Commission Delegated Regulation (EU) 2019/442 of 12 December 2018 amending and correcting Delegated Regulation (EU) 2017/587 to specify the requirement for prices to reflect prevailing market conditions and to update and correct certain provisions (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2019/442

of 12 December 2018

amending and correcting Delegated Regulation (EU) 2017/587 to specify the requirement for prices to reflect prevailing market conditions and to update and correct certain provisions

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012[(1)], and in particular Article 4(6), Article 14(7), Article 22(4) and Article 23(3) thereof,

Whereas:

(1) Commission Delegated Regulation (EU) 2017/587[(2)] sets out transparency requirements for trading venues and systematic internalisers in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments. In particular, Delegated Regulation (EU) 2017/587 specifies that prices quoted by systematic internalisers reflect prevailing market conditions, as required by Article 14(3) of Regulation (EU) No 600/2014, where those prices are close in price, at the time of publication, to quotes of equivalent sizes for the same financial instrument on the most relevant market in terms of liquidity. Systematic internalisers may therefore provide quotes that are not subject to the minimum price increment (‘tick size’) with which trading venues are to comply.

(2) The ability of systematic internalisers to provide quotes using price increments smaller than those available to trading venues may result in marginally better prices available to investors. Those quotes, however, undermine the overall quality of the liquidity available, the efficient valuation and pricing of financial instruments, and the level playing field between trading venues and systematic internalisers. This is most relevant for shares and depositary receipts which are subject to a wider range of tick sizes than other financial instruments.

(3) To ensure effective price formation, the overall quality of the liquidity available and the efficient valuation of shares and depositary receipts, prices quoted by systematic internalisers for those instruments should only be deemed to reflect prevailing market conditions where those prices are subject to minimum price increments corresponding to the tick sizes applicable to prices published by trading venues.

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2019/442. (See end of Document for details)*

(4) Regulation (EU) 2016/1033 of the European Parliament and of the Council[3] removes securities financing transactions from the scope of the transparency provisions for trading venues and systematic internalisers. It is therefore necessary to remove references to securities financing transactions from Delegated Regulation (EU) 2017/587.

(5) Delegated Regulation (EU) 2017/587 should therefore be amended accordingly.

(6) A number of provisions of Delegated Regulation (EU) 2017/587 diverge from the draft regulatory technical standards on which that Regulation is based[4]. To the extent that those divergences are errors that affect the substance of those provisions, they should be corrected.

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

(8) In accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[5], 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,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) 2017/587

Delegated Regulation (EU) 2017/587 is amended as follows:

(1) in Article 2, point (h) is deleted;

(2) in Article 6, point (h) is deleted;

(3) Article 10 is replaced by the following:

Article 10

Prices reflecting prevailing market conditions(Article 14(3) of Regulation (EU) No 600/2014)

The prices published by a systematic internaliser shall be deemed to reflect prevailing market conditions where they are close in price, at the time of publication, to quotes of equivalent sizes for the same financial instrument on the most relevant market in terms of liquidity as determined in accordance with Article 4 for that financial instrument.

However, the prices published by a systematic internaliser in respect of shares and depositary receipts shall be deemed to reflect prevailing market conditions only where those prices meet the requirements set out in the first paragraph of this Article and respect minimum price increments corresponding to the tick sizes specified in Article 2 of Commission Delegated Regulation (EU) No 2017/588[6].

***Changes to legislation:** There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2019/442. (See end of Document for details)*

Article 2

Corrections to Delegated Regulation (EU) 2017/587

Delegated Regulation (EU) 2017/587 is corrected as follows:

(1) in Article 2, point (b) is replaced by the following:

(b) the transaction is part of a portfolio trade which includes five or more different shares.;

(2) in Article 3, paragraph 2 is replaced by the following:

2. The transparency requirements referred to in paragraph 1 shall also apply to any "actionable indication of interest" as defined in Article 2(1)(33) of Regulation (EU) No 600/2014 and pursuant to Article 3 of that Regulation.;

(3) in Article 11, paragraphs 4 and 5 are replaced by the following:

4. Before a share, depositary receipt, ETF, certificate or other similar financial instrument is traded for the first time on a trading venue in the Union, the competent authority shall estimate the average value of transactions for that financial instrument taking into account any previous trading history of that financial instrument and of other financial instruments that are considered to have similar characteristics, and ensure publication of that estimate;

5 The estimated average value of transactions laid down in paragraph 4 shall be used to determine the standard market size for a share, depositary receipt, ETF, certificate or other similar financial instrument during a six-week period following the date that the share, depositary receipt, ETF, certificate or other similar financial instrument was first admitted to trading or first traded on a trading venue.;

(4) in Article 17, paragraph 2 is replaced by the following:

2. Competent authorities, market operators and investment firms including investment firms operating a trading venue shall use the information published in accordance with paragraph 1 from 1 April of the year in which the information is published.

Article 3

Entry into force

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