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: