Regulation (EU) 2016/1033 of the European Parliament and of the Council of 23 June 2016 amending Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) No 596/2014 on market abuse and Regulation (EU) No 909/2014 on improving securities settlement in the European Union and on central securities depositories (Text with EEA relevance)

REGULATION (EU) 2016/1033 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 23 June 2016

amending Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) No 596/2014 on market abuse and Regulation (EU) No 909/2014 on improving securities settlement in the European Union and on central securities depositories

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank[(1)],

Having regard to the opinion of the European Economic and Social Committee[(2)],

Acting in accordance with the ordinary legislative procedure[(3)],

Whereas:

(1) Regulation (EU) No 600/2014 of the European Parliament and of the Council[(4)] and Directive 2014/65/EU of the European Parliament and of the Council[(5)] (together, 'the new legal framework') are major financial legislative acts adopted in the wake of the financial crisis as regards securities markets, investment intermediaries and trading venues. The new legal framework reinforces and replaces Directive 2004/39/EC of the European Parliament and of the Council[(6)].

(2) The new legal framework governs the requirements applicable to investment firms, regulated markets, data reporting services providers and third country firms providing investment services or activities in the Union. It harmonises the position limits regime for commodity derivatives to improve transparency, to support orderly pricing and to prevent market abuse. It also introduces rules on high-frequency algorithmic trading and improves the oversight of financial markets by harmonising administrative sanctions. Building on the rules already in place, the new legal framework also strengthens the

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protection of investors by introducing robust organisational and conduct requirements. The new rules are to apply from 3 January 2017.

(3) The new legal framework requires trading venues and systematic internalisers to provide competent authorities with financial instrument reference data that describe in a uniform manner the characteristics of every financial instrument that is subject to Directive 2014/65/EU. Those data are also used for other purposes, for instance for the calculation of transparency and liquidity thresholds, as well as for the reporting of positions in commodity derivatives.

(4) In order to collect data in an efficient and harmonised manner, a new data collection infrastructure, the Financial Instruments Reference Data System ('FIRDS'), is being developed by the European Securities and Markets Authority ('ESMA') in conjunction with national competent authorities ('NCAs'). FIRDS will cover a wide range of financial instruments brought into the scope of Regulation (EU) No 600/2014 and it will link data feeds between ESMA, NCAs and trading venues across the Union. The vast majority of the new IT-systems underpinning FIRDS will need to be built from scratch, based on new parameters.

(5) Given the complexity of the new legal framework and the need for a very high number of delegated and implementing acts, the date of applicability of Regulation (EU) No 600/2014 was deferred by 30 months from the date of entry into force. Despite this unusually long period, stakeholders, such as trading platforms, NCAs and ESMA are not in a position to ensure that the necessary data collection infrastructures will be in place and become operational by 3 January 2017. This is due to the size and complexity of the data needed to be collected and processed for the new legal framework to become operational, in particular for transaction reporting, transparency calculations and the reporting of positions in commodity derivatives.

(6) The absence of the necessary data collection infrastructures would have implications across the entire scope of the new legal framework. Without data, it would not be feasible to establish a precise delineation of financial instruments that fall within the scope of the new legal framework. Furthermore, it would not be possible to tailor the pre-trade and post-trade transparency rules, in order to determine which instruments are liquid and when waivers or deferred publication should be granted.

(7) In the absence of the necessary data collection infrastructures, trading venues and investment firms would not be able to report executed transactions to competent authorities. In the absence of reporting of positions in commodity derivatives, it would be difficult to enforce position limits on such commodity derivatives. With no position reporting, there would be limited ability to effectively detect breaches of the position limits. Many of the requirements in relation to algorithmic trading are also dependent on data.

(8) The absence of the necessary data collection infrastructures would also make it difficult for investment firms to apply best execution rules. Trading venues and systematic internalisers would not be able to publish data relating to the quality of execution of transactions on those venues. Investment firms would not be provided with important execution data to help them determine the best way to execute client orders.

(9) In order to ensure legal certainty and avoid potential market disruption, it is necessary and justified to take urgent action to defer the entry into application of the new legal framework in its entirety, including all delegated and implementing acts adopted thereunder.

(10) The implementation process for the data collection infrastructures involves five steps: business requirements, specifications, development, testing and deployment. ESMA estimates that those steps will be completed by January 2018, provided that there is legal certainty on the final requirements under the relevant regulatory technical standards by June 2016.

(11) In light of the exceptional circumstances and in order to enable ESMA, NCAs and stakeholders to complete the operational implementation, it is appropriate to defer the date of application of Regulation (EU) No 600/2014 by 12 months until 3 January 2018. Reports and reviews should be deferred accordingly.

(12) Investment firms often execute, on their own account or on behalf of clients, transactions in derivatives and other financial instruments or assets that comprise a number of interlinked, contingent trades. Such package transactions enable investment firms and their clients to better manage their risks, with the price of each component of the package transaction reflecting the overall risk profile of the package rather than the prevailing market price of each component. Package transactions can take various forms, such as exchange for physicals, trading strategies executed on trading venues, or bespoke package transactions, and it is important to take those specificities into account when calibrating the applicable transparency regime. It is therefore appropriate to specify for the purpose of Regulation (EU) No 600/2014 the specific circumstances in which pre-trade transparency requirements should not apply to orders relating to such package transactions, nor to any individual component of such orders.

(13) As a body with highly specialised expertise, it would be efficient and appropriate to entrust ESMA with the elaboration of draft regulatory technical standards which do not involve policy choices for submission to the Commission regarding a methodology for determining those package orders for which there is a liquid market. The Commission should adopt those draft regulatory technical standards by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the Union and in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[(7)].

(14) It is considered that securities financing transactions, as defined in Regulation (EU) 2015/2365 of the European Parliament and of the Council[(8)], do not contribute to the price discovery process and that it would be appropriate that Title II and Title III of Regulation (EU) No 600/2014 not apply to those transactions.

(15) Regulation (EU) No 596/2014 of the European Parliament and of the Council[(9)] establishes requirements regarding the collection of financial instrument reference data. Those data, that are collected via FIRDS, are used to determine the financial instruments that fall within the scope of Regulation (EU) No 596/2014. Regulation (EU) No 596/2014 applies from 3 July 2016. However, FIRDS will not be fully operational

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before January 2018. It is therefore appropriate to defer the date of application of Article 4(2) and (3) of Regulation (EU) No 596/2014 until 3 January 2018.

(16) Regulation (EU) No 596/2014 contains reference to the date of application of the new legal framework. In order to ensure that references in Regulation (EU) No 596/2014 to organised trading facilities, small and medium-sized enterprises' ('SME') growth markets, emission allowances or auctioned products based thereon do not apply until the date of application of Regulation (EU) No 600/2014 and Directive 2014/65/EU, Article 39(4) of Regulation (EU) No 596/2014 stating that references to them are read as references to Directive 2004/39/EC should be adjusted taking into account the extension of the date of application of those acts.

(17) The settlement of securities transactions is closely linked to securities trading. As such, Regulation (EU) No 909/2014 of the European Parliament and of the Council[(10)] contains references to the date of application of the new legal framework. Before that date, the references to Regulation (EU) No 600/2014 and Directive 2014/65/EU should be read as references to Directive 2004/39/EC. Regulation (EU) No 909/2014 further creates a transitional regime for the application of the rules on settlement discipline to multilateral trading facilities ('MTFs') applying for registration as SME growth markets in accordance with Directive 2014/65/EU.

(18) In order to ensure that Directive 2004/39/EC is referenced in Regulation (EU) No 909/2014 until the extended date of application of the new legal framework and that the transitional provisions for MTFs applying for registration as SME growth markets under Regulation (EU) No 909/2014 are maintained so as to provide sufficient time for MTFs to apply for such registration under Directive 2014/65/EU, Regulation (EU) No 909/2014 should be amended.

(19) Regulations (EU) No 600/2014, (EU) No 596/2014 and (EU) No 909/2014 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 600/2014 is amended as follows:

(1) in Article 1, the following paragraph is inserted:

5a. Title II and Title III of this Regulation shall not apply to securities financing transactions as defined in point (11) of Article 3 of Regulation (EU) 2015/2365 of the European Parliament and of the Council[(11)].;

(2) in Article 2(1), the following points are added:

(48) "exchange for physical" means a transaction in a derivative contract or other financial instrument contingent on the simultaneous execution of an equivalent quantity of an underlying physical asset;

(49) "package order" means an order priced as a single unit:

(a) for the purpose of executing an exchange for physical; or

(b) in two or more financial instruments for the purpose of executing a package transaction;

(50) "package transaction" means:

(a) an exchange for physical; or

(b) a transaction involving the execution of two or more component transactions in financial instruments and which fulfils all of the following criteria:

(i) the transaction is executed between two or more counterparties;

(ii) each component of the transaction bears meaningful economic or financial risk related to all the other components;

(iii) the execution of each component is simultaneous and contingent upon the execution of all the other components.;

(3) in Article 4(7), the date '3 January 2017' is replaced by '3 January 2018' and the date '3 January 2019' is replaced by '3 January 2020';

(4) in Article 5(8), the date '3 January 2016' is replaced by '3 January 2017';

(5) in Article 8(1), the first sentence is replaced by the following:

'Market operators and investment firms operating a trading venue shall make public current bid and offer prices and the depth of trading interests at those prices which are advertised through their systems for bonds, and structured finance products, emission allowances, derivatives traded on a trading venue and package orders.';

(6) Article 9 is amended as follows:

(a) in paragraph 1, the following points are added:

(d) orders for the purpose of executing an exchange for physical;

(e) package orders that meet one of the following conditions:

(i) at least one of its components is a financial instrument for which there is not a liquid market, unless there is a liquid market for the package order as a whole;

(ii) at least one of its components is large in scale compared with the normal market size, unless there is a liquid market for the package order as a whole;

(iii) all of its components are executed on a request-for-quote or voice system and are above the size specific to the instrument.;

(b) the following paragraph is inserted:

2a. Competent authorities shall be able to waive the obligation referred to in Article 8(1) for each individual component of a package order.;