**MiFID2 Delegated Regulation April 2016**

**CHAPTER I SCOPE AND DEFINITIONS**

*Article 1*

### Subject-matter and scope

1. Chapter II, and Sections 1 to 4, Articles 59(4) and 60 and Sections 6 and 8 of Chapter III and, to the extent they relate to those provisions, Chapter I and Section 9 of Chapter III and Chapter IV of this Regulation shall apply to management companies in accordance with Article 6(4) of Directive 2009/65/EC of the European Parliament and of the Council13 and Article 6(6) of Directive 2011/61/EU of the European Parliament and of the Council14.
2. References to investment firms shall encompass credit institutions and references to financial instruments shall encompass structured deposits in relation to all the requirements referred to in Article 1(3) and 1(4) of Directive 2014/65/EU and their implementing provisions as set out under this Regulation.

12 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).

13 Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective

investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

14 Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations

(EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

### Definitions

For the purposes of this Regulation, the following definitions shall apply:

1. ‘relevant person’ in relation to an investment firm, means any of the following:
   1. a director, partner or equivalent, manager or tied agent of the firm;
   2. a director, partner or equivalent, or manager of any tied agent of the firm;
   3. an employee of the firm or of a tied agent of the firm, as well as any other natural person whose services are placed at the disposal and under the control of the firm or a tied agent of the firm and who is involved in the provision by the firm of investment services and activities;
   4. a natural person who is directly involved in the provision of services to the investment firm or to its tied agent under an outsourcing arrangement for the purpose of the provision by the firm of investment services and activities;
2. ‘financial analyst’ means a relevant person who produces the substance of investment research;
3. ‘outsourcing’ means an arrangement of any form between an investment firm and a service provider by which that service provider performs a process, a service or an activity which would otherwise be undertaken by the investment firm itself;
   1. ‘person with whom a relevant person has a family relationship’ means any of the following:
   2. the spouse of the relevant person or any partner of that person considered by national law as equivalent to a spouse;
   3. a dependent child or stepchild of the relevant person;
   4. any other relative of the relevant person who has shared the same household as that person for at least one year on the date of the personal transaction concerned;
4. ‘securities financing transaction’ means security financing transaction as defined in Article 3(11) of Regulation (EU) 2015/2365 of the European Parliament and of the Council15.
5. ‘remuneration’ means all forms of payments or financial or non-financial benefits provided directly or indirectly by firms to relevant persons in the provision of investment or ancillary services to clients;
6. ‘commodity’ means any goods of a fungible nature that are capable of being delivered, including metals and their ores and alloys, agricultural products, and energy such as electricity.

15 Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (OJ L 337, 23.12.2015, p. 1).

### Conditions applying to the provision of information

1. Where, for the purposes of this Regulation, information is required to be provided in a durable medium as defined in Article 4(1) point 62 of Directive 2014/65/EU investment firms shall have the right to provide that information in a durable medium other than on paper only if:
   1. the provision of that information in that medium is appropriate to the context in which the business between the firm and the client is, or is to be, carried on; and
   2. the person to whom the information is to be provided, when offered the choice between information on paper or in that other durable medium, specifically chooses the provision of the information in that other medium.
2. Where, pursuant to Article 46, 47, 48, 49, 50 or 66(3) of this Regulation, an investment firm provides information to a client by means of a website and that information is not addressed personally to the client, investment firms shall ensure that the following conditions are satisfied:
   1. the provision of that information in that medium is appropriate to the context in which the business between the firm and the client is, or is to be, carried on;
   2. the client must specifically consent to the provision of that information in that form;
   3. the client must be notified electronically of the address of the website, and the place on the website where the information may be accessed;
   4. the information must be up to date;
   5. the information must be accessible continuously by means of that website for such period of time as the client may reasonably need to inspect it.
3. For the purposes of this Article, the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the firm and the client is, or is to be, carried on where there is evidence that the client has regular access to the internet. The provision by the client of an e-mail address for the purposes of the carrying on of that business shall be treated as such evidence.

*Article 4*

### Provision of investment service in an incidental manner

*(Article 2(1) of Directive 2014/65/EU)*

For the purpose of the exemption in point (c) of Article 2(1) of Directive 2014/65/EU, an investment service shall be deemed to be provided in an incidental manner in the course of a professional activity where the following conditions are satisfied:

* 1. a close and factual connection exists between the professional activity and the provision of the investment service to the same client, such that the investment service can be regarded as accessory to the main professional activity;
  2. the provision of investment services to the clients of the main professional activity does not aim to provide a systematic source of income to the person providing the professional activity; and
  3. the person providing the professional activity does not market or otherwise promote his ability to provide investment services, except where these are disclosed to clients as being accessory to the main professional activity.

*Article 5*

### Wholesale energy products that must be physically settled

*(Article 4(1)(2) of Directive 2014/65/EU)*

1. For the purposes of Section C(6) of Annex I to Directive 2014/65/EU, a wholesale energy product must be physically settled where all the following conditions are satisfied:
   1. it contains provisions which ensure that parties to the contract have proportionate arrangements in place to be able to make or take delivery of the underlying commodity; a balancing agreement with the Transmission System Operator in the area of electricity and gas shall be considered a proportionate arrangement where the parties to the agreement have to ensure physical delivery of electricity or gas.
   2. it establishes unconditional, unrestricted and enforceable obligations of the parties to the contract to deliver and take delivery of the underlying commodity;
   3. it does not allow either party to replace physical delivery with cash settlement;
   4. the obligations under the contract cannot be offset against obligations from other contracts between the parties concerned, without prejudice to the rights of the parties to the contract, to net their cash payment obligations.

For the purposes of point (d), operational netting in power and gas markets shall not be considered as offsetting of obligations under a contract against obligations from other contracts.

1. Operational netting shall be understood as any nomination of quantities of power and gas to be fed into a gridwork upon being so required by the rules or requests of a Transmission System Operator as defined in Article 2(4) of Directive 2009/72/EC of the European Parliament and of the Council16 for an entity performing an equivalent function to a Transmission System Operator at the national level. Any nomination of

quantities based on operational netting shall not be at the discretion of the parties to the contract.

1. For the purposes of Section C(6) of Annex I to Directive 2014/65/EU, force majeure shall include any exceptional event or a set of circumstances which are outside the control of the parties to the contract, which the parties to the contract could not have reasonably foreseen or avoided by the exercise of appropriate and reasonable due diligence and which prevent one or both parties to the contract from fulfilling their contractual obligations.
2. For the purposes of Section C(6) of Annex I to Directive 2014/65/EU bona fide inability to settle shall include any event or set of circumstances, not qualifying as force majeure as referred to in paragraph 3, which are objectively and expressly

16 Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ L 211, 14.8.2009, p. 55).

defined in the contract terms, for one or both parties to the contract, acting in good faith, not to fulfil their contractual obligations.

1. The existence of force majeure or bona fide inability to settle provisions shall not prevent a contract from being considered as 'physically settled' for the purposes of Section C(6) of Annex I to Directive 2014/65/EU.
2. The existence of default clauses providing that a party is entitled to financial compensation in the case of non- or defective performance of the contract shall not prevent the contract from being considered as 'physically settled' within the meaning of Section C(6) of Annex I to Directive 2014/65/EU.
3. The delivery methods for the contracts being considered as ' physically settled' within the meaning of Section C(6) of Annex I to Directive 2014/65/EU shall include at least:
   1. physical delivery of the relevant commodities themselves;
   2. delivery of a document giving rights of an ownership nature to the relevant commodities or the relevant quantity of the commodities concerned;
   3. other methods of bringing about the transfer of rights of an ownership nature in relation to the relevant quantity of goods without physically delivering them including notification, scheduling or nomination to the operator of an energy supply network, that entitles the recipient to the relevant quantity of the goods.

*Article 6*

### Energy derivative contracts relating to oil and coal and wholesale energy products

*(Article 4(1)(2) of Directive 2014/65/EU)*

1. For the purposes of Section C(6) of Annex I to Directive 2014/65/EU, energy derivative contracts relating to oil shall be contracts with mineral oil, of any description and petroleum gases, whether in liquid or vapour form, including products, components and derivatives of oil and oil transport fuels, including those with biofuel additives, as an underlying.
2. For the purposes of Section C(6) of Annex I to Directive 2014/65/EU, energy derivative contracts relating to coal shall be contracts with coal, defined as a black or dark-brown combustible mineral substance consisting of carbonised vegetable matter, used as a fuel, as an underlying.
3. For the purposes of Section C(6) of Annex I to Directive 2014/65/EU derivative contracts that have the characteristics of wholesale energy products as defined in Article 2(4) of Regulation (EU) 1227/2011 of the European Parliament and Council17 shall be derivatives with electricity or natural gas as an underlying, in accordance with points (b) and (d) of Article 2(4) of that Regulation.

17 Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (OJ L 326, 8.12.2011, p. 1).

*Article 7*

### Other derivative financial instruments

*(Article 4(1)(2) of Directive 2014/65/EU)*

1. For the purposes of Section C(7) of Annex I to Directive 2014/65/EU, a contract which is not a spot contract in accordance with paragraph 2 and which is not for commercial purposes as laid down in paragraph 4 shall be considered as having the characteristics of other derivative financial instruments where it satisfies the following conditions:
   1. it meets one of the following criteria:
      * (i) it is traded on a third country trading venue that performs a similar function to a regulated market, an MTF or an OTF;
      * (ii) it is expressly stated to be traded on, or is subject to the rules of, a regulated market, an MTF, an OTF or such a third country trading venue;
      * (iii) it is equivalent to a contract traded on a regulated market, MTF, an OTF or such a third country trading venue, with regards to the price, the lot, the delivery date and other contractual terms;
   2. it is standardised so that the price, the lot, the delivery date and other terms are determined principally by reference to regularly published prices, standard lots or standard delivery dates.
2. A spot contract for the purposes of paragraph 1 shall be a contract for the sale of a commodity, asset or right, under the terms of which delivery is scheduled to be made within the longer of the following periods:
   1. 2 trading days;
   2. the period generally accepted in the market for that commodity, asset or right as the standard delivery period.

A contract shall not be considered a spot contract where, irrespective of its explicit terms, there is an understanding between the parties to the contract that delivery of the underlying is to be postponed and not to be performed within the period referred to in paragraph 2.

1. For the purposes of Section C(10) of Annex I to Directive 2004/39/EU, a derivative contract relating to an underlying referred to in that Section or in Article 8 of this Regulation shall be considered to have the characteristics of other derivative financial instruments where one of the following conditions is satisfied:
   1. it is settled in cash or may be settled in cash at the option of one or more of the parties, otherwise than by reason of a default or other termination event;
   2. it is traded on a regulated market, an MTF, an OTF, or a third country trading venue that performs a similar function to a regulated market, MTF or an OTF;
   3. the conditions laid down in paragraph 1 are satisfied in relation to that contract.
2. A contract shall be considered to be for commercial purposes for the purposes of Section C(7) of Annex I to Directive 2014/65/EU, and as not having the characteristics of other derivative financial instruments for the purposes of Sections C(7) and (10) of that Annex, where the following conditions are both met:
   1. it is entered into with or by an operator or administrator of an energy transmission grid, energy balancing mechanism or pipeline network,
   2. it is necessary to keep in balance the supplies and uses of energy at a given time, including the case when the reserve capacity contracted by an electricity transmission system operator as defined in Article 2(4) of Directive 2009/72/EC is being transferred from one prequalified balancing service provider to another prequalified balancing service provider with the consent of the relevant transmission system operator.

*Article 8*

### Derivatives under Section C(10) of Annex I to Directive 2014/65/EU

*(Article 4(1)(2) of Directive 2014/65/EU)*

In addition to derivative contracts expressly referred to in Section C(10) of Annex I to Directive 2014/65/EU, a derivative contract shall be subject to the provisions in that Section where it meets the criteria set out in that Section and in Article 7(3) of this Regulation and it relates to any of the following:

1. telecommunications bandwidth;
2. commodity storage capacity;
3. transmission or transportation capacity relating to commodities, whether cable, pipeline or other means with the exception of transmission rights related to electricity transmission cross zonal capacities when they are, on the primary market, entered into with or by a transmission system operator or any persons acting as service providers on their behalf and in order to allocate the transmission capacity;
4. an allowance, credit, permit, right or similar asset which is directly linked to the supply, distribution or consumption of energy derived from renewable resources, except if the contract is already with the scope of Section C(4) of Annex I to Directive 2014/65/EU;
5. a geological, environmental or other physical variable, except if the contract is relating to any units recognised for compliance with the requirements of Directive 2003/87/EC of the European Parliament and of the Council 18;
6. any other asset or right of a fungible nature, other than a right to receive a service, that is capable of being transferred;
7. an index or measure related to the price or value of, or volume of transactions in any asset, right, service or obligation;
8. an index or measure based on actuarial statistics.

*Article 9*

### Investment advice

*(Article 4(1)(4) of Directive 2014/65/EU)*

For the purposes of the definition of ‘investment advice’ in Article 4(1)(4) of Directive 2014/65/EU, a personal recommendation shall be considered a recommendation that is made

18 Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

to a person in his capacity as an investor or potential investor, or in his capacity as an agent for an investor or potential investor.

That recommendation shall be presented as suitable for that person, or shall be based on a consideration of the circumstances of that person, and shall constitute a recommendation to take one of the following sets of steps:

* 1. to buy, sell, subscribe for, exchange, redeem, hold or underwrite a particular financial instrument;
  2. to exercise or not to exercise any right conferred by a particular financial instrument to buy, sell, subscribe for, exchange, or redeem a financial instrument.

A recommendation shall not be considered a personal recommendation if it is issued exclusively to the public.

*Article 10*

### Characteristics of other derivative contracts relating to currencies

1. For the purposes of Section C (4) of Annex I to Directive 2014/65/EC, other derivative contracts relating to a currency shall not be a financial instrument where the contract is one of the following:
   1. a spot contract within the meaning of paragraph 2 of this Article,
   2. a means of payment that:
      1. must be settled physically otherwise than by reason of a default or other termination event;
      2. is entered into by at least a person which is not a financial counterparty within the meaning of Article 2(8) of Regulation (EU) No. 648/2012 of the European Parliament and of the Council 19;
      3. is entered into in order to facilitate payment for identifiable goods, services or direct investment; and
      4. is not traded on a trading venue.
2. A spot contract for the purposes of paragraph 1 shall be a contract for the exchange of one currency against another currency, under the terms of which delivery is scheduled to be made within the longer of the following periods:
   1. 2 trading days in respect of any pair of the major currencies set out in paragraph 3;
   2. for any pair of currencies where at least one currency is not a major currency, the longer of 2 trading days or the period generally accepted in the market for that currency pair as the standard delivery period;
   3. where the contract for the exchange of those currencies is used for the main purpose of the sale or purchase of a transferable security or a unit in a collective investment undertaking, the period generally accepted in the market for the settlement of that transferable security or a unit in a collective

19 Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

investment undertaking as the standard delivery period or 5 trading days, whichever is shorter.

A contract shall not be considered a spot contract where, irrespective of its explicit terms, there is an understanding between the parties to the contract that delivery of the currency is to be postponed and not to be performed within the period set out in the first subparagraph.

1. The major currencies for the purposes of paragraph 2 shall only include the US dollar, Euro, Japanese yen, Pound sterling, Australian dollar, Swiss franc, Canadian dollar, Hong Kong dollar, Swedish krona, New Zealand dollar, Singapore dollar, Norwegian krone, Mexican peso, Croatian kuna, Bulgarian lev, Czech koruna, Danish krone, Hungarian forint, Polish złoty and Romanian leu.
2. For the purposes of paragraph 2, a trading day shall mean any day of normal trading in the jurisdiction of both the currencies that are exchanged pursuant to the contract for the exchange of those currencies and in the jurisdiction of a third currency where any of the following conditions are met:
   1. the exchange of those currencies involves converting them through that third currency for the purposes of liquidity;
   2. the standard delivery period for the exchange of those currencies references the jurisdiction of that third currency.

*Article 11*

### Money-market instruments

*(Article 4(1)(17) of Directive 2014/65/EU)*

Money-market instruments in accordance with Article 4(1)(17) of Directive 2014/65/EU, shall include treasury bills, certificates of deposits, commercial papers and other instruments with substantively equivalent features where they have the following characteristics:

1. they have a value that can be determined at any time;
2. they are not derivatives;
3. they have a maturity at issuance of 397 days or less.

*Article 12*

### Systematic internalisers for shares, depositary receipts, ETFs, certificates and other similar financial instruments

*(Article 4(1)(20) of Directive 2014/65/EU)*

An investment firm shall be considered to be a systematic internaliser in accordance with Article 4(1)(20) of Directive 2014/65/EU in respect of each share, depositary receipt, exchange traded fund (ETF), certificate and other similar financial instrument where it internalises according to the following criteria:

1. on a frequent and systematic basis in the financial instrument for which there is a liquid market in accordance with Article 2(1)(17)(b) of Regulation (EU) No 600/2014 where during the past 6 months:
   1. the number of OTC transactions carried out by it on own account when executing client orders is equal to or larger than 0.4% of the total number of transactions in the relevant financial instrument executed in the Union on any trading venue or OTC during the same period;
   2. the OTC transactions carried out by it on own account when executing client orders in the relevant financial instrument take place on average on a daily basis;
2. on a frequent and systematic basis in the financial instrument for which there is not a liquid market in accordance with Article 2(1)(17)(b) of Regulation (EU) No 600/2014 where during the past 6 months the OTC transactions carried out by it on own account when executing client orders takes place on average on a daily basis;
3. on a substantial basis in the financial instrument where the number of OTC trades carried out by it on own account when executing client orders is, during the past 6 months, equal to or larger than either:
   1. 15% of the total turnover in that financial instrument executed by the investment firm on own account or on behalf of clients and executed on a trading venue or OTC;
   2. 0.4% of the total turnover in that financial instrument executed in the Union on a trading venue or OTC.

*Article 13*

### Systematic internalisers for bonds

*(Article 4(1)(20) of Directive 2014/65/EU)*

An investment firm shall be considered to be a systematic internaliser in accordance with Article 4(1)(20) of Directive 2014/65/EU in respect of all bonds belonging to a class of bonds issued by the same entity or by any entity within the same group where, in relation to any such bond, it internalises according to the following criteria:

1. on a frequent and systematic basis in a bond for which there is a liquid market in accordance with Article 2(1)(17)(b) of Regulation (EU) No 600/2014 where during the past 6 months:
   1. the number of OTC transactions carried out by it on own account when executing client orders is equal to or larger than 2.5% of the total number of transactions in the relevant bond executed in the Union on any trading venue or OTC during the same period;
   2. the OTC transactions carried out by it on own account when executing client orders in the relevant financial instrument take place on average once a week;
2. on a frequent and systematic basis in a bond for which there is not a liquid market in accordance with Article 2(1)(17)(b) of Regulation (EU) No 600/2014 where during the past 6 months the OTC transactions carried out by it on own account when executing client orders takes place on average once a week;
3. on a substantial basis in a bond where the number of OTC trades carried out by it on own account when executing client orders is, during the past 6 months, equal to or larger than either:
   1. 25% of the total nominal amount traded in that bond executed by the investment firm on own account or on behalf of clients and executed on a trading venue or OTC;
   2. 1% of the total nominal amount traded in that bond executed in the Union on a trading venue or OTC.

*Article 14*

### Systematic internalisers for structured finance products

*(Article 4(1)(20) of Directive 2014/65/EU)*

An investment firm shall be considered to be a systematic internaliser in accordance with Article 4(1)(20) of Directive 2014/65/EU in respect of all structured finance products belonging to a class of structured finance products issued by the same entity or by any entity within the same group where, in relation to any such structured finance product, it internalises according to the following criteria:

1. on a frequent and systematic basis in a structured finance product for which there is a liquid market in accordance with Article 2(1)(17)(b) of Regulation (EU) No 600/2014 where during the past 6 months:
   1. the number of OTC transactions carried out by it on own account when executing client orders is equal to or larger than 4% of the total number of transactions in the relevant structured finance product executed in the Union on any trading venue or OTC during the same period;
   2. the OTC transactions carried out by it on own account when executing client orders in the relevant financial instrument take place on average once a week;
2. on a frequent and systematic basis in a structured finance product for which there is not a liquid market in accordance with Article 2(1)(17)(b) of Regulation (EU) No 600/2014 where during the past 6 months the OTC transactions carried out by it on own account when executing client orders takes place on average once a week;
3. on a substantial basis in a structured finance product where the number of OTC trades carried out by it on own account when executing client orders is, during the past 6 months, equal to or larger than either:
   1. 30% of the total nominal amount traded in that structured finance product executed by the investment firm on own account or on behalf of clients and executed on a trading venue or OTC;
   2. 2.25% of the total nominal amount traded in that structured finance product executed in the Union on a trading venue or OTC.

*Article 15*

### Systematic internalisers for derivatives

*(Article 4(1)(20) of Directive 2014/65/EU)*

An investment firm shall be considered to be a systematic internaliser in accordance with Article 4(1)(20) of Directive 2014/65/EU in respect of all derivatives belonging to a class of derivatives where, in relation to any such derivative, it internalises according to the following criteria:

1. on a frequent and systematic basis in a derivative for which there is a liquid market in accordance with Article 2(1)(17)(b) of Regulation (EU) No 600/2014 where during the past 6 months:
   1. the number of OTC transactions carried out by it on own account when executing client orders is equal to or larger than 2.5% of the total number of transactions in the relevant class of derivatives executed in the Union on any trading venue or OTC during the same period;
   2. the OTC transactions carried out by it on own account when executing client orders in this class of derivatives take place on average once a week;
2. on a frequent and systematic basis in a derivative for which there is not a liquid market in accordance with Article 2(1)(17)(b) of Regulation (EU) No 600/2014 where during the past 6 months the OTC transactions carried out by it on own account in the relevant class of derivatives when executing client orders takes place on average once a week;
3. on a substantial basis in a derivative where the number of OTC trades carried out by it on own account when executing client orders is, during the past 6 months, equal to or larger than either:
   1. 25% of the total nominal amount traded in that class of derivatives executed by the investment firm on own account or on behalf of clients and executed on a trading venue or OTC; or
   2. 1% of the total nominal amount traded in that class of derivatives executed in the Union on a trading venue or OTC.

*Article 16*

### Systematic internalisers for emission allowances

*(Article 4(1)(20) of Directive 2014/65/EU)*

An investment firm shall be considered to be a systematic internaliser in accordance with Article 4(1)(20) of Directive 2014/65/EU in respect of emission allowances where, in relation to any such instrument, it internalises according to the following criteria:

1. on a frequent and systematic basis in an emission allowance for which there is a liquid market in accordance with Article 2(1)(17)(b) of Regulation (EU) No 600/2014 where during the past 6 months:
   1. the number of OTC transactions carried out by it on own account when executing client orders is equal to or larger than 4% of the total number of transactions in the relevant type of emission allowances executed in the Union on any trading venue or OTC during the same period;
   2. the OTC transactions carried out by it on own account when executing client orders in this type of emission allowances take place on average once a week;
2. on a frequent and systematic basis in an emission allowance for which there is not a liquid market in accordance with Article 2(1)(17)(b) of Regulation (EU) No 600/2014 where during the past 6 months the OTC transactions carried out by it on own account in the relevant type of emission allowances when executing client orders takes place on average once a week;
3. an investment firm internalises on a substantial basis in an emission allowance where the number of OTC trades carried out by it on own account when executing client orders is, during the past 6 months, equal to or larger than either of the following:
   1. 30% of the total nominal amount traded in that type of emission allowances executed by the investment firm on own account or on behalf of clients and executed on a trading venue or OTC;
   2. 2.25% of the total nominal amount traded in that type of emission allowances executed in the Union on a trading venue or OTC.

*Article 17*

### Relevant assessment periods

*(Article 4(1)(20) of Directive 2014/65/EU)*

The conditions set out in Articles 12 to 16 shall be assessed on a quarterly basis on the basis of data from the past 6 months. The assessment period shall start on the first working day of the months of January, April, July and October.

Newly issued instruments shall only be considered in the assessment when historical data covers a period of at least three months in the case of shares, depositary receipts, ETFs, certificates and other similar financial instruments, and six weeks in the case of bonds, structured finance products and derivatives.

*Article 18*

### Algorithmic trading

*(Article 4(1)(39) of Directive 2014/65/EU)*

For the purposes of further specifying the definition of algorithmic trading in accordance with Article 4(1)(39) of Directive 2014/65/EU, a system shall be considered as having no or limited human intervention where, for any order or quote generation process or any process to optimise order-execution, an automated system makes decisions at any of the stages of initiating, generating, routing or executing orders or quotes according to pre-determined parameters.

*Article 19*

### High frequency algorithmic trading technique

*(Article 4(1)(40) of Directive 2014/65/EU)*

1. A high message intraday rate in accordance with Article 4(1)(40) of Directive 2014/65/EU shall consist of the submission on average of any of the following:
   1. at least 2 messages per second with respect to any single financial instrument traded on a trading venue;
   2. at least 4 messages per second with respect to all financial instruments traded on a trading venue.
2. For the purposes of paragraph 1, messages concerning financial instruments for which there is a liquid market in accordance with Article 2(1)(17) of Regulation (EU) No 600/2014 shall be included in the calculation. Messages introduced for the purpose of trading that fulfil the criteria in Article 17(4) of Directive No 2014/65/EU shall be included in the calculation.
3. For the purposes of paragraph 1, messages introduced for the purpose of dealing on own account shall be included in the calculation. Messages introduced through other trading techniques than those relying on dealing on own account shall be included in the calculation where the firm's execution technique is structured in such a way as to avoid that the execution takes place on own account.
4. For the purposes of paragraph 1, for the calculation of high message intraday rate in relation to DEA providers, messages submitted by their DEA clients shall be excluded from the calculations.
5. For the purposes of paragraph 1, trading venues shall make available to the firms concerned, on request, estimates of the average of messages per second on a monthly basis two weeks after the end of each calendar month taking into account all messages submitted during the preceding 12 months.

*Article 20*

### Direct electronic access

*(Article 4(1)(41) of Directive 2014/65/EU)*

1. A person shall be considered not capable of electronically transmitting orders relating to a financial instrument directly to a trading venue in accordance with Article 4(1)(41) of Directive 2014/65/EU where that person cannot exercise discretion regarding the exact fraction of a second of order entry and the lifetime of the order within that timeframe.
2. A person shall be considered not capable of such direct electronic order transmission where it takes place through arrangements for optimisation of order execution processes that determine the parameters of the order other than the venue or venues where the order should be submitted, unless these arrangements are embedded into the clients' systems and not into those of the member or participant of a regulated market or of an MTF or a client of an OTF.