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Commission Delegated Regulation (EU) 2017/566 of 18 May 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 ratio of unexecuted orders to transactions in order to prevent disorderly trading conditions (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2017/566

of 18 May 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 ratio of unexecuted orders to transactions in order to prevent disorderly trading conditions

(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/EU[(1)], and in particular Article 48(12)(b) thereof,

Whereas:

(1) Trading venues should have a number of systems, procedures and arrangements in place to ensure that algorithmic trading systems cannot create or contribute to disorderly trading conditions including systems to monitor and, where appropriate, limit the ratio of unexecuted orders to transactions.

(2) Taking into account their nature, voice trading systems should be exempt from the scope of this Regulation which should only apply to trading venues operating electronic continuous auction order book or quote-driven or hybrid trading systems.

(3) Directive 2014/65/EU extends the requirements relating to the determination of the ratio of unexecuted orders to transactions to multilateral trading facilities and organised trading facilities. It is therefore important that those venues are also within the scope of this Regulation.

(4) Trading venues should calculate the ratio of unexecuted orders to transactions effectively incurred by their members or participants at the level of each financial instrument traded on them in order to ensure effectively that the ratio does not lead to excessive volatility in that instrument.

(5) In order to ensure sufficient harmonisation across the Union of the arrangements to prevent disorderly trading conditions through the limitation of the ratio between unexecuted orders and transactions, a clear methodology to calculate the ratio of

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unexecuted orders to transactions with respect to all market participants should be laid down.

(6) The meaning of certain essential parameters to be used for the calculation of the ratio of unexecuted orders to transactions should be clarified.

(7) The calculation of the ratio of unexecuted orders to transactions entered into the system by a member or participant should be supported by an adequate observation period. On that basis, the calculation period of the effective ratio of unexecuted orders to transactions should not be longer than a trading session. However, trading venues should be allowed to set out shorter observation periods in case such shorter observation periods would contribute more effectively to maintain orderly trading conditions.

(8) 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.

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

(10) 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 Council[(2)],

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

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

(a) 'order' includes all input messages, including messages on submission, modification and cancellation sent to the trading system of a trading venue, relating to an order or a quote, but excluding cancellation messages sent subsequent to:

  (i) uncrossing in an auction;

  (ii) a loss of venue connectivity;

  (iii) the use of a kill functionality;

(b) 'transaction' means a totally or partially executed order;

(c) 'volume' means the quantity of financial instruments traded expressed as any of the following:

  (i) the number of instruments for shares, depositary receipts, ETFs, certificates and other similar financial instruments;

  (ii) the nominal value for bonds and structured finance products;

  (iii) the number of lots size or contracts for derivatives;

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(iv) metric tonnes of carbon dioxide for emission allowances.

Article 2

Obligation to calculate the ratio of unexecuted orders to transactions

Trading venues shall calculate the ratio of unexecuted orders to transactions effectively entered into the system by each of their members and participants for every financial instrument traded under an electronic continuous auction order book or a quote-driven or a hybrid trading system.

Article 3

Methodology

1 Trading venues shall calculate the ratio of unexecuted orders to transactions for each of their members or participants at least at the end of every trading session in both of the following ways:

(a) in volume terms	:	(total volume of orders/total volume of transactions) – 1;
(b) in number terms	:	(total number of orders/total number of transactions) – 1.

2 The maximum ratio of unexecuted orders to transactions calculated by the trading venue shall be deemed to have been exceeded by a member or participant of the trading venue during a trading session if the trading activity of that member or participant in one specific instrument, taking into account all phases of the trading session, including the auctions, exceeds either or both of the two ratios set out in paragraph 1.

3 Trading venues shall calculate the number of orders received from each member or participant following the counting methodology per order type set out in the Annex.

4 Where a trading venue uses an order type which is not explicitly laid down in the Annex, it shall count the messages in accordance with the general system behind the counting methodology and on the basis of the most similar order type appearing in the Annex.

Article 4

Entry into force and application

This Regulation shall enter into force on the twentieth following that of its publication in the *Official Journal of the European Union*.

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

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

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Done at Brussels, 18 May 2016.

For the Commission

The President

Jean-Claude JUNCKER

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ANNEX

Counting methodology for orders set out for each type

Types of order	**Number of orders received by the trading venue to be counted when calculating the ratio of unexecuted orders to transactions (each submission, modification, cancellation shall be counted as one single order)**	**Updates potentially sent by the trading venue not to be counted when calculating the ratio of unexecuted orders to transactions (excluding executions/cancellations by market operations)**
Limit	1	0
Limit — add	1	0
Limit — delete	1	0
Limit — modify	2 (any modifications entails a cancellation and a new insertion)	0
Stop	1	1 (when triggered)
Immediate (Market)	1	0
Immediate (Fill-or-Kill, Immediate-or-Cancel)	1 (and if deleted/cancelled 2)	0
Iceberg/reserve	1	0
Market-to-limit	1	1 (when triggered)
Quote	2 (1 for the buy side and 1 for the sell side)	0
Quote — add	2	0
Quote — delete	2	0
Quote — modify	4 (any modifications entails a cancellation and a new insertion)	0
Peg	1	potentially unlimited as the order tracks the BBO
Market peg: an order to the opposite side of the (European) Best Bid and Offer (BBO)		
Primary peg: an order to the same side of the (European) BBO		