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## INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 600/2014 as regards enhancing market data transparency, removing obstacles to the emergence of a consolidated tape, optimising the trading obligations and prohibiting receiving payments for forwarding client orders - Outcome of the European Parliament's first reading (Strasbourg, 15 to 18 January 2024)

## I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the Joint declaration on practical arrangements for the codecision procedure<sup>1</sup>, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this file at first reading.

In this context, the Chair of the Committee on Economic and Monetary Affairs (ECON) Irene TINAGLI (S&D, IT) presented on behalf of ECON a compromise amendment (amendment number 2) to the abovementioned proposal for a Regulation, for which Danuta Maria HÜBNER (PPE, PL) had prepared a draft report. This amendment had been agreed during the informal contacts referred to above. No other amendments were tabled.

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<sup>1</sup> OJ C 145, 30.6.2007, p.5.

## II. VOTE

When it voted on 16 January 2024, the plenary adopted the compromise amendment (amendment number 2) to the abovementioned proposal for a Regulation. The Commission's proposal as thus amended constitutes the European Parliament's position at first reading which is contained in its legislative resolution as set out in the Annex hereto<sup>2</sup>.

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

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<sup>2</sup> The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

## **Amendments to the Markets in Financial Instruments Regulation (MiFIR)**

**European Parliament legislative resolution of 16 January 2024 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 600/2014 as regards enhancing market data transparency, removing obstacles to the emergence of a consolidated tape, optimising the trading obligations and prohibiting receiving payments for forwarding client orders (COM(2021)0727 – C9-0440/2021 – 2021/0385(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2021)0727),
  - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0440/2021),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the opinion of the European Central Bank of 1 June 2022<sup>1</sup>,
  - having regard to the opinion of the European Economic and Social Committee of 23 March 2022<sup>2</sup>,
  - having regard to the provisional agreement approved by the committee responsible under Rule 74(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 18 October 2023 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
  - having regard to Rule 59 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs (A9-0040/2023),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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<sup>1</sup> OJ C 286, 27.7.2022, p. 17.

<sup>2</sup> OJ C 290, 29.7.2022, p. 68.

**Position of the European Parliament adopted at first reading on 16 January 2024 with a view to the adoption of Regulation (EU) 2024/... 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 payment for order flow**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Central Bank<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure<sup>3</sup>,

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<sup>1</sup> OJ C 286, 27.7.2022, p. 17.

<sup>2</sup> OJ C 290, 29.7.2022, p. 68.

<sup>3</sup> Position of the European Parliament of 16 January 2024.

Whereas:

- (1) In its communication of 24 September 2020 entitled ‘A Capital Markets Union for people and businesses – new action plan’ (‘CMU Action Plan’), the Commission announced its intention to table a legislative proposal to create a continuous electronic live data stream, which was meant to provide a comprehensive view of the prices and the volume of equity and equity-like financial instruments traded throughout the Union across trading venues (‘consolidated tape’). In its conclusions of 2 December 2020 on the Commission’s CMU Action Plan, 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 barriers to establishing a consolidated tape in the Union.
- (2) In its communication of 19 January 2021 entitled ‘The European economic and financial system: fostering openness, strength and resilience’, the Commission confirmed its intention to improve, simplify and further harmonise the securities markets transparency framework, as part of the review of Directive 2014/65/EU of the European Parliament and of the Council<sup>4</sup> and of Regulation (EU) No 600/2014 *of* the European Parliament and of the Council<sup>5</sup>. As part of efforts to strengthen the international role of the euro, the Commission also announced that such a reform would include the design and implementation of a consolidated tape, in particular for corporate bond issuances, to increase secondary trading in euro-denominated debt instruments.

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<sup>4</sup> 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).

<sup>5</sup> 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 provides a legislative framework for consolidated tape providers (CTPs), for both equity and non-equity *instruments*. Those CTPs are currently responsible for collecting from trading venues and approved publication arrangements (APAs) trade reports for financial instruments and consolidating them into a continuous electronic live data stream, which provides price and volume data per financial instrument. The idea behind the introduction of CTPs was that 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.

- (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*, the European Supervisory Authority (European Securities and Markets Authority) (ESMA) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>6</sup> identified three main obstacles that have prevented supervised entities from applying for authorisation as a CTP: first, a lack of clarity as to how a CTP is to obtain 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; and 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* ('data contributors') transmit data to CTPs ■ , and, second, an improvement of the data quality by harmonising the data reports that data contributors are to submit to the *data centres of CTPs*.

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<sup>6</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

- (5) Article 1(7) of Directive 2014/65/EU requires systems and facilities 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 **I**, multilateral trading facilities (MTFs) or organised trading facilities (OTFs). The inclusion of that requirement within the scope of 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 authorised as *a regulated market*, an MTF or an OTF and multilateral systems that are not authorised as such. In order to ensure a uniform application of that requirement, it should be moved from Directive 2014/65/EU to Regulation (EU) No 600/2014.
- I**



- (6) Dark trading is trading without pre-trade transparency, using the waiver laid down in Article 4(1), point (a), of Regulation (EU) No 600/2014 ('reference price waiver') and the waiver laid down in Article **4(1), point (b)(i)**, of that Regulation ('negotiated trade waiver'). 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. First, the level of dark trading in an equity instrument on an individual venue **is not to** exceed **4 %** of the total volume of trading in that instrument in the Union. When that threshold is **exceeded**, dark trading in that instrument on that venue is suspended. Second, the level of dark trading in an equity instrument in the Union **is not to** exceed **8 %** of the total volume of trading in that instrument in the Union. When that second threshold is **exceeded**, all dark trading **under both waivers** in that instrument is suspended. The first threshold, namely the venue-specific threshold, leaves room for the continued use of those waivers on other venues on which trading in that equity instrument is not yet suspended, until the second threshold, namely the Union-wide threshold, is **exceeded**. That makes monitoring the levels of dark trading and enforcing the suspension more complex. To simplify the double volume cap while keeping its effectiveness, the new single volume cap should rely solely on a Union-wide threshold **set at 7 %, which should apply only to trading under the reference price waiver and not to trading under 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 price formation, and should submit a report with its suggestions to the Commission. On that basis, the Commission should be empowered to adjust the volume-cap threshold by means of delegated acts. ESMA should also assess the appropriateness of the volume cap and whether it is necessary to remove it or to extend it to other trading systems or execution venues which derive their prices from a reference price.**

- (7) *Article 8 of Regulation (EU) No 600/2014 sets out pre-trade transparency requirements for market operators and investment firms operating a trading venue in respect of non-equity instruments, regardless of the trading system. The benefits of those requirements have been clear for such market operators and investment firms that operate a central limit order book or a periodic auction trading system, where bids and offers are anonymous, firm and truly multilateral. Other trading systems, in particular 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 such market operators and investment firms and to simplify the applicable waivers, the requirement to publish firm or indicative quotes should apply only 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 periodic auction trading systems, the requirements applicable to waivers as referred to in Article 9 of Regulation (EU) No 600/2014 should be amended. The waiver that is available above a size specific to the financial instrument for request-for-quote systems and for voice trading systems should be removed.*

- (8) *Currently, derivatives fall within the scope of the non-equity transparency regime, which combines different types of financial instruments with mostly securities (bonds) on the one hand and mostly contracts (derivatives) on the other. Transparency for non-equity instruments, as well as for equity instruments, relies on the concept of ‘traded on a trading venue’. For certain derivatives, that concept has proven to be problematic due to their lack of fungibility and the lack of appropriate identifying reference data. For that reason, the scope of derivatives transparency should rely not on the concept of ‘traded on a trading venue’, but, rather, on predefined characteristics of the derivatives. The derivatives should be subject to the transparency requirements regardless of whether they are traded on or off venue. The transparency requirements should apply to derivatives that are sufficiently standardised for the data published in relation to them to be meaningful for market participants beyond the contracting parties. This means that all exchange-traded derivatives should remain subject to the transparency requirements.*

*Other derivatives should be subject to the transparency requirements where they fall within the scope of the clearing obligation under Regulation (EU) No 648/2012 of the European Parliament and of the Council<sup>7</sup> ('clearing obligation'), for which a degree of standardisation is a prerequisite, and are centrally cleared. This ensures that transactions that are considered to be unsuitable for the clearing obligation, such as intragroup transactions, are not subject to the transparency requirements. In particular, only interest rate derivatives with the most standardised and liquid currency and tenor combinations should fall within the scope of the transparency requirements. Furthermore, recent market events have shown that a lack of transparency in certain credit default swaps referencing global 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 the transparency requirements where they are centrally cleared even where they are not subject to the clearing obligation. The Commission should be empowered to amend the conditions for determining the derivatives that are to be subject to the transparency requirements where market developments so require.*

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<sup>7</sup> *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).*

- (9) Article 10 of Regulation (EU) No 600/2014 contains requirements for trading venues to make public information related to transactions in non-equity instruments, including price and volume. Article 11 of that Regulation specifies where it is possible for competent authorities to authorise the deferred publication of those details. Such deferred publication 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 ■ , where the transaction involves liquidity providers, is above the size specific to the financial instrument threshold. Competent authorities have discretion to determine the duration of the deferrals and the details of the transactions to be deferred. That discretion has led to differing practices among the Member States and to an ineffective *and complex* post-trade transparency *regime*. To ensure transparency with regard to all types of investors, it is necessary to harmonise the deferral regime at Union level, to remove discretion at national level and to facilitate data consolidation. It is therefore appropriate to reinforce post-trade transparency requirements by removing the discretion of competent authorities.

- (10) To ensure an adequate level of transparency, the price *and the volume of transactions executed in respect of bonds, structured finance products and emission allowances* should be made public as close to real time as technically 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. The categories of transactions for which deferrals are allowed should be determined taking into account 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 bonds, structured finance products and emission allowances, or classes thereof, is needed. The draft regulatory technical standards developed by ESMA should specify which issuance sizes correspond to a liquid or illiquid market in bonds, or classes thereof, until their maturity, from which transaction size in either a liquid or illiquid bond a deferral can be applied, and the duration of such a deferral in accordance with 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 laid down in Commission Delegated Regulation (EU) 2015/61<sup>8</sup>. With regard to structured finance products and emission allowances, ESMA should develop draft regulatory technical standards to determine the instruments or the classes that have a liquid or illiquid market. ESMA should establish the applicable categories and the duration of the deferrals. It is appropriate for ESMA to also apply the determination of liquid and illiquid markets in bonds, emission allowances and structured finance products to the pre-trade transparency waiver. It is not appropriate for that determination to rely on frequent assessments. 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 regard to transactions in sovereign debt instruments not issued by Members States, decisions on such extensions should be taken by ESMA.*

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<sup>8</sup> *Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions (OJ L 11, 17.1.2015, p. 1).*

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



- (12) 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 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 data policies and how the price for data is set. On 18 August 2021, ESMA issued guidelines explaining how the concept of ‘reasonable commercial basis’ should be applied. Those guidelines should be converted to legal obligations ***and strengthened in order to ensure that it is not possible for trading venues, APAs, CTPs and systematic internalisers to charge for data according to the value that the data represents to individual users***. Due to the high level of detail required to specify the concept of ‘reasonable commercial basis’ and the required flexibility in amending the applicable rules on the basis of the ***fast-changing*** data landscape, ESMA should be empowered to develop draft regulatory technical standards specifying how the concept of ‘reasonable commercial basis’ is to 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 data policies and price-setting in the market. ESMA should update those draft regulatory technical standards on the basis of its assessment.***

- (13) 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 where those systematic internalisers deal in sizes of up to the standard market size. Systematic internalisers are free to decide at which sizes they quote, provided that 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 make public firm quotes on the basis of a minimum quote *size to be determined by means of regulatory technical standards. When developing those regulatory technical standards, it is appropriate for ESMA to consider the following objectives: increasing the 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 increase the competitiveness of systematic internalisers, they should be allowed to match orders of any size at midpoint.*

- (14) *Articles 18 and 19 of Regulation (EU) No 600/2014 lay down pre-trade transparency requirements for 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 are of 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.*

- (15) *Under the current legal framework, where one of the two parties to a transaction is a systematic internaliser, the systematic internaliser is required to report the 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 trades for their clients while not dealing on own account on a systematic basis, which has placed disproportionate requirements on such investment firms. Therefore, it is appropriate to introduce a status of designated publishing entity allowing an investment firm to be responsible for making a transaction public through an APA without the need to opt in to the status of systematic internaliser. Furthermore, competent authorities should grant investment firms the status of designated publishing entity for specific classes of financial instrument, in line with the request of those investment firms and should communicate such requests to ESMA. ESMA should maintain a public register of such designated publishing entities by class of financial instrument so that market participants can identify them.*

- (16) Market participants need core market data to be able to make informed investment decisions. Currently, sourcing ■ data about certain financial instruments directly from data contributors requires CTPs to enter into separate licensing agreements with all such data contributors. That process is burdensome, costly and time-consuming. It has been one of the obstacles to CTPs emerging *in any asset class*. That obstacle should be removed to enable CTPs to obtain the ■ data and to overcome licensing issues. Data contributors should be required to submit their ■ data to CTPs and to use a harmonised format meeting standards that ensure high-quality data when so doing. *Data contributors should also provide regulatory data to keep investors informed of the status of the system matching orders, for example in the event of a market outage, and of the status of the financial instrument, for example in the event of suspensions or trading halts.* Only CTPs selected and authorised by ESMA should be able to collect ■ data from data contributors in accordance with the mandatory contribution rule. To make the ■ data useful for investors, ■ data contributors should be required to transmit data to the CTP as close *to real time* as technically possible ■ .

- (17) Titles II and III of Regulation (EU) *No* 600/2014 require trading venues, APAs, investment firms and systematic internalisers ■ to make public 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 core market data provided by the CTP. The requirement for trading venues, APAs, investment firms and systematic internalisers to make public pre-trade and post-trade data should therefore remain applicable to enable market participants to access such data. However, to avoid an undue burden on data contributors, it is appropriate to align, to the extent possible, the requirement that data contributors make data public with the requirement to contribute data to the CTP.

- (18) 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 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 those venues, an opt-in mechanism should be established. That opt-in mechanism should apply to investment firms operating SME growth markets and to market operators whose annual trading volume of shares represents 1 % or less of the annual trading volume of shares in the Union. Two alternative conditions should complement the 1 % threshold: either the investment firm or market operator is not part of a group comprising or having close links with an investment firm or a market operator that exceeds the 1 % threshold, or the concentration of the trading is very high in the venue operated by that investment firm or market operator, namely 85 % of the total annual trading volume of shares is traded in the trading venue where they were initially admitted to trading. Only a few trading venues fulfil those criteria, and therefore only a small percentage of trading in the Union would not be required to transmit data to the CTP. Nonetheless, the investment firms and market operators fulfilling those criteria would have the opportunity to opt in and should notify the CTP and ESMA of any decision to do so. Such a decision would be irrevocable and all the data – for both shares and exchange-traded funds (ETFs) – would be part of the consolidated tape afterwards.*

- (19) Due to the varying quality of data, it is difficult for market participants to compare such data, which deprives data consolidation of much of its added value. It is of the utmost importance for the proper functioning of the transparency regime laid down in Titles II and III of Regulation (EU) **No 600/2014** and for the consolidation of data by CTPs that data transmitted to the CTPs be of high quality. It is therefore appropriate to require that those data comply with standards that ensure high-quality data 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 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 the quality of the transmission protocol. ESMA should be closely involved in the work of the expert stakeholder group.*



- (20) To better monitor reportable events, Directive 2014/65/EU harmonises the synchronisation of business clocks for trading venues and their members. To ensure that, in the context of the consolidation of 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 CTPs. Due to the level of technical expertise required to specify the requirements for application of a synchronised business clock, ESMA should be empowered to develop draft regulatory technical standards to specify the level of accuracy to which the business clocks should be synchronised.

- (21) Article 23 of Regulation (EU) No 600/2014 requires that **most of the** trading in shares take 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, irregular and infrequent. It is **currently** not **sufficiently** clear when this exemption applies. ESMA has therefore clarified its scope by making a distinction between shares on the basis of their International Securities Identification Number (ISIN). According to that distinction, only shares with a European Economic Area (EEA) ISIN **which are traded on a trading venue** are subject to the share trading obligation. That approach provides clarity to market participants trading in shares. ESMA’s current practice should therefore be incorporated in Regulation (EU) No 600/2014, while simultaneously removing the exemption for trades in shares which are non-systematic, ad hoc, irregular and infrequent.

- (22) Reporting in financial markets – in particular transaction reporting – is already highly automated and data are fairly standardised. Some inconsistencies between frameworks have already been resolved in Regulation (EU) No 648/2012, Regulation (EU) 2015/2365 of the European Parliament and of the Council<sup>9</sup> and the Commission's Regulatory Fitness and Performance (REFIT) programme. The empowerments of ESMA should be aligned to require ESMA to develop draft regulatory technical standards and ensure greater consistency in transaction reporting between the frameworks of those Regulations and that of Regulation (EU) No 600/2014. 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 competent authorities, in order to adequately reflect their evolving supervisory needs to monitor the most recent market developments and potential related risks.***

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<sup>9</sup> Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (OJ L 337, 23.12.2015, p. 1).

- (23) *Currently, investment firms are required to report their transactions to their competent authority in any financial instrument traded on a trading venue or where 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 whether the transaction is executed on or off venue. The concept of ‘traded on a trading venue’ has proven to be problematic in the case of over-the-counter (OTC) derivatives for the purposes of transaction reporting, for the same reason it has proven to be problematic for the purposes of transparency requirements. Therefore, the new scope for transaction reporting of derivatives clarifies that transactions in OTC derivatives executed on venue are to be reported, and those transactions in OTC derivatives executed off venue are to be reported only 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.*

- (24) *Trading venues should be obliged to provide ESMA with identifying reference data for transparency purposes, including identifiers of OTC derivatives. The identifier currently used for derivatives, namely the ISIN, has proved cumbersome and ineffective for public transparency, and that situation 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, it is possible that that unique identifier is not sufficient and that it needs to be complemented by additional identifying data. Therefore, the Commission should specify, by means of delegated acts, the identifying reference data to be used with regard to OTC derivatives, including a unique identifier and any other relevant identifying reference data. In relation to the identifier to be used for the purposes of transaction reporting pursuant to Regulation (EU) No 600/2014, the Commission should specify the most appropriate identifiers of OTC derivatives, which might be different from the identifier determined for transparency requirements, taking into account the different purposes of those requirements, in particular as regards supervision of market abuse by competent authorities.*

- (25) Competition among CTPs ensures that the consolidated tape is provided in the most efficient way and under the best conditions for users. However, to date, no entity has applied to act as a CTP. It is therefore 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**. **First**, ESMA should **initiate the** selection procedure **concerning the consolidated tape for bonds**. **Within six months of the initiation of** that selection procedure, ESMA should **initiate the selection procedure for a CTP for shares and ETFs**. **Last, ESMA should initiate the selection procedure for the CTP on OTC derivatives within three months of the date of application of the delegated act specifying the appropriate OTC derivatives identifier for transparency purposes and no earlier than six months from the initiation of the selection procedure for a CTP for shares and ETFs**.

- (26) *The purpose of the selection procedure is to award the right to operate a consolidated tape for a period of five years. The selection procedure is subject to the rules laid down in Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council<sup>10</sup>. ESMA should, for all classes, select a candidate on the basis of its technical abilities to operate a consolidated tape, including its ability to ensure business continuity and resilience, as well as its ability to use modern interface technologies, the organisation of its management and decision-making processes, its methods for ensuring data quality, the costs required for developing and operating a consolidated tape, the simplicity of the licences that users have to enter into in order to receive the core market data and regulatory data, including the number of types of licensing 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 a CTP, ESMA should take into account the existence of fair and equitable arrangements for revenue redistribution. It is appropriate for such arrangements to acknowledge the role that small trading venues play in providing undertakings with the opportunity to issue debt to finance their activities. For shares and ETFs, CTPs should display the European best bid and offer, with no dissemination of the market identifier code of the venue. By 30 June 2026, the Commission should make an assessment of that level of pre-trade information for the functioning and competitiveness of Union markets and should, where appropriate, accompany that assessment with a legislative proposal on the design of the consolidated tape.*

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<sup>10</sup> *Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).*

- (27) *A selected applicant should, without undue delay, apply to ESMA for authorisation. Within 20 working days of such an application, ESMA should assess whether the application is complete and should notify the applicant accordingly. Within three months of receipt of a complete application, ESMA should adopt a reasoned decision granting or refusing authorisation. ESMA should base that reasoned decision on its assessment of whether the applicant is able, within a reasonable time, to operate a consolidated tape in compliance with all the requirements. ESMA's reasoned decision should specify the conditions applicable to the applicant's operation of the consolidated tape, in particular the level of fees charged to users. In order to ensure an orderly start of operation, it should be possible for ESMA, after granting authorisation, to allow the applicant a reasonable period of time to complete the development of the consolidated tape.*
- (28) According to data presented in the impact assessment accompanying the proposal for this Regulation, the expected revenue generation for the consolidated tape is likely to vary depending on the precise features of the consolidated tape. The *CTPs should not be prevented* from making a reasonable margin to maintain a viable business model. *Academics and civil society organisations using the data for research purposes, competent authorities using the data for the execution of regulatory and supervisory competences, and retail investors should have access, free of charge, 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.*



- (29) ■ 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, namely those whose annual trading volume of shares represents 1 % or less of the annual trading volume of shares in the Union ('small trading venues'), which are generally the main centre of liquidity for the securities they offer for trading.* The data that small trading venues contribute to the consolidated tape therefore play a more determining role in the price formation for the shares that *small trading venues admit* to trading. *Notwithstanding the possibility of certain data contributors not to contribute to the consolidated tape, it is appropriate to grant, to those data contributors that decide to opt in to the consolidated tape,* preferential treatment for the redistribution of revenue generated by the consolidated tape for shares and ETFs, to help *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.

- (30) *The CTP for shares and ETFs should redistribute part of its revenue generated by the consolidated tape to certain trading venues in accordance with a redistribution scheme based on three criteria. The weighting of those criteria should be specified by means of regulatory technical standards. In order to incentivise small trading venues to opt in to the mandatory contribution of data to the CTP for shares and ETFs, the highest weighting should apply to the total annual trading volume of small trading venues. The second highest weighting should remunerate data contributors that 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. Considering the limited number of listings on small trading venues, the CTP should apply the relevant weighting 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 were initially admitted to trading on ... [five years before the date of entry into force of this amending Regulation] or thereafter. The lowest weighting of the three criteria should remunerate the trading that has been concluded on a trading system providing pre-trade transparency and that resulted from orders that were not subject to a waiver from pre-trade transparency.*

- (31) *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 establish the conditions under which the CTP is allowed to temporarily suspend the redistribution of revenue in the event that the CTP proves that a data contributor has seriously and repeatedly breached the data requirements established in this Regulation. Where it is found that that data contributor complied with those data requirements, the data contributor should receive the share of the revenue to which they were entitled, plus interest.*

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- (32) In order to safeguard market participants' continued trust in the consolidated tape, *CTPs* should periodically publish a series of reports concerning compliance with their obligations under this Regulation, namely performance statistics and incident reports relating to data quality and *data* systems. Due to the highly technical nature of those reports, *the content, timing, format and terminology of the reporting obligation should be specified by means of regulatory technical standards.*
- (33) The requirement that trade reports are to 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 becoming users of the consolidated tape. This is in particular the case for bonds and *OTC* derivatives, which are in general not traded frequently and for which the data have often kept most of their value after 15 minutes. *Therefore*, while the requirement to deliver trade reports free of charge after 15 minutes should remain in place for trading venues and APAs, it should be abandoned for CTPs to *ensure their commercial viability.*

- (34) Article 28 of Regulation (EU) No 600/2014 requires that OTC derivatives that are subject to the clearing obligation be traded on trading venues ('derivative trading obligation'). Regulation (EU) 2019/834 of the European Parliament and of the Council<sup>11</sup> amended Regulation (EU) No 648/2012 to reduce the scope of the entities that are subject to the clearing obligation. In light of the close interconnection between the clearing obligation and the derivative trading obligation, to ensure greater legal coherence, and to simplify the legal framework, it is necessary and appropriate to re-align the derivative 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 derivative trading obligation.

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<sup>11</sup> 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).

- (35) *Post-trade risk reduction services are an essential tool of risk management with respect to OTC derivatives. Post-trade risk reduction services rely on technical transactions that are pre-arranged, non-price forming and market-risk neutral and that achieve a reduction in the risk in each of the portfolios. Portfolio compression services, which are currently exempt from the obligation to execute orders on terms most favourable to the client as laid down in Article 27 of Directive 2014/65/EU ('best execution') and transparency requirements, are a subset of post-trade risk reduction services. In light of their technical and non-price forming nature, the transactions on OTC derivatives that are formed and established as a result of post-trade risk reduction services should not be subject to the derivative trading obligation. Taking into account the fact that providers of post-trade risk reduction services do not allow multiple third-party buying and selling trading interests in financial instruments to interact, they should not be considered to operate a multilateral system. They should similarly be exempt from requirements of pre- and post-trade transparency and of verifying best execution. The Commission should be empowered to specify, by means of delegated acts, what constitutes post-trade risk reduction services for the purposes of Regulation (EU) No 600/2014 and the particulars of the transactions to be recorded.*

- (36) 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 derivative 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 might, however, prevent counterparties from being able to comply with their derivative trading obligation, because the clearing obligation is a pre-requisite to the derivative 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 derivative trading obligation, it should be possible to concurrently suspend the derivative trading obligation for the same classes of OTC derivative that are subject to the suspension of the clearing obligation. ***ESMA should also be able to request that the Commission suspend the derivative trading obligation, where such a suspension is necessary to avoid or address adverse effects on liquidity or a serious threat to financial stability and to ensure the orderly functioning of financial markets in the Union.***

- (37) An ad hoc suspension mechanism is necessary to ensure that the Commission is able to swiftly react to significant changes in market conditions that could have a material effect on the trading of derivatives and on counterparties involved in such trading. Where such changes in market conditions are present, and upon the request of the competent authority of a Member State, the Commission should be able to suspend the derivative trading obligation independently from any suspension of the clearing obligation. Such a suspension of the derivative trading obligation should be possible where the activities of an EEA investment firm with a non-EEA counterparty are unduly affected by the scope of the derivative trading obligation and where that investment firm acts as a market maker in the category of derivatives subject to the derivative trading obligation. The issue of overlapping derivative trading obligations is particularly acute in the case of trading with counterparties within the jurisdiction of a third country that applies its own derivative trading obligations. That suspension would also help EEA financial counterparties to remain competitive on global markets. When deciding whether to suspend the derivative trading obligation, the Commission should take into account the impact of such a suspension on the clearing obligation.



- (38) Provisions concerning non-discriminatory access for exchange-traded derivatives *might* reduce the attractiveness of investing in new products as competitors *might* be able to get access without the upfront investment. The application of the non-discriminatory access regime for exchange-traded derivatives, laid down in Articles 35 and 36 of Regulation (EU) No 600/2014, *might* thus limit *investment* in such products by removing incentives for regulated markets to create new exchange-traded derivatives. It should therefore be laid down that *that* regime is not to apply to the central counterparty (CCP) or trading venue concerned in respect of exchange-traded derivatives, thus fostering innovation and the development of exchange-traded derivatives in the Union.

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

(40) *In order to ensure the flexibility necessary to adapt to developments in the financial markets, and to specify certain technical elements of Regulation (EU) No 600/2014, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of adjusting the volume-cap threshold; amending the conditions for determining which OTC derivatives are subject to transparency requirements; specifying the identifying reference data to be used with regard to OTC derivatives; specifying what constitutes post-trade risk reduction services for the purposes of Regulation (EU) No 600/2014 and the particulars of the transactions to be recorded by investment firms and market operators that are providers of post-trade risk reduction services; and 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-Making<sup>12</sup>. 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.*

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<sup>12</sup> OJ L 123, 12.5.2016, p. 1.

- (41) *In order to ensure uniform conditions for the implementation of Regulation (EU) No 600/2014 with regard to the suspension of the derivative 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 Council<sup>13</sup>.*

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<sup>13</sup> *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).*

- (42) The Commission should *be empowered to* adopt the regulatory technical standards developed by ESMA *with regard to: the characteristics of central limit order books and periodic auction 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 size for systematic internalisers; 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*; the level of accuracy to which business clocks are to be synchronised by trading venues, systematic internalisers, *designated publishing entities*, APAs and CTPs; *the conditions for linking specific transactions and the means of identifying aggregated orders resulting in the execution of a transaction; the date by which transactions and reference data are to be reported; the information to be provided by applicants for authorisation as a CTP; the weighting assigned to the criteria for the application of the revenue redistribution scheme, the method for calculating the amount of the revenue to be redistributed to data contributors under that scheme, and the criteria under which the CTP can temporarily suspend the participation of data contributors in that scheme*; and *the content, timing, format and terminology of the reporting obligation of CTPs*. The Commission should adopt those 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 1095/2010.

- (43) *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 competent authorities by firms that meet the definition of systematic internaliser; and the standard forms, templates and procedures for the provision of information and the notifications as regards applicants for authorisation as a 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.*

- (44) Since the objectives of this Regulation, namely to facilitate the emergence of a consolidated tape ■ for each asset class and to amend certain aspects of Regulation (EU) No 600/2014 in order to improve transparency on markets in financial instruments, and 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 Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (45) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, in particular the freedom to conduct a business and the right to consumer protection.
- (46) *Regulation (EU) No 600/2014 should therefore be amended accordingly,*

HAVE ADOPTED THIS REGULATION:

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

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

(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 in accordance with 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 on systematic internalisers shall comply with Articles 20 *and 21*.’;



(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 one 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 and of the European Central Bank, annexed to the Treaty on European Union and to the TFEU, 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 from 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) the following point is inserted:

‘(8a) “SME growth market” means an SME growth market as defined in Article 4(1), point (12), of Directive 2014/65/EU;’;

(b) 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;’;

(c) the following point ■ is inserted:

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

(d) *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 in which there are ready and willing buyers and sellers on a continuous basis, where the market is assessed according to the issuance size of the bond;*

- (ii) *as regards a financial instrument or a class of financial instrument other than those referred to in point (i), a market in which there are ready and willing buyers and sellers on a continuous basis, 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 instrument:*
- *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) *the 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;’;*

(e) *the following point is inserted:*

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

(f) 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 core market data and regulatory 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 trading 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 system and the applicable waivers and deferrals*;
  - (v) *except for the information referred to in points (i) and (ii), the market 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 execution 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 trading 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 market 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 execution venues;
- (iv) *for OTC derivatives, the identifying reference data as referred to in Article 27(1), second subparagraph*;

(v) the timestamp information on the following:

- the ■ execution of the *transaction and any amendment thereto*,
- the ■ publication of the *transaction by the trading venues*,
- the dissemination of *core* market data ■ ;

(vi) the *type of trading system* and the applicable waivers and 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), point (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 details of pre-trade data, 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);’;*



(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 *that 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 *that waiver* on the data published by ESMA in accordance with paragraph 4 of this Article, and shall take such decision within two working days of *the* publication of those data and for a period of *three* months.’;

(c) paragraphs 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 percentages of trading in each 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 of trading in each financial instrument*.’;

(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 limit referred to in paragraph 1 has 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 ***that 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 from 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 from 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 from 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 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 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 in paragraph 1 of this Article. For the purposes of this subparagraph, the Commission shall take into account the report from ESMA referred to in the first subparagraph of this paragraph, 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 articles are inserted:*

*‘Article 8a*

*Pre-trade transparency requirements for trading venues in respect of 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 an 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 dollars or pounds sterling and that:*
  - (a) are subject to the clearing obligation under Title II of Regulation (EU) No 648/2012, 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, of this Article as regards the OTC derivatives subject to the transparency requirements laid down in that subparagraph in light of market developments.*

## **Article 8b**

### ***Pre-trade transparency requirements 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 paragraph 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:*

*‘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 Article 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;*

(c) *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.’;*



(d) *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 pursuant to 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.’;*

(e) *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 set 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 publish that temporary suspension on its website.’;*

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

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

- (f) *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 Article 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 Article 8b(2);’;*

- *point (d) is deleted;*
- *the following point is added:*
  - ‘(f) the characteristics of central limit order books and periodic auction 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 from 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 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 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 their arrangements for making public the information pursuant to paragraph 1 of this Article 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 in respect of each component as close to real time as 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 period of deferral for the transaction has lapsed.’;*

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

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

*‘Deferred publication in respect of 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 this Article.*

*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 and shall, every two years, submit a report to the Commission on how they are used in practice.*

*1a. The arrangements for deferred publication in respect of bonds, or classes thereof, 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.*

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

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

*When the period of deferral 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 bond, structured finance product or emission allowance 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 established on the basis of objective criteria specific to the market for the financial instrument concerned.*

*Such a temporary suspension shall be published on the website of the relevant competent authority and shall be notified to ESMA. ESMA shall publish that temporary suspension on its website.*

*ESMA may, in the 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, points (f) and (g). 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 bond, structured finance product or emission allowance is traded. Such an 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 fourth subparagraphs.*

3. *In addition to the deferred publication as referred to in paragraph 1, the competent authority of a Member State may allow, in respect of sovereign debt instruments issued by that Member State, or classes thereof:*

- (a) the omission of the publication of the volume of an individual transaction for an extended period not exceeding six months; or*
- (b) the publication of the details of several transactions in an aggregated form for an extended 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 decisions taken pursuant to the first and second subparagraphs and shall, every two years, submit a report to the Commission on how they are used in practice.*

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

4. *ESMA shall, after consulting the expert stakeholder group established pursuant to Article 22b(2), develop draft regulatory technical standards to specify the following in such a way as to enable the publication of information required pursuant to this Article and Article 27g:*
  - (a) *the details of transactions that investment firms and market operators are to 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 pursuant to 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 is considered to comply with the obligation to publish as close to real time as technically possible including when trades are executed outside normal trading hours;*
- (c) *for which structured finance products or emission allowances traded on a trading venue, or classes thereof, a liquid market exists;*
- (d) *what constitutes a liquid and illiquid market for bonds, or classes thereof, expressed as thresholds determined according to the issuance size of those bonds;*
- (e) *for a liquid or illiquid bond, or for a class thereof, what constitutes a transaction of a medium size, of a large size and of a very large size, as referred to in paragraph 1a of this Article, on the basis of a quantitative and qualitative analysis and taking into account the criteria in Article 2(1), point (17)(a), and other relevant criteria where applicable;*
- (f) *in respect of bonds, or classes thereof, the price and volume deferrals applicable to each of the five categories set out in paragraph 1a, 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;*
- (g) *the arrangements for deferred publication in respect of structured finance products and emission allowances, or classes thereof, on the basis of a quantitative and qualitative analysis and taking into account the criteria in Article 2(1), point (17)(a), and other relevant criteria where applicable;*

- (h) *in respect of sovereign debt instruments, or classes thereof, the criteria to be applied when determining the size or type of a transaction in such instruments for which decisions can be taken pursuant to paragraph 3.*

*For each of the categories set out in paragraph 1a, ESMA shall regularly update the draft regulatory technical standards referred to in the first subparagraph, point (f), 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 disseminated by the CTP 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, point (f), 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 ... [nine months from 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 in respect of 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 this Article.*

*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 and shall, every two years, submit a report to the Commission on how they are used in practice.*

*The arrangements for deferred publication in respect of exchange-traded derivatives or of OTC derivatives as referred to in Article 8a(2), or classes thereof, 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.*

*When the period of deferral 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 derivative or of OTC derivative 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 established on the basis of objective criteria specific to the market for the financial instrument concerned.*

*Such a temporary suspension shall be published on the website of the relevant competent authority and shall be notified to ESMA. ESMA shall publish that temporary suspension on its website.*

*ESMA may, in the case of an emergency, such as a significant adverse effect on the liquidity of a class of exchange-traded derivative or of OTC derivative 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), of this Article. 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 derivative or of OTC derivative as referred to in Article 8a(2) is traded. Such an 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 fourth subparagraphs.*

3. *ESMA shall, after consulting the expert stakeholder group established pursuant to Article 22b(2), develop draft regulatory technical standards to specify the following in such a way as to enable the publication of information required pursuant to this Article and Article 27g:*

- (a) *the details of transactions that investment firms and market operators are to make available to the public for each class of derivative as referred to in paragraph 1 of this Article, including identifiers for the different types of transactions published pursuant to 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 is considered to comply with the obligation to publish as close to real time as technically possible including when trades are executed outside normal trading hours;*
- (c) *for which derivatives, or classes thereof, a liquid market exists;*
- (d) *for a liquid or illiquid derivative, or for a class thereof, what constitutes a transaction of a medium size, of a large size and of a very large size, as referred to in paragraph 1, third subparagraph, of this Article on the basis of a quantitative and qualitative analysis and taking into account the criteria in Article 2(1), point (17)(a), and other relevant criteria where applicable;*
- (e) *the price and volume deferrals applicable to each of the five categories set out in paragraph 1, third subparagraph, of this Article, on the basis of 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 in paragraph 1, third subparagraph, of this Article ESMA shall regularly update the draft regulatory technical standards referred to in the first subparagraph, point (e), 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 disseminated by the CTP 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, point (e), 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 ... [18 months from 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 referred to in the first and second subparagraphs in conjunction with the expert stakeholder group established pursuant to Article 22b(2) and amend them to take into account any substantial changes in the calibration of the price and volume deferrals pursuant to the first subparagraph, point (e), and the 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 and post-trade data available on a reasonable commercial basis*

*1. Market operators and investment firms operating a trading venue, APAs, CTPs and systematic internalisers 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, CTPs and systematic internalisers shall ensure non-discriminatory access to such information. The data policies of those market operators and investment firms, APAs, CTPs and systematic internalisers shall be made available to the 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, APAs and systematic internalisers shall make available to the public the information referred to in paragraph 1 free of charge 15 minutes after publication in a format that is machine-readable and usable 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, CTPs and systematic internalisers 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 as referred to in paragraph 1, first subparagraph;*
  - (b) *what constitutes non-discriminatory access to information as referred to in paragraph 1, second subparagraph;*

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

*ESMA shall, every two years, monitor and assess the developments in the cost of data and shall, where appropriate, update those draft regulatory technical standards on the basis of its assessment.*

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by ... [*nine months from 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.’;

(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 of 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 of up to ***and including the threshold referred to in paragraph 2.*** 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 referred to in paragraph 2, which shall take into account the international best practices, the competitiveness of Union firms, the significance of the market impact and the efficiency of price formation and which shall not be below twice the standard market size;*
- (c) *the determination of the minimum quote size as referred to in paragraph 3, which shall not exceed 90 % of the threshold referred to in paragraph 2 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 from 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 third subparagraph is replaced by the following:*

*‘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 address 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 from 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 laid down in Article 15(2) of this Regulation and in* 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, first subparagraph, 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’;*

(b) *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 referred to 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.’;*

(c) *paragraphs 3 and 4 are 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 pursuant to Article 11(4), points (a) and (b), and Article 11a(3), points (a) and (b).*
- 4. With regard to bonds, structured finance products and emission allowances traded on a trading venue, investment firms may defer the publication of the price or volume on the same conditions as laid down in Article 11.*
- 4a. With regard to OTC derivatives as referred to in Article 8a(2), investment firms may defer the publication of the price or volume on the same conditions as laid down in Article 11a.’;*

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

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

*‘ESMA shall develop draft regulatory technical standards in such a way as to enable the publication of information required pursuant to 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 instrument, upon the request of 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 pursuant to 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 pursuant to paragraph 1 of this Article, 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 ... [six months from the date of entry into force of this amending Regulation] establish and shall regularly update a register of all designated publishing entities, specifying their identity and the classes of financial instrument 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 in order 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 technically possible, regulatory data and the data required pursuant to Article 3(1), without prejudice to Article 4, and pursuant to Article 6(1), Article 10(1) and Articles 20 and 21, and, where regulatory technical standards are adopted pursuant to Article 22b(3), point (d), in accordance with the requirements specified therein.* Those ■ data shall be transmitted in a harmonised format, through a high-quality transmission protocol ■ .

2. *An investment firm operating an 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 transmit its data to the CTP where:*
- (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 of shares that were initially admitted to trading on that regulated market or SME growth market.*
3. *Notwithstanding paragraph 2, an investment firm operating an SME growth market, or a market operator, which meets the conditions laid down in that paragraph may decide to transmit data to the CTP in accordance with paragraph 1, provided that it notifies ESMA and the CTP accordingly. Such an investment firm or market operator shall start transmitting 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 a list of investment firms operating SME growth markets and market operators that meet the conditions laid down in paragraph 2, indicating which of them 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 *transmitting* the █ data referred to in paragraph 1 of this Article or the transmission protocol referred to in paragraph 5 of this Article, other than the revenue received pursuant to Article 27h(5), (6) and (7).
7. Data contributors shall, *where applicable, apply the deferrals* laid down in Articles █ 7, 11 and 11a, Article 20(2) and Article 21(4) to the data to be transmitted to the CTP.
8. *Where the CTP considers the quality of the data to be insufficient, it shall notify the competent authority of the data contributor accordingly. The 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 transmitted to the CTP pursuant to Article 22a(1) and the data disseminated by the CTP pursuant to Article 27h(1), point (d), shall comply with the regulatory technical standards adopted pursuant to Article 4(6), point (a), Article 7(2), point (a), Article 11(4), point (a), and Article 11a(3), point (a), unless provided otherwise in the regulatory technical standards adopted pursuant to paragraph 3, points (b) and (d), of this Article.*
2. The Commission shall *establish* an expert stakeholder group by ... [*three months from 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.*

*The 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, for a term of two years. The European Parliament may invite the Chair of the expert stakeholder group to make a statement before it and to 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) *the minimum requirements for the quality of the transmission protocols referred to in Article 22a(1);*
- (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 data as close to real time as technically possible;*
- (d) *where necessary, the data needed to be transmitted to the CTP in order for it to be operational, taking into account the advice of the expert stakeholder group established pursuant to 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 of this paragraph, **ESMA** shall take into account the advice from the expert *stakeholder* group established pursuant to paragraph 2 of this Article, international developments, and standards agreed at Union or international level. **ESMA** shall ensure that the *draft regulatory technical standards* take into account the transparency requirements laid down in Articles 3, 6, 8, *8a*, *8b*, 10, *11*, *11a*, 14, 20, 21 and 27g.

*ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by ... [nine months from 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, participants or users, systematic internalisers, **designated publishing entities**, APAs and CTPs shall synchronise the business clocks they use 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 business clocks are to be synchronised.

ESMA shall submit those draft regulatory technical standards to the Commission by ... **[nine months from 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* a European Economic Area (EEA) International Securities Identification Number (ISIN), *and which are traded on a trading venue*, 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 a 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 transactions that stem 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 pursuant to 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 pursuant to 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:*

- (a) the competent authority of the most relevant market in terms of liquidity for those financial instruments;*
- (b) the competent authorities responsible for the supervision of the transmitting investment firms;*
- (c) the competent authorities responsible for the supervision of the branches which have been part of the transaction; and*
- (d) 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) *paragraphs 2 and 3 are 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 such transactions are carried out on the trading venue, with the exception of transactions in OTC derivatives other than those referred in Article 8a(2), to which the obligation shall apply only when carried out on a trading venue;*
- (b) financial instruments where the underlying is a financial instrument that is traded on a trading venue, irrespective of whether 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 that are traded on a trading venue, irrespective of whether such transactions are carried out on the trading venue;*
- (d) OTC derivatives as referred to in Article 8a(2), irrespective of whether such transactions are carried out on the trading venue.*



3. *The reports shall, in particular, include details of the names and numbers of the financial instruments bought or sold, the quantity, the dates and times of execution, the 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 regulatory technical standards adopted pursuant to Article 20(3), point (a), and Article 21(5), point (a), of this Regulation. 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.’;*

(c) *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 not subject to this Regulation in accordance with paragraphs 1 and 3.’;*

(d) *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 determine the competent authority that is to receive all the transaction reports.’;*

(e) *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, a designation to identify the entity subject to the reporting obligation, 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, point (c);’;*

– *the following points are added:*

*‘(j) the conditions for linking specific transactions and the means of identifying 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 draft regulatory technical standards, ESMA shall take into account international developments and standards agreed at Union or international level, and **the** consistency of those draft regulatory technical standards with the reporting requirements laid down in Regulations (EU) No 648/2012 and (EU) 2015/2365.*

*ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by ... [18 months from 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.’;*

(f) *the following paragraph is added:*

- ‘11. By ... [*four* years from *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 pursuant to this Article to:
- (a) reduce duplicative or inconsistent requirements for transaction data reporting, and in particular duplicative or inconsistent requirements laid down in this Regulation ■ and Regulations (EU) *No 648/2012* and (EU) *2015/2365*, *and in other relevant Union legal acts*;
  - (b) improve data standardisation and efficient sharing and use of data reported within any Union reporting framework by any relevant authority at Union or national level ■ .

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 purposes of transaction reporting pursuant to Article 26 and of the transparency requirements pursuant to Articles 3, 6, 8, 8a, 8b, 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 reference data.*

*With regard to OTC derivatives not covered by the first subparagraph of this paragraph 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) *in the first subparagraph, 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 developing those draft regulatory technical standards, ESMA shall take into account international developments and standards agreed at Union or international level, and the consistency of those draft regulatory technical standards with the reporting requirements laid down in Regulations (EU) No 648/2012 and (EU) 2015/2365.’;

(c) *the following paragraph is added:*

*‘5. By ... [three months from the date of entry into force of this amending Regulation], the Commission shall adopt delegated acts in accordance with Article 50 to supplement this Regulation by specifying the identifying reference data to be used with regard to OTC derivatives for the purposes of the transparency requirements laid down in Article 8a(2) and Articles 10 and 21.*

*The Commission is empowered to adopt delegated acts in accordance with Article 50 to supplement this Regulation by specifying the identifying reference data to be used with regard 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, where relevant, the national competent authority, to confirm that the APA or ARM has put in place, at the time of initial authorisation, all the necessary arrangements to meet its obligations pursuant to this Title, including a programme of operations setting out, inter alia, the types of services envisaged and the organisational structure.*
- 2. ESMA, or, where relevant, the national competent authority, 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, where relevant, the national competent authority, shall set a deadline by which the APA or ARM is to provide additional information.*

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

3. *ESMA, or, where relevant, the national competent authority, shall, within six months of 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 of adoption.’;*

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

*‘(b) the information to be included in the notifications referred to in 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 information to be provided pursuant to paragraph 1 of this Article and the information to be included in the notifications referred to in Article 27f(2) as regards 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 derivative* ■ .

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

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

*ESMA shall initiate the first selection procedure pursuant to the first subparagraph, point (c), of this paragraph within three months of the date of application of the delegated act referred to in Article 27(5) and no earlier than six months from the initiation of the selection procedure laid down in the first subparagraph, point (b), of this paragraph.*

*ESMA shall initiate subsequent selection procedures pursuant to the first subparagraph 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 that is 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:*
  - (i) *for shares and ETFs, pre-trade and post-trade data;*
  - (ii) *for bonds, post-trade data;*
  - (iii) *for OTC derivatives, post-trade data;*
- (d) *the adequacy of* the governance structure of the *applicant*;
- (e) the speed at which the *applicant* can disseminate core market data and regulatory 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 consolidated tape, *the simplicity of its fee and licensing models, and compliance with Article 13;*
- (i) *for the consolidated tape for bonds, the existence of arrangements for revenue redistribution in accordance with Article 27h(5);*
- (j) *the use of* modern interface technologies *by the applicant* for the dissemination of core market data and regulatory data and for connectivity;

- (k) *the appropriateness of the arrangements put in place by the applicant to keep records in accordance with Article 27ha(3);*
  - (l) *the ability of the applicant to ensure resilience and business continuity, and the arrangements that the applicant intends to put in place to mitigate and address outages and cyber risk;*
  - (m) *the arrangements the applicant intends to put in place to mitigate the energy consumption generated by the collection, processing and storage of data;*
  - (n) *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 laid down in paragraph 2 of this Article and to comply with the organisational requirements laid down in Article 27h.*
4. *Within six months of the initiation of each selection procedure referred to in paragraph 1, ESMA shall adopt a reasoned decision selecting the applicant that is 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 pursuant to this Article or authorised pursuant to Article 27db, ESMA shall initiate a new selection procedure within six months of 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 laid down in Article 27da(2).*
2. *ESMA shall assess whether the application for authorisation is complete within 20 working days of receipt of the application.*

*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 receipt of a complete application for authorisation, ESMA shall assess the compliance of the applicant with this Title. It 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. A decision granting authorisation shall specify the conditions under which the applicant is to operate.*
4. *Following authorisation pursuant to paragraph 3, ESMA may grant the applicant authorised as a CTP a transition period to put in place the necessary operational and technical arrangements.*
5. The **CTP** shall comply at all times with the organisational requirements laid down in Article 27h and with the conditions laid down in the *reasoned* decision 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 shall inform ESMA thereof without undue delay.

6. The withdrawal of the authorisation referred to in Article 27e shall take effect only after 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 pursuant to paragraph 1;*

(b) *the information to be included in the notifications referred to in Article 27f(2) as regards CTPs.*

*ESMA shall submit those draft regulatory technical standards to the Commission by ... [nine months from 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 information to be provided pursuant to paragraph 1 of this Article and the information to be included in the notifications referred to Article 27f(2) as regards CTPs.*

*ESMA shall submit those draft implementing technical standards to the Commission by ... [nine months from 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 is to be withdrawn shall ensure orderly substitution, including the transfer of data to other data reporting services providers, the provision of due notice to its clients and the redirection of reporting flows to other data reporting services providers before the withdrawal.’;*

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

*‘4. ESMA, or, where relevant, the national competent authority, 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 requirements laid down in Article 20(1) and Article 21(1).*

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

*4b. An APA shall keep records relating to its business at the disposal of the relevant competent authority or ESMA for at least five years.’;*

(b) *paragraph 7 is deleted;*

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

‘Article 27h

*Organisational requirements for CTPs*

1. A CTP shall, in accordance with the conditions for authorisation referred to in Article 27db:
  - (a) collect all data transmitted by data contributors in relation to the asset class for which it is authorised;
  - (b) collect ■ fees from *users, while providing access, free of charge, to the consolidated tape to retail investors, academics, civil society organisations and competent authorities;*
  - (c) in the case of the consolidated tape for shares *and ETFs*, redistribute part of its ■ revenue ■ in accordance with *paragraph 6*;
  - (d) *disseminate* core market data *and regulatory data* to users *as* a continuous electronic live data stream on non-discriminatory terms as close to real time as technically possible;
  - (e) ■ ensure that the core market data and regulatory data are easily accessible, machine-readable and usable for all users, including retail investors;
  - (f) *have systems in place that can effectively check the completeness of the data transmitted by data contributors, 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), a CTP for shares and ETFs shall not publish the market identifier code when disseminating the European best bid and offer as close as to real time as technically possible to the public.*

2. A CTP shall adopt, publish on its website **and regularly update** service level standards covering all of the following:
  - (a) an inventory of   data contributors from whom data are received;
  - (b) modes and speed of delivery of core market data and regulatory data to users;
  - (c) measures taken to ensure operational continuity in the provision of core market data and regulatory data.
3. A CTP shall have sound security arrangements 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. The CTP shall maintain adequate resources and have back-up facilities in place to offer and maintain its services at all times.

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

*The CTP shall offer access, free of charge, 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.*

5. *A CTP for financial instruments other than shares and ETFs may redistribute to data contributors part of the revenue generated by the consolidated tape.*
6. *A CTP for shares and ETFs shall redistribute part of the revenue 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 (the ‘revenue redistribution scheme’):*
  - (a) *the data contributor is a 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) *the data contributor is a trading venue that 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;*

(c) *the data are transmitted by a trading venue and pertain to transactions in shares and ETFs that have been concluded on a trading system that provides pre-trade transparency, where those transactions did not result from orders that were subject to a waiver from pre-trade transparency pursuant to Article 4(1), point (c).*

7. *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 paragraph 6, point (a), the total annual trading volume generated by that trading venue;*

(b) *for the purposes of paragraph 6, 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 paragraph 6, 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 data contributors under the revenue redistribution scheme by multiplying the relevant trading volume by the weighting assigned to each criterion laid down in paragraph 6, as specified in the regulatory technical standards adopted pursuant to paragraph 8.*

*If trading venues meet more than one of the criteria laid down in paragraph 6, the amounts resulting from the calculation referred to in the second subparagraph of this paragraph shall be added cumulatively.*

8. *ESMA shall develop draft regulatory technical standards to:*

- (a) specify the weighting assigned to each criterion laid down in paragraph 6;*
- (b) further specify the method for calculating the amount of the revenue to be redistributed to data contributors as referred to in paragraph 7, second 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 Articles 22a, 22b and 22c, temporarily suspend the participation of that data contributor in the revenue redistribution scheme, and specify the conditions under which the CTP is to:*
  - (i) resume revenue redistribution; and*
  - (ii) where there was no breach of those requirements, provide that data contributor with the revenue retained plus interest.*

*For the purposes of the first subparagraph, point (a), of this paragraph, the criterion laid down in paragraph 6, point (a), shall have a higher weighting than the criterion laid down in point (b) of that paragraph, and the criterion laid down in point (b) of that paragraph shall have a higher weighting than the criterion laid down in point (c) of that paragraph.*

*ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by ... [nine months from 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.’;*

(33) the following article ■ is inserted:

*‘Article 27ha*

*Reporting obligations for CTPs*

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



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

ESMA shall submit those draft regulatory technical standards to the Commission by ... [18 months from ***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. A CTP shall keep records relating to its business at the disposal of the relevant competent authority or ESMA for ***at least*** five years.’;

(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 laid down in Article 26.***

*An ARM shall publicly disclose the prices and fees associated with the data reporting services provided pursuant to this Regulation. It shall disclose separately the prices and fees of each service provided, including discounts and rebates and the conditions for benefiting 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.** *An ARM shall keep records relating to its business at the disposal of the relevant competent authority or ESMA for at least five years.’;*

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

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

‘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 derivative that has been declared subject to the trading obligation in accordance with 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 under Title II 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 requirements laid down in Articles 8a, 10 and 21 of this Regulation, the trading obligation laid down in Article 28 of this Regulation and the obligation to execute orders on terms most favourable to the client laid down in Article 27 of Directive 2014/65/EU shall not apply to transactions in OTC derivatives that are formed and established as a 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 keep complete and accurate records of the transactions referred to in paragraph 1 of this Article that are not already recorded or reported in accordance with Regulation (EU) No 648/2012. Those investment firms and market operators shall make those records available to the relevant competent authority or ESMA promptly upon request.*

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

(a) *post-trade risk reduction services for the purposes of paragraph 1;*

(b) *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 derivative pursuant to paragraph 1, point (a), of this Article 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 laid down in paragraph 2 and after conducting a public consultation, identify and notify to the Commission the classes of derivative 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 pursuant to 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) of this Regulation for the same classes of OTC derivative that are subject to the request to suspend the clearing obligation.

**4b.** *ESMA may request that the Commission suspend the trading obligation laid down in Article 28(1) for specific classes of OTC derivative or for a specific type of counterparty, where such a suspension is necessary to avoid or address adverse effects on liquidity or a 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.*

4c. The *requests* referred to in *paragraphs 4a and 4b* shall not be made public.

4d. After having received the *requests* referred to in *paragraphs 4a and 4b*, 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 derivative *or for types of counterparties*;
- (b) reject the requested suspension.

For the purposes of point (b) of the first subparagraph, 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, point (a), 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 that point.*

*Where the grounds for the suspension referred to in the first subparagraph, point (a), 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 subparagraph, point (a), and the fourth subparagraph 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 trading obligation laid down in Article 28 (the ‘derivative trading obligation’) with respect to certain ***financial counterparties, where appropriate*** after consulting 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 derivative trading obligation and regularly receives requests for a quote for the derivatives subject to the derivative 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 derivative trading obligation; or*
- (b) **■** *regularly acts as a market maker in a credit default swap subject to the derivative trading obligation and:*
  - (i) *intends to trade credit default swaps subject to the derivative trading obligation on own account on a trading venue open only 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 credit default swaps subject to the derivative 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 derivative trading obligation; and*
  - (iii) *clears those credit default swaps in a CCP authorised or recognised pursuant to Regulation (EU) No 648/2012.*

*The implementing act referred to in the first subparagraph of this paragraph shall be adopted in accordance with the examination procedure referred to in Article 51.*

2. When assessing whether to suspend the derivative trading obligation pursuant to paragraph 1, the Commission *shall consider whether to suspend it for specific markets, and* shall take into account whether such suspension of the derivative trading obligation would have a distortive effect on the clearing obligation under *Title II* of Regulation (EU) No 648/2012.

*The Commission shall also contact other competent authorities of other Member States to assess whether financial counterparties in Member States other than that making the request pursuant to paragraph 1 (the ‘requesting Member State’) are in a situation similar to that in the requesting Member State.*

*The competent authority of a Member State other than the requesting Member State may, after adoption of the implementing act referred to in paragraph 1, request that financial counterparties that are in a situation similar to that in the requesting Member State be 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 met.*

3. *Where the derivative trading obligation is suspended pursuant to paragraph 1 or 2 with respect to a financial counterparty, the derivative trading obligation shall not apply with respect to its counterparty, as referred to in paragraph 1, point (a), or paragraph 1, point (b)(ii).*
4. The implementing act referred to in paragraph 1 shall be accompanied by the evidence presented by the competent authority requesting the suspension.
5. 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 **■** .
6. The Commission shall regularly review whether the grounds for the suspension of the *derivative* 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 within three months of receiving the request referred to in paragraph 2, either permitting access, provided that the relevant competent authority has granted access pursuant to paragraph 4, or denying access. The CCP may deny a request for access subject to the conditions laid down in paragraph 6, *point* (a). Where a CCP denies access, it shall provide full reasons in its response and inform its competent authority of the decision in writing. Where the trading venue is established in a Member State other than that of the CCP, the CCP shall also forward that written response to the competent authority of the 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 provided that 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 relating to access, to any CCP authorised or recognised pursuant to that Regulation that wishes to clear transactions in financial instruments that are concluded on that trading venue. That requirement shall not apply to:

- (a) any derivative contract that is already subject to the access obligations laid down in 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 of receiving the request referred to in paragraph 2, either permitting access, provided that the relevant competent authority has granted access pursuant to paragraph 4, or denying access. The trading venue may deny a request for access subject to the conditions laid down in paragraph 6, point (a). Where a trading venue denies access, it shall provide full reasons in its response and inform its competent authority of the decision in writing. Where the CCP is established in a Member State other than that of 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 provided that such access would not threaten the smooth and orderly functioning of the markets, in particular due to liquidity fragmentation, and provided that the trading venue has put in place adequate arrangements to prevent such fragmentation, or would not adversely affect systemic risk.’;*

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

(d) *paragraph 5 is deleted;*

(e) *in paragraph 6, first subparagraph, 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 pursuant to Article 25 of Regulation (EU) No 648/2012.

CCPs and trading venues established in third countries shall be permitted to make use of the access rights referred to in Articles 35 and 36 only 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 Articles **20 to 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 laid down in Article **22 to 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 ■ is inserted:

*Article 39a*

*Prohibition of receiving payment for order flow*

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

*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, before ... [the date of entry into force of this amending Regulation], investment firms acting on behalf of clients are established which receive a fee, a commission or a non-monetary benefit from any third party for executing orders from those clients on a particular execution venue or for forwarding orders of those clients 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 where 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 laid down in the first subparagraph shall notify ESMA by ... [six months from the date of entry into force of this amending Regulation] to that effect. ESMA shall maintain a list of Member States using that 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 on the Commission for an indeterminate period from 2 July 2014.*’;

(b) ■ paragraph 3 ■ is replaced by the following:

‘3. 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 to revoke 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:

‘5. A delegated act adopted pursuant to Article 1(9), Article 2(2) or (3), **Article 5(10), Article 8a(4), Article 17(3), Article 27(4) or (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) or (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 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 of 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 established pursuant to Article 22b(2), shall assess the market demand for the consolidated tape for shares and ETFs, the impact of that consolidated tape on the functioning, 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. On the basis of 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 consulting ESMA and the expert stakeholder group established pursuant to Article 22b(2), 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 transmitted to the CTP*;
- (c) *the timeliness of the dissemination, and the quality, of the core market data* and regulatory data;
- (d) the role of *core* market data ■ and regulatory data in reducing implementation shortfall;
- (e) the number of users of the consolidated tape per asset class;
- (f) the effect of *core* market data ■ and regulatory data on remedying information asymmetries between various capital market participants;
- (g) *the appropriateness of the transmission protocols used for the transmission of data to the CTP*;
- (h) the appropriateness and functioning of the *revenue redistribution* scheme, *in particular as regards data contributors that are small trading venues*;
- (i) the effects of the *core* market data and regulatory data on investments in SMEs.

*14b. By ... [12 months from 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 and which execute transactions in financial instruments. In particular, the Commission shall include in that assessment 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 in accordance with the first subparagraph of this paragraph.*

*14c. By ... [four years from 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 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 on 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 to supplement this Regulation, by specifying measures in order to:’;*

*(ii) points (a) to (d) are deleted;*



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

*‘(e) ensure that the core market data and regulatory data are provided on a reasonable commercial basis and meet the needs of the users of those data across the Union;’;*

(iv) *point (f) is deleted;*

(v) *points (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 provided that 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*:

‘3. *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*

*For the Council*

*The President*

*The President*

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