

Chapter 13

Commission Delegated Regulation (EU) 2017/573

Preamble

THE EUROPEAN COMMISSION,
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Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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, and in particular Article 48(12)(d),

01/01/2021

Whereas:

(1) It is important to adopt detailed regulatory technical standards to clearly identify conditions when co-location and fee structures used by trading venues may be considered fair and non-discriminatory.

(2) Directive 2014/65/EU extends the requirements relating to co-location and fee structures to multilateral trading facilities and organised trading facilities. It is therefore important to ensure that those venues are also within the scope of this Regulation.

(3) In order to ensure harmonised conditions, common requirements should apply to all types of co-location services and to trading venues that organise their own data centres or that use data centres owned or managed by third parties.

(4) Trading venues should have the ability to determine their commercial policy as regards co-location and determine which types of market participants they want to grant access to those services provided that their commercial policy is based on objective, transparent and non-discriminatory criteria. Trading venues should not be required to extend their co-location capacities beyond the limits of the space, power, cooling or similar facilities available and should have discretion to decide whether they expand their co-location space or not.

(5) Fair and non-discriminatory co-location services and fee structures require a sufficient degree of transparency to ensure that the obligations laid down in Directive 2014/65/EU are not circumvented. Trading venues should therefore use objective criteria when determining rebates, incentives and disincentives.

(6) Fee structures that contribute to conditions leading to disorderly trading conditions through encouraging intensive trading and that may lead to a stress of market infrastructures should be prohibited. Therefore, volume discounts should be allowed, provided that, as price differentiation schemes, they are based on the total trading volume, the total number of trades or the cumulated trading fees generated by one member whereby only the marginal trade executed subsequently to reaching the threshold is executed at a reduced price.

(7) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the related national provisions transposing Directive 2014/65/EU apply from the same date.

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

(9) The European Securities and Markets Authority 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: