

Annex D

COMMISSION DELEGATED REGULATION (EU) 2017/588 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the tick size regime for shares, depositary receipts and exchange-traded funds

~~(Text with EEA relevance)~~

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Article -3

Definitions

In this Regulation, ‘exit day’ has the meaning given in the European Union (Withdrawal) Act 2018.

Article -2

Application

This Regulation applies to:

1. those persons described in Article 1(2) of Regulation 600/2014/EU; and
2. the Financial Conduct Authority as a competent authority.

Article -1

Interpretation

1. Where a term is defined in Directive 2014/65/EU (as that directive applied in the European Union immediately before exit day) that definition shall apply for the purposes of this Regulation except where it is defined in article 2 of Regulation 600/2014/EU in which case that definition shall apply for the purposes of this Regulation.
2. The definition of all other terms defined in article 2 of Regulation 600/2014/EU shall apply for the purposes of this Regulation.
3. Article 2(1)(62) of Regulation 600/2014/EU applies for the purposes of this Regulation.

4. References to the date of application of Regulation (EU) No 600/2014 mean the date of application of that Regulation in the European Union.

Article 1

Most relevant market in terms of liquidity

For the purposes of this Regulation, the most relevant market in terms of liquidity for a share or a depositary receipt shall be considered to be the most relevant market in terms of liquidity as referred to in Article 4(1)(a) of Regulation (EU) No 600/2014 and specified in Article 4 or in accordance with Article 17A of Commission Delegated Regulation (EU) 2017/587.

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Article 3

Average daily number of transactions for shares and depositary receipts

(Article 49(1) and (2) of Directive 2014/65/EU)

1. By 1 March of the year following the date of application of Regulation (EU) No 600/2014 and by 1 March of each year thereafter, the ~~competent authority for a specific share or depositary receipt~~ FCA shall, when determining the most relevant market in terms of liquidity for ~~that~~ each share or depositary receipt that is traded on a trading venue calculate the average daily number of transactions for that financial instrument in that market and ensure the publication of that information.

~~The competent authority referred to in subparagraph 1 shall be the competent authority of the most relevant market in terms of liquidity as specified in Article 16 of Commission Delegated Regulation (EU) 2017/590.~~

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5. Before the first admission to trading or before the first day of trading of a share or depositary receipt on a trading venue, the ~~competent authority of the trading venue where that financial instrument is to be first admitted to trading or is to be first traded~~ FCA shall estimate the average daily number of transactions for that trading venue, taking into account the previous trading history of that financial instrument, where applicable, as well as the previous trading history of financial instruments that are considered to have similar characteristics, and publish that estimation.

The tick sizes of the liquidity band corresponding to that published estimate average daily number of transactions shall apply from the publication of that estimate until the publication of the average daily number of transactions for that instrument in accordance with paragraph 6.

6. No later than six weeks after the first day of trading of the share or depositary receipt, the ~~competent authority of the trading venue where the financial instrument was first admitted to trading or was first traded on a trading venue~~ FCA shall calculate and ensure the publication of the average daily number of transactions in that financial instrument for that trading venue, using the data relating to the first four weeks of trading of that financial instrument.

The tick sizes of the liquidity band corresponding to that published average daily number of transactions shall apply from the publication until a new average daily number of transactions for that instrument has been calculated and published in accordance with the procedure set out in paragraphs 1 to 4.

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Article 3A

Transitional period for publication of average daily number of transactions

1. For the purposes of this Article, the term ‘transitional period’ has the same meaning as under Article 5(3A) of Regulation 600/2014/EU).
2. During the transitional period and until the FCA makes a publication under Articles 3, 4 or 5(3) in relation to the financial instrument in question, the average daily number of transactions in respect of a share or depositary receipt for the purposes of retained EU law relating to markets in financial instruments shall be as follows in (a) or (b), subject to (c):
 - (a) that stated in the most recent information published before exit day under Article 4 or 5 (whichever is the most recent) by the competent authority in the European Union (including the FCA) for the relevant instrument under Article 3(1) as it applied in the European Union before exit day (including the FCA);
or
 - (b) if no such information was published by that competent authority in the European Union in respect of a financial instrument under those provisions before exit day, the average daily number of transactions for that financial instrument shall be that estimated by the FCA, taking into account any previous trading history of that financial instrument and of other financial instruments that are considered to have similar characteristics, and published on exit day; and
 - (c) if information was published before exit day under Article 3(1) by the competent authority in the European Union (including the FCA) for the relevant instrument under Article 3(1) as it applied in the European Union before exit day, but the information was not required to be used under Article 3(4) before exit day, then the average daily number of transactions shall become that stated in such information from the point at which it would have been required to be used under Article 3(4) as it applied in the European Union before exit day, provided that the calculations used to produce that information did not exclude trading in the UK for the relevant period.

3. From exit day and during the transitional period, the FCA's obligations to perform calculations and publish information under Article 3 are modified as follows:
- (a) where the FCA publishes information under Article 3(1):
- (i) it shall publish what appears to it to be the average daily number of transactions;
- (ii) it is not required to follow the relevant methodology in Article 3, but where it does not:
- it must have regard to the relevant methodology; and
 - it may take into account any information available in relation to trading of the financial instrument in question in the United Kingdom or in any other country; and
- (iii) it shall ensure publication by five working days after 1 March; and
- (b) where the FCA publishes information under Article 3(6) it shall publish what appears to it to be the average daily number of transactions, and it may take into account any information available in relation to trading of the financial instrument in question in the United Kingdom or in any other country.

Article 4

Corporate actions

(Article 49(1) and (2) of Directive 2014/65/EU)

Where ~~a competent authority~~ the FCA considers that a corporate action may modify the average daily number of transactions of a particular financial instrument thereby causing this financial instrument to fall within a different liquidity band, the ~~competent authority~~ FCA shall determine and ensure publication of a new applicable liquidity band for that financial instrument treating it as if it were first admitted to trading or first traded on a trading venue and apply the procedure set out in Article 3(5) and (6).

Article 5

Transitional provisions

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3. The tick sizes of the liquidity band corresponding to the published average daily number of transactions referred to in paragraph 1 shall be applied until 1 April of the year following the date of application of Regulation (EU) No 600/2014. During that period, ~~competent authorities~~ the FCA shall ensure that the tick sizes for financial instruments referred to under points (b) and (c) of paragraph 2 ~~and for which they are the competent authority~~, do not contribute to disorderly trading conditions. Where ~~a competent authority~~ the FCA identifies a risk for the orderly functioning of the markets due to such tick sizes, it shall determine and publish an

updated average daily number of transactions for the relevant financial instruments to address that risk. It shall do so on the basis of longer and more comprehensive trading history data of those instruments. Trading venues shall immediately apply the liquidity band corresponding to that updated average daily number of transactions. They shall do so until 1 April of the year following the date of application of Regulation (EU) No 600/2014 or until any further publication by the competent authority FCA in accordance with this paragraph.

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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