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'I' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 2)
Subject:	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) No 596/2014 on market abuse and Regulation (EU) No 909/2014 on improving securities settlement in the European Union and on central securities depositories as regards certain dates

Delegations will find attached the text of the above-mentioned Regulation, as provisionally agreed with the European Parliament.`

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) No 596/2014 on market abuse and Regulation (EU) No 909/2014 on improving securities settlement in the European Union and on central securities depositories as regards certain dates

(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,

Whereas:

¹ OJ C , , p. .

² OJ C , , p. .

- (1) Regulation (EU) No 600/2014 of the European Parliament and of the Council³ and Directive 2014/65/EU of the European Parliament and of the Council⁴ are major pieces of financial legislation adopted in the wake of the financial crisis as regards securities markets, investment intermediaries and trading venues. The new framework reinforces and replaces Directive 2004/39/EC of the European Parliament and of the Council⁵.
- (2) Regulation (EU) No 600/2014 and Directive 2014/65/EU establish requirements in relation to authorisation and operation of investment firms, regulated markets and data reporting services providers. It harmonises position-limits regime for commodity derivatives to improve transparency, support orderly pricing and prevent market abuse. It also introduces rules on high frequency trading and improves oversight of financial markets by harmonising administrative sanctions. Building on the rules already in place, the new framework also strengthens the protection of investors by introducing robust organisational and conduct requirements. The new rules are to apply from 3 January 2017.
- (3) The new framework introduced by Regulation (EU) No 600/2014 and Directive 2014/65/EU requires trading venues and systematic internalisers to provide competent authorities with financial instrument reference data that describe in a uniform manner the characteristics of every financial instrument subject to that Directive. Those data are also used for other purposes, for instance for the calculation of transparency and liquidity thresholds as well as for positions reporting of commodity derivatives.

³ 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).

⁴ 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).

⁵ Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

- (4) In order to collect data in an efficient and harmonised manner, a new data collection infrastructure is being developed. To this end, the European Securities and Markets Authority ('ESMA'), in conjunction with competent national authorities, are obliged to establish a Financial Instruments Reference Data System ('FIRDS'). It will cover a wide range of financial instruments brought into the scope of Regulation (EU) No 600/2014 and will link data feeds of ESMA, national competent authorities ('NCAs') and trading venues across the Union. The vast majority of the new IT-systems underpinning FIRDS will need to be built from the ground, based on new parameters.
- (5) Given the complexity of the new framework and the need for a very high number of delegated and implementing acts, the date of applicability of Regulation (EU) No 600/2014 was deferred by 30 months from the date of entry into force. Despite this unusually long period, stakeholders, such as trading platforms, NCAs and ESMA are not in a position to ensure that the necessary data infrastructures will be in place and become operational by 3 January 2017. This is due to the size and complexity of the data needed to be collected and processed for the new framework to become operational, in particular for transaction reporting, transparency calculations and reporting of positions in commodity derivatives.
- (6) The absence of the data collection infrastructures has implications across the entire scope of Regulation (EU) No 600/2014 and Directive 2014/65/EU. Without data it will not be feasible to establish a precise delineation of financial instruments that fall within the scope of the new framework. Furthermore, it will not be possible to tailor the pre-trade and post-trade transparency rules, in order to determine which instruments are liquid and when waivers or deferred publication should be granted.

- (7) Absent the data, trading venues and investment firms will not be able to report executed transactions to competent authorities. In the absence of position reporting for commodity derivatives it will be difficult to enforce position limits on such contracts. With no position reporting, there is a limited ability to effectively detect breaches of the position limits. For instance, many of the requirements in relation to algorithmic trading are also dependent on data.
- (8) The absence of data collection infrastructures will also make it difficult for investment firms to apply best execution rules. Trading venues and systematic internalisers will not be able to publish data relating to the quality of execution of transactions on those venues. Investment firms will not be provided with important execution data to help them determine the best way to execute client orders.
- (9) In order to ensure legal certainty and avoid potential market disruption, it is necessary and justified to take urgent action to defer the entry into application of the whole framework, including all delegated and implementing acts.
- (10) The implementation process for data infrastructure involves five steps: business requirements, specifications, development, testing and deployment. ESMA estimates that those steps should be completed by January 2018 provided that there is legal certainty on the final requirements under the relevant regulatory technical standards no later than by June 2016.
- (11) In light of the exceptional circumstances and in order to enable ESMA, NCAs and stakeholders to complete the operational implementation, it is appropriate to defer the date of application of Regulation (EU) No 600/2014 by 12 months until 3 January 2018. Reports and reviews should be deferred accordingly.

- (11a) Investment firms often execute, on their own account or on behalf of clients, transactions in derivatives and other financial instruments or assets that comprise a number of interlinked, contingent trades. Such package transactions enable investment firms and their clients to better manage their risks, with the price of each component of the package transaction reflecting the overall risk profile of the package rather than the prevailing market price of each component. Package transactions can take various forms, such as exchange for physicals, trading strategies executed on trading venues, or bespoke package transactions, and it is important to take those specificities into account when calibrating the applicable transparency regime. It is therefore appropriate to specify for the purpose of Regulation (EU) No 600/2014 the specific circumstances in which pre-trade transparency requirements should not apply to orders relating to such package transactions, nor to any individual component of such orders.
- (11aa) As a body with highly specialised expertise, it would be efficient and appropriate to entrust ESMA with the elaboration of draft regulatory technical standards which do not involve policy choices for submission to the Commission regarding a methodology for determining those package orders for which there is a liquid market. The Commission should adopt the draft regulatory technical standards developed by ESMA by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.
- (11b) It is considered that securities financing transactions, as defined in Article 3(11) of Regulation (EU) 2015/2365, do not contribute to the price discovery process and that it would be appropriate that Title II and Title III do not apply to these transactions.

- (11c) Regulation (EU) 596/2014 of the European Parliament and of the Council ⁶, which applies from 3 July 2016, establishes requirements regarding the collection of financial instrument reference data. Those data, that are collected via FIRDS, are used to determine the financial instruments that fall into the scope of Regulation (EU) 596/2014. Regulation (EU) 596/2014 will apply from 3 July 2016. However, FIRDS will not be fully operational before January 2018. It is therefore appropriate to defer the date of application of Article 4(2) and (3) of Regulation (EU) 596/2014 until 3 January 2018.
- (12) Regulation (EU) 596/2014 contains reference to the date of application of Regulation (EU) No 600/2014 and Directive 2014/65/EU. In order to ensure that references in Regulation (EU) 596/2014 to organised trading facilities, small and medium-sized enterprises' ('SME') growth markets, emission allowances or auctioned products based thereon do not apply until the date of application of Regulation (EU) No 600/2014 and Directive 2014/65/EU, Article 39(4) of Regulation (EU) 596/2014 stating that references to them are read as references to Directive 2004/39/EC should be adjusted taking into account the extension of the date of application of those acts.

⁶ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

- (13) The settlement of securities transactions is closely linked to securities trading. As such, Regulation (EU) 909/2014 of the European Parliament and of the Council⁷ contains references to the date of application of Regulation (EU) No 600/2014 and Directive 2014/65/EU. Before that date, references to those two acts should be read as references to Directive 2004/39/EC. Regulation (EU) 909/2014 further creates a transitional regime for the application of the rules on settlement discipline to multilateral trading facilities ('MTFs') applying for registration as SME growth markets in accordance with Directive 2014/65/EU.
- (14) In order to ensure that Directive 2004/39/EC is referenced in Regulation (EU) 909/2014 until the extended date of application of Regulation (EU) No 600/2014 and Directive 2014/65/EU and that the transitional provisions for MTFs applying for registration as SME growth markets under Regulation (EU) 909/2014 are maintained so as to provide sufficient time for MTFs to apply for such registration under Directive 2014/65/EU, Regulation (EU) 909/2014 should be amended.
- (15) Regulations (EU) No 600/2014, (EU) No 596/2014 and (EU) No 909/2014 should therefore be amended accordingly,

⁷ Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 600/2014 is amended as follows:

(-1) In Article 1, the following paragraph is inserted:

‘6a. Title II and Title III of this Regulation shall not apply to securities financing transactions as defined in Article 3(11) of Regulation (EU) 2015/2365.’

(-1a) In Article 2(1), the following points are inserted:

‘(28a) ‘securities financing transaction’ or ‘SFT’ means a securities financing transaction as defined in Article 3(11) of Regulation (EU) 2015/2365;’

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

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

(a) for the purpose of executing an EFP; or

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

‘(50) ‘Package transaction’ means:

(a) an EFP; or

(b) a transaction involving the execution of two or more component transactions in financial instruments and which fulfils all of the following criteria:

- (i) the transaction is executed between two or more counterparties;
- (ii) each component of the transaction bears meaningful economic or financial risk related to all the other components;
- (iii) the execution of each component is simultaneous and contingent upon the execution of all the other components.’;

(1) In Article 4(7) '3 January 2017' is replaced by '3 January 2018'; and '3 January 2019' is replaced by '3 January 2020'.

(2) In Article 5(8) '3 January 2016' is replaced by '3 January 2017'.

(2a) In Article 8(1), the first sentence is replaced by the following:

‘Market operators and investment firms operating a trading venue shall make public current bid and offer prices and the depth of trading interests at those prices which are advertised through their systems for bonds, and structured finance products, emission allowances, derivatives traded on a trading venue and package orders.’

(2b) In Article 9(1), the following points are added:

‘(d) orders for the purpose of executing an EFP;

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

- (i) at least one of its components is a financial instrument for which there is not a liquid market, unless there is a liquid market for the package order as a whole;
- (ii) at least one of its components is large in scale compared with the normal market size, unless there is a liquid market for the package order as a whole;
- (iii) all its components are executed on a request-for-quote or voice system and they are above the size specific to the instrument.'

(2c) In Article 9, the following paragraphs are included:

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

'6. . In order to ensure consistent application of Article 9(1)(e)(i) and (ii), ESMA shall develop draft regulatory technical standards to establish a methodology for determining those package orders for which there is a liquid market. When developing such methodology for determining whether there is a liquid market for a package order as a whole, ESMA shall assess whether packages are standardised and frequently traded.

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

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

(2d) In article 18, the following paragraph is added:

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

- (3) In Article 19(1) '3 January 2019' is replaced by '3 January 2020'.
- (4) In Article 26(10) '3 January 2019' is replaced by '3 January 2020';
- (5) Article 35(5) is amended as follows:
 - (a) '3 January 2017' is replaced by '3 January 2018';
 - (b) '3 July 2019' is replaced by '3 July 2020';
- (6) In Article 37(2) '3 January 2017' is replaced by '3 January 2018';
- (7) Article 52 is amended as follows:
 - (a) in paragraph 1, '3 March 2019' is replaced by '3 March 2020';
 - (b) in paragraph 4, '3 March 2019' is replaced by '3 March 2020';
 - (c) in paragraph 5, '3 March 2019' is replaced by '3 March 2020';
 - (d) in paragraph 6, '3 March 2019' is replaced by '3 March 2020';
 - (e) in paragraph 7, '3 July 2019' is replaced by '3 July 2020';
 - (f) in paragraph 8, '3 July 2019' is replaced by '3 July 2020';
 - (g) in the first subparagraph of paragraph 9, '3 July 2019' is replaced by '3 July 2020';
 - (h) in the second subparagraph of paragraph 9, '3 July 2021' is replaced by '3 July 2022';
 - (i) in the first subparagraph of paragraph 10, '3 July 2019' is replaced by '3 July 2020';
 - (j) in paragraph 11, '3 July 2019' is replaced by '3 July 2020';
 - (k) in the second subparagraph of paragraph 12, '3 January 2017' is replaced by '3 January 2018'.

- (8) In the first subparagraph of Article 54(2) '3 July 2019' is replaced by the following '3 July 2020';
- (9) Article 55 is amended as follows:
- (a) the second paragraph is replaced by the following:

'This Regulation shall apply from 3 January 2018.

- (b) the fourth paragraph is replaced by the following:

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

Article 2

Regulation (EU) No 596/2014 is amended as follows:

- (-1) Article 39(2) is replaced by the following:

'2. It shall apply from 3 July 2016 except for:

- (a) Article 4 (2) and (3), which shall apply from 3 January 2018; and
- (b) Article 4(4) and (5), Article 5(6), Article 6(5) and (6), Article 7(5), Article 11(9), (10) and (11), Article 12(5), Article 13(7) and (11), Article 16(5), the third subparagraph of Article 17(2), Article 17(3), (10) and (11), Article 18(9), Article 19(13), (14) and (15), Article 20(3), Article 24(3), Article 25(9), the second, third and fourth subparagraphs of Article 26(2), Article 32(5) and Article 33(5), which shall apply from 2 July 2014. '

- (1) In the first subparagraph of Article 39(4) '3 January 2017' is replaced by '3 January 2018'.
- (2) In the second subparagraph of Article 39(4) '3 January 2017' is replaced by '3 January 2018'.

Article 3

Regulation (EU) No 909/2014 is amended as follows:

- (1) In point (b) of the second subparagraph of Article 76(5) '13 June 2017' is replaced by '13 June 2018'.
- (2) In Article 76(7) '3 January 2017' is replaced by '3 January 2018'.

Article 4

This Regulation shall enter into force on the 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 Brussels,

For the European Parliament
The President

For the Council
The President
