

## **Chapter 24**

# **Commission Delegated Regulation (EU) 2017/584**



## Article 6 Outsourcing and procurement(Article 48(1) of Directive 2014/65/EU)

(1) Trading venues outsourcing all or part of their operational functions in relation to the systems allowing or enabling algorithmic trading shall ensure that:

- (a) the outsourcing agreement exclusively relates to operational functions and does not alter the responsibilities of the senior management and the management body;
- (b) the relationship and obligations of the trading venue towards its members, competent authorities, or any third parties, such as clients of data feed services are not altered;
- (c) they meet the requirements that they must comply with in order to be authorised in accordance with the UK law corresponding to Title III of Directive 2014/65/EU.

(2) For the purposes of this article, operational functions shall include all direct activities related to the performance and surveillance of the trading systems supporting the following elements:

- (a) upstream connectivity, order submission capacity, throttling capacities and ability to balance customer order entrance through different gateways;
- (b) trading engine to match orders;
- (c) downstream connectivity, order and transaction edit and any other type of market data feed;
- (d) infrastructure to monitor the performance of the elements referred to in points (a), (b) and (c).

(3) Trading venues shall document the process of selecting the service provider to whom the operational functions are to be outsourced ("the service provider"). They shall take the necessary steps to ensure, before concluding the outsourcing agreement and throughout its duration, that the following conditions are satisfied:

(a) the service provider has the ability to perform the outsourced functions reliably and professionally and is the holder of any authorisations required by law for those purposes;

(b) the service provider properly supervises the carrying out of the outsourced functions and adequately manages risks associated with the outsourcing agreement;

(c) the outsourced services are provided in accordance with the specifications of the outsourcing agreement, which are based on pre-determined methods for assessing the standard of performance of the service provider, including metrics to measure the service provided and specifications of the requirements that shall be met;

(d) the trading venue has the necessary expertise to supervise the outsourced functions effectively and manage risks associated with the outsourcing agreement;

(e) the trading venue has the ability to take swift action if the service provider does not carry out the functions effectively and in compliance with applicable laws and regulatory requirements;

(f) the service provider discloses to the trading venue any fact that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with its legal obligations;

(g) the trading venue is able to terminate the outsourcing agreement where necessary without detriment to the continuity and quality of its services to clients;

(h) the service provider cooperates with the competent authorities of the trading venue in connection with the outsourced activities;

(i) the trading venue has effective access to data related to the outsourced activities and to the business premises of the service provider, and auditors of the trading venue and competent authorities have effective access to data related to the outsourced activities;

(j) the trading venue sets out requirements to be met by the service providers to protect confidential information relating to the trading venue and its members, and to the venue's proprietary information and software;

(k) the service provider meets the requirements referred to in point (j);

(l) the trading venue and the service provider establish, implement and maintain a contingency plan for disaster recovery and periodic testing of backup facilities, where that is necessary having regard to the operational function that has been outsourced;

(m) the outsourcing agreement specifies the obligations of the service provider in case it cannot provide its services, including the provision of the service by a substituting firm;

(n) the trading venue has access to information in relation to the business continuity arrangements referred to in Article 16 of the service provider.

(4) Outsourcing agreements shall be concluded in writing and shall set out:

(a) the assignment of rights and obligations between service provider and trading venue;

(b) a clear description of:

(i) the operational functions that are outsourced;

(ii) the access of the trading venue to the books and records of the service provider;

(iii) the procedure to identify and address potential conflicts of interest;

(iv) the responsibility assumed by each party;

(v) the procedure for the amendment and termination of the agreement.

(c) the means to ensure that both the trading venue and the service provider facilitate in any way necessary the exercise by the competent authority of its supervisory powers.

(5) Trading venues shall report to the competent authority their intention to outsource operational functions in the following cases:

(a) where the service provider provides the same service to other trading venues;

(b) where critical operational functions necessary for business continuation would be outsourced, in which case the trading venues shall request a prior authorisation from the competent authority.

(6) For the purposes of point (b) in paragraph 5, critical operational functions shall include those functions necessary to comply with the obligations referred to in the UK law corresponding to Article 47(1)(b), (c) and (e) of Directive 2014/65/EU.

(7) Trading venues shall inform the competent authority of any outsourcing agreements not subject to prior authorisation requirement immediately after the signature of the agreement.