorisation, all the necessary arrangements to fulfil the criteria set out in Article 27da(2).*
2. *ESMA shall assess whether the application for authorisation is complete within 20 working days of its receipt.*

Where the application for authorisation is not complete, ESMA shall set a deadline by which the applicant is to provide additional information.

After assessing the application for authorisation as complete, ESMA shall notify the applicant accordingly.

3. ***Within three months of the receipt of a complete application for authorisation, ESMA shall assess the compliance of the applicant with this Title. ESMA shall adopt a reasoned decision granting or refusing authorisation and shall notify the applicant accordingly within five working days of the date of adoption of such reasoned decision.*** Such reasoned decision shall specify the conditions under which ***the applicant*** shall operate.
4. ***Following the authorisation in accordance with paragraph 3, ESMA may grant the applicant authorised as CTP a transition period to put in place the necessary operational and technical set-up.***
5. The ***CTP*** shall comply at all times with the **■** requirements set out in Article 27h and with the conditions set out in the ***reasoned*** decision of ESMA authorising the CTP referred to in paragraph 3 ***of this Article.***

A CTP that is no longer able to comply with those requirements and conditions ***referred to in the first subparagraph***, shall inform ESMA thereof without undue delay.

6. The withdrawal of the authorisation referred to in Article 27e shall only take effect *once* a new CTP has been selected and authorised *for the asset class concerned* in accordance with *Articles 27da and 27db*.

7. *ESMA shall develop draft regulatory technical standards to determine:*

(a) the information to be provided under paragraph 1;

(b) the information included in the notifications under Article 27f(2) as regards CTPs.

ESMA shall submit those draft regulatory technical standards to the Commission by ... [nine months after the date of entry into force of this amending Regulation]

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

8. *ESMA shall develop draft implementing technical standards to determine standard forms, templates and procedures for the notification or provision of information provided for in paragraph 1 of this Article and in Article 27f(2) as regards CTPs.*

ESMA shall submit those draft implementing technical standards to the Commission by ... [nine months after the date of entry into force of this amending Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’;

(29) *in Article 27e, the following paragraph is added:*

‘3. *A data reporting services provider from which authorisation has been withdrawn shall ensure orderly substitution, including the transfer of data to other data reporting services providers, the due notice to its clients and the redirection of reporting flows to other data reporting services providers prior to the withdrawal.’;*

(30) *in Article 27f, paragraph 4 is replaced by the following:*

‘4. *ESMA, or the national competent authority where relevant, shall refuse or withdraw authorisation if it is not satisfied that the person or persons who effectively direct the business of the data reporting services provider are of sufficiently good repute, or if there are objective and demonstrable grounds for believing that proposed changes to the management body of the data reporting services provider pose a threat to its sound and prudent management and to the adequate consideration of the interest of its clients and the integrity of the market.’;*

(31) Article 27g is amended as follows:

(a) the following paragraphs are inserted:

‘4a. An APA shall have objective, non-discriminatory and publicly disclosed requirements for access to its services by undertakings that are subject to the transparency obligations under Article 20(1) and Article 21(1).

An APA shall publicly disclose the prices and fees associated with the data reporting services provided under this Regulation. It shall disclose separately the prices and fees of each service provided, including discounts and rebates and the conditions to benefit from them. It shall allow reporting entities to access specific services separately.

4b. APAs shall keep and preserve records relating to their business for at least five years. APAs shall promptly make those records available to the relevant competent authority or ESMA upon request.’;

(b) paragraph 7 is deleted;

(32) Article 27h is replaced by the following:

‘Article 27h

Organisational requirements for CTPs

1. CTPs shall, in accordance with the conditions for authorisation referred to in Article 27da:
 - (a) collect all market data provided through contributions in relation to the asset class for which they are authorised;
 - (b) collect █ fees from *subscribers, while providing free access to retail investors, academics, civil society organisations and competent authorities;*
 - (c) in the case of market data concerning shares *and ETFs*, redistribute part of their █ revenue █ in accordance with *paragraph 5*;
 - (d) *disseminate* core market data *and regulatory data* to users *as* a continuous electronic data stream on non-discriminatory terms as close to real time as technically possible;
 - (e) █ ensure that the consolidated core market data is easily accessible, machine readable and utilisable for all users, including retail investors;
 - (f) *have systems in place that can effectively check the completeness of the data provided, identify obvious errors, and request the re-submission of data;*

(g) where the CTP is controlled by a group of economic operators, have a compliance system in place to ensure that the operation of the consolidated tape does not result in a distortion of competition.

For the purposes of the first subparagraph, point (d), the CTP for shares and ETFs shall not publish the market identifier code when disseminating best bids and offers as close as to real time as technically possible to the public.

2. CTPs shall adopt, publish on their website *and regularly update* service level standards covering all of the following:
 - (a) an inventory of ■ data contributors from whom market data are received;
 - (b) modes and speed of delivery of consolidated market data to users;
 - (c) measures taken to ensure operational continuity in the provision of consolidated market data.

3. CTPs shall have sound security mechanisms in place designed to guarantee the security of the means of transfer of ■ data between the ■ data contributors and the CTP and between the CTP and the users and to minimise the risk of data corruption and unauthorised access. CTPs shall maintain adequate resources and have back-up facilities in place to offer and maintain its services at all times.

- 3a. For each of the asset classes referred to in Article 27da(1), the CTP shall publish a list of the financial instruments that are covered by the consolidated tape, indicating their identifying reference data.**

Each CTP shall offer free access to its list, and shall ensure that the list is regularly reviewed and updated, in order to offer a comprehensive view of all the financial instruments covered by the consolidated tape.

- 1a. The CTP for financial instruments, other than shares and ETFs, may redistribute to data contributors part of the revenue generated by the consolidated tape.**

- 5. The CTP for shares and ETFs shall redistribute part of the revenues generated by the consolidated tape, as indicated in the reasoned decision referred to in Article 27db(3), to data contributors meeting one or more of the following criteria ('revenue distribution scheme'):**

- (a) whether the data contributor is a small regulated market or an SME growth market whose annual trading volume of shares represents 1 % or less of the annual trading volume of shares in the Union ('small trading venue');**
- (b) whether the data contributor is a trading venue that has provided initial admission to trading of shares or ETFs on ... [five years before the date of entry into force of this amending Regulation] or thereafter; and**

- (c) *whether the data is provided by a trading venue and pertains to transactions in shares and ETFs that have been concluded on a trading system that provides pre trade transparency and where those transactions did not result from orders that were subject to a waiver from pre trade transparency under Article 4 paragraph 1 point (c).*

For the purposes of the revenue redistribution scheme, the CTP shall take into account the following trading volume ('the relevant trading volume'):

- (a) *for the purposes of the first subparagraph, point (a), the total annual trading volume generated by that trading venue;*
- (b) *for the purposes of the first subparagraph, point (b):*
- (i) *in the case of small trading venues, their total annual trading volume;*
 - (ii) *in the case of trading venues other than small trading venues, the trading volume pertaining to the shares and ETFs referred to in that point;*
- (c) *for the purposes of the first subparagraph, point (c), the volume pertaining to the shares and ETFs referred to in that point.*

The CTP shall determine the amount of the revenue to be redistributed to each data contributor under the revenue distribution scheme by multiplying the relevant trading volume by the weight assigned to each criterion set out in the first subparagraph, as specified in the regulatory technical standards adopted pursuant to paragraph 6.

If trading venues meet more than one of the criteria above, the amounts resulting from the above calculation shall be added cumulatively.

6. ESMA shall develop draft regulatory technical standards to:

- (a) specify the weights assigned to each criterion referred to in paragraph 5, first subparagraph;**
- (b) further specify the method for calculating amount of the revenue to be redistributed to each data contributor as referred to in paragraph 5, third subparagraph.**
- (c) Specify the criteria under which the CTP can, where the CTP proves that a data contributor has seriously and repeatedly breached the data requirements referred to in Article 22a, 22b and 22c, temporarily suspend the participation of that data contributor in the revenue redistribution scheme, the conditions under which the CTP is to resume revenue redistribution and, where there was no breach of those requirements, is to restitute the retained revenue with interest to that data contributor.**

For the purposes of point (a) of this paragraph, the criterion set out in paragraph 5, first subparagraph, point (a), shall have a higher weight than the criterion set out in point (b) of that subparagraph, and the criterion set out in point (b) of that subparagraph shall have a higher weight than the condition set out in point (c) of that subparagraph.

ESMA shall submit those draft regulatory technical standards to the Commission by ... [nine months after the date of entry into force of this amending Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in paragraph 1, point (c), in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.’;

(33) the following article ■ is inserted:

‘Article 27ha

Reporting obligations for consolidated tape providers

1. CTPs shall, **every year**, publish on their website ■ performance statistics and incident reports relating to data quality and **data** systems. ***Those performance statistics and incident reports shall be accessible free of charge.***

2. ESMA shall develop draft regulatory technical standards to specify the content, timing, format and terminology of the reporting obligation *set out in paragraph 1*.

ESMA shall submit those draft regulatory technical standards to the Commission by [18 months after *the date of* entry into force *of this amending Regulation*].

Power is delegated to the Commission to *supplement this Regulation by adopting* the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.’;

3. CTPs shall keep and preserve records relating to their business for *at least* five years. *CTPs shall promptly make those records available to the relevant competent authority or ESMA upon request.*’;

(34) *in Article 27i, the following paragraphs are inserted:*

‘4a. An ARM shall have objective, non-discriminatory and publicly disclosed requirements for access to its services by undertakings that are subject to the reporting obligation set out in Article 26.

An ARM shall publicly disclose the prices and fees associated with the data reporting services provided under this Regulation. It shall disclose separately the prices and fees of each service provided, including discounts and rebates and the conditions to benefit from them. It shall allow reporting entities to access specific services separately. The prices and fees charged by an ARM shall be cost-related.

4b. ARMs shall keep and preserve records relating to their business for at least five years. ARMs shall promptly make those records available to the relevant competent authority or ESMA upon request.’;

(35) Article 28 *is amended as follows:*

(a) *in* paragraph 1, the introductory wording is replaced by the following:

‘1. Financial counterparties ■ and non-financial counterparties that *are subject to the clearing obligation under Title II of Regulation (EU) No 648/2012* shall conclude transactions ■ with other such financial counterparties or other such non-financial counterparties 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.’;

(b) in paragraph 2, the first subparagraph is deleted;

(c) the following paragraph is inserted:

‘2a. Transactions in derivatives that are exempt from or not subject to the clearing obligation laid down in Article 4 of Regulation (EU) No 648/2012 shall not be subject to the trading obligation.’;

(d) in paragraph 4, third subparagraph, point (b) is replaced by the following:

‘(b) trading venues have clear and transparent rules so that derivatives are capable of being traded in a fair, orderly and efficient manner, and are freely negotiable;’;

(36) Article 31 is amended as follows:

(a) the title is replaced by the following:

‘Post-trade risk reduction services’;

(b) paragraph 1 is replaced by the following:

‘1. The transparency obligations in Articles 8a, 10 and 21 of this Regulation, the trading obligation in Article 28 of this Regulation and the best execution obligation in Article 27 of Directive 2014/65/EU shall not apply to transactions in OTC derivatives that are formed and established as result of post-trade risk reduction services.’;

(c) paragraph 2 is deleted;

(d) paragraphs 3 and 4 are replaced by the following:

‘3. Investment firms and market operators that are providers of post-trade risk reduction services shall ensure the maintenance of complete and accurate records of the transactions referred to in paragraph 1 that are not already recorded or reported in accordance with Regulation (EU) No 648/2012. Those investment firms and market operators shall promptly make those records available to the relevant competent authority or ESMA upon request.’

4. *The Commission is empowered to adopt delegated acts in accordance with Article 50 to supplement this Regulation by specifying:*

- (a) what constitutes post-trade risk reduction services for the purposes of paragraph 1;*
- (b) the particulars of the transactions to be recorded pursuant to paragraph 3.’;*

(37) Article 32 *is amended as follows:*

(a) in paragraph 2, point (a) is replaced by the following:

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

(b) in paragraph 4, the first subparagraph is replaced by the following:

‘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) of this Regulation, but for which no CCP has yet received authorisation under Article 14 or 15 of Regulation (EU) No 648/2012.’;

(c) the following paragraphs are inserted:

‘4a. Where ESMA considers that the suspension of the clearing obligation as referred to in Article 6a of Regulation (EU) No 648/2012 is a material change in the criteria for the trading obligation to take effect, as referred to in paragraph 5 of this Article, ESMA may request *that* the Commission ■ suspend the trading obligation laid down in Article 28(1) and (2) of this Regulation for the same classes of OTC derivatives that are subject to the request to suspend the clearing obligation.

- 7a. ESMA may request that the Commission suspend the trading obligation laid down in Article 28(1) and (2) for specific classes of OTC derivatives or for a specific type of counterparty, where such a suspension is necessary to avoid or address adverse effects to liquidity or serious threat to financial stability and to ensure the orderly functioning of financial markets in the Union and where that suspension is proportionate to those aims.**
8. The *requests* referred to in *paragraphs 7 and 7a* shall not be made public.
9. After having received the *requests* referred to in *paragraphs 7 and 7a*, the Commission shall, without undue delay and, on the basis of the reasons and evidence provided by ESMA, do either of the following:
- (a) ***by way of*** an implementing act, suspend the trading obligation for **■** *classes of OTC derivatives or for types of counterparties*;
 - (b) reject the requested suspension.

For the purposes of point (b), the Commission shall inform ESMA of the reasons why it rejected the requested suspension. The Commission shall immediately inform the European Parliament and the Council of that rejection and forward them the reasons provided to ESMA. The information provided to the European Parliament and the Council regarding the rejection and the reasons for that rejection shall not be made public.

The suspension referred to in the first subparagraph shall be valid for an initial period of no more than three months from the date of publication of the implementing act referred to in the first subparagraph, point (a).

Where the grounds for the suspension referred to in the first subparagraph continue to apply, the Commission may by way of an implementing act, extend that suspension for further periods of no more than three months, with the total period of the suspension of no more than 12 months.

The implementing acts referred to in the first and fourth subparagraphs of this paragraph shall be adopted in accordance with the examination procedure referred to in Article 51.’;

(38) the following article **■** is inserted:

‘Article 32a

Stand-alone suspension of the trading obligation

1. At the request of the competent authority of a Member State, the Commission may, **by way of an implementing act**, suspend the derivatives trading obligation with respect to certain **financial counterparties** after, **where appropriate**, having consulted ESMA. The competent authority shall indicate why it considers that the conditions for a suspension are met. In particular, the competent authority shall demonstrate that **a financial counterparty** within its jurisdiction:

- (a) *regularly acts as a market maker in an OTC derivative subject to the derivatives trading obligation and regularly receives requests for a quote for the derivatives subject to the derivatives trading obligation from a non-EEA counterparty which has no active membership on an EEA trading venue that offers trading in the OTC derivative subject to the trading obligation; or*
- (b) **█** *regularly acts as a market maker in an OTC credit derivative subject to the derivatives trading obligation and:*
- (i) *intends to trade OTC credit derivatives subject to the derivatives trading obligation on own account on a trading venue only open to counterparties that are CCP clearing members as defined in Article 2, point 14, of Regulation (EU) No 648/2012 ('dealer-to-dealer' venue);*
 - (ii) *intends to trade OTC credit derivatives subject to the derivatives trading obligation on own account with a counterparty which is a market maker and which has no active membership on an EEA dealer-to-dealer venue that offers trading in the OTC derivatives subject to the trading obligation; and*
 - (iii) *clears those OTC credit derivatives in a CCP authorised in accordance with Regulation (EU) No 648/2012.*

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

2. When assessing whether to suspend the trading obligation in accordance with paragraph 1, the Commission shall ***consider whether to suspend it for specific markets only, and*** shall take into account whether such suspension of the trading obligation would have a distortive effect on the clearing obligation laid down in Article 4(1) of Regulation (EU) No 648/2012.

The Commission shall also contact other competent authorities from other Member States to assess whether investment firms in Member States other than that making the request in accordance with paragraph 1 are in a situation similar to those in the requesting Member State. Member States that did not file a request pursuant to paragraph 1 may, after adoption of the implementing act mentioned in paragraph 1, request that investment firms that are in a situation similar to those in the requesting Member State are added to the implementing act. The competent authority of the Member State making that request shall demonstrate why it considers that the conditions for a suspension are also met.

Where the derivatives trading obligation with respect to the investment firm specified by the competent authority is suspended, the derivatives trading obligation shall not apply with respect to its counterparty, as referred to in paragraph 1, point (a) or (b).

3. The implementing act referred to in paragraph 1 shall be accompanied by the evidence presented by the competent authority requesting the suspension.
4. The implementing act referred to in paragraph 1 shall be communicated to ESMA and shall be published in the **■** register referred to in Article 34 **■** .
5. The Commission shall regularly review whether the grounds for the suspension of the *derivatives* trading obligation continue to apply. ’;

(39) Article 35 is amended as follows:

- (a) in paragraph 1, first subparagraph, the introductory wording is replaced by the following:

■ 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.

The requirement in the first subparagraph shall not apply to exchange-traded derivatives.

The CCP shall in particular ensure that a trading venue has the right to non-discriminatory treatment of contracts traded on that trading venue in terms of:’;

(b) paragraph 3 is replaced by the following:

‘3. The CCP shall provide a written response to the trading venue either within three months of permitting access, on condition that a relevant competent authority has granted access pursuant to paragraph 4, or within three months of denying access. The CCP may deny a request for access only under the conditions specified in paragraph 6, *point* (a). Where 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 Member State other than the one of the CCP, the CCP shall also provide such notification and reasoning to the competent authority of that trading venue. The CCP shall provide access within three months of providing a positive response to the access request.’;

(c) *paragraph 4 is amended as follows:*

(i) *the first subparagraph is replaced by the following:*

‘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 would not threaten the smooth and orderly functioning of the markets, in particular due to liquidity fragmentation, or would not adversely affect systemic risk.’;

(ii) *the second and third subparagraphs are deleted;*

(40) Article 36 is amended as follows:

(a) in paragraph 1, the first subparagraph is replaced by the following:

‘Without prejudice to Article 8 of Regulation (EU) No 648/2012, a trading venue shall, upon request, provide trade feeds on a non-discriminatory and transparent basis, including as regards fees related to access, to any CCP authorised or recognised *in accordance with* that Regulation that wishes to clear transactions in financial instruments that are concluded on that trading venue. That requirement *does* not apply to:

- (a) any derivative contract that is already subject to the access obligations under Article 8 of Regulation (EU) No 648/2012;
 - (b) exchange-traded derivatives.’;
- (b) paragraph 3 is replaced by the following:
- ‘3. The trading venue shall provide a written response to the CCP within three months 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 pursuant to paragraph 6, point (a). When access is denied, the trading venue shall provide full reasons in its written response and forward that written response to its competent authority. Where the CCP is established in a different Member State than the trading venue, the trading venue shall also forward that written response to the competent authority of the CCP. The trading venue shall provide access within three months of providing a positive response to the access request.’;

(c) *paragraph 4 is amended as follows:*

(i) *the first subparagraph is replaced by the following:*

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

(ii) *the second and third subparagraphs are deleted;*

(d) paragraph 5 is deleted;

(c) *in paragraph 6, point (d) is deleted.*

(41) in Article 38, paragraph 1 is replaced by the following:

‘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 referred to in Articles 35 and 36 with regard to financial instruments covered by those Articles and provided that the Commission has adopted a decision in accordance with paragraph 3 of this Article, determining 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.’;

(42) in Article 38g(1), the introductory wording is replaced by the following:

‘Where ESMA finds that a person listed in Article 38b(1), point (a), has not complied with any of the requirements laid down in Article **20, 21, 22, 22a, 22b or 22c**, or *in* Title IVa, it shall take one or more of the following actions:’;

(43) in Article 38h(1), the first subparagraph is replaced by the following:

‘Where ESMA, in accordance with Article 38k(5), finds that a person listed in Article 38b(1), point (a), has intentionally or negligently not complied with any of the requirements provided for in Article 22, 22a, 22b or 22c, or in Title IVa, it shall adopt a decision imposing a fine in accordance with paragraph 2 of this Article.’;

(44) the following article 39a is inserted:

Article 39a

Ban on payment for forwarding client orders for execution

1. Investment firms acting on behalf of *retail* clients, *as defined in Article 4, point (11), of Directive 2014/65/EU, or professional clients as referred to in Section II of Annex II of that Directive* shall not receive any fee or commission or non-monetary benefits from any third party *for executing orders from those clients on a particular execution venue or for forwarding 2 orders of those clients to any third party for their execution on a particular execution venue.*

The first subparagraph shall not apply to rebates or discounts on the transaction fees of execution venues, where permitted under the approved and public tariff structure of a trading venue in the Union or of a third-country trading venue, where they exclusively benefit the client. Such discounts or rebates shall not result in a monetary benefit to the investment firm.

2. *A Member State in which prior to ... [the date of entry into force of this amending Regulation] investment firms acting on behalf of clients are established which receive a fee or commission or non-monetary benefits from any third party for executing client orders on a particular execution venue or for forwarding client orders to any third party for their execution on a particular execution venue, may exempt investment firms under its jurisdiction from the prohibition laid down in paragraph 1 until 30 June 2026 when those investment firms provide investment services to clients domiciled or established in that Member State.*

To apply the exemption referred to in the first subparagraph, a Member State which fulfils the condition set out in the first subparagraph shall notify ESMA by ... [six months after the date of entry into force of this amending Regulation] to that effect. ESMA shall maintain a list of Member States using this exemption. The list shall be made available to the public and updated regularly.’;

(45) Article 50 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘2. The power to adopt delegated acts referred to in Article 1(9), Article 2(2) and (3), **Article 5(10), Article 8a(4), Article 17(3), Article 27(4) and (5), Article 31(4), Article 38k(10), Article 38n(3), Article 40(8), Article 41(8), Article 42(7), Article 45(10) and Article 52(10), (14b) and (15), shall be conferred for an indeterminate period from 2 July 2014.**’;

(b) paragraph 3 is replaced by the following:

‘The delegation of power referred to in Article 1(9), Article 2(2) and (3), **Article 5(10), Article 8a(4), Article 17(3), Article 27(4) and (5), Article 31(4), Article 38k(10), Article 38n(3), Article 40(8), Article 41(8), Article 42(7), Article 45(10) and Article 52(10), (14b) and (15), 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.**’;

(c) ■ paragraph 5 ■ is replaced by the following:

‘A delegated act adopted pursuant to Article 1(9), Article 2(2) and (3), **Article 5(10), Article 8a(4), Article 17(3), Article 27(4) and (5), Article 31(4), Article 38k(10), Article 38n(3), Article 40(8), Article 41(8), Article 42(7), Article 45(10) or Article 52(10), (14b) and (15)**, shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of three months of notification of that act to the European Parliament and to 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.***’;

(46) Article 52 is amended as follows:

(a) paragraphs 11, 12 **and 13** are **deleted**;

(b) paragraph 14 is replaced by the following:

‘14. By 30 June 2026, ESMA, in close cooperation with the expert stakeholder group referred to in Article 22b, shall assess the market demand for the consolidated tape for shares and ETFs, the impact of that consolidated tape on the functioning of the market and on the attractiveness and international competitiveness of Union markets and firms, and whether the consolidated tape has delivered on its aim to decrease information asymmetries between market participants and to make the Union a more attractive location to invest. ESMA shall report to the Commission on the appropriateness of adding additional features to the consolidated tape, such as the dissemination of the market identifier code for pre-trade data. Based on that report, the Commission shall submit, where appropriate, a legislative proposal to the European Parliament and the Council.

14a. Three years after the first authorisation of a consolidated tape, the Commission shall, after having consulted ESMA ***and the expert stakeholder group referred to in Article 22b***, submit a report to the European Parliament and to the Council on the following:

- (a) the asset classes covered by a consolidated tape;
- (b) the timeliness and *the* quality of *the data provided to the CTP*;
- (c) *the timeliness of the dissemination and the quality of the core market data*;
- (d) the role of *core* market data ■ in reducing implementation shortfall;
- (e) the number of subscribers to *core* market data per asset class;
- (f) the effect of *core* market data ■ on remedying information asymmetries between various capital market participants;
- (g) *the appropriateness of the transmission protocols used for the provision of data to the CTP*;
- (h) the appropriateness and functioning of the *revenue distribution* scheme, *in particular as regards data contributors that are small trading venues*;
- (i) the effects of the *core* market data on investments in SMEs.

14b. By ... [12 months after the date of entry into force of this amending Regulation] the Commission shall, in close cooperation with ESMA, assess the possibility of extending the requirements of Article 26 of this Regulation to AIFMs as defined in Article 4(1), point (b), of Directive 2011/61/EU, and management companies, as defined in Article 2(1), point (b), of Directive 2009/65/EC, which provide investment services and activities, as defined in Article 4(1), point (2), of Directive 2014/65/EU and which execute transactions in financial instruments. In particular, the Commission shall include a cost-benefit analysis and an evaluation of the scope of such extension.

On the basis of that assessment and taking into account the goals of the capital markets union, the Commission is empowered to adopt delegated acts in accordance with Article 50 to amend this Regulation by extending the requirements of Article 26 as set out in the first subparagraph.

14c. By ... [four years after the date of entry into force of this amending Regulation], ESMA shall submit to the Commission a report assessing the appropriateness of the volume cap set out in Article 5(1) and the necessity to remove or to extend it to other trading systems or execution venues which derive their prices from a reference price, taking into account international best practices, the competitiveness of Union financial markets, and the effects of that volume cap on the fair and orderly trading of markets, and on the efficiency of price formation.’;

(c) paragraph 15 is amended as follows:

(i) the introductory wording is replaced by the following:

‘The Commission is empowered to adopt delegated acts in accordance with Article 50 in order to supplement this Regulation, by specifying measures in order to:’;

(ii) point (a) to (d) are deleted;

(iii) point (e) is replaced by the following:

‘(e) ensure that the core market data is provided on a reasonable commercial basis, on both a consolidated and unconsolidated basis, and meets the needs of the users of that information across the Union;’;

(iv) point (f) is deleted;

(v) point (g) and (h) are replaced by the following:

‘(g) specify arrangements applicable where the CTP no longer fulfils the selection criteria;

(h) specify arrangements under which a CTP may continue to operate a consolidated tape as long as no new entity is authorised through the selection procedure.’;

(47) Article 54 *is amended as follows*:

(a) paragraph 2 is deleted;

(b) *the following paragraph is added*:

The provisions of the delegated acts adopted pursuant to Regulation (EU) No 600/2014 as applicable before ... [the date of entry into force of this amending Regulation] shall continue to apply until the date of application of the delegated acts adopted pursuant to Regulation (EU) No 600/2014 as applicable from that date.

Article 2

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

Done at ...,

For the European Parliament

The President

For the Council

The President

DIRECTIVE (EU) 2023/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

amending Directive 2014/65/EU on markets in financial instruments

(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 53(1) thereof,

Having regard to the proposal from the European Commission,

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

After consulting the European Central Bank,

Having regard to the opinion of the European Economic and Social Committee¹⁴,

■

Acting in accordance with the ordinary legislative procedure¹⁵,

¹⁵ *Position of the European Parliament of ... (not yet published in the Official Journal) and decision of the Council of*

Whereas:

- (1) In its 2020 CMU Action Plan¹⁶, the Commission announced its intention to table a legislative proposal to create a centralised data base which was meant to provide a comprehensive view on prices and volume of equity and equity-like financial instruments traded throughout the Union across a multitude of trading venues (‘consolidated tape’). On 2 December 2020, in its conclusion on the Commission’s CMU Action Plan¹⁷, the Council encouraged the Commission to stimulate more investment activity inside the Union by enhancing data availability and transparency by further assessing how to tackle the obstacles to establishing a consolidated tape in the Union.
- (2) In its roadmap on ‘The European economic and financial system: fostering openness, strength and resilience’ of 19 January 2021¹⁸, the Commission confirmed its intention to improve, simplify and further harmonise capital markets’ transparency, as part of the review of Directive 2014/65/EU of the European Parliament and of the Council¹⁹ and of Regulation (EU) No 600/2014 of the European Parliament and of the Council²⁰. As part of efforts to strengthen the international role of the Euro, the Commission also announced that such reform would include the design and implementation of a consolidated tape, in particular for corporate bond issuances to increase the liquidity of secondary trading in euro-denominated debt instruments.

¹⁶ COM/2020/590 final.

¹⁷ Council Conclusions on the Commission’s CMU Action Plan, 12898/1 of /20 REV 1 EF 286 ECOFIN 1023: <https://data.consilium.europa.eu/doc/document/ST-12898-2020-REV-1/en/pdf>;

¹⁸ COM/2021/32 final.

¹⁹ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

²⁰ 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 (OJ L 173, 12.6.2014, p. 84).

- (3) Regulation (EU) No 600/2014 was amended by Regulation (EU) XX/XXXX of the European Parliament and of the Council⁺ removing the main obstacles that have prevented the emergence of a consolidated tape. That Regulation therefore introduced mandatory contributions of market data to the consolidated tape provider and enhanced the data quality including harmonizing the synchronisation of the business clock. In addition, that Regulation reduced the recourse to possibilities to waive pre-trade transparency for venues and systematic internalisers. Furthermore, it introduced enhancements to the trading obligations and the prohibition of the practice of receiving payment for forwarding client orders for execution. Since Directive 2014/65/EU also contains provisions related to consolidated tape and transparency, the amendments to Regulation (EU) No 600/2014 should be reflected in Directive 2014/65/EU.

⁺ *OJ: Please insert in the text the number of the Regulation contained in document PE-CONS .../... (2021/0385(COD)).*

- (4) Article 1(7) of Directive 2014/65/EU requires operators of systems in which multiple third-party buying and selling trading interests in financial instruments are able to interact ('multilateral systems') to operate in accordance with the requirements concerning regulated markets ('RMs'), multilateral trading facilities ('MTFs'), or organised trading facilities ('OTFs'). However, market practice, as evidenced by the European Securities and Markets Authority ('ESMA') in its final report on the functioning of the organised trading facility²¹ has shown that the principle of multilateral trading activity requiring a license has not been upheld in the Union, which has led to an uneven playing field between licensed and unlicensed multilateral systems. In addition, that situation has created legal uncertainty for certain market participants as to the regulatory expectations for such multilateral systems. To provide market participants with clarity, safeguard a level-playing field, improve the internal market functioning and ensure a uniform application of the requirement that hybrid systems can only perform multilateral trading activities where they are licensed as a regulated market, a multilateral trading facility ('MTF') or an organised trading facility ('OTF'), the content of Article 1(7) of Directive 2014/65/EU should be moved from Directive 2014/65/EU to Regulation (EU) No 600/2014.

²¹ https://www.esma.europa.eu/sites/default/files/esma70-156-4225_mifid_ii_final_report_on_functioning_of_otf.pdf.

- (5) Article 2(1), point (d), point (ii), of Directive 2014/65/EU, exempts persons dealing on own account from the requirement to be licensed as an investment firm or credit institution, unless those persons ***are members of or participants in a regulated market or an MTF or*** have direct electronic access to a trading venue. ***Non-financial entities that are members of or participants in a regulated market or an MTF to execute transactions for the purpose of liquidity management or for the purpose of reducing risks directly relating to the commercial activity or treasury financing activity should not be required to be licensed as an investment firm as such a requirement would be disproportionate.*** ***Regarding direct electronic access to a trading venue,*** Articles 17(5) and 48(7) of Directive 2014/65/EU require that providers of direct electronic access are licensed investment firms or credit institutions. Investment firms or credit institutions that do provide direct electronic access are responsible for ensuring that their clients comply with the requirements laid down in Articles 17(5) and 48(7) of Directive 2014/65/EU. That gatekeeper function is effective and makes it unnecessary for clients of the direct electronic access provider, including persons dealing on own account, to become subject to Directive 2014/65/EU. In addition, removing that requirement would contribute to a level playing field between third country persons accessing EU venues via direct electronic access, for which Directive 2014/65/EU does not require a license, and persons established in the Union.

(6) Due to the removal of multilateral systems from the scope of Article 1(7) of Directive 2014/65/EU and into Regulation (EU) *No* 600/2014, it is equally logic to move the corresponding definition of ‘multilateral system’ into that Regulation.

(6a) Directive XXX/ requires MTFs or OTFs to have at least three materially active members or users. That requirement should apply to all multilateral systems. Therefore, that requirement should be extended to regulated markets.

(6b) *Directive 2014/65/EU provides that an investment firm is to be considered to be a systematic internaliser only when it is deemed to perform its activities on an organised, frequent, systematic and substantial basis or when it chooses to opt-in under the systematic internaliser regime. The frequent, systematic and substantial bases are determined by quantitative criteria which have led to excessive burden for investment firms that have to perform the assessment and for ESMA that has to publish data for the calculation, and should therefore be replaced by a qualitative assessment. Considering that Regulation (EU) No 600/2014 is being amended to exclude systematic internalisers from the scope of the pre-trade transparency requirements for non-equity instruments, the qualitative assessment of systematic internalisers should apply only to equity instruments, but it should be possible for an investment firm to opt-in to become a systematic internaliser for non-equity instruments.*

(7) Article 27(3) **and (6)** of Directive 2014/65/EU **contain** the requirement for execution platforms to publish a list of details relating to best execution. Factual evidence and feedback from stakeholders has shown that those reports are rarely read and do not enable investors or any users of those reports to make meaningful comparisons based on the information provided in those reports. As a consequence, Directive (EU) 2021/338 of the European Parliament and of the Council²² suspended the reporting requirement **under Article 27(3)** for two years in order for that requirement to be reviewed. Regulation (EU) XX/XXXX²³ has amended Regulation (EU) No 600/2014 to remove the obstacles that have prevented the emergence of a consolidated tape. ■ The data that the consolidated tape is expected to **disseminate** are **European best bid and offer and** post-trade information regarding ■ transactions in **shares and ETFs, and post-trade information regarding transactions in bonds and OTC derivatives**. That information can be used for proving best execution. The reporting requirement laid down in Article 27(3) of Directive 2014/65/EU will therefore no longer be relevant and should therefore be deleted.

²² Directive (EU) 2021/338 of the European Parliament and of the Council of 16 February 2021 amending Directive 2014/65/EU as regards information requirements, product governance and position limits, and Directives 2013/36/EU and (EU) 2019/878 as regards their application to investment firms, to help the recovery from the COVID-19 crisis (OJ L 68, 26.2.2021, p. 14).

²³ COM 727

(7a) More generally, Article 27 of Directive 2014/65/EU contains provisions related to the obligation to execute orders on terms most favourable to the client ('best execution'). However, different interpretations of that Article by national competent authorities have led to diverging application of best execution requirements and of market practice supervision. That divergence is particularly evident in the different regulation across the Union of practices related to receiving payments for forwarding client orders for execution ('payment for order flows'). Regulation (EU) .../...⁺ amending Regulation (EU) No 600/2014 bans the payment for order flows across the Union. However, feedback from regulators and stakeholders has shown that best execution requirements for professional clients could also benefit from further clarification. ESMA should develop draft regulatory technical standards on the criteria that should be taken into account for the purpose of defining and assessing the order execution policy, taking into account the difference between retail and professional clients under Article 27(5) and (7) of Directive 2014/65/EU.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS .../... (2021/0385(COD)).

- (8) The correct functioning of a consolidated tape depends on the quality of the data the consolidated tape provider receives. Regulation (EU) No 600/2014 sets out requirements for the quality of data that contributors to the consolidated tape should adhere to. In order to ensure that investment firms and market operators operating an MTF or an OTF, and regulated markets, effectively meet those requirements, Member States should require that those investment firms and market operators have the necessary arrangements in place to do so.
- (9) The receipt of high quality data is of the utmost importance for the functioning of the consolidated tape and the internal market. That includes the need for all market data contributors and the consolidated tape provider to timestamp their data in a synchronized manner and thus to synchronise their business clocks. Regulation (EU) XX/XXX²⁴ has therefore amended Regulation (EU) No 600/2014 to extend that requirement, which under Directive 2014/65/EU only applied to trading venues and their members, to systematic internalisers, *designated publishing entities*, APAs *and consolidated tape providers*. Since that requirement is now laid down in Regulation (EU) No 600/2014, it can be removed from Directive 2014/65/EU.

²⁴ COM 727

- (10) Within the framework regulating the Union's markets in financial instruments, many substantive requirements laid down in Regulation (EU) No 600/2014 are supervised and sanctioned at national level and in accordance with Articles 69 and 70 of Directive 2014/65/EU. Regulation (EU) XX/XXXX²⁵ has amended Regulation (EU) No 600/2014 to include new rules on the volume cap mechanism, on mandatory contributions of core market data to the *consolidated* tape, on data quality standards to which those contributions are subject and on the ban on receiving payments for forwarding client orders for execution. As the supervision of the relevant entities lies with national authorities, those new substantive requirements should be added to the list in Directive 2014/65/EU of provisions for which the Member States should provide sanctions at national level.

²⁵ COM 727

(10a) *Following the energy crisis of 2022 and the resulting higher and more frequent margin calls and extreme volatility, a comprehensive revision of the appropriateness of the overall framework for commodity derivatives markets and derivatives on emission allowances markets is warranted. Such a review should have a strategic focus and consider the liquidity and proper functioning of commodity derivative markets, emission allowances and derivatives on emission allowances markets in the Union to ensure that the framework governing those markets are fit for purpose to facilitate the energy transition, food security and the markets' ability to withstand external shocks. In carrying out its analysis, the Commission should also consider that commodity derivatives markets play an important role in ensuring that market participants can properly risk manage the necessary investments, and that setting the right parameters is very important to ensure that the Union has competitive liquid commodity derivatives markets that ensure the open strategic autonomy of the Union and the delivery of the European Green Deal. With these objectives in mind, the Commission should, firstly, review whether the position limits and position management controls regime has been conducive to the prevention of market abuse and the support for orderly pricing and settlement conditions. That review should also establish to what extent nascent energy markets have been able to develop in the Union.*

Secondly, the Commission should review the ancillary activity exemption considering the overall liquidity in, and the orderly functioning of, commodity derivatives markets, emission allowances and derivatives of emission allowances markets. Over the last few years, energy companies have increasingly assumed the role of market makers in the energy commodity markets. Therefore, the Commission should duly take into consideration the overall impact of the ancillary activity exemption by not only looking at the authorisation but also at the impact of prudential requirements as set out in Regulation (EU) 2019/2033 of the European Parliament and of the Council²⁶ and clearing, margining and bilateral collateralisation obligations as set out in Regulation (EU) No 648/2012 of the European Parliament and of the Council²⁷. Thirdly, the Commission should review to what extent transactions in commodity or derivative on emission allowance markets could be harmonized not only in terms of the number of data fields, but also with respect to formats, submission technologies and technical acknowledgement processes and data receivers for commodity derivatives or derivatives on emission allowances markets in Regulation (EU) No 600/2014 and Regulation (EU) No 648/2012 and could be collected in a single collecting entity. This single collection entity could be the consolidated tape provider for derivatives. The Commission should assess which transaction data would be relevant for the public and how that transaction data would be best disseminated.

²⁶ *Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (OJ L 314, 5.12.2019, p. 1).*

²⁷ *Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).*

(10b) Directive 2014/65/EU contains rules that require trading venues to implement mechanisms designed to limit excessive volatility in the markets, notably trading halts and price collars. However, the extreme circumstances that energy and commodity derivatives markets have experienced throughout the energy crisis of 2022 have led to further scrutiny of those mechanisms and have shown that there is a lack of transparency around the activation of those mechanisms by the relevant trading venues in the Union, as highlighted in ESMA's answer to the Commission's call for advice to address the excessive volatility in energy derivatives markets. Market participants would benefit from further information and more transparency on the circumstances that lead to trading being halted and on the main principles that regulated markets are to consider for establishing the technical parameters connected to the activation of those mechanisms. ESMA should provide the broad outline within which the regulated markets shall consider the main technical parameters. Due to the importance of ensuring orderly trading, regulated markets should maintain broad discretion of which mechanisms to use and how to parametrise those mechanisms. In addition, national competent authorities should carefully monitor the use of those mechanisms by trading venues and make use of their supervisory powers as appropriate.

(10c) The Commission should be empowered to adopt the draft regulatory technical standards developed by ESMA with regard to the criteria to be taken into account when defining and assessing the order execution policy, taking into account the difference between retail and professional clients; the principles that regulated markets are to consider when establishing their mechanisms to halt trading; and the information that trading venues are to disclose on the circumstances leading to trading being halted, including the parameters of circuit breakers that trading venues are to report to competent authorities. 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.

(10d) Since the objectives of this Directive, namely to improve transparency on markets in financial instruments and to enhance the international competitiveness of the Union's capital markets, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at 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 Directive does not go beyond what is necessary in order to achieve those objectives.

(10e) Directive 2014/65/EU should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Amendments to Directive 2014/65/EU

Directive 2014/65/EU is amended as follows:

- (1) in Article 1, paragraph 7, is deleted;
- (2) in Article 2(1), point (d), point (ii) is replaced by the following:
 - ‘(ii) are members of or participants in a regulated market or an MTF, ***except for non-financial entities who execute transactions on a trading venue which are part of liquidity management or which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of those non-financial entities or their groups;***’;
- (3) in Article 4, ***paragraph 1 is amended as follows:***
 - (a) point (19) is replaced by the following:***
 - ‘(19) ‘multilateral system’ means a multilateral system as defined in Article 2(1), point (11), of Regulation ***(EU) No 600/2014;***’;

(b) point (20) is replaced by the following:

‘(20) ‘systematic internaliser’ means an investment firm which, on an organised, frequent and systematic basis, deals on own account in equity instruments by executing client orders outside a regulated market, an MTF or an OTF without operating a multilateral system or which opts into the status of systematic internaliser;’;

(4) Article 27 is amended as follows:

(a) paragraph 2 is deleted;

(b) paragraph 3 is replaced by the following;

‘3. In the case of financial instruments that are subject to the trading obligation set out in Articles 23 and 28 of Regulation (EU) No 600/2014, Member States shall require that, following execution of a transaction on behalf of a client, the investment firm shall inform the client where the order was executed.’;

(c) paragraph 6 is deleted;

(d) paragraph 7 is replaced by the following:

‘7. Member States shall require investment firms who execute client orders to monitor the effectiveness of their order execution arrangements and execution policy in order to identify and, where appropriate, correct any deficiencies. In particular, they shall assess, on a regular basis, whether the execution venues included in the order execution policy provide for the best possible result for the client or whether they need to make changes to their execution arrangements. Member States shall require investment firms to notify clients with whom they have an ongoing client relationship of any material changes to their order execution arrangements or execution policy.’;

(e) paragraph 10 is replaced by the following:

‘10. ESMA shall develop draft regulatory technical standards on the criteria to be taken into account when defining and assessing the order execution policy under paragraphs 5 and 7, taking into account whether the orders are executed on behalf of retail or professional clients.

Those criteria shall include at least the following:

- (a) factors determining the choice of execution venues included in the order execution policy;*
- (b) the periodicity of assessing and updating the order execution policy;*
- (c) ways of defining classes of financial instruments under paragraph 5.*

ESMA shall submit those draft regulatory technical standards to the Commission by ... [nine months after the date of entry into force of this amending Directive].

Power is delegated to the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the first subparagraph of this Article in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.’;

(5) in Article 31(1), the following *subparagraph* is added:

‘Member States shall require that investment firms and market operators operating an MTF or an OTF ■ have arrangements in place to ensure they meet the data quality standards as set out in Article 22b of Regulation (EU) No 600/2014.’;

(6) in Article 47(1), the following *points are* added:

(g) to have arrangements in place to ensure they meet the data quality standards as set out in Article 22b of Regulation (EU) No 600/2014;

(h) to have at least three materially active members or users, each having the opportunity to interact with all the others in respect of price formation.’;

(7) *Article 48 is amended as follows:*

(a) *paragraph 5 is amended as follows:*

(i) *the first subparagraph is replaced by the following:*

‘Member States shall require a regulated market to be able to temporarily halt or constrain trading in emergency situations or if there is a significant price movement in a financial instrument on that market or a related market during a short period and, in exceptional cases, to be able to cancel, vary or correct any transaction. Member States shall require a regulated market to ensure that the parameters for halting trading are appropriately calibrated in a way which takes into account the liquidity of different asset classes and sub-classes, the nature of the market model and the types of users, and is sufficient to avoid significant disruptions to the orderliness of trading.’;

(ii) *the following subparagraphs are added:*

‘Member States shall require a regulated market to publicly disclose on its website information on the circumstances leading to trading being halted and on the principles for establishing the main technical parameters used to do so.

Member States shall ensure that, where a trading venue does not use the measures referred to in the first subparagraph despite a significant price movement affecting a financial instrument or related financial instruments leading to disorderly trading conditions on one or several markets, competent authorities are able to take appropriate measures to re-establish the normal functioning of the markets, including the powers referred to in Article 69(2) points (m), (n), (o) and (p).’;

(b) paragraph 12 is amended as follows:

(i) in the first subparagraph, the following points are added:

‘(h) the principles that regulated markets are to consider when establishing their mechanisms to halt trading in accordance with paragraph 5, taking into account the liquidity of different asset classes and sub-classes, the nature of the market model and the types of users, and without prejudice to the discretion of regulated markets in setting those mechanisms;

(i) the information that trading venues shall disclose, including the parameters of circuit breakers that trading venues shall report to competent authorities in accordance with paragraph 5.’;

(ii) the second subparagraph is replaced by the following:

‘ESMA shall submit those draft regulatory technical standards to the Commission by ... [12 months after the date of entry into force of this amending Directive].

Power is delegated to the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.’;

(c) paragraph 13 is deleted;

(8) in Article 49(2), the following point is added:

‘(c) for shares with a non-EEA International Securities Identification Number (ISIN), or shares referred to in Article 23(1), point (a), of Regulation (EU) No 600/2014 for which the venue that is the most relevant market in terms of liquidity is in a third country, have the same tick size that applies on that venue.’;

(9) Article 50 is deleted;

(10) in Article 57(8), first subparagraph, the introductory wording is replaced by the following:

‘Member States shall ensure that an investment firm or a market operator operating a trading venue which trades commodity derivatives, emission allowances or derivatives on emission allowances applies position management controls, including powers for the trading venue to:’;

(11) Article 58 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the first subparagraph is amended as follows:

– **the introductory wording is replaced by the following:**

‘1. Member States shall ensure that an investment firm or a market operator operating a trading venue which trades commodity derivatives or derivatives of emission allowances:’;

– **point (a) is replaced by the following:**

‘(a) for those trading venues where options are traded, make public two weekly reports, one of which excluding options, with the aggregate positions held by the different categories of persons for the different commodity derivatives or derivatives of emission allowances traded on their trading venue, specifying the number of long and short positions by such categories, changes thereto since the previous report, the percentage of the total open interest represented by each category, and the number of persons holding a position in each category in accordance with paragraph 4;’;

(aa) for those trading venues where options are not traded, make public a weekly report on the elements set out in point (a);

(ii) the following subparagraph is inserted after the first subparagraph:

‘Member States shall ensure that an investment firm or a market operator operating a trading venue which trades commodity derivatives or derivatives of emission allowances communicates the reports referred to in point (a) of the first subparagraph to ESMA. ESMA shall proceed with a centralised publication of the information included in those reports.’;

(b) paragraph 2 is replaced by the following:

‘Member States shall ensure that investment firms trading in commodity derivatives or derivatives of emission allowances outside a trading venue provide, on at least a daily basis, the central competent authority referred to in Article 57(6) or – where there is no central competent authority – the competent authority of the trading venue where the commodity derivatives or derivatives of emission allowances are traded, with a complete breakdown of their positions taken in economically equivalent OTC contracts as well as of those of their clients and the clients of those clients until the end client is reached, in accordance with Article 26 of Regulation (EU) No 600/2014 and, where applicable, of Article 8 of Regulation (EU) No 1227/2011.’;

(c) *in paragraph 4, first subparagraph, is amended as follows:*

(i) *the introductory wording is replaced by the following:*

‘4. Persons holding positions in a commodity derivative or derivative of emission allowance shall be classified by the investment firm or market operator operating that trading venue according to the nature of their main business, taking account of any applicable authorisation, as either:’;

(ii) *point (e) is replaced by the following:*

‘(e) in the case of derivatives of emission allowances, operators with compliance obligations under Directive 2003/87/EC.’;

(d) *in paragraph 5, the fourth subparagraph is replaced by the following:*

‘In the case of derivatives of emission allowances, the reporting shall not prejudice the compliance obligations under Directive 2003/87/EC.’;

(12) Article 70(3) *is amended as follows:*

(a) *in* point (a), point (xxx) is deleted;

(b) point (b) *is amended as follows:*

(i) the following *point is* inserted:

‘(ia) Article 5;’;

(ii) *point (v) is replaced by the following:*

‘(v) Articles 8(1(;

(va) Article 8a(1) and (1a);’;

(vb) Article 8b

(iii) *point (vii) is replaced by the following:*

‘(vii) Article 11(1), second subparagraph, first sentence, Article 11(1b) and Article 11(3), fourth subparagraph;

(viii) Article 11a(1), second subparagraph, first sentence, and Article 11a(1), fourth subparagraphs;’;

(iv) points (ix), (x) and (xi) are replaced by the following:

‘(ix) Article 13(1) and (2);

(x) Article 14(1), the first sentence of Article 14(2) and Article 14(3);

(xi) Article 15(1), first subparagraph, second subparagraph, the first and third sentences, and fourth subparagraph, Article 15(2) and Article 15(4), the second sentence;’;

(v) point (xiii) is deleted;

(vi) point (xiv) is replaced by the following:

‘(xiv) Article 20(1), (1a) and Article 20(2), first sentence;’;

(vii) the following points are inserted:

‘(xvia) Article 22a;

(xvib) Article 22b;

(xvic) Article 22c;’;

(viii) point (xxi) is replaced by the following:

‘(xxi) Article 28(1);’;

(ix) point (xxiv) is replaced by the following:

‘(xxiv) Article 31(3);’;

(x) the following point is inserted:

‘(xxviii) Article 39a.’

(14) in Article 90, the following paragraph is added:

‘5. The Commission shall, after consulting ESMA, EBA and ACER, present a report to the European Parliament and the Council with a comprehensive assessment of the markets for commodity derivatives, emission allowances or derivatives on emission allowances. The report shall assess at least for each of the following elements their contribution to the liquidity and proper functioning of European markets for commodity derivative, emission allowances or derivatives on emission allowances:’

- (a) *the position limit and position management controls regimes relying on data provided by competent authorities to ESMA in accordance with Article 57(5) and (10);*
- (b) *the elements referred to in the second and third subparagraph of Article 2(4) and the criteria for establishing when an activity is to be considered to be ancillary to the main business at group level pursuant to the Commission Delegated Regulation (EU) 2021/1833, taking into account the ability to enter into transactions for effectively reducing risks directly relating to the commercial activity or treasury financing activity, the application of requirements from 26 June 2026 for investment firms specialised in commodity derivatives or emission allowances or derivatives thereof as set out in Regulation (EU) 2019/2033 and requirements for financial counterparties as set out in Regulation (EU) No 648/2012;*

- (c) *the key elements to obtain a harmonized data set for transactions by the commodity derivative market to a single collecting entity. The relevant information on transaction data to be made public and its most appropriate format.*

The Commission shall present its reports:

- *by 31 July 2024 for point b) of the first sub-paragraph of this Article;*
- *by 31 July 2025 for points a) and c) of the first sub-paragraph of this Article.*

These reports shall be accompanied, if appropriate, with a legislative proposal concerning targeted changes to the market rules for commodity derivatives, emission allowances or derivatives on emission allowances framework.’

Article 2
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... [**18** months after the date of entry into force of *this amending Directive*] at the latest.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

Entry into force

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

Article 4

Addressees

This Directive is addressed to the Member States.

Done at ...,

For the European Parliament

The President

For the Council

The President