

In this instrument, underlining indicates new text and striking through indicates deleted text.

Annex A

COMMISSION DELEGATED REGULATION (EU) 2016/2020 of 26 May 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on criteria for determining whether derivatives subject to the clearing obligation should be subject to the trading obligation

~~(Text with EEA relevance)~~

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Article -3 **Application**

This Regulation applies to the Financial Conduct Authority as a competent authority.

Article -2 **Interpretation**

1. References in this Regulation to Regulation 600/2014/EU shall mean Regulation 600/2014/EU as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018.
2. For the purposes of this Regulation, where a term is defined in Article 2 of Regulation 600/2014/EU the same definition applies.
3. Paragraph 2 is subject to the specific definition set out in Article -1.

Article -1 **Definitions**

For the purposes of this Regulation, the following definition applies:

‘trading venue’ means any of the venues referred to in article 28(1)(a) to (d) of Regulation 600/2014/EU.

Article 1

Sufficient third party buying and selling interest

When establishing whether a class of derivatives or relevant subset thereof has sufficient third-party buying and selling interest to be considered sufficiently liquid for the trading obligation, ~~ESMA~~ the competent authority shall apply the criteria in Article 32(3) of Regulation (EU) No 600/2014, as further specified in Articles 2 to 5 below.

Article 2

Average frequency of trades

1. In relation to the average frequency of trades, ~~ESMA~~ the competent authority shall take into consideration the following elements:
 - (a) the number of days on which trading took place;
 - (b) the number of trades.
2. ~~ESMA's~~ The competent authority's analysis of the criteria in paragraph 1 shall take into account the distribution of trading executed on trading venues and executed OTC. ~~ESMA~~ The competent authority shall assess these criteria over a period of time of sufficient length to determine whether the liquidity of each class of derivatives or a relevant subset thereof is subject to seasonal or structural factors. ~~ESMA~~ The competent authority shall also consider whether trades are concentrated at certain points in time and over certain sizes over the period assessed and determine to what extent such concentration constitutes predictable patterns.

Article 3

Average size of trades

1. In relation to the average size of trades, ~~ESMA~~ the competent authority shall take into consideration the following elements:
 - (a) the average daily turnover whereby the notional size of all trades combined shall be divided by the number of trading days;
 - (b) the average value of trades whereby the notional size of all trades combined shall be divided by the number of trades.
2. ~~ESMA~~ The competent authority's analysis of the criteria in paragraph 1 shall take into account the factors specified in Article 2(2).

Article 4

Number and type of active market participants

1. In relation to the number and type of active market participants, ~~ESMA~~ the competent authority shall take into consideration the following elements:
 - (a) the total number of market participants trading in that class of derivatives or relevant subset thereof is not lower than two;
 - (b) the number of trading venues that have admitted to trading or are trading the class of derivatives or a relevant subset thereof;
 - (c) the number of market makers and other market participants under a binding written agreement or an obligation to provide liquidity.
2. ~~ESMA~~ The competent authority's analysis shall compare the ratio of market participants to the findings in the data obtained for the analyses of average size of trades and the average frequency of trades.

Article 5

Average size of spreads

1. In relation to the average size of spreads, ~~ESMA~~ the competent authority shall take into consideration the following elements:
 - (a) the size of weighted spreads, including volume weighted spreads, over different periods of time;
 - (b) spreads at different points in time of trading sessions.
2. Where information on spreads is not available, ~~ESMA~~ the competent authority shall take into consideration a proxy for the assessment of this criterion.

Article 6

Entry into force and application

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

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