

**TECHNICAL STANDARDS (MARKETS IN FINANCIAL INSTRUMENTS
TRANSPARENCY) INSTRUMENT 2023**

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the powers and related provisions in or under:
- (1) articles 4, 7, 20, 21 and 23 of and paragraph 24 of Schedule 3 to 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; and
 - (2) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138P (Technical standards);
 - (b) section 138Q (Standards instruments);
 - (c) section 138S (Application of Chapters 1 and 2); and
 - (d) section 137T (General supplementary powers).
- B. The rule-making powers listed above are specified for the purposes of section 138Q(2) (Standards instruments) of the Act.

Pre-conditions to making

- C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with section 138P of the Act.
- D. A draft of this instrument has been approved by the Treasury in accordance with section 138R of the Act.

Interpretation

- E. In this instrument, any reference to any provision of direct EU legislation is a reference to it as it forms part of retained EU law.

Modifications

- F. The following technical standards are amended in accordance with Annexes A, B and C of this instrument.

(1)	(2)
Commission Delegated Regulation (EU) 2017/587 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments	Annex A

and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser	
Commission Delegated Regulation (EU) 2017/583 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives	Annex B
Commission Delegated Regulation (EU) 2017/588 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the tick size regime for shares, depositary receipts and exchange-traded funds	Annex C

Commencement

- G. Part 1, 3 and 5 of Annex A, and Annex B of this instrument come into force on 29 April 2024.
- H. Part 2 and 4 of Annex A, and Annex C of this instrument come into force on 28 April 2023.

Notes

- I. In the Annexes to this instrument, the “notes” (indicated by “**Note:**” or “*Editor’s note:*”) are included for the convenience of readers, but do not form part of the legislative text.

Citation

- J. This instrument may be cited as the Technical Standards (Markets in Financial Instruments Transparency) Instrument 2023.

By order of the Board
27 April 2023

In this annex, underlining indicates new text and striking through indicates deleted text.

Annex A

Commission Delegated Regulation (EU) 2017/587 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser

Part 1: Comes into force on 29 April 2024

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Article 1

Definitions

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

- (1) “portfolio trade” means transactions in five or more different financial instruments where those transactions are traded at the same time by the same client and as a single lot against a specific reference price;
- (2) “give-up transaction” or “give-in transaction” means:
 - (a) a transaction where an investment firm passes a client trade to, or receives a client trade from, another investment firm for the purpose of post-trade processing; or
 - (b) where an investment firm executing a trade passes it to, or receives it from, another investment firm for the purpose of hedging the position that it has committed to enter into with a client.
- (3) “securities financing transaction” means a securities financing transaction as defined in Article 3(6) of Delegated Regulation (EU) 2017/577;
- (5) “the Recognition Requirements Regulations” means the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001 (SI 2001/995);
- (5A) “benchmark trade” means a transaction is executed by reference to:
 - (a) a price calculated over multiple time instances according to a given benchmark, including transactions executed by reference to a volume-weighted average price or a time-weighted average price; or
 - (b) the market closing price.

- (5B) “designated reporter” means an investment firm that accepts responsibility for making public through an APA the trades it concludes with another investment firm outside the rules of a trading venue, where it is the buyer of a financial instrument either on own account or on behalf of clients;
- (5C) “inter-affiliate transaction” means a transaction between entities within the same group carried out exclusively for intra-group risk management purposes.
- (6) “the AIFM Regulations” means the Alternative Investment Fund Managers Regulations 2013 (SI 2013/1773).

Article 2

Transactions not contributing to the price discovery process (Article 23(1) of Regulation (EU) No 600/2014)

A transaction in shares does not contribute to the price discovery process where any of the following circumstances apply:

- (a) ~~the transaction is executed by reference to a price that is calculated over multiple time instances according to a given benchmark, including transactions executed by reference to a volume weighted average price or a time weighted average price~~ a benchmark trade;
- (b) the transaction is part of a portfolio trade;
- (c) the transaction is contingent on the purchase, sale, creation or redemption of a derivative contract or other financial instrument where all the components of the trade are to be executed only as a single lot;
- (ca) the transaction is of a type listed in article 13.
- (d) ~~the transaction is executed by a management company as defined in section 237(2) of FSMA, or a UK AIFM as defined in the AIFM Regulations, which transfers the beneficial ownership of shares from one collective investment undertaking to another and where no investment firm is a party to the transaction;~~
- (e) ~~the transaction is a give up transaction or a give in transaction;~~
- (f) ~~the purpose of the transaction is to transfer shares as collateral in bilateral transactions or in the context of central counterparty (CCP) margin or collateral requirements or as part of the default management process of a CCP;~~
- (g) ~~the transaction results in the delivery of shares in the context of the exercise of convertible bonds, options, covered warrants or other similar derivatives;~~
- (h) ~~the transaction is a securities financing transaction;~~
- (i) ~~the transaction is carried out under the rules or procedures of a trading venue, a CCP or a central securities depository to effect a buy in of unsettled transactions in accordance with Regulation (EU) No 909/2014 (or a similar third country law for the same type of transactions, where applicable).~~

Part 2: Comes into force on 28 April 2023

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*Article 4***Most relevant market in terms of liquidity (Article 4(1)(a) of Regulation (EU) No 600/2014)**

- (-1) For the purposes of this Article, Article 2(1)(62) of Regulation 600/2014/EU shall not apply.
- (1) For the purposes of Article 4(1)(a) of Regulation (EU) No 600/2014, the most relevant market in terms of liquidity for a share, depositary receipt, ETF, certificate or other similar financial instrument shall be considered to be the trading venue with the highest turnover within the relevant area for that financial instrument except where Article 4(1A) of this Regulation applies.
- (1A) Where a share, depositary receipt, ETF, certificate or other similar financial instrument is admitted to trading in a third country, the most relevant market in terms of liquidity may be considered to be the third-country trading venue where that financial instrument was first admitted to trading.

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Part 3: Comes into force on 29 April 2024

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*Article 6***Negotiated transactions subject to conditions other than the current market price (Article 4(1)(b) of Regulation (EU) No 600/2014)**

A negotiated transaction in shares, depositary receipts, ETFs, certificates and other similar financial instruments shall be subject to conditions other than the current market price of the financial instrument where any of the following circumstances applies:

- (a) the transaction is ~~executed by reference to a price that is calculated over multiple time instances according to a given benchmark, including transactions executed by reference to a volume weighted average price or a time weighted average price~~ a benchmark trade;
- (b) the transaction is part of a portfolio trade;

- (c) the transaction is contingent on the purchase, sale, creation or redemption of a derivative contract or other financial instrument where all the components of the trade are meant to be executed as a single lot;
- (ca) the transaction is of a type listed in article 13;
- ~~(d) the transaction is executed by a management company as defined in section 237(2) of FSMA, a UK AIFM as defined in the AIFM Regulations, or a third country AIFM as defined in the AIFM Regulations, which transfers the beneficial ownership of shares from one collective investment undertaking to another and where no investment firm is a party to the transaction;~~
- (e) ~~the transaction is a give up transaction or a give in transaction;~~
- (f) ~~the transaction has as its purpose the transferring of financial instruments as collateral in bilateral transactions or in the context of a CCP margin or collateral requirements or as part of the default management process of a CCP;~~
- ~~(g) the transaction results in the delivery of financial instruments in the context of the exercise of convertible bonds, options, covered warrants or other similar financial derivative;~~
- (h) ~~the transaction is a securities financing transaction;~~
- ~~(i) the transaction is carried out under the rules or procedures of a trading venue, a CCP or a central securities depository to effect buy in of unsettled transactions in accordance with Regulation (EU) No 909/2014 (or similar third country law for the same type of transactions, where applicable);~~
- (j) any other transaction equivalent to one of those described in points (a) to ~~(i)~~ (ca) in that it is contingent on technical characteristics which are unrelated to the current market valuation of the financial instrument traded.

Part 4: comes into force on 28 April 2023

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Article 8

Type and minimum size of orders held in an order management facility (Article 4(1)(d) of Regulation (EU) No 600/2014)

- (1) The type of order held in an order management facility of a trading venue pending disclosure for which pre-trade transparency obligations may be waived is an order which:
 - (a) is intended to be disclosed to the order book operated by the trading venue and is contingent on objective conditions that are pre-defined by the system's protocol;
 - (b) cannot interact with other trading interests prior to disclosure to the order book operated by the trading venue;

- (c) once disclosed to the order book, interacts with other orders in accordance with the rules applicable to orders of that kind at the time of disclosure.
- (1A) By way of derogation from paragraph 1(b), where a portion of a quantity of an aggressive order has executed against the disclosed quantity of a reserve order and other disclosed orders in the order book of a trading venue, the non-disclosed quantity of the reserve order held in the trading venue's order management facility is a type of order for which pre-trade disclosure may be waived and which can be executed against the remainder of the quantity of the aggressive order.
- (1B) A reserve order as referred to in paragraph 1A shall be considered a limit order consisting of a disclosed order relating to a portion of a quantity in the order book of a trading venue and a non-disclosed order relating to the remainder of the quantity where the non-disclosed quantity is held in the order management facility of a trading venue.
- (1C) An aggressive order as referred to in paragraph 1A shall be considered a limit order that has been disclosed in the order book of a trading venue and which initiates trades.
- (2) Orders held in an order management facility of a trading venue pending disclosure for which pre-trade transparency obligations may be waived shall, at the point of entry and following any amendment, have one of the following sizes:
- (a) ~~in the case of a reserve order, a size that is greater than or equal to EUR 10000;~~
- (b) ~~for all other orders, a size that is greater than or equal to the minimum tradable quantity set in advance by the system operator under its rules and protocols.~~
- (3) ~~A reserve order as referred to in paragraph 2(a) shall be considered a limit order consisting of a disclosed order relating to a portion of a quantity and a non-disclosed order relating to the remainder of the quantity where the non-disclosed quantity is capable of execution only after its release to the order book as a new disclosed order.~~

Part 5: comes into force on 29 April 2024

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Article 12

Post-trade transparency obligations (Article 6(1) and Article 20(1) and (2) of Regulation (EU) No 600/2014)

...

- (4) Where a transaction between two investment firms is concluded outside the rules of a trading venue, either on own account or on behalf of clients, only the investment firm that sells the financial instrument concerned is registered as a designated reporter shall make the transaction public through an APA.
- (5) By way of derogation from paragraph 4, where only one of the investment firms
Where neither investment firm party to the transaction is a systematic internaliser in

~~the given financial instrument and it is acting as the buying firm is a designated reporter, only that the firm acting as the selling firm shall be obliged to make the transaction public through an APA, informing the seller of the action taken.~~

- (5A) Where each investment firm party to the transaction is registered as a designated reporter:
- (a) only the firm acting as the selling firm shall be obliged to make the transaction public through an APA; or
 - (b) the selling firm may discharge its obligation by arranging for the buyer only to make the transaction public through an APA.
- (6) ...
- (7) An investment firm must notify the FCA in writing before carrying on or ceasing the activity of a designated reporter.
- (8) The FCA shall publish and maintain on its website a register of designated reporters. The register shall be publicly accessible on the FCA's website and updated on a regular basis.

Article 13

Application of post-trade transparency to certain types of transactions executed outside a trading venue (Article 20(1) of Regulation (EU) No 600/2014)

The obligation in Article 20(1) of Regulation (EU) No 600/2014 shall not apply to the following:

- (a) excluded transactions listed under Article 2(5) of Commission Delegated Regulation (EU) 2017/590 where applicable;
- (b) ~~transactions executed by a management company as defined in section 237(2) of FSMA, a UK AIFM as defined in the AIFM Regulations, or a third country AIFM as defined in the AIFM Regulations~~ an investment firm when providing the investment service of portfolio management, which transfers the beneficial ownership of financial instruments from one collective investment undertaking fund to another and where no other investment firm is a party to the transaction other than for the sole purpose of providing arrangements for the execution of such non price-forming transactions;
- (c) give-up transactions and give-in transactions;
- (ca) inter-affiliate transactions.
- (d) ~~transfers of financial instruments as collateral in bilateral transactions or in the context of a CCP margin or collateral requirements or as part of the default management process of a CCP.~~

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ANNEX I Information to be made public

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Table 3 List of details for the purpose of post-trade transparency

Field identifier	Description and details to be published	Type of execution or publication venue	Format to be populated as defined in Table 2
...			
Price	<p>Traded price of the transaction excluding, where applicable, commission and accrued interest.</p> <p>Where price is reported in monetary terms, it shall be provided in the major currency unit.</p> <p>Where price is currently not available but pending, the value should be “PNDG”.</p> <p>Where price is not applicable the field shall not be populated.</p> <p>The information reported in this field shall be consistent with the values provided in field Quantity.</p>	RM, MTF APA CTP	<p>{DECIMAL-18/13} in case the price is expressed as monetary value</p> <p>{DECIMAL-11/10} in case the price is expressed as percentage or yield</p> <p>“PNDG” in case the price is not available</p>
<u>Price conditions</u>	<u>Where price is currently not available but pending, the value should be “PNDG”.</u>	<u>RM, MTF</u> <u>APA</u> <u>CTP</u>	<u>“PNDG” in cases where the price is not available</u>
Price <u>major</u> currency	Currency in which the price is expressed (applicable if the price is expressed as monetary value).	RM, MTF APA CTP	{CURRENCYCODE_3}

...	<u>Note: This field should use an ISO 4217 currency code for a major currency.</u>		
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Table 4 List of flags for the purpose of post-trade transparency

Flag	Name	Type of execution or publication venue	Description
“BENC”	Benchmark transactions flag	RM, MTF APA CTP	Transactions executed in reference to a price that is calculated over multiple time instances according to a given benchmark, such as volume-weighted average price or time-weighted average price.
“ACTX”	Agency cross transactions flag	APA CTP	Transactions where an investment firm has brought together clients' orders with the purchase and the sale conducted as one transaction and involving the same volume and price.
“CLSE”	<u>Market closing price flag</u>	<u>RM, MTF</u> <u>APA</u> <u>CTP</u>	<u>Benchmark transactions executed at the market closing price.</u>
“PORT”	<u>Portfolio trade transactions flag</u>	<u>RM, MTF</u> <u>APA</u> <u>CTP</u>	<u>Transactions in five or more different financial instruments where those transactions are traded at the same time by the same client and as a single lot against a specific reference price.</u>

“NPFT”	Non-price forming transactions flag	RM, MTF CTP	Transactions where the exchange of financial instruments is determined by factors other than the current market valuation of the financial instrument as listed under Article 13.
“TNCP”	Transactions not contributing to the price discovery process for the purposes of Article 23 of Regulation (EU) No 600/2014 flag, <u>other than where covered by BENC, CLSE or PORT flags.</u>	RM, MTF APA CTP	Transactions not contributing to the price discovery process for the purposes of Article 23 of Regulation (EU) No 600/2014 and as set out in Article 2, <u>other than where covered by BENC, CLSE or PORT flags.</u>
“SDIV”	Special dividend transaction flag	RM, MTF APA CTP	Transactions that are either: (a) executed during the ex-dividend period where the dividend or other form of distribution accrues to the buyer instead of the seller; or (b) executed during the cum-dividend period where the dividend or other form of distribution accrues to the seller instead of the buyer.
“LRGS”	Post-trade large in scale transaction flag	RM, MTF APA CTP	Transactions that are large in scale compared with normal market size for which deferred publication is permitted under Article 15.
“ <u>NTLS</u> ”	<u>Pre-trade large in scale trade flag</u>	<u>RM, MTF</u> <u>CTP</u>	<u>Transactions that are large in scale compared with normal market size for which pre-trade transparency can be waived under Article 7.</u>

“RFPT”	Reference price transaction flag	RM, MTF CTP	Transactions which are executed under systems operating in accordance with Article 4(1)(a) of Regulation (EU) No 600/2014.
“NLIQ”	Negotiated transaction in liquid financial instruments flag	RM, MTF CTP	Transactions executed in accordance with Article 4(1)(b)(i) of Regulation (EU) No 600/2014.
“OILQ”	Negotiated transaction in illiquid financial instruments flag	RM, MTF CTP	Transactions executed in accordance with Article 4(1)(b)(ii) of Regulation (EU) No 600/2014.
“PRIC”	Negotiated transaction subject to conditions other than the current market price flag	RM, MTF CTP	Transactions executed in accordance with Article 4(1)(b)(iii) of Regulation (EU) No 600/2014 and as set out in Article 6.
“NETW”	<u>Negotiated transaction flag</u>	<u>RM, MTF</u> <u>CTP</u>	Transactions executed in accordance with Article 4(1)(b) of Regulation (EU) No 600/2014 and <u>article 6 of this regulation.</u>
“ALGO”	Algorithmic transaction flag	RM, MTF CTP	Transactions executed as a result of an investment firm engaging in algorithmic trading as defined in Regulation 2(1) of The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (SI 2017/701).
“SIZE”	Transaction above the standard market size flag	APA CTP	Transactions executed on a systematic internaliser where the size of the incoming order was above the standard market size as determined in accordance with Article 11.

“ILQD”	Illiquid instrument transaction flag	APA CTP	Transactions in illiquid instruments as determined in accordance with Articles 1 to 9 of Commission Delegated Regulation (EU) 2017/567 executed on a systematic internaliser.
“RPRI”	Transactions which have received price improvement flag	APA CTP	Transactions executed on a systematic internaliser with a price improvement in accordance with Article 15(2) of Regulation (EU) No 600/2014.
“CANC”	Cancellation flag	RM, MTF APA CTP	When a previously published transaction is cancelled.
“AMND”	Amendment flag	RM, MTF APA CTP	When a previously published transaction is amended.
“DUPL”	Duplicative trade reports flag	APA	When a transaction is reported to more than one APA in accordance with Article 17(1) of Delegated Regulation (EU) 2017/571.

In this annex, underlining indicates new text and striking through indicates deleted text.

Annex B comes into force on 29 April 2024

Annex B

Commission Delegated Regulation (EU) 2017/583 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives

...

Article 1

Definitions

For the purposes of this Regulation, the following definitions shall apply:

...

- (4) “the AIFM Regulations” means the Alternative Investment Fund Managers Regulations 2013 (SI 2013/1773);
- (5) “designated reporter” means an investment firm that accepts responsibility for making public through an APA the trades it concludes with another investment firm outside the rules of a trading venue, where it is the buyer of a financial instrument either on own account or on behalf of clients.

...

Article 7

Post-trade transparency obligations (Article 10(1) and Article 21(1) and (5) of Regulation (EU) No 600/2014)

...

- (5) Where a transaction between two investment firms is concluded outside the rules of a trading venue, either on own account or on behalf of clients, only the investment firm that ~~sells the financial instrument concerned~~ is registered as a designated reporter shall make the transaction public through an APA.
- (6) ~~By way of derogation from paragraph 5, where only one of the investment firms~~ Where neither investment firm party to the transaction is a systematic internaliser in the given financial instrument and it is acting as the buying firm, is a designated

reporter, only that the firm acting as the selling firm shall be obliged to make the transaction public through an APA, informing the seller of the action taken.

(6A) Where each investment firm party to the transaction is registered as a designated reporter:

(a) only the firm acting as the selling firm shall be obliged to make the transaction public through an APA; or

(b) the selling firm may discharge its obligation by arranging for the buyer only to make the transaction public through an APA.

...

(8) ...

(9) An investment firm must notify the FCA in writing before carrying on or ceasing the activity of a designated reporter.

In this annex, underlining indicates new text and striking through indicates deleted text.

Annex C comes into force on 28 April 2023

Annex C

Commission Delegated Regulation (EU) 2017/588 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the tick size regime for shares, depositary receipts and exchange-traded funds

...

Article 1

Most relevant market in terms of liquidity

For the purposes of this Regulation, the most relevant market in terms of liquidity for a share or a depositary receipt shall be considered to be ~~the most relevant market in terms of liquidity as referred to in Article 4(1)(a) of Regulation (EU) No 600/2014 and specified in Article 4 or in accordance with Article 17A of Commission Delegated Regulation (EU) 2017/587~~ the trading venue with the highest turnover for that financial instrument within the UK.

Article 2

Tick size for shares, depositary receipts and exchange-traded funds (Article 49(1) and (2) of Directive 2014/65/EU)

- (1) Trading venues shall apply to orders in shares or depositary receipts a tick size which is equal to or greater than the one corresponding to:
 - (a) the liquidity band in the table in the Annex corresponding to average daily number of transactions in the most relevant market in terms of liquidity for that instrument; and
 - (b) the price range in that liquidity band corresponding to the price of the order.
- (2) By way of derogation from paragraph 1(a), where the most relevant market in terms of liquidity for a share or depositary receipt operates only a trading system that matches orders on the basis of a periodic auction and a trading algorithm operated without human intervention, trading venues shall apply the liquidity band corresponding to the lowest average daily number of transactions in the table in the Annex.

- (2A) By way of derogation from paragraph (1), where a share or a depositary receipt is admitted to trading on a third country trading venue, trading venues may apply to orders in these instruments a tick size that is applied by a third country trading venue where that financial instrument was first admitted to trading.

...

Article 3

Average daily number of transactions for shares and depositary receipts (Article 49(1) and (2) of Directive 2014/65/EU)

- (1) By 1 March of the year following the date of application of Regulation (EU) No 600/2014 and by 1 March of each year thereafter, for the purposes of this regulation, the FCA shall, when determining the most relevant market in terms of liquidity for each share or depositary receipt that is traded on a trading venue, calculate the average daily number of transactions for that financial instrument in that market and ensure the publication of that information.

...

8. ~~The competent authority for a specific share may adjust the average daily number of transactions calculated or estimated by that competent authority for that share in accordance with the procedure set out in paragraphs 1 to 7 where all of the following conditions are met:~~
- (a) ~~the trading venue with the highest turnover for that share is located in a third country;~~
 - (b) ~~where that average daily number of transactions has been calculated and published in accordance with the procedure set out in paragraphs 1 to 4, it is equal to or greater than one.~~

~~When adjusting the average daily number of transactions for a share, the competent authority shall take into account the transactions executed on the third country trading venue with the highest turnover for trading of that share.~~

9. ~~The competent authority that adjusted the average daily number of transactions for a share in accordance with paragraph 8 shall ensure the publication of that adjusted average daily number of transactions.~~
10. ~~Trading venues shall apply the tick sizes of the liquidity band corresponding to the adjusted average daily number of transactions from the second calendar day after its publication.~~