

Brussels, 26.5.2016
C(2016) 3020 final

COMMISSION DELEGATED REGULATION (EU) .../...

of 26.5.2016

**supplementing Directive 2014/65/EU of the European Parliament and of the Council on
markets in financial instruments with regard to regulatory technical standards for the
determination of a material market in terms of liquidity in relation to notifications of a
temporary halt in trading**

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Under Article 48(5) of MiFID II Directive 2014/65/EU in financial instruments (MiFID II), Member States shall require a regulated market to be able to halt or constrain trading if there is a significant price movement in a financial instrument on that market or a related market during a short period and, in exceptional cases, to be able to cancel, vary or correct any transaction that took place. The parameters used for deciding to halt trading and any material changes to those parameters must be reported to the competent authority which in turn shall report them to ESMA. This requirement is extended to MTFs and OTFs by virtue of Article 18(5) of MiFID II.

In this context, Article 48(12)(d) of MiFID II requires ESMA to develop draft RTS further specifying the determination of where a regulated market is material in terms of liquidity in a given instrument for that market.

The draft regulatory technical standards were submitted to the Commission on 28 September 2015. In accordance with Article 10(1) of Regulation No (EU) 1095/2010 establishing the ESMA, the Commission shall decide within three months of receipt of the draft standards whether to endorse them. The Commission may also endorse the draft standards in part only, or with amendments, where the Union's interests so require, having regard to the specific procedure laid down in those Articles.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In accordance with Article 10 of the Regulation (EU) 1095/2010 ESMA has carried out a public consultation on the draft regulatory technical standards. A consultation paper was published on 19 December 2014 on the ESMA website and the consultation closed on 2 March 2015. In addition, the ESMA invited sought the views of the Securities and Markets Stakeholder Group (MSG) established in accordance with Article 37 of the ESMA Regulation. The MSG chose not to provide advice on these issues due to the technical nature of the standards.

Together with the draft technical standards, and in accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1095/2010, the ESMA has submitted its impact assessment, including the analysis of costs and benefits related to the draft technical standards. This analysis is available at http://www.esma.europa.eu/system/files/2015-esma-1464_annex_ii_-_cba_-_draft_rts_and_its_on_mifid_ii_and_mifir.pdf

3. LEGAL ELEMENTS OF THE DELEGATED ACT

This Regulation provides clarification on which regulated markets should be considered material in terms of liquidity for a specific financial instrument so that those markets have in place appropriate systems and procedures for notifying competent authorities of trading halts. The standard refers to the same regulated market as that applicable for the purposes of determining most liquid market under the transparency rules for equity instruments.

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(Text with EEA relevance)

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/EU¹, and in particular Article 48(12)(e) thereof,

Whereas:

- (1) It is necessary to clarify which regulated markets should be considered material in terms of liquidity for each type of financial instrument so that those markets have in place appropriate systems and procedures for notifying competent authorities of temporary halts in trading.
- (2) Directive 2014/65/EU extends the requirements relating to trading halts to multilateral trading facilities and organised trading facilities and it is therefore important to ensure that financial instruments traded on those venues are also within the scope of these regulatory technical standards.
- (3) It is important to ensure a proportionate application of the notification requirement. After being notified of a temporary halt in trading, the competent authority is obliged to assess whether that notification is to be disseminated to the rest of the market and to coordinate, where necessary, a market-wide response. In order to limit the administrative burden for trading venues, only the trading venues with the greatest potential for market wide impact when trading is halted should be subject to the notification obligation.
- (4) For equity and equity-like financial instruments, the material market in terms of liquidity should be the trading venue that has the highest turnover in the financial instrument concerned within the Union, since that trading venue has the greatest potential for having a market wide impact when trading is halted.
- (5) For non-equity financial instruments, the material market in terms of liquidity should be the regulated market where the financial instrument concerned was first admitted to trading. If the non-equity financial instrument is not admitted to trading on a regulated market, the material market in terms of liquidity should be the trading venue where it was first traded. This should ensure certainty for a range of complex financial instruments by establishing a simple reference point to the trading venue on which

¹ OJ L 173, 12.06.2014, p. 349.

events have important liquidity impacts on other markets trading the same financial instrument, typically due to the significant share in terms of the volumes executed in that instrument on that trading venue.

- (6) 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. This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority to the Commission.
- (7) The European Securities and Markets Authority 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 Council²

HAS ADOPTED THIS REGULATION:

Article 1

Material market in terms of liquidity

For the purposes of the second subparagraph of Article 48(5) of Directive 2014/65/EU, the material market in terms of liquidity shall be considered to be:

- (a) in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments, the trading venue which is the most relevant market in terms of liquidity for the instrument as set out in Article 4 of [Commission Delegated Regulation (EU) xxxx/xxxx] ... on transparency requirements in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on the trading obligation for firms (*RTS1*)]³,
- (b) in respect of financial instruments other than those set out in point (a) which are admitted to trading on a regulated market, the regulated market where the financial instrument was first admitted to trading;
- (c) in respect of financial instruments other than those set out in point (a) which are not admitted to trading on a regulated market, the trading venue where the financial instrument was first traded.

Article 2

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*.

This Regulation shall apply from the date that appears first in the second subparagraph of Article 93(1) of Directive 65/2014/EU.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

² Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

³ [Please state full title of the act], [OJ L...].

Done at Brussels, 26.5.2016

For the Commission
The President
Jean-Claude JUNCKER