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 (Text with EEA relevance)

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

(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) The financial crisis has exposed weaknesses in the transparency of financial markets which can contribute to harmful socioeconomic effects. Strengthening transparency is one of the shared principles to strengthen the financial system as confirmed by the G20 Leaders' statement in London on 2 April 2009. In order to strengthen the transparency and improve the functioning of the internal market for financial instruments, a new framework establishing uniform requirements for the transparency of transactions in markets for financial instruments should be put in place. The framework should establish comprehensive rules for a broad range of financial instruments. It should complement requirements for the transparency of orders and transactions in respect of shares established in Directive 2004/39/EC of the European Parliament and of the Council[(4)].

(2) The High-Level Group on Financial Supervision in the EU chaired by Jacques de Larosière invited the Union to develop a more harmonised set of financial regulations. In the context of the future European supervision architecture, the European Council of 18 and 19 June 2009 stressed the need to establish a European single rule book applicable to all financial institutions in the internal market.

(3) The new legislation should as a consequence consist of two different legal instruments, a Directive and this Regulation. Together, both legal instruments should form the

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legal framework governing the requirements applicable to investment firms, regulated markets and data reporting services providers. This Regulation should therefore be read together with the Directive. The need to establish a single set of rules for all institutions in respect of certain requirements and to avoid potential regulatory arbitrage as well as to provide more legal certainty and less regulatory complexity for market participants warrants the use of a legal basis allowing for the creation of a Regulation. In order to remove the remaining obstacles to trade and significant distortions of competition resulting from divergences between national laws and to prevent any further likely obstacles to trade and significant distortions of competition from arising, it is therefore necessary to adopt a Regulation establishing uniform rules applicable in all Member States. This directly applicable legal act aims at contributing in a determining manner to the smooth functioning of the internal market and should, consequently, be based on Article 114 of the Treaty on the Functioning of the European Union (TFEU), as interpreted in accordance with the consistent case-law of the Court of Justice of the European Union.

(4) Directive 2004/39/EC established rules for making the trading in shares admitted to trading on a regulated market pre-trade and post-trade transparent and for reporting transactions in financial instruments admitted to trading on a regulated market to competent authorities. The directive needs to be recast in order to appropriately reflect developments in financial markets and to address weaknesses and close loopholes that were, inter alia, exposed in the financial market crisis.

(5) Provisions in respect of trade and regulatory transparency requirements need to take the form of directly applicable law applied to all investment firms that should follow uniform rules in all Union markets, in order to provide for a uniform application of a single regulatory framework, to strengthen confidence in the transparency of markets across the Union, to reduce regulatory complexity and investment firms' compliance costs, especially for financial institutions operating on a cross-border basis, and to contribute to the elimination of distortions of competition. The adoption of a regulation ensuring direct applicability is best suited to accomplish those regulatory goals and ensure uniform conditions by preventing diverging national requirements as a result of the transposition of a directive.

(6) It is important to ensure that trading in financial instruments is carried out as far as possible on organised venues and that all such venues are appropriately regulated. Under Directive 2004/39/EC, some trading systems developed which were not adequately captured by the regulatory regime. Any trading system in financial instruments, such as entities currently known as broker crossing networks, should in the future be properly regulated and be authorised under one of the types of multilateral trading venues or as a systematic internaliser under the conditions set out in this Regulation and in Directive 2014/65/EU[(5)].

(7) The definitions of regulated market and multilateral trading facility (MTF) should be clarified and remain closely aligned with each other to reflect the fact that they represent effectively the same organised trading functionality. The definitions should exclude bilateral systems where an investment firm enters into every trade on own account, even

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as a riskless counterparty interposed between the buyer and seller. Regulated markets and MTFs should not be allowed to execute client orders against proprietary capital. The term 'system' encompasses all those markets that are composed of a set of rules and a trading platform as well as those that only function on the basis of a set of rules. Regulated markets and MTFs are not obliged to operate a 'technical' system for matching orders and should be able to operate other trading protocols including systems whereby users are able to trade against quotes they request from multiple providers. A market which is only composed of a set of rules that governs aspects related to membership, admission of instruments to trading, trading between members, reporting and, where applicable, transparency obligations is a regulated market or an MTF within the meaning of this Regulation and the transactions concluded under those rules are considered to be concluded under the systems of a regulated market or an MTF. The term 'buying and selling interests' is to be understood in a broad sense and includes orders, quotes and indications of interest.

One of the important requirements concerns the obligation that the interests be brought together in the system by means of non-discretionary rules set by the system operator. That requirement means that they are brought together under the system's rules or by means of the system's protocols or internal operating procedures, including procedures embodied in computer software. The term 'non-discretionary rules' means rules that leave the regulated market or the market operator or investment firm operating an MTF with no discretion as to how interests may interact. The definitions require that interests be brought together in such a way as to result in a contract which occurs where execution takes place under the system's rules or by means of the system's protocols or internal operating procedures.

(8) In order to make Union financial markets more transparent and efficient and to level the playing field between various venues offering multilateral trading services it is necessary to introduce a new trading venue category of organised trading facility (OTF) for bonds, structured finance products, emissions allowances and derivatives and to ensure that it is appropriately regulated and applies non-discriminatory rules regarding access to the facility. That new category is broadly defined so that now and in the future it should be able to capture all types of organised execution and arranging of trading which do not correspond to the functionalities or regulatory specifications of existing venues. Consequently, appropriate organisational requirements and transparency rules which support efficient price discovery need to be applied. The new category encompasses systems eligible for trading clearing-eligible and sufficiently liquid derivatives.

It should not include facilities where there is no genuine trade execution or arranging taking place in the system, such as bulletin boards used for advertising buying and selling interests, other entities aggregating or pooling potential buying or selling interests, electronic post-trade confirmation services, or portfolio compression, which reduces non-market risks in existing derivatives portfolios without changing the market risk of the portfolios. Portfolio compression may be provided by a range of firms which are not regulated as such by this Regulation or by Directive 2014/65/EU, such as central counterparties (CCPs), trade repositories as well as by investment firms or market operators. It is appropriate to clarify that where investment firms and market

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operators carry out portfolio compression certain provisions of this Regulation and of Directive 2014/65/EU are not applicable in relation to portfolio compression. Since central securities depositories (CSDs) will be subject to the same requirements as investment firms when providing certain investment services or performing certain investment activities, the provisions of this Regulation and of Directive 2014/65/EU should not be applicable to firms that are not regulated thereby when carrying out portfolio compression.

(9) That new category OTF will complement the existing types of trading venues. While regulated markets and MTFs have non-discretionary rules for the execution of transactions, the operator of an OTF should carry out order execution on a discretionary basis subject, where applicable, to the pre-transparency requirements and best execution obligations. Consequently, conduct of business rules, best execution and client order handling obligations should apply to the transactions concluded on an OTF operated by an investment firm or a market operator. In addition, any market operator authorised to operate an OTF should comply with Chapter 1 of Directive 2014/65/EU regarding conditions and procedures for authorisation of investment firms. The investment firm or the market operator operating an OTF should be able to exercise discretion at two different levels: first when deciding to place an order on the OTF or to retract it again and second when deciding not to match a specific order with the orders available in the system at a given point in time, provided that that complies with specific instructions received from clients and with best execution obligations.
For the system that crosses client orders the operator should be able to decide if, when and how much of two or more orders it wants to match within the system. In accordance with Article 20(1), (2), (4) and (5) of Directive 2014/65/EU and without prejudice to Article 20(3) of Directive 2014/65/EU, the firm should be able to facilitate negotiation between clients as to bring together two or more potentially compatible trading interests in a transaction. At both discretionary levels the OTF operator must have regard to its obligations under Articles 18 and 27 of Directive 2014/65/EU. The market operator or investment firm operating an OTF should make clear to users of the venue how they will exercise discretion. Because an OTF constitutes a genuine trading platform, the platform operator should be neutral. Therefore, the investment firm or market operator operating the OTF should be subject to requirements in relation to non-discriminatory execution and neither the investment firm or market operator operating the OTF nor any entity that is part of the same group or legal person as the investment firm or market operator should be allowed to execute client orders in an OTF against its proprietary capital.
For the purpose of facilitating the execution of one or more client orders in bonds, structured finance products, emission allowances and derivatives that have not been declared subject to the clearing obligation in accordance with Article 5 of Regulation (EU) No 648/2012 of the European Parliament and of the Council[6], an OTF operator is permitted to use matched principal trading within the meaning of Directive 2014/65/EU provided the client has consented to that process. In relation to sovereign debt instruments for which there is not a liquid market, an investment firm or market operator operating an OTF should be able to engage in dealing on own account other than matched principal trading. When matched principal trading is used all pre-trade and

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post-trade transparency requirements as well as best execution obligations must be complied with. The OTF operator or any entity that is part of the same group or legal person as the investment firm or market operator should not act as systematic internaliser in the OTF operated by it. Furthermore, the operator of an OTF should be subject to the same obligations as an MTF in relation to the sound management of potential conflicts of interest.

(10) All organised trading should be conducted on regulated venues and be fully transparent, both pre and post trade. Appropriately calibrated transparency requirements therefore need to apply to all types of trading venues, and to all financial instruments traded thereon.

(11) In order to ensure more trading takes place on regulated trading venues and systematic internalisers, a trading obligation for shares admitted to trading on a regulated market or traded on a trading venue should be introduced for investment firms in this Regulation. That trading obligation requires investment firms to undertake all trades including trades dealt on own account and trades dealt when executing client orders on a regulated market, an MTF, a systematic internaliser or an equivalent third-country trading venue. However an exclusion from that trading obligation should be provided if there is a legitimate reason. Those legitimate reasons are where trades are non-systematic, ad-hoc, irregular and infrequent, or are technical trades such as give-up trades which do not contribute to the price discovery process. Such an exclusion from that trading obligation should not be used to circumvent the restrictions introduced on the use of the reference price waiver and the negotiated price waiver or to operate a broker crossing network or other crossing system.
The option for trades to be done on a systematic internaliser is without prejudice to the systematic internaliser regime laid down in this Regulation. The intention is that if the investment firm itself meets the relevant criteria laid down in this Regulation to be deemed a systematic internaliser in that particular share, the trade may be dealt in that way; however, if it is not deemed a systematic internaliser in that particular share, the investment firm should still be able to undertake the trade on another systematic internaliser where that complies with its best execution obligations and the option is available to it. In addition, in order to ensure that multilateral trading with respect to shares, depositary receipts, exchange-traded funds (ETFs), certificates and other similar financial instruments is properly regulated, an investment firm that operates an internal matching system on a multilateral basis should be authorised as an MTF. It should be clarified that the best execution provisions set out in Directive 2014/65/EU should be applied in such a manner as not to impede the trading obligations under this Regulation.

(12) Trading in depositary receipts, ETFs, certificates, similar financial instruments and shares other than those admitted to trading on a regulated market takes place in largely the same fashion, and fulfils a nearly identical economic purpose, as trading in shares admitted to trading on a regulated market. Transparency provisions applicable to shares admitted to trading on regulated markets should thus be extended to those financial instruments.