Chapter 4

Commission Delegated Regulation (EU) 2017/2194

Preamble

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard 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 in particular Article 9(6) thereof,

01/01/2021

Whereas:

(1) Package orders are common in all asset classes and may include many different components within the same asset class or across different asset classes. Package orders may therefore comprise an unlimited number of combinations of components. Accordingly, it is appropriate to adopt a holistic approach in establishing qualitative criteria to identify those package orders which should be considered as standardised and frequently traded and therefore, as a whole, having a liquid market. To take into account the characteristics of the different types of package order, those qualitative criteria should include general criteria applicable across all asset classes, as well as specific criteria applicable to the different asset classes comprising a package order.

(2) The determination of the classes of derivative subject to the trading obligation under Regulation (EU) No 600/2014 requires derivatives within those classes to be standardised and sufficiently liquid. Therefore, it is appropriate to consider that there is a liquid market for the package order as a whole where all the components of that package order are of the same asset class and are subject to the trading obligation. However, package orders where all components are above a certain size or which include a large number of components are not considered as sufficiently standardised or liquid. It is therefore appropriate to specify that package orders where all components are subject to the trading obligation should be considered as having a liquid market where the package order is composed of no more than four components or where not all components within the package order are above a size that is large in scale compared to normal market size.

(3) The possibility to trade financial instruments on a trading venue demonstrates that those instruments are standardised and relatively liquid. It is therefore appropriate to consider that where all components of a package order are available for trading on a trading venue, that package order as a whole potentially has as a liquid market. A package order should be considered as being available for trading where a trading venue offers it for trading to its members, participants or clients.

(4) While it is possible to trade package orders with many different components, liquidity is concentrated in packages consisting exclusively of components from the same asset class, such as interest rate derivatives, equityderivatives, credit derivatives or commodity derivatives. Therefore, package orders composed only of derivatives of one of those asset classes should be eligible for being considered as having a liquid market, whereas package orders composed of derivative components from more than one of those asset classes are not frequently traded and, as a consequence, do not have a liquid market. Furthermore, package orders including components of asset classes other than interest rate derivatives, equity derivatives, credit derivatives or commodity derivatives are not sufficiently standardised and consequently, are not considered as having a liquid market.

(5) It is therefore necessary to specify a methodology to determine whether there is a liquid market for the package order as a whole, including where one or more of the components of a package order are not considered as having a liquid market, or are large in scale compared to normal market size. However, package orders where none of the components have a liquid market, where all components are large in scale compared to normal market size, or which are a combination of components that do not have a liquid market and components that are large in scale compared to normal market size, are not considered as standardised or frequently traded and therefore should be determined as not having a liquid market for the package order as a whole.

(6) For package orders consisting of interest rate swaps, most transactions are concentrated in package orders where the components have certain benchmark tenors. It is therefore appropriate to consider only those package orders as being liquid as a whole. To reflect the characteristics of the different interest rate swaps, it is important to differentiate contracts starting immediately after the execution of the trade from contracts starting at a predetermined date in the future. The tenor of a contract should be calculated based on the date at which the obligations under the contract come into effect, that is, on the effective date. However, to take into account the liquidity pattern of those contracts as well as to avoid circumvention, those tenors should not be interpreted too strictly, but rather as targeted intervals around a benchmark tenor.

(7) Many market participants trade package orders consisting of two contracts with a different expiry date. In particular, roll forwards are highly standardised and frequently traded. Those package orders are used to replace a position in a contract that is nearest to expiry with a position in a contract expiring at the next maturity date, thereby allowing market participants to maintain an investment position beyond the initial expiration of a contract. It is therefore appropriate to consider that there is a liquid market for those package orders as a whole.

(8) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that this Regulation and the provisions laid down in Regulation (EU) No 600/2014 apply from the same date.

(9) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(10) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council,

HAS ADOPTED THIS REGULATION: