

Chapter 15

Commission Delegated Regulation (EU) 2017/575

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 point (a) of the first subparagraph of Article 27(10) thereof,

01/01/2021

Whereas:

(1) With a view to providing both the public and investment firms with relevant data on execution quality to help them determine the best way to execute client orders, it is important to set out the specific content, format and the periodicity of data relating to the quality of execution of financial instruments subject to the trading obligation in Articles 23 and 28 of Regulation (EU) No 600/2014 of the European Parliament and of the Council to be published by trading venues and systematic internalisers. It is also important to set out the specific content, format and the periodicity of data relating to the quality of execution of other financial instruments which are not subject to the trading obligation and which execution venues are required to publish. In this respect, due regard should be given to the type of execution venue and the type of financial instrument concerned.

(2) In order to fully assess the extent of the quality of execution of transactions that take place in the Union, it is appropriate that execution venues which may be selected by investment firms to execute client orders comply with requirements on data to be provided by execution venues in accordance with this Regulation. To this effect, these execution venues should include regulated markets, multilateral trading facilities, organised trading facilities, systematic internalisers, market makers and other liquidity providers.

(3) Differences in the type of execution venue and financial instruments require that the content of reporting should vary depending on several factors. It is appropriate to differentiate the amount and nature of reported data according to trading systems, trading modes and trading platforms to provide a proper context for the quality of execution obtained.

(4) To avoid inappropriate comparison between execution venues and ensure the relevance of collected data, execution venues should submit separate reports corresponding

to segments that operate different order books or that are regulated differently or use different market segment identifiers.

(5) To ensure an accurate picture of the quality of execution that effectively occurred, trading venues should not publish among executed orders those traded over the counter and reported onto the trading venue.

(6) When market makers and other liquidity providers are reporting as execution venues for financial instruments which are not subject to the trading obligation, they should only publish information on the orders executed or the price quoted for their clients when the orders are either quoted or executed over the counter, or executed pursuant to Articles 4 and 9 of Regulation (EU) No 600/2014, excluding orders which are held in an order management facility of a trading venue pending disclosure.

(7) It is appropriate to consider that other liquidity providers should include firms that hold themselves out as being willing to deal on own account, and which provide liquidity as part of their normal business activity, whether or not they have formal agreements in place or commit to providing liquidity on a continuous basis.

(8) In order to have complete transparency on the quality of execution for transactions in relation to price, it is appropriate that the information provided in relation to price should exclude all commissions or accrued interest, where relevant.

(9) In determining appropriate information for assessing price quality, both daily average levels and point-in-time information should be required. This will provide participants with an appropriate context and a more complete picture when analysing the quality of execution obtained. In order to allow for price comparisons between financial instruments it is also necessary to specify the currency code of any reported transaction.

(10) To ensure regulatory consistency, it is not appropriate to require trading venues to provide details of transactions that remain, at the time of publication, subject to a deferral of publication in compliance with requirements on post trade transparency. It is appropriate that systematic internalisers, market makers and other liquidity providers be exempt from publishing point-in-time transaction data for any transactions above standard market size or above size specific to the financial instrument in order to avoid those venues becoming subject to undue risk of disclosing commercially sensitive information that might hinder their ability to hedge exposures and provide liquidity. For shares, exchange-traded funds and certificates deemed to be illiquid under Regulation (EU) No 600/2014, the standard market size threshold to be used is the minimum available standard market size for that type of financial instrument. To avoid uncertainty, it is appropriate to clarify that reference to large in scale and size specific to the financial instrument have the same meaning as set out in the post trade transparency requirements.

(11) It is essential to have full transparency on all costs charged when executing an order through a given venue. It is necessary to specify all costs in the execution of a client order relevant to the use of a specific venue and for which the client pays directly or indirectly. Those costs should include execution fees, including fees for the submission, modification or cancellation of orders or quotes withdrawals, as well as any fees related to market data access or use of terminals. The relevant costs may also include clearing or settlement fees or any other fees paid to third parties involved in the execution of the order when they are part of the services provided by the execution venue. Information on costs

should also include taxes or levies directly invoiced to or incurred by the venue on behalf of the members or users of the execution venue or the client to whom the order refers.

(12) Likelihood of execution indicates the probability of execution of a particular type of order and is supported by details on trading volumes in a particular instrument or other characteristics of orders and transactions. Information on likelihood of execution should allow for the calculation of metrics such as the relative market size of a venue in a particular financial instrument or a class of financial instruments. Likelihood of execution should also be assessed with data on failed transactions or cancelled or modified orders.

(13) Speed of execution may have different meanings for the different types of execution venues as the measurement of speed varies by both trading systems and trading platform. For continuous auction order books, speed of execution should be expressed in milliseconds while for other trading systems it is appropriate to use larger units of time. It is also appropriate to exclude the latency of a particular participant's connection to the execution venue, as this is outside of the control of the execution venue itself.

(14) In order to compare the quality of execution for orders of different size, execution venues should be required to report on transactions within several size ranges. The thresholds for these ranges should be dependent on the type of financial instrument and its liquidity to ensure that they provide an adequate sample of executions in a size that is typical in that instrument.

(15) It is important that execution venues collect data throughout the normal hours of their operation. Reporting should therefore be made without charge in a machine readable electronic format via an internet website to enable the public to download, search, sort and analyse all the provided data.

(16) The reports by execution venues should be complemented by the output of a consolidated tape provider established by Directive 2014/65/EU thus allowing for the development of enhanced measures of execution quality.

(17) 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 provisions laid down in Directive 2014/65/EU and Regulation (EU) No 600/2014 apply from the same date.

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

(19) 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: