Chapter 20

Commission Delegated Regulation (EU) 2017/580

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 the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, and in particular the fourth subparagraph of Article 25(3) thereof,

01/01/2021

Whereas:

(1) Operators of trading venues should be free to determine the manner in which they keep records of relevant data relating to all orders in financial instruments. However, in order to enable effective and efficient collation, comparison and analysis of the relevant order data for market monitoring purposes, such information should be made available to the competent authorities using uniform standards and formats where a competent authority requests such information pursuant to Article 25(2) of Regulation (EU) No 600/2014.

(2) In order to ensure clarity, legal certainty and avoid double storage of the same information this Regulation should cover all data elements relating to orders, including details that are to be reported in accordance with Article 26(1) and (3).

(3) In order to detect and investigate potential or attempted market abuse effectively, competent authorities need to promptly identify persons and entities who may be significantly involved in the order process, including members or participants of trading venues, entities responsible for investment and execution decisions, non-executing brokers and clients on whose behalf orders are initiated. Accordingly operators of trading venues should maintain designations for such parties.

(4) In order to allow competent authorities to more efficiently identify suspicious patterns of potentially abusive behaviour originating from one client, including where the client is operating through a number of investment firms, the operators of trading venues should record the identity of clients on whose behalf their members or participants submitted the order. Operators should identify those clients by unique identifiers in order to facilitate certain and efficient identification of such persons and thereby facilitate more effective analysis of potential market abuse in which clients may be involved.

(5) Operators of trading venues should not be required to record client identifiers for all clients in the trading chain but only for the client on whose behalf the member or participant submitted the order.

(6) The identification of market-making strategies or similar activities is important in order to enable efficient detection of market manipulation. This allows the competent authorities to distinguish the order flow coming from an investment firm acting on the basis of terms pre-determined by the issuer of the instrument which is the subject of the order or by the trading venue to which the order is submitted from the order flow coming from an investment firm acting at its own or at its client's discretion.

(7) The record of the precise date and time and of the details of any order placement, modification, cancellation, rejection and execution should be maintained. This allows monitoring the changes to the order throughout its lifetime, which can be significant in detecting and assessing potential market manipulation and front running behaviours.

(8) To ensure an accurate and complete picture of the order book of a trading venue, competent authorities require information on trading sessions in which financial instruments are traded. This information can notably be used to determine when auction periods or continuous trading start and finish and whether orders cause unscheduled circuit breakers. This information is also required to identify how orders will interact, particularly when sessions end at random periods such as auctions. Information on indicative uncrossing prices and volumes would also assist in analysing possible auction manipulation. Given that a single order can impact either the auction uncrossing price, auction uncrossing volume or both, competent authorities need to see the impact of each order on these values. Without this information it would be difficult to identify which order has had the impact on those values. Additionally, a sequence number should be assigned to each relevant event in order to determine the sequence of events when two or more events take place at the same time.

(9) Specification of the position of the orders in an order book allows for the reconstruction of the order book and for analysis of the sequence of execution of orders which is an important element of market abuse surveillance. The position assigned to an order depends on how priority is determined by the trading system. Therefore, operators of trading venues should assign and maintain details of the priority of orders according to the price visibility-time priority or the size-time priority method.

(10) In order to enable effective market monitoring it is necessary to be able to link orders with their corresponding transactions. Accordingly operators of trading venues should maintain distinctive transaction identification codes linking orders to transactions.

(11) Operators of trading venues should, for each order received, record and maintain the order type and the related specific instructions which together determine how each order is to be handled by their matching engines, in accordance with their own classifications. This detailed information is essential for competent authorities to be able to monitor, as part of its market abuse surveillance, trading activity in a given trading venue order book and in particular to replicate how each order behaves within the order book. However, given the broad range of existing and potential new order types designed by operators of trading venues and the specific technicalities attached to the latter, the maintenance of this detailed information according to the operators' internal classification system may not currently allow competent authorities to replicate the order book activity of all trading venues in a consistent manner. Therefore, for competent authorities to be in a position to exactly locate each order within the order book, operators of trading venues should also classify each order received either as a limit order where the order is tradable or as a stop

order where the order becomes tradable only upon the realisation of a pre-determined price event.

(12) 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 Regulation (EU) No 600/2014 apply from the same date.

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

(14) 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: