Markets in Financial Instruments Directive/ Regulation

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Chapter 28

Commission Delegated Regulation (EU) 2017/588

Preamble

THE EUROPEAN COMMISSION,

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 49(3) and (4) thereof,

01/01/2021

Whereas:

(1) A tick size regime or minimum tick sizes should be set out in respect of certain financial instruments to ensure the orderly functioning of the markets. In particular, the risk of an ever-decreasing tick size for shares, depositary receipts and certain types of exchange-traded funds and its impact on the orderliness of the market should be controlled by means of a mandatory tick size regime.

(2) For other financial instruments, given the nature of those instruments and the micro-structures of the markets on which they are traded, a tick size regime cannot be presumed to effectively contribute to the orderliness of the markets and, hence, those instruments should not be subject to the tick size regime.

(3) In particular, certificates are only traded in certain Member States. In view of the characteristics of those financial instruments and the liquidity, scale and nature of the markets on which they are traded, a mandatory tick size regime is not necessary to prevent the occurrence of disorderly trading conditions.

(4) Non-equity financial instruments and fixed income products are largely traded over the counter, with only a limited number of transactions being executed on trading venues. Due to the specific characteristics of the liquidity of those instruments on electronic platforms and their fragmentation, no mandatory tick size regime for those instruments is deemed necessary either.

(5) The correlation between exchange-traded funds and the underlying equity instruments renders it necessary to determine a minimum tick size for exchange-traded funds having as underlying shares and depositary receipts. However, exchange-traded funds

having financial instruments which are not shares or depositary receipts as their underlying should not be subject to a mandatory tick size regime.

(6) It is important that all exchange-traded funds covered by this Regulation have the same tick size regime based on a single liquidity band, regardless of their average daily number of transactions, so that the risk of circumvention of the tick size regime in relation to those instruments is reduced.

(7) The meaning of the term "most relevant market in terms of liquidity" should be clarified for the purposes of this Regulation, since Regulation (EU) No 600/2014 of the European Parliament and of the Council uses this term for both the purpose of the reference price waiver and for the purpose of transaction reporting.

(8) The tick size regime only determines the minimum difference between two price levels of orders sent in relation to a financial instrument in the order-book. It should therefore be applied equally, regardless of the currency of the financial instrument.

(9) Competent authorities should be able to react to events known in advance that lead to a change in the number of transactions in a financial instrument whereby the applicable tick size may no longer be appropriate. To that end, a specific procedure should be set out to avoid disorderly market conditions arising from corporate actions that may cause the tick size of one specific instrument to be unsuitable. That procedure should apply to corporate actions that could significantly affect the liquidity of that instrument. While assessing the impact of a corporate action on a specific financial instrument, competent authorities should take account of any previous corporate actions with similar characteristics.

(10) To ensure that the tick size regime can operate effectively and that market participants have sufficient time to implement the new requirements, it is appropriate to provide for the collection of certain data and for an early publication of the average daily number of transactions for each financial instrument covered by this Regulation.

(11) 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. However, to ensure that the tick size regime can operate effectively, certain provisions of this Regulation should apply from the date of its entry into force.

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

(13) 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:

Article -3 Definitions

In this Regulation, 'IP completion day' has the meaning given in the European Union (Withdrawal) Act 2020.

Article -2 Application

This Regulation applies to:

those persons described in Article 1(2) of Regulation 600/2014/EU; and

the Financial Conduct Authority as a competent authority.

Article -1 Interpretation

Where a term is defined in Directive 2014/65/EU (as that directive applied in the European Union immediately before IP completion day) that definition shall apply for the purposes of this Regulation except where it is defined in article 2 of Regulation 600/2014/EU in which case that definition shall apply for the purposes of this Regulation.

The definition of all other terms defined in article 2 of Regulation 600/2014/EU shall apply for the purposes of this Regulation.

Article 2(1)(62) of Regulation 600/2014/EU applies for the purposes of this Regulation.

References to the date of application of Regulation (EU) No 600/2014 mean the date of application of that Regulation in the European Union.

Article 1 Most relevant market in terms of liquidity

For the purposes of this Regulation, the most relevant market in terms of liquidity for a share or a depositary receipt shall be considered to be the most relevant market in terms of liquidity as referred to in Article 4(1)(a) of Regulation (EU) No 600/2014 and specified in Article 4 or in accordance with Article 17A of Commission Delegated Regulation (EU) 2017/587.

Article 2 Tick size for shares, depositary receipts and exchange-traded funds(Article 49(1) and (2) of Directive 2014/65/EU)

(1) Trading venues shall apply to orders in shares or depositary receipts a tick size which is equal to or greater than the one corresponding to:

(a) the liquidity band in the table in the Annex corresponding to average daily number of transactions in the most relevant market in terms of liquidity for that instrument; and

(b) the price range in that liquidity band corresponding to the price of the order.

(2) By way of derogation from paragraph 1(a), where the most relevant market in terms of liquidity for a share or depositary receipt operates only a trading system that matches orders on the basis of a periodic auction and a trading algorithm operated without human intervention, trading venues shall apply the liquidity band corresponding to the lowest average daily number of transactions in the table in the Annex.

(3) Trading venues shall apply to orders in exchange-traded funds a tick size which is equal to or greater than the one corresponding to:

(a) the liquidity band in the table in the Annex corresponding to the highest average daily number of transactions; and

(b) the price range in that liquidity band corresponding to the price of the order.

(4) The requirements set out in paragraph 3 shall only apply to exchange-traded funds the underlying financial instruments of which are solely equities subject to the tick size regime under paragraph 1 or a basket of such equities.

Article 3 Average daily number of transactions for shares and depositary receipts (Article 49(1) and (2) of Directive 2014/65/EU)

(1) By 1 March of the year following the date of application of Regulation (EU) No 600/2014 and by 1 March of each year thereafter, the FCA shall, when determining the most relevant market in terms of liquidity for each share or depositary receipt that is traded on a trading venue calculate the average daily number of transactions for that financial instrument in that market and ensure the publication of that information.

(2) The calculation referred to in paragraph 1 shall have the following characteristics:

(a) it shall include, for each trading venue, transactions executed under the rules of that trading venue, excluding reference price and negotiated transactions flagged as set out in Table 4 of Annex I to Delegated Regulation (EU) 2017/587 and transactions executed on the basis of at least one order that has benefitted from a large in scale waiver and where the transaction size is above the applicable large-in-scale threshold as determined in accordance with Article 7 of Delegated Regulation (EU) 2017/587;

(b) it shall cover either the preceding calendar year or, where applicable, the period of the preceding calendar year during which the financial instrument was admitted to trading or has been traded on a trading venue and was not suspended from trading.

(3) Paragraphs 1 and 2 shall not apply to shares and depositary receipts which were first admitted to trading or were first traded on a trading venue four weeks or less before the end of the preceding calendar year.

(4) Trading venues shall apply the tick sizes of the liquidity band corresponding to the average daily number of transactions as published in accordance with paragraph 1 from 1 April following that publication.

(5) Before the first admission to trading or before the first day of trading of a share or depositary receipt on a trading venue, the FCA shall estimate the average daily number of transactions for that trading venue, taking into account the previous trading history of that financial instrument, where applicable, as well as the previous trading history of financial instruments that are considered to have similar characteristics, and publish that estimation.

The tick sizes of the liquidity band corresponding to that published estimate average daily number of transactions shall apply from the publication of that estimate until the publication of the average daily number of transactions for that instrument in accordance with paragraph 6.

(6) No later than six weeks after the first day of trading of the share or depositary receipt, the FCA shall calculate and ensure the publication of the average daily number of transactions in that financial instrument for that trading venue, using the data relating to the first four weeks of trading of that financial instrument.

The tick sizes of the liquidity band corresponding to that published average daily number of transactions shall apply from the publication until a new average daily number of transactions for that instrument has been calculated and published in accordance with the procedure set out in paragraphs 1 to 4.

(7) For the purposes of this Article, the average daily number of transactions for a financial instrument shall be calculated by dividing, for the relevant time period and the relevant trading venue, the total number of transactions in that financial instrument by the number of trading days.

8. The competent authority for a specific share may adjust the average daily number of transactions calculated or estimated by that competent authority for that share in accordance with the procedure set out in paragraphs 1 to 7 where all of the following conditions are met:

(a) the trading venue with the highest turnover for that share is located in a third country;

(b) where that average daily number of transactions has been calculated and published in accordance with the procedure set out in paragraphs 1 to 4, it is equal to or greater than one.

When adjusting the average daily number of transactions for a share, the competent authority shall take into account the transactions executed on the third-country trading venue with the highest turnover for trading of that share.

9. The competent authority that adjusted the average daily number of transactions for a share in accordance with paragraph 8 shall ensure the publication of that adjusted average daily number of transactions.

10. Trading venues shall apply the tick sizes of the liquidity band corresponding to the adjusted average daily number of transactions from the second calendar day after its publication.

Article 3A Transitional period for publication of average daily number of transactions

(1) For the purposes of this Article, the term ‘transitional period’ has the same meaning as under Article 5(3A) of Regulation 600/2014/EU).

(2) During the transitional period and until the FCA makes a publication under Articles 3, 4 or 5(3) in relation to the financial instrument in question, the average daily number of transactions in respect of a share or depositary receipt for the purposes of retained EU law relating to markets in financial instruments shall be as follows in (a) or (b), subject to (c):

(a) that stated in the most recent information published before IP completion day under Article 4 or 5 (whichever is the most recent) by the competent authority in the European Union (including the FCA) for the relevant instrument under Article 3(1) as it applied in the European Union before IP completion day (including the FCA); or

(b) if no such information was published by that competent authority in the European Union in respect of a financial instrument under those provisions before IP completion day, the average daily number of transactions for that financial instrument shall be that estimated by the FCA, taking into account any previous trading history of that financial instrument and of other financial instruments that are considered to have similar characteristics, and published on IP completion day; and

if information was published before IP completion day under Article 3(1) by the competent authority in the European Union (including the FCA) for the relevant instrument under Article 3(1) as it applied in the European Union before IP completion day, but the information was not required to be used under Article 3(4) before IP completion day, then the average daily number of transactions shall become that stated in such information from the point at which it would have been required to be used under Article 3(4) as it applied in the European Union before IP completion day, provided that the calculations used to produce that information did not exclude trading in the UK for the relevant period.

(3) From IP completion day and during the transitional period, the FCA’s obligations to perform calculations and publish information under Article 3 are modified as follows:

where the FCA publishes information under Article 3(1):

it shall publish what appears to it to be the average daily number of transactions;

it is not required to follow the relevant methodology in Article 3, but where it does not:

- it must have regard to the relevant methodology; and

- it may take into account any information available in relation to trading of the financial instrument in question in the United Kingdom or in any other country; and

it shall ensure publication by five working days after 1 March; and

where the FCA publishes information under Article 3(6) it shall publish what appears to it to be the average daily number of transactions, and it may take into account any information available in relation to trading of the financial instrument in question in the United Kingdom or in any other country.

Article 4 Corporate actions(Article 49(1) and (2) of Directive 2014/65/EU)

Where the FCA considers that a corporate action may modify the average daily number of transactions of a particular financial instrument thereby causing this financial instrument to fall within a different liquidity band, the FCA shall determine and ensure publication of a new applicable liquidity band for that financial instrument treating it as if it were first admitted to trading or first traded on a trading venue and apply the procedure set out in Article 3(5) and (6).

Article 5 Transitional provisions

(1) The competent authority of the trading venue where a share or depositary receipt was first admitted to trading or has been traded for the first time before the date of application of Regulation (EU) No 600/2014, shall collect the necessary data and calculate and ensure the publication of the average daily number of transactions for that financial instrument and for that trading venue within the following time limits:

(a) no later than 4 weeks prior to the date of application of Regulation (EU) No 600/2014 where the date on which shares or depositary receipts are traded for the first time on a trading venue within the Union is a date not less than 10 weeks prior to the date of application of Regulation (EU) No 600/2014;

(b) no later than the date of application of Regulation (EU) No 600/2014 where the date on which financial instruments are traded for the first time on a trading venue within the Union is a date falling within the period commencing 10 weeks prior to the date of application of Regulation (EU) No 600/2014 and ending on the day preceding the date of application of Regulation (EU) No 600/2014.

(2) The calculations referred to in paragraph 1(a) shall be carried out as follows:

(a) where the date on which shares or depositary receipts are traded for the first time on a trading venue within the Union is a date not less than 16 weeks prior to the date of application of Regulation (EU) No 600/2014, the calculation shall be based on data available for a 40-week reference period commencing 52 weeks prior to the date of application of Regulation (EU) No 600/2014;

(b) where the date on which shares or depositary receipts are traded for the first time on a trading venue within the Union is a date within the period commencing 16 weeks prior to the date of application of Regulation (EU) No 600/2014 and ending 10 weeks prior to the date of application of Regulation (EU) No 600/2014, the calculation shall be based on data available for the first 4-week trading period of the financial instrument;

(c) where the date on which shares or depositary receipts are traded for the first time on a trading venue within the Union is a date falling within the period commencing 10 weeks prior to the date of application of Regulation (EU) No 600/2014 and ending on the day preceding the date of application of Regulation (EU) No 600/2014, the calculation shall be based on the trading history of the share or depositary receipt or other financial instruments considered to have similar characteristics to those shares or depositary receipts.

(3) The tick sizes of the liquidity band corresponding to the published average daily number of transactions referred to in paragraph 1 shall be applied until 1 April of the year following the date of application of Regulation (EU) No 600/2014. During that period, the FCA shall ensure that the tick sizes for financial instruments referred to under points (b) and (c) of paragraph 2, do not contribute to disorderly trading conditions. Where the FCA identifies a risk for the orderly functioning of the markets due to such tick sizes, it shall determine and publish an updated average daily number of transactions for the relevant financial instruments to address that risk. It shall do so on the basis of longer and more comprehensive trading history data of those instruments. Trading venues shall immediately apply the liquidity band corresponding to that updated average daily number of transactions. They shall do so until 1 April of the year following the date of application of Regulation (EU) No 600/2014 or until any further publication by the FCA in accordance with this paragraph.

Article 6 Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 3 January 2018.

However, Article 5 shall apply from the date of entry into force of this Regulation.

Signature

01/01/2021

Done at Brussels, 14 July 2016.

01/01/2021

For the Commission

01/01/2021

The President

01/01/2021

Jean-Claude JUNCKER

ANNEX Tick size table

	Liquidity bands					
Price ranges	0 ≤ Average daily number of transactions < 10	10 ≤ Average daily number of transactions < 80	80 ≤ Average daily number of transactions < 600	600 ≤ Aver age daily num ber of transac tions < 2000	2000 ≤ Aver age daily num ber of transac tions < 9000	9000 ≤ Aver age daily num ber of transac tions
0 ≤ price < 0,1	0,0005	0,0002	0,0001	0,0001	0,0001	0,0001
0,1 ≤ price < 0,2	0,001	0,0005	0,0002	0,0001	0,0001	0,0001
0,2 ≤ price < 0,5	0,002	0,001	0,0005	0,0002	0,0001	0,0001
0,5 ≤ price < 1	0,005	0,002	0,001	0,0005	0,0002	0,0001
1 ≤ price < 2	0,01	0,005	0,002	0,001	0,0005	0,0002
2 ≤ price < 5	0,02	0,01	0,005	0,002	0,001	0,0005
5 ≤ price < 10	0,05	0,02	0,01	0,005	0,002	0,001
10 ≤ price < 20	0,1	0,05	0,02	0,01	0,005	0,002
20 ≤ price < 50	0,2	0,1	0,05	0,02	0,01	0,005
50 ≤ price < 100	0,5	0,2	0,1	0,05	0,02	0,01
100 ≤ price < 200	1	0,5	0,2	0,1	0,05	0,02
200 ≤ price < 500	2	1	0,5	0,2	0,1	0,05
500 ≤ price < 1000	5	2	1	0,5	0,2	0,1

1000 ≤ price < 2000	10	5	2	1	0,5	0,2
2000 ≤ price < 5000	20	10	5	2	1	0,5
5000 ≤ price < 10000	50	20	10	5	2	1
10000 ≤ price < 20000	100	50	20	10	5	2
20000 ≤ price < 50000	200	100	50	20	10	5
50000 ≤ price	500	200	100	50	20	10