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Commission Implementing Regulation (EU) 2016/824 of 25 May 2016 laying down implementing technical standards with regard to the content and format of the description of the functioning of multilateral trading facilities and organised trading facilities and the notification to the European Securities and Markets Authority according to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2016/824

of 25 May 2016

laying down implementing technical standards with regard to the content and format of the description of the functioning of multilateral trading facilities and organised trading facilities and the notification to the European Securities and Markets Authority according to Directive 2014/65/EU of the European Parliament and of the Council on markets 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 Directive 2014/65/EU of 15 May 2014 of the European Parliament and of the Council on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU[(1)], and in particular the third subparagraph of Article 18(11) thereof,

Whereas:

(1) It is important to recognise the need for competent authorities to receive complete information about the purpose, structure and organisation of multilateral trading facilities (MTFs) and organised trading facilities (OTFs) that they will be required to supervise in order to ensure the efficient and orderly functioning of financial markets.

(2) That information should build upon the information an investment firm or market operator would be required to provide as part of the general authorisation requirements under Directive 2014/65/EU. It should focus upon the specific functionality of the trading system so as to enable competent authorities to assess whether the system satisfies the definition of an MTF or OTF and to assess its compliance with the particular, venue-orientated requirements of Directive 2014/65/EU and Regulation (EU) No 600/2014 of the European Parliament and of the Council[(2)]. The requirement for a detailed description should not affect the duty of an investment firm or market operator to provide other information to its competent authority as required under Directive 2014/65/EU and Regulation (EU) No 600/2014, or the rights of competent authorities to request other information as part of their on-going supervision of trading venues.

(3) The information received by competent authorities should ensure collecting detailed descriptions of the functioning of the MTF or OTF under Directive 2014/65/EU in a

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uniform manner, and achieve an efficient processing of information for existing MTFs already operating in accordance with a national authorisation at the point in time when the requirement of submitting a detailed description comes into force.

(4) Since SME growth markets are distinguished from other MTFs in that they are subject to additional rules under Directive 2014/65/EU, it is necessary that SME growth markets provide additional information.

(5) Since OTFs are distinguished from MTFs in that the trading process may involve the use of discretionary rules by the operator and because the operator of an OTF will owe responsibilities to users of the system, OTFs should provide additional information.

(6) To ensure efficient processing, the information required should be provided in electronic format.

(7) To facilitate the publication by the European Securities and Markets Authority (ESMA) of the list of all MTFs and OTFs in the Union accompanied by information on the services they provide and the unique code identifying them, a standard template for that information should be used.

(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) Any personal data provided under this Regulation should be for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes. In accordance with Article 6 of Directive 95/46/EC of the European Parliament and of the Council[(3)] any personal data should be retained for no longer than necessary for the purpose of the exercising the supervisory function, and a maximum period of retention should be indicated.

(10) This Regulation is based on the draft implementing technical standards submitted by ESMA to the Commission.

(11) ESMA has conducted open public consultations on the draft implementing 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[(4)],

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

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

(1) 'relevant operator' means:

(a) an investment firm operating a multilateral trading facility (MTF);

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(b) an investment firm operating an organised trading facility (OTF);

(c) a market operator operating an MTF;

(d) a market operator operating an OTF;

(2) 'asset classes' means the categories of financial instruments as set out in Section C of Annex I to Directive 2014/65/EU.

Article 2

Information to be provided on MTFs and OTFs

1 A relevant operator shall provide its competent authority with the following information:

a the asset classes of financial instruments traded on the MTF or OTF;

b the rules and procedures for making financial instruments available for trading, together with details of the publication arrangements used to make that information available to the public;

c the rules and procedures to ensure the objective and non-discriminatory access to the trading facilities together with details on the publication arrangements used to make that information available to the public;

d the measures and procedures to ensure that sufficient information is publicly available to users of the MTF or OTF to form an investment judgement, taking into account both the nature of the users and the classes of financial instruments traded;

e the systems, procedures and arrangements to ensure compliance with the conditions laid down in Articles 48 and 49 of Directive 2014/65/EU;

f a detailed description of any arrangements to facilitate the provision of liquidity to the system such as market making schemes;

g the arrangements and procedures to monitor transactions as required by Article 31 of Directive 2014/65/EU;

h the rules and procedures for suspension and removal of financial instruments from trading as required by Article 32 of Directive 2014/65/EU;

i the arrangements to comply with pre-trade and post-trade transparency obligations that apply to the financial instruments traded and the trading functionality of the MTF or OTF; that information shall be accompanied by information on any intention to use waivers under Articles 4 and 9 of Regulation (EU) No 600/2014 and deferred publication under Articles 7 and 11 of that Regulation;

j the arrangements for the efficient settlement of the transactions effected under its systems and for ensuring that users are aware of their respective responsibilities in this regard;

k a list of the members or participants of the MTF or OTF which it operates.

2 A relevant operator shall provide its competent authority with a detailed description of the functioning of its trading system specifying:

a whether the system represents a voice, electronic or hybrid functionality;

b in the case of an electronic or hybrid trading system, the nature of any algorithm or program used to determine the matching and execution of trading interests;

c in the case of a voice trading system, the rules and protocols used to determine the matching and execution of trading interests;

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d a description explaining how the trading system satisfies each element of the definition of an MTF or an OTF.

3 A relevant operator shall provide its competent authority with information on how and in what instances the operation of the MTF or OTF will give rise to any potential conflicts between the interests of the MTF or OTF, its operator or its owners and the sound functioning of the MTF or OTF. The relevant operator shall specify the procedures and arrangements to comply with the requirements set out in Article 18(4) of Directive 2014/65/EU.

4 A relevant operator shall provide its competent authority with the following information on its outsourcing arrangements that relate to the management, operation or oversight of the MTF or OTF:

a the organisational measures to identify the risks in relation to those outsourced activities and to monitor the outsourced activities;

b the contractual agreement between the relevant operator and the entity providing the outsourced service in which the nature, scope, objectives, and service level agreements are outlined.

5 A relevant operator shall provide its competent authority with information on any links to or participation by a regulated market, MTF, OTF or systematic internaliser owned by the same relevant operator.

Article 3

Additional information to be provided on MTFs

In addition to the information set out in Article 2, a relevant operator shall provide its competent authority with the following information relating to the requirements set out in Article 19(3) of Directive 2014/65/EU:

(a) a description of the arrangements and the systems implemented to manage the risks to which the operator is exposed, to identify all significant risks to its operation and to put in place effective measures to mitigate those risks;

(b) a description of the arrangements implemented to facilitate the efficient and timely finalisation of the transactions executed under the operator's systems;

(c) having regard to the nature and extent of the transactions concluded on the market and the range and degree of the risks to which the operator is exposed, a description of the financial resources considered sufficient to facilitate its orderly functioning.

Article 4

Information to be provided on MTFs already in operation

In the case of an investment firm or market operator authorised to operate an MTF under Article 5 of Directive 2004/39/EC of the European Parliament and of the Council[(5)] which is operating at the date of application of this Regulation, that firm or operator shall provide the information referred to under Articles 2 and 3 of this Regulation where it is required:

(a) to correct, update or clarify information previously submitted by the relevant operator to its competent authority;

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(b) to demonstrate compliance with obligations under Directive 2014/65/EU and Regulation (EU) No 600/2014 that did not apply to the MTF prior to the application of this Regulation.

Article 5

Additional information to be provided on MTFs for registration as an SME growth market

In the case of a relevant operator which is applying for registration of an MTF as an SME growth market, that operator shall ensure that the information provided under Articles 2 and 3 clearly identifies which functionalities or arrangements are applicable to the SME growth market.

Article 6

Additional information to be provided on OTFs

In addition to Article 2, a relevant operator operating an OTF shall provide its competent authority with the following information:

(a) information on whether another investment firm is engaged to carry out market making on its OTF on an independent basis in accordance with Article 20(5) of Directive 2014/65/EU;

(b) a detailed description of how and under what circumstances it executes orders on the OTF on a discretionary basis in accordance with Article 20(6) of Directive 2014/65/EU;

(c) the rules, procedures and protocols which allow the operator to route the trading interest of a member or participant outside the facilities of the OTF;

(d) a description of the use of matched principal trading which complies with Article 20(7) of Directive 2014/65/EU;

(e) the rules and procedures to ensure compliance with Articles 24, 25, 27 and 28 of Directive 2014/65/EU for transactions concluded on the OTF where those rules are applicable to the relevant operator in relation to an OTF user.

Article 7

Asset class specific information

Where a relevant operator of an MTF or OTF applies different rules to different asset classes, it shall provide the information required by this Regulation for each of those asset classes separately.