

Chapter 30

Commission Delegated Regulation (EU) 2017/590

Article 2 Meaning of transaction

(1) For the purposes of Article 26 of Regulation (EU) No 600/2014, the conclusion of an acquisition or disposal of a financial instrument referred to in Article 26(2) of Regulation (EU) No 600/2014 shall constitute a transaction.

(2) An acquisition referred to in paragraph 1 shall include the following:

- (a) a purchase of a financial instrument;
- (b) entering into a derivative contract;
- (c) an increase in the notional amount of a derivative contract.

(3) A disposal referred to in paragraph 1 shall include the following:

- (a) sale of a financial instrument;
- (b) closing out of a derivative contract;
- (c) a decrease in the notional amount of a derivative contract.

(4) For the purposes of Article 26 of Regulation (EU) No 600/2014, a transaction shall also include a simultaneous acquisition and disposal of a financial instrument where there is no change in the ownership of that financial instrument but post-trade publication is required under Articles 6, 10, 20 or 21 of Regulation (EU) No 600/2014.

(5) A transaction for the purposes of Article 26 of Regulation (EU) No 600/2014 shall not include the following:

- (a) securities financing transactions as defined in Article 3(11) of Regulation (EU) 2015/2365 of the European Parliament and of the Council;
- (b) a contract arising exclusively for clearing or settlement purposes;

(c) a settlement of mutual obligations between parties where the net obligation is carried forward;

(d) an acquisition or disposal that is solely a result of custodial activity;

(e) a post-trade assignment or novation of a derivative contract where one of the parties to the derivative contract is replaced by a third party;

(f) a portfolio compression;

(g) the creation or redemption of units of a collective investment undertaking by the administrator of the collective investment undertaking;

(h) the exercise of a right embedded in a financial instrument, or the conversion of a convertible bond and the resultant transaction in the underlying financial instrument;

(i) the creation, expiration or redemption of a financial instrument as a result of pre-determined contractual terms, or as a result of mandatory events which are beyond the control of the investor where no investment decision by the investor takes place at the point in time of the creation, expiration or redemption of the financial instrument;

(j) a decrease or increase in the notional amount of a derivative contract as a result of pre-determined contractual terms or mandatory events where no investment decision by the investor takes place at the point in time of the change in the notional amount;

(k) a change in the composition of an index or a basket that occurs after the execution of a transaction;

(l) an acquisition under a dividend re-investment plan;

(m) an acquisition or disposal under an employee share incentive plan, or arising from the administration of an unclaimed asset trust, or of residual fractional share entitlements following corporate events or as part of shareholder reduction programmes where all the following criteria are met:

(i) the dates of acquisition or disposal are pre-determined and published in advance;

(ii) the investment decision concerning the acquisition or disposal that is taken by the investor amounts to a choice by the investor to enter into the transaction with no ability to unilaterally vary the terms of the transaction;

(iii) there is a delay of at least ten business days between the investment decision and the moment of execution;

(iv) the value of the transaction is capped at the equivalent of EUR 1000 for a one-off transaction for the particular investor in the particular instrument or, where the arrangement results in transactions, the cumulative value of the transaction shall be capped at the equivalent of EUR 500 for the particular investor in the particular instrument per calendar month;

(n) an exchange and tender offer on a bond or other form of securitised debt where the terms and conditions of the offer are pre-determined and published in advance and the investment decision amounts to a choice by the investor to enter into the transaction with no ability to unilaterally vary its terms;

(o) an acquisition or disposal that is solely a result of a transfer of collateral.

The exclusion provided for in point (a) of the first subparagraph shall not apply to the securities financing transactions to which a member of the European System of Central Banks¹ or Bank of England is a counterparty.

The exclusion provided for in point (i) of the first subparagraph shall not apply to initial public offerings or secondary public offerings or placings, or debt issuance.

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¹ In accordance with paragraph 31bazg of Annex IX (Financial Services) to the EEA Agreement, this reference to a member of the European System of Central Banks shall be understood to include, in addition to its meaning in this Regulation, a national central bank of the EFTA States. Article 2(b) of the EEA Agreement defines ‘EFTA States’ to mean Iceland, the Principality of Liechtenstein and the Kingdom of Norway.

The European Union (Withdrawal) Act 2018 provides that the Annexes to the EEA Agreement, as they have effect in EU law immediately before IP completion day, form part of UK law on and after IP completion day – to the extent that they refer to or adapt any EU regulation, EU decision or EU tertiary legislation which is retained by section 3 of the Act. The 2018 Act also provides that Protocol 1 to the EEA Agreement, as it has effect in EU law immediately before IP completion day, forms part of UK law on and after IP completion day.