

## **Chapter 21**

# **Commission Delegated Regulation (EU) 2017/581**

**Article 9 Conditions under which access  
must be permitted**

(1) The parties shall agree on their respective rights and obligations arising from the access granted, including the applicable law governing their relationships. The terms of the access agreement shall:

(a) be clearly defined, transparent, valid and enforceable;

(b) where two or more CCPs have access to the trading venue specify the way in which transactions on the trading venue will be allocated to the CCP that is party to the agreement;

(c) contain clear rules concerning the moment of entry of transfer orders, construed pursuant to the Financial Markets and Insolvency (Settlement Finality) Regulations 1999, into relevant systems and the moment of irrevocability;

(d) contain rules regarding the termination of the access agreement by any of the parties, which shall:

(i) provide for termination in an orderly manner that does not unduly expose other entities to additional risks, including clear and transparent arrangements for the management and orderly run-off of contracts and positions made under the access agreement that were open at the point of termination;

(ii) ensure that the relevant party is given a reasonable amount of time to remedy any breach that does not give rise to immediate termination;

(iii) allow the termination, if risks increase in a way that would have justified denial of access in the first instance;

(e) specify the financial instruments being subject to the access agreement;

(f) specify the cover of the one-off and ongoing costs caused by the access request;

(g) contain provisions for claims and liabilities stemming from the access agreement.

(2) The terms of the access agreement shall require that the parties to the agreement put in place adequate policies, procedures and systems to ensure the following:

- (a) timely, reliable and secure communication between the parties;
- (b) prior consultation to the other party where changes to either party's operations are likely to have a material impact on the access agreement or on the risks to which the other party is exposed;
- (c) timely notification to the other party before a change is implemented, in the cases not covered by point (b);
- (d) resolution of disputes;
- (e) identification, monitoring and management of the potential risks arising from the access agreement;
- (f) reception by the trading venue of all necessary information to fulfil its obligations regarding the monitoring of open interest;
- (g) acceptance by the CCP of delivery of physically settled commodities.

(3) The relevant parties to the access agreement shall ensure the following:

- (a) that proper risk management standards are maintained when granting access;
- (b) that information provided in the request for access is kept up-to-date throughout the duration of the access agreement, including information about material changes;
- (c) that non-public and commercially sensitive information including information provided during the development phase of a financial instrument may only be used for the specific purpose for which it is conveyed and may only be acted upon for the specific purpose agreed by the parties.