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Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2017/590

of 28 July 2016

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities

(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 the third subparagraph of Article 26(9) thereof,

Whereas:

(1) For the purposes of effective data analysis by competent authorities, there should be consistency in the standards and formats used when reporting transactions.

(2) Given market practices, supervisory experience and market developments, the meaning of a transaction for reporting purposes should be broad. It should cover purchases and sales of reportable instruments as well as other cases of acquisition or disposal of reportable instruments, as these may also give rise to market abuse concerns. Furthermore, changes to notional amount may give rise to concerns about possible market abuse as they are similar in nature to additional purchase or sale transactions. In order for competent authorities to distinguish those changes from other purchases or sales, information on those changes should be specifically reported in transaction reports.

(3) The concept of a transaction should not include acts or events which do not need to be reported to competent authorities for market surveillance purposes. In order to ensure that information on such acts and events is not included in transaction reports, they should be specifically excluded from the meaning of a transaction.

(4) In order to clarify which investment firms are required to report transactions, the activities or services which lead to a transaction should be specified. Accordingly, an investment firm should be considered to be executing a transaction where it performs a service or activity referred to in points 1, 2 and 3 of Section A of Annex I to Directive 2014/65/EU of the European Parliament and of the Council[(2)], makes the investment decision in accordance with a discretionary mandate given by a client, or

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transfers financial instruments to or from accounts, provided that in each case such services or activities have resulted in a transaction. However, in accordance with Article 26(4) of Regulation (EU) No 600/2014, investment firms which are considered to have transmitted orders which result in transactions should not be considered as having executed those transactions.

(5) In order to avoid non-reporting or double reporting by investment firms that transmit orders to each other, the investment firm that intends to transmit the order should agree with the firm receiving the order whether the receiving firm will report all the details of the resulting transaction or transmit the order onwards to another investment firm. In the absence of an agreement, the order should be deemed not transmitted and each investment firm should submit its own transaction report containing [all] the details that pertain to the transaction that each investment firm is reporting. Moreover, the details relating to the order to be transmitted between firms should be specified in order to ensure that the competent authorities receive information that is relevant, accurate and complete.

(6) In order to ensure certain and efficient identification of investment firms responsible for execution of transactions, those firms should ensure that they are identified in the transaction report submitted pursuant to their transaction reporting obligation using validated, issued and duly renewed legal entity identifiers (LEIs).

(7) In order to ensure consistent and robust identification of natural persons referred to in transaction reports, they should be identified by a concatenation of the country of their nationality followed by identifiers assigned by the country of nationality of those persons. Where those identifiers are not available, natural persons should be identified by identifiers created from a concatenation of their date of birth and name.

(8) In order to facilitate market surveillance, client identification should be consistent, unique and robust. Transaction reports should therefore include the full name and date of birth of clients that are natural persons and should identify clients that are legal entities by their LEIs.

(9) Persons or computer algorithms which make investment decisions may be responsible for market abuse. Therefore, in order to ensure effective market surveillance, where investment decisions are made by a person other than the client or by a computer algorithm, the person or algorithm should be identified in the transaction report using unique, robust and consistent identifiers. Where more than one person in an investment firm makes the investment decision, the person taking the primary responsibility for the decision should be identified in the report.

(10) The persons or computer algorithms responsible for determining the venue to access or an investment firm to which the orders are to be transmitted or any other conditions related to the execution of the order may thereby be responsible for market abuse. Therefore, in order to ensure effective market surveillance, a person or computer algorithm within the investment firm that is responsible for such activities should be identified in the transaction report. Where both a person and computer algorithm are involved, or more than one person or algorithm is involved, the investment firm should

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determine, on a consistent basis following predetermined criteria, which person or algorithm is primarily responsible for those activities.

(11) In order to enable effective market monitoring, transaction reports should include exact information on any change in the position of an investment firm or its client resulting from a reportable transaction at the time such transaction took place. Investment firms should therefore report related fields in an individual transaction report consistently and should report a transaction or different legs of a transaction in such manner that their reports, collectively, provide a clear overall picture which accurately reflects changes in position.

(12) Short Sale transactions should be specifically flagged as such regardless of whether these transactions constitute a full or partial short sale transaction.

(13) Effective market surveillance in the case of a transaction in a combination of financial instruments presents particular challenges for market surveillance. The competent authority needs to have the global view and needs to be able to see separately the transaction in respect of each financial instrument that is part of a transaction in which more than one financial instrument is involved. Therefore, investment firms which execute transactions in a combination of financial instruments should report the transaction for each financial instrument separately and link those reports by an identifier that is unique at the level of the firm to the group of transaction reports related to that execution.

(14) In order to safeguard the effectiveness of market abuse surveillance of legal persons, Member States should ensure that LEIs are developed, attributed and maintained in accordance with internationally established principles to ensure legal persons are consistently and uniquely identified. Investment firms should obtain LEIs from their clients before providing services which would trigger reporting obligations in respect of transactions carried out on behalf of those clients and use those LEIs in their transaction reports.

(15) In order to ensure efficient and effective market monitoring, transaction reports should be submitted only once and to a single competent authority that can route them to other relevant competent authorities. Therefore, where an investment firm executes a transaction, it should submit the report to the competent authority of the home Member State of the investment firm irrespective of whether or not a branch is involved, or whether the reporting firm executed the transaction through a branch in another Member State. Moreover, where a transaction is executed wholly or partly through a branch of an investment firm located in another Member State, the report should be submitted only once to the competent authority of the home Member State of the investment firm unless otherwise agreed by the competent authorities of the home and the host Member State. In order to ensure that competent authorities of host Member State can supervise the services provided by branches within their territory, they need to receive transaction reports on the activities of branches. For this reason, and to allow for the transaction reports to be routed to all the relevant competent authorities for the branches that take part in those transactions, it is necessary to include granular data on branch activity in the reports.

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(16) Complete and accurate transaction reporting data is essential to market abuse surveillance. Trading venues and investment firms should therefore have methods and arrangements to ensure that complete and accurate transaction reports are submitted to competent authorities. ARMs should not be covered by this regulation since they are subject to own specific regime specified in the Commission Delegated Regulation (EU) 2017/571[(3)] and have analogous requirements to ensure the data completeness and accuracy.

(17) In order to be able to track the cancellations or corrections, the investment firm should retain the details of the corrections and cancellations provided to it by the ARM in the case where the ARM, in accordance with instructions from the investment firm, cancels or corrects a transaction report submitted on behalf of an investment firm.

(18) Determination of the most relevant market in terms of liquidity enables the routing of transaction reports to other competent authorities and enables investors to identify the competent authorities to whom they must report their short positions pursuant to Articles 5, 7 and 8 of Regulation (EU) No 236/2012 of the European Parliament and of the Council[(4)]. The rules for determining the relevant competent authority under Directive 2004/39/EC of the European Parliament and of the Council[(5)] have worked effectively for most financial instruments and should therefore remain unchanged. However, new rules should be introduced specifically for those instruments which are not covered by Directive 2004/39/EC, namely for debt instruments issued by a third-country entity, emission allowances and for derivatives for which the immediate underlying has no global identifier, or is a basket or a non-EEA index.

(19) 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 provisions laid down in Regulation (EU) No 600/2014 apply from the same date.

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

(21) 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[(6)],

HAS ADOPTED THIS REGULATION:

Article 1

Data standards and formats for transaction reporting

A transaction report shall include all details referred to in Table 2 of Annex I that pertain to the financial instruments concerned. All details to be included in transaction reports shall be submitted in accordance with the standards and formats specified in Table 2 of Annex I, in an electronic and machine-readable form and in a common XML template in accordance with the ISO 20022 methodology.

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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, 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[(7)];

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;