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Commission Delegated Regulation (EU) 2017/580 of 24 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the maintenance of relevant data relating to orders in financial instruments (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2017/580

of 24 June 2016

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the maintenance of relevant data relating to orders in financial instruments

(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 the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012[(1)], and in particular the fourth subparagraph of Article 25(3) thereof,

Whereas:

(1) Operators of trading venues should be free to determine the manner in which they keep records of relevant data relating to all orders in financial instruments. However, in order to enable effective and efficient collation, comparison and analysis of the relevant order data for market monitoring purposes, such information should be made available to the competent authorities using uniform standards and formats where a competent authority requests such information pursuant to Article 25(2) of Regulation (EU) No 600/2014.

(2) In order to ensure clarity, legal certainty and avoid double storage of the same information this Regulation should cover all data elements relating to orders, including details that are to be reported in accordance with Article 26(1) and (3).

(3) In order to detect and investigate potential or attempted market abuse effectively, competent authorities need to promptly identify persons and entities who may be significantly involved in the order process, including members or participants of trading venues, entities responsible for investment and execution decisions, non-executing brokers and clients on whose behalf orders are initiated. Accordingly operators of trading venues should maintain designations for such parties.

(4) In order to allow competent authorities to more efficiently identify suspicious patterns of potentially abusive behaviour originating from one client, including where the client is operating through a number of investment firms, the operators of trading venues should record the identity of clients on whose behalf their members or participants submitted the order. Operators should identify those clients by unique identifiers in order to facilitate certain and efficient identification of such persons and thereby

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facilitate more effective analysis of potential market abuse in which clients may be involved.

(5) Operators of trading venues should not be required to record client identifiers for all clients in the trading chain but only for the client on whose behalf the member or participant submitted the order.

(6) The identification of market-making strategies or similar activities is important in order to enable efficient detection of market manipulation. This allows the competent authorities to distinguish the order flow coming from an investment firm acting on the basis of terms pre-determined by the issuer of the instrument which is the subject of the order or by the trading venue to which the order is submitted from the order flow coming from an investment firm acting at its own or at its client's discretion.

(7) The record of the precise date and time and of the details of any order placement, modification, cancellation, rejection and execution should be maintained. This allows monitoring the changes to the order throughout its lifetime, which can be significant in detecting and assessing potential market manipulation and front running behaviours.

(8) To ensure an accurate and complete picture of the order book of a trading venue, competent authorities require information on trading sessions in which financial instruments are traded. This information can notably be used to determine when auction periods or continuous trading start and finish and whether orders cause unscheduled circuit breakers. This information is also required to identify how orders will interact, particularly when sessions end at random periods such as auctions. Information on indicative uncrossing prices and volumes would also assist in analysing possible auction manipulation. Given that a single order can impact either the auction uncrossing price, auction uncrossing volume or both, competent authorities need to see the impact of each order on these values. Without this information it would be difficult to identify which order has had the impact on those values. Additionally, a sequence number should be assigned to each relevant event in order to determine the sequence of events when two or more events take place at the same time.

(9) Specification of the position of the orders in an order book allows for the reconstruction of the order book and for analysis of the sequence of execution of orders which is an important element of market abuse surveillance. The position assigned to an order depends on how priority is determined by the trading system. Therefore, operators of trading venues should assign and maintain details of the priority of orders according to the price visibility-time priority or the size-time priority method.

(10) In order to enable effective market monitoring it is necessary to be able to link orders with their corresponding transactions. Accordingly operators of trading venues should maintain distinctive transaction identification codes linking orders to transactions.

(11) Operators of trading venues should, for each order received, record and maintain the order type and the related specific instructions which together determine how each order is to be handled by their matching engines, in accordance with their own classifications. This detailed information is essential for competent authorities to be able to monitor, as part of its market abuse surveillance, trading activity in a given trading venue order book

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and in particular to replicate how each order behaves within the order book. However, given the broad range of existing and potential new order types designed by operators of trading venues and the specific technicalities attached to the latter, the maintenance of this detailed information according to the operators' internal classification system may not currently allow competent authorities to replicate the order book activity of all trading venues in a consistent manner. Therefore, for competent authorities to be in a position to exactly locate each order within the order book, operators of trading venues should also classify each order received either as a limit order where the order is tradable or as a stop order where the order becomes tradable only upon the realisation of a pre-determined price event.

(12) 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.

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

(14) 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[(2)],

HAS ADOPTED THIS REGULATION:

Article 1

Scope, standards and format of relevant order data

1 Operators of trading venues shall keep at the disposal of their competent authority the details of each order advertised through their systems set out in Articles 2 to 13 as specified in the second and third columns of Table 2 of the Annex insofar as they pertain to the order concerned.

2 Where competent authorities request any of the details referred to in paragraph 1 in accordance with Article 25(2) of Regulation (EU) No 600/2014, the operators of trading venues shall provide such details using the standards and formats prescribed in the fourth columns of Table 2 of the Annex to this Regulation.

Article 2

Identification of the relevant parties

1 For all orders, operators of trading venues shall maintain the records on the following:

a the member or participant of the trading venue who submitted the order to the trading venue, identified as specified in field 1 of Table 2 of the Annex;

b the person or computer algorithm within the member or participant of the trading venue to which an order is submitted that is responsible for the investment decision in relation to the order, identified as specified in field 4 of the Table 2 of the Annex;

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c the person or computer algorithm within the member or participant of the trading venue that is responsible for the execution of the order, identified as specified in field 5 of Table 2 of the Annex;

d the member or participant of the trading venue who routed the order on behalf of and in the name of another member or participant of the trading venue, identified as a non-executing broker as specified in field 6 of Table 2 of the Annex;

e the client on whose behalf the member or participant of the trading venue submitted the order to the trading venue, identified as specified in field 3 of Table 2 of the Annex.

2 Where a member or participant or client of the trading venue is authorised under the legislation of a Member State to allocate an order to its client following submission of the order to the trading venue and has not yet allocated the order to its client at the time of the submission of the order, that order shall be identified as specified in field 3 of Table 2 of the Annex.

3 Where several orders are submitted to the trading venue together as an aggregated order, the aggregated order shall be identified as specified in field 3 of Table 2 of the Annex.

Article 3

Trading capacity of members or participants of the trading venue and liquidity provision activity

1 The trading capacity in which the member or participant of the trading venue submits an order shall be described as specified in field 7 of Table 2 of the Annex.

2 The following orders shall be identified as specified in field 8 of Table 2 of the Annex:

a an order submitted to a trading venue by a member or participant as part of a market-making strategy pursuant to Articles 17 and 48 of Directive 2014/65/EU of the European Parliament and of the Council[(3)];

b an order submitted to a trading venue by a member or participant as part of any other liquidity provision activity carried out on the basis of terms pre-determined either by the issuer of the instrument which is the subject of the order or by that trading venue.

Article 4

Date and time recording

1 Operators of trading venues shall maintain a record of the date and time of the occurrence of each event listed in field 21 of Table 2 of the Annex to this Regulation with the level of accuracy specified by Article 2 of Commission Delegated Regulation (EU) 2017/574[(4)] as specified in field 9 of Table 2 of the Annex to this Regulation. Except for the recording of the date and time of the rejection of orders by trading venue systems, all events referred to in field 21 of Table 2 of the Annex to this Regulation shall be recorded using the business clocks used by trading venue matching engines.

2 Operators of trading venues shall maintain a record of the date and time for each data element listed in fields 49, 50 and 51 of Table 2 of the Annex to this Regulation, with the level of accuracy specified by Article 2 of Delegated Regulation (EU) 2017/574.

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Article 5

Validity period and order restrictions

1 Operators of trading venues shall keep a record of the validity periods and order restrictions that are listed in fields 10 and 11 of Table 2 of the Annex.

2 Records of the dates and times in respect of validity periods shall be maintained as specified in field 12 of Table 2 of the Annex for each validity period.

Article 6

Priority and sequence numbers

1 Operators of trading venues which operate trading systems on a price visibility-time priority shall maintain a record of the priority time stamp for all orders as specified in field 13 of Table 2 of the Annex. The priority time stamp shall be maintained with the same level of accuracy specified by Article 4(1).

2 Operators of trading venues which operate trading systems on a size-time priority basis shall maintain a record of the quantities which determine the priority of orders as specified in field 14 of Table 2 of the Annex as well as the priority time stamp referred to in paragraph 1.

3 Operators of trading venues which use a combination of price-visibility-time priority and size-time priority and display orders on their order book in time priority shall comply with paragraph 1.

4 Operators of trading venues which use a combination of price-visibility-time priority and size-time priority and displays orders on its order book in size-time priority shall comply with paragraph 2.

5 Operators of trading venues shall assign and maintain a sequence number for all events as specified in field 15 of Table 2 of the Annex.

Article 7

Identification codes for orders in financial instruments

1 Operators of trading venues shall maintain an individual identification code for each order as specified in field 20 of Table 2 of the Annex. The identification code shall be unique per order book, per trading day and per financial instrument. It shall apply from the receipt of the order by the operator of the trading venue until the removal of the order from the order book. The identification code shall also apply to rejected orders irrespective of the ground for their rejection.

2 The operator of the trading venue shall maintain the relevant details of strategy orders with implied functionality (SOIF) that are disseminated to the public as specified in the Annex. Field 33 of Table 2 of the Annex shall include a statement that the order is an implicit order.

Upon execution of a SOIF, its details shall be maintained by the operator of the trading venue as specified in the Annex.