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)

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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,

Having regard to the opinion of the European Economic and Social Committee,

Acting in accordance with the ordinary legislative procedure,

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.

(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 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.

(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 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 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, 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 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.

(13) While, in principle, acknowledging the need for a regime of waivers from pre-trade transparency to support the efficient functioning of markets, the actual waiver provisions for shares applicable on the basis of Directive 2004/39/EC and of Commission Regulation (EC) No 1287/2006, need to be scrutinised as to their continued appropriateness in terms of scope and conditions applicable. In order to ensure a uniform application of the waivers from pre-trade transparency in shares and eventually other similar financial instruments and non-equity products for specific market models and types and sizes of orders, the European Supervisory Authority (European Securities and Markets Authority), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council ('ESMA'), should assess the compatibility of individual requests for applying a waiver with rules laid down in this Regulation and in delegated acts provided for in this Regulation. ESMA's assessment should take the form of an opinion in accordance with Article 29 of Regulation (EU) No 1095/2010. In addition, the already existing waivers for shares should be reviewed by ESMA within an appropriate timeframe and an assessment should be made, following the same procedure, as to whether they are still in compliance with the rules set out in this Regulation and in delegated acts provided for in this Regulation.

(14) The financial crisis exposed specific weaknesses in the way information on trading opportunities and prices in financial instruments other than shares is available to market participants, namely in terms of timing, granularity, equal access, and reliability. Timely pre-trade and post-trade transparency requirements taking account of the different characteristics and market structures of specific types of financial instruments other than shares should thus be introduced and calibrated for different types of trading systems, including order-book, quote-driven, hybrid, periodic auction trading and voice trading

systems. In order to provide a sound transparency framework for all relevant financial instruments, these should apply to bonds, structured finance products, emission allowances and derivatives which are traded on a trading venue. Therefore, exemptions from pre-trade transparency and adaptations of the requirements in relation to deferred publication should be available only in certain defined cases.

(15) It is necessary to introduce an appropriate level of trade transparency in markets for bonds, structured finance products and derivatives in order to help the valuation of products as well as the efficiency of price formation. Structured finance products should, in particular, include asset backed securities as defined in Article 2(5) of Commission Regulation (EC) No 809/2004, comprising among others collateralised debt obligations.

(16) In order to ensure uniform applicable conditions between trading venues, the same pre-trade and post-trade transparency requirements should apply to the different types of venues. The transparency requirements should be calibrated for different types of financial instruments, including equities, bonds, and derivatives, taking into account the interests of investors and issuers, including government bond issuers, and market liquidity. The requirements should be calibrated for different types of trading, including order-book and quote-driven systems such as request for quote as well as hybrid and voice broking systems, and take account of transaction size, including turnover, and other relevant criteria.

(17) In order to avoid any negative impact on the price formation process, it is necessary to introduce an appropriate volume cap mechanism for orders placed in systems which are based on a trading methodology by which the price is determined in accordance with a reference price and for certain negotiated transactions. That mechanism should have a double cap, whereby a volume cap is applied to each trading venue that uses those waivers so that only a certain percentage of trading can be done on each trading venue, and in addition an overall volume cap is applied which if exceeded would result in the suspension of use of those waivers across the Union. In relation to the negotiated transactions, it should only apply to those transactions that are made within the current volume weighted spread reflected on the order book or the quotes of the market makers of the trading venue operating that system. It should exclude negotiated transactions in illiquid shares, depositary receipts, ETFs, certificates or other similar financial instruments, and those transactions that are subject to conditions other than the current market price as they do not contribute to the price formation process.

(18) In order to ensure that trading carried out OTC does not jeopardise efficient price discovery or a transparent level playing field between means of trading, appropriate pre-trade transparency requirements should apply to investment firms dealing on own account in financial instruments OTC insofar as it is carried out in their capacity as systematic internalisers in relation to shares, depositary receipts, ETFs, certificates or other similar financial instruments for which there is a liquid market and bonds, structured finance products, emission allowances and derivatives which are traded on a trading venue and for which there is a liquid market.

(19) An investment firm executing client orders against own proprietary capital should be deemed a systematic internaliser, unless the transactions are carried out outside a trading venue on an occasional, ad hoc and irregular basis. Thus, systematic internalisers should be defined as investment firms which, on an organised, frequent systematic and substantial basis, deal on own account by executing client orders outside a trading venue. The requirements for systematic internalisers in this Regulation should apply to an investment firm only in relation to each single financial instrument, for example on ISIN-code level, in which it is a systematic internaliser. In order to ensure an objective and effective application of the definition of systematic internaliser to investment firms, there should be a pre-determined threshold for systematic internalisation containing an exact specification of what is meant by frequent, systematic and substantial basis.

(20) While an OTF is any system or facility in which multiple third-party buying and selling interests interact in the system, a systematic internaliser should not be allowed to bring together third-party buying and selling interests. For instance, a so-called single-dealer platform, where trading always takes place against a single investment firm, should be considered a systematic internaliser, were it to comply with the requirements included in this Regulation. However, a so-called multi-dealer platform, with multiple dealers interacting for the same financial instrument, should not be considered a systematic internaliser.

(21) Systematic internalisers should be able to decide on the basis of their commercial policy and in an objective non-discriminatory way the clients to whom they give access to their quotes, distinguishing between categories of clients, and should also be entitled to take account of distinctions between clients, for example in relation to credit risk. Systematic internalisers should not be obliged to publish firm quotes, execute client orders and give access to their quotes in relation to equity transactions above standard market size and non-equity transactions above the size specific to the financial instrument. Systematic internalisers' compliance with their obligations should be checked by and information made

available to competent authorities to enable them to do so.

(22) It is not the intention of this Regulation to require the application of pre-trade transparency rules to transactions carried out on an OTC basis, other than within a systematic internaliser.

(23) Market data should be easily and readily available to users in a format as disaggregated as possible to allow investors, and data service providers serving their needs, to customise data solutions to the furthest possible degree. Therefore, pre-trade and post-trade transparency data should be made available to the public in an 'unbundled' fashion in order to reduce costs for market participants when purchasing data.

(24) Directive 95/46/EC of the European Parliament and of the Council and Regulation (EC) No 45/2001 of the European Parliament and of the Council should be fully applicable to the exchange, transmission and processing of personal data for the purposes of this Regulation, particularly Title IV, by Member States and ESMA.

(25) Considering the agreement reached by the parties to the G20 Pittsburgh summit on 25 September 2009 to move trading in standardised OTC derivative contracts to exchanges or electronic trading platforms where appropriate, a formal regulatory procedure should be defined for mandating trading between financial counterparties and large non-financial counterparties in all derivatives which have been considered to be clearing-eligible and which are sufficiently liquid to take place on a range of trading venues subject to comparable regulation and enabling participants to trade with multiple counterparties. The assessment of sufficient liquidity should take account of market characteristics at national level including elements such as the number and type of market participants in a given market, and of transaction characteristics, such as the size and frequency of transactions in that market. A liquid market in a product class of derivatives will be characterised by a high number of active market participants, including a suitable mix of liquidity providers and liquidity takers, relative to the number of traded products, which execute trades frequently in those products in sizes below a size that is large in scale. Such market activity should be indicated by a high number of resting bids and offers in the relevant derivative leading to a narrow spread for a transaction of normal market size. The assessment of sufficient liquidity should recognize that the liquidity of a derivative can vary significantly according to market conditions and its life cycle.

(26) Considering the agreement reached by the parties to the G20 in Pittsburgh on 25 September 2009 to move trading in standardised OTC derivative contracts to exchanges or electronic trading platforms where appropriate on the one hand, and the relatively lower liquidity of various OTC derivatives on the other, it is appropriate to provide for a suitable range of eligible venues on which trading pursuant to that commitment can take place. All eligible venues should be subject to closely aligned regulatory requirements in terms of organisational and operational aspects, arrangements to mitigate conflicts of interest, surveillance of all trading activity, pre-trade and post-trade transparency calibrated by financial instrument and types of trading system, and for multiple third-party trading interests to be able to interact with one another. The possibility for operators of venues to arrange transactions pursuant to that commitment between multiple third parties in a discretionary fashion should however be provided for in order to improve the conditions for execution and liquidity.

(27) The obligation to conclude transactions in derivatives pertaining to a class of derivatives that has been declared subject to the trading obligation on a regulated market, MTF, OTF or third country trading venue should not apply to the components of non-price forming post-trade risk reduction services which reduce non-market risks in derivatives portfolios including existing OTC derivatives portfolios in accordance with Regulation (EU) No 648/2012 without changing the market risk of the portfolios. In addition, while it is appropriate to make specific provision for portfolio compression, this Regulation is not intended to prevent the use of other post-trade risk reduction services.

(28) The trading obligation established for those derivatives should allow for efficient competition between eligible trading venues. Therefore those trading venues should not be able to claim exclusive rights in relation to any derivatives subject to that trading obligation preventing other trading venues from offering trading in those financial instruments. For effective competition between trading venues for derivatives, it is essential that trading venues have non-discriminatory and transparent access to CCPs. Non-discriminatory access to a CCP should mean that a trading venue has the right to non-discriminatory treatment in terms of how contracts traded on its platform are treated in terms of collateral requirements and netting of economically equivalent contracts and cross-margining with correlated contracts cleared by the same CCP, and non-discriminatory clearing fees.

(29) Competent authorities' powers should be complemented with an explicit mechanism for prohibiting or restricting the marketing, distribution and sale of any financial instrument or structured deposit giving rise to serious concerns regarding investor protection, orderly functioning and integrity of financial

markets, or commodities markets, or the stability of the whole or part of the financial system, together with appropriate coordination and contingency powers for ESMA or, for structured deposits, the European Supervisory Authority (European Banking Authority) (EBA), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council. The exercise of such powers by competent authorities and, in exceptional cases, by ESMA or EBA should be subject to the need to fulfil a number of specific conditions. Where those conditions are met, the competent authority or, in exceptional cases, ESMA or EBA should be able to impose a prohibition or restriction on a precautionary basis before a financial instrument or structured deposit has been marketed, distributed or sold to clients. Those powers do not imply any requirement to introduce or apply a product approval or licensing by the competent authority, ESMA or EBA, and do not relieve investment firms of their responsibility to comply with the all relevant requirements laid down in this Regulation and in Directive 2014/65/EU. The orderly functioning and integrity of commodity markets should be included as a criterion for intervention by competent authorities in order to enable action to be taken to counteract possible negative externalities on commodities markets from activities on financial markets. This is true, in particular, for agricultural commodity markets the purpose of which is to ensure a secure supply of food for the population. In those cases, the measures should be coordinated with the authorities competent for the commodity markets concerned.

(30) Competent authorities should notify ESMA of the details of any of their requests to reduce a position in relation to a derivative contract, of any one-off limits, as well as of any *ex-ante* position limits in order to improve coordination and convergence in how those powers are applied. The essential details of any *ex-ante* position limits applied by a competent authority should be published on ESMA's website.

(31) ESMA should be able to request information from any person regarding their position in relation to a derivative contract, to request that position to be reduced, as well as to limit the ability of persons to undertake individual transactions in relation to commodity derivatives. ESMA should then notify relevant competent authorities of measures it proposes to undertake and should publish those measures.

(32) The details of transactions in financial instruments should be reported to competent authorities to enable them to detect and investigate potential cases of market abuse, to monitor the fair and orderly functioning of markets, as well as the activities of investment firms. The scope of that oversight includes all financial instruments which are traded on a trading venue and financial instruments where the underlying is a financial instrument traded on a trading venue or where the underlying is an index or basket composed of financial instruments traded on a trading venue. The obligation should apply whether or not such transactions in any of those financial instruments were carried out on a trading venue. In order to avoid an unnecessary administrative burden on investment firms, financial instruments that are not susceptible to market abuse should be excluded from the reporting obligation. The reports should use a legal entity identifier in line with the G-20 commitments. ESMA should report to the Commission on the functioning of such reporting to the competent authorities and the Commission should take steps to propose any changes where appropriate.

(33) The operator of a trading venue should provide its competent authority with relevant financial instrument reference data. Those notifications are to be transmitted by the competent authorities without delay to ESMA, which should publish them immediately on its website to enable ESMA and competent authorities to use, analyse and exchange transaction reports.

(34) In order to serve their purpose as a tool for market monitoring, transaction reports should identify the person who has made the investment decision, as well as those responsible for its execution. In addition to the transparency regime provided for in Regulation (EU) No 236/2012 of the European Parliament and of the Council, the marking of short sales provides useful supplementary information to enable competent authorities to monitor levels of short selling. Competent authorities need to have full access to records at all stages in the order execution process, from the initial decision to trade, through to its execution. Therefore, investment firms should keep records of all their orders and all their transactions in financial instruments, and operators of platforms are required to keep records of all orders submitted to their systems. ESMA should coordinate the exchange of information among competent authorities to ensure that they have access to all records of transactions and orders, including those entered on platforms that operate outside their territory, in financial instruments under their supervision.

(35) Double reporting of the same information should be avoided. Reports submitted to trade repositories registered or recognised in accordance with Regulation (EU) No 648/2012 for the relevant financial instruments which contain all the required information for transaction reporting purposes should not need to be reported to competent authorities, but should be transmitted to them by the trade repositories. Regulation (EU) No 648/2012 should be amended to that effect.

(36) Any exchange or transmission of information by competent authorities should be in accordance with the rules on the transfer of personal data as laid down in Directive 95/46/EC. Any exchange or transmission

of information by ESMA should be in accordance with the rules on the transfer of personal data as laid down in Regulation (EC) No 45/2001, which should be fully applicable to the processing of personal data for the purposes of this Regulation.

(37) Regulation (EU) No 648/2012 lays down the criteria according to which classes of OTC derivatives should be subject to the clearing obligation. It prevents competitive distortions by requiring non-discriminatory access to CCPs offering clearing of OTC derivatives to trading venues and non-discriminatory access to the trade feeds of trading venues to CCPs offering clearing of OTC derivatives. As OTC derivatives are defined as derivative contracts whose execution does not take place on a regulated market, there is a need to introduce similar requirements for regulated markets under this Regulation. Derivatives traded on regulated markets should also be centrally cleared.

(38) In addition to requirements in Directive 2004/39/EC and in Directive 2014/65/EU that prevent Member States from unduly restricting access to post-trade infrastructure such as CCP and settlement arrangements, it is necessary that this Regulation removes various other commercial barriers that can be used to prevent competition in the clearing of financial instruments. To avoid any discriminatory practices, CCPs should accept to clear transactions executed in different trading venues, to the extent that those venues comply with the operational and technical requirements established by the CCP, including the risk management requirements. Access should be granted by a CCP if certain access criteria specified in regulatory technical standards are met. With regard to newly established CCPs that have been authorised or recognised for a period of less than three years at the point of entry into force of this Regulation, with respect to transferable securities and money market instruments, there should be the possibility for competent authorities to approve a transitional period of up to two-and-a-half years before they are exposed to full non-discriminatory access in relation to transferable securities and money market instruments. However, if a CCP chooses to avail of the transitional arrangement it should not be able to benefit from the access rights to a trading venue under this Regulation for the duration of the transitional arrangement. Furthermore, no trading venue with a close link to that CCP should be able to benefit from the access rights to a CCP under this Regulation for the duration of the transitional arrangement.

(39) Regulation (EU) No 648/2012 lays down the conditions under which non-discriminatory access between CCPs and trading venues should be granted for OTC derivatives. Regulation (EU) No 648/2012 defines OTC derivatives as derivatives whose execution does not take place on a regulated market or on a third-country market considered as equivalent to a regulated market in accordance with Article 19(6) of Directive 2004/39/EC. In order to avoid any gaps or overlaps and to ensure consistency between Regulation (EU) No 648/2012 and this Regulation, the requirements set out in this Regulation on non-discriminatory access between CCPs and trading venues apply to derivatives traded on regulated markets or on a third-country market considered as equivalent to a regulated market in accordance with Directive 2014/65/EU and all non-derivative financial instruments.

(40) Trading venues should be required to provide access including data feeds on a transparent and non-discriminatory basis to CCPs that wish to clear transactions executed on a trading venue. However, this should not necessitate the use of interoperability arrangements for clearing transactions in derivatives or create liquidity fragmentation in a way that would threaten the smooth and orderly functioning of markets. Access should only be denied by a trading venue if certain access criteria specified in regulatory technical standards are not met. With regard to exchange-traded derivatives, it would be disproportionate to require smaller trading venues, particularly those closely linked to CCPs, to comply with non-discriminatory access requirements immediately if they have not yet acquired the technological capability to engage on a level playing field with the majority of the post-trade infrastructure market. Therefore trading venues below the relevant threshold should have the option of exempting themselves, and therefore their associated CCPs, from non-discriminatory access requirements in respect of exchange-traded derivatives for a period of 30 months with the possibility of subsequent renewals. However, if a trading venue chooses to exempt itself, it should not be able to benefit from the access rights to a CCP under this Regulation for the duration of the exemption. Furthermore, no CCP with a close link to that trading venue should be able to benefit from the access rights to a trading venue under this Regulation for the duration of the exemption. Regulation (EU) No 648/2012 identifies that where commercial and intellectual property rights relate to financial services related to derivative contracts, licenses should be available on proportionate, fair, reasonable and non-discriminatory terms. Therefore, access to licences of, and information relating to, benchmarks that are used to determine the value of financial instruments should be provided to CCPs and other trading venues on a proportionate, fair, reasonable and non-discriminatory basis and any license should be on reasonable commercial terms. Without prejudice to the application of competition rules, where any new benchmark is developed following the entry into force of this Regulation an obligation to licence should start 30 months after a financial instrument referencing that benchmark commenced trading or was

admitted to trading. Access to licenses is critical to facilitate access between trading venues and CCPs under Article 35 and 36 as otherwise licensing arrangements could still prevent access between trading venues and CCPs that they have requested access to. The removal of barriers and discriminatory practices is intended to increase competition for clearing and trading of financial instruments in order to lower investment and borrowing costs, eliminate inefficiencies and foster innovation in Union markets. The Commission should continue to closely monitor the evolution of post-trade infrastructure and should, where necessary, intervene in order to prevent competitive distortions from occurring in the internal market, in particular where the refusal of access to infrastructure or to benchmarks contravenes Articles 101 or 102 TFEU. The licencing duties under this Regulation should be without prejudice to the general obligation of proprietary owners of benchmarks under Union competition law, and under Articles 101 and 102 TFEU in particular, concerning access to benchmarks that are indispensable to enter a new market. Approvals of competent authorities to not apply access rights for transitional periods are not authorisations or amendments of authorisations.

(41) The provision of services by third-country firms in the Union is subject to national regimes and requirements. Those regimes are highly differentiated and the firms authorised in accordance with them do not enjoy the freedom to provide services and the right of establishment in Member States other than the one where they are established. It is appropriate to introduce a common regulatory framework at Union level. The regime should harmonise the existing fragmented framework, ensure certainty and uniform treatment of third-country firms accessing the Union, ensure that an assessment of effective equivalence has been carried out by the Commission in relation to the prudential and business conduct framework of third countries, and should provide for a comparable level of protection to clients in the Union receiving services by third-country firms. In applying the regime the Commission and Member States should prioritise the areas covered by the G-20 commitments and agreements with the Union's largest trading partners and should have regard to the central role that the Union plays in worldwide financial markets and ensure that the application of third-country requirements does not prevent Union investors and issuers from investing in or obtaining funding from third countries or third-country investors and issuers from investing, raising capital or obtaining other financial services in Union markets unless that is necessary for objective and evidence-based prudential reasons. In carrying out the assessments, the Commission should have regard to the International Organisation of Securities Commission's (IOSCO) Objectives and Principles of Securities Regulation and its recommendations as amended and interpreted by IOSCO. Where a decision cannot be made determining effective equivalence, the provision of services by third-country firms in the Union remains subject to national regimes. The Commission should initiate the equivalence assessment on its own initiative. Member States should be able to indicate their interest that a certain third-country or certain third countries are subject to the equivalence assessment carried out by the Commission, without such indications being binding on the Commission to initiate the equivalence process. The equivalence assessment should be outcome-based; it should assess to what extent the respective third-country regulatory and supervisory framework achieves similar and adequate regulatory effects and to what extent it meets the same objectives as Union law. When initiating those equivalence assessments, the Commission should be able to prioritise among third-country jurisdictions taking into account the materiality of the equivalence finding to Union firms and clients, the existence of supervisory and cooperation agreements between the third country and the Member States, the existence of an effective equivalent system for the recognition of investment firms authorised under foreign regimes as well as the interest and willingness of the third country to engage in the equivalence assessment process. The Commission should monitor any significant changes to the regulatory and supervisory framework of the third country and review the equivalence decisions where appropriate.

(42) Under this Regulation, the provision of services without branches should be limited to eligible counterparties and professional clients per se. It should be subject to registration by ESMA and to supervision in the third country. Proper cooperation arrangements should be in place between ESMA and the competent authorities in the third country.

(43) The provisions of this Regulation regulating the provision of services or undertaking of activities by third-country firms should not affect the possibility for persons established in the Union to receive investment services by a third-country firm at their own exclusive initiative or for Union investment firms or credit institutions to receive investment services or activities from a third-country firm at their own exclusive initiative or for a client to receive investment services from a third-country firm at their own exclusive initiative through the mediation of such a credit institution or investment firm. Where a third-country firm provides services at the own exclusive initiative of a person established in the Union, the services should not be deemed as provided in the territory of the Union. Where a third-country firm solicits clients or potential clients in the Union or promotes or advertises investment services or activities together with ancillary services in the Union, it should not be deemed as a service provided at

the own exclusive initiative of the client.

(44) With regard to the recognition of third-country firms, and in accordance with the Union's international obligations under the agreement establishing the World Trade Organisation, including the General Agreement on Trade in Services, decisions determining third-country regulatory and supervisory frameworks as equivalent to the regulatory and supervisory framework of the Union should be adopted only if the legal and supervisory framework of the third country provides for an effective equivalent system for the recognition of investment firms authorised under foreign legal regimes in accordance with, amongst others, the general regulatory goals and standards set out by the G-20 in September 2009 of improving transparency in the derivatives markets, mitigating systemic risk, and protecting against market abuse. Such a system should be considered equivalent if it ensures that the substantial result of the applicable regulatory framework is similar to Union requirements and should be considered effective if those rules are being applied in a consistent manner.

(45) A range of fraudulent practices have occurred in spot secondary markets in emission allowances (EUA) which could undermine trust in the emissions trading scheme, set up by Directive 2003/87/EC of the European Parliament and of the Council, and measures are being taken to strengthen the system of EUA registries and conditions for opening an account to trade EUAs. In order to reinforce the integrity and safeguard the efficient functioning of those markets, including comprehensive supervision of trading activity, it is appropriate to complement measures taken under Directive 2003/87/EC by bringing emission allowances fully into the scope of this Regulation and Directive 2014/65/EU as well as of Regulation (EU) No 596/2014 of the European Parliament and the Council and of Directive 2014/57/EU of the European Parliament and of the Council, by classifying them as financial instruments.

(46) The Commission should be empowered to adopt delegated acts in accordance with Article 290 of TFEU. In particular, the delegated acts should be adopted in respect of the extension of the scope of certain provisions of this Regulation to third-country central banks, specific details concerning definitions, specific cost-related provisions related to the availability of market data, access to quotes, the sizes at or below which a firm shall enter into transactions with any other client to whom a quote is available, portfolio compression and the further determination of when there is a significant investor protection concern or a threat to investor protection, the orderly functioning and integrity of financial markets or commodity markets or to the stability of the whole or part of the financial system of the Union may warrant ESMA, EBA or competent authorities' action, position management powers of ESMA, the extension of the transitional period under Article 35(5) of this Regulation for a certain period of time and in respect of the exclusion of exchange-traded derivatives from the scope of certain provisions of this Regulation for a certain period of time. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(47) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission relating to the adoption of the equivalence decision concerning the third-country legal and supervisory framework for the provision of services by third-country firms or third-country trading venues for the purpose of eligibility as trading venues for derivatives subject to the trading obligation and of access of third-country CCPs and third-country trading venues to trading venues and CCPs established in the Union. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.

(48) Since the objectives of this Regulation, namely to establish uniform requirements relating to financial instruments in relation to disclosure of trade data, reporting of transactions to the competent authorities, trading of derivatives and shares on organised venues, non-discriminatory access to CCPs, trading venues and benchmarks, product intervention powers and powers on position management and position limits, provision of investment services or activities by third-country firms, cannot be sufficiently achieved by the Member States, because, although national competent authorities are better placed to monitor market developments, the overall impact of the problems related to trade transparency, transaction reporting, derivatives trading, and bans of products and practices can only be fully understood in a Union-wide context, but can rather, by reason of its scale and effects, be better achieved at the Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(49) No action taken by any competent authority or ESMA in the performance of their duties should directly or indirectly discriminate against any Member State or group of Member States as a venue for the

provision of investment services and activities in any currency. No action taken by EBA in the performance of its duties under this Regulation should directly or indirectly discriminate against any Member State or group of Member States.

(50) Technical standards in financial services should ensure adequate protection of depositors, investors and consumers across the Union. 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.

(51) The Commission should adopt the draft regulatory technical standards developed by ESMA regarding the precise characteristics of trade transparency requirements, regarding the monetary, foreign exchange and financial stability policy operations and the types of the certain transactions relevant under this Regulation, regarding the detailed conditions for waivers from pre-trade transparency, regarding deferred post-trade publication arrangements, regarding the obligation to make pre-trade and post-trade data available separately, regarding the criteria for the application of the pre-trade transparency obligations for systematic internalisers, regarding post-trade disclosure by investment firms, regarding the content and frequency of data requests for the provision of information for the purposes of transparency and other calculations, regarding transactions that do not contribute to the price discovery process, regarding the order data to be retained, regarding the content and specifications of transaction reports, regarding the content and specification of financial instrument reference data, regarding the types of contracts which have a direct, substantial and foreseeable effect within the Union and the cases where the trading obligation for derivatives is necessary, regarding the requirements for systems and procedures to ensure that transactions in cleared derivatives are submitted and accepted for clearing, specifying types of indirect clearing service arrangements, regarding derivatives subject to an obligation to trade on organised trading venues, regarding non-discriminatory access to a CCP and to a trading venue, regarding non-discriminatory access to and obligation to licence benchmarks, and concerning the information that the applicant third-country firm should provide to ESMA in its application for registration. The Commission should adopt those draft regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

(52) Article 95 of Directive 2014/65/EU provides for a transitional exemption for certain C6 energy derivative contracts. It is therefore necessary that the technical standards specifying the clearing obligation developed by ESMA in accordance with Article 5(2)(b) of Regulation (EU) No 648/2012 take that into account and do not impose a clearing obligation on derivative contracts which would subsequently be subject to the transitional exemption for C6 energy derivative contracts.

(53) The application of the requirements in this Regulation should be deferred in order to align applicability with the application of the transposed rules of the recast Directive and to establish all essential implementing measures. The entire regulatory package should then be applied from the same point in time. Only the application of the empowerments for implementing measures should not be deferred so that the necessary steps to draft and adopt those implementing measures can start as early as possible.

(54) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, in particular the right to the protection of personal data (Article 8), the freedom to conduct a business (Article 16), the right to consumer protection (Article 38), the right to an effective remedy and to a fair trial (Article 47), and the right not to be tried or punished twice for the same offence (Article 50), and has to be applied in accordance with those rights and principles.

(55) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and delivered an opinion on 10 February 2012,

HAVE ADOPTED THIS REGULATION:

TITLE I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter and scope

1.This Regulation establishes uniform requirements in relation to the following:

(a) disclosure of trade data to the public;

(b) reporting of transactions to the GFSC;

(c) trading of derivatives on organised venues;

(d) *Omitted*

(e) the GFSC's powers in respect of–

(i) product intervention; and

(ii) position management controls and position limits; and

(f) provision of investment services or activities by third-country firms following an applicable equivalence decision by the Minister with or without a branch.

2.This Regulation applies to–

(a) investment firms and credit institutions which have their head office in Gibraltar which have Part 7 permission to carry on regulated activities relating to investment services and activities in Gibraltar, when those firms or institutions are providing investment services or performing investment activities; and

(b) market operators which have their registered office or head office in Gibraltar, including any Gibraltar trading venues they operate.

2A. This Regulation does not apply to any firm which has Part 7 permission to carry on regulated activities as a restricted investment firm, within the meaning of regulation 8 of the Investment Services Regulations .

3.Title V of this Regulation also applies to all financial counterparties as defined in Article 2(8) of EMIR and to all non-financial counterparties falling under Article 10(1)(b) of that Regulation.

4.Title VI of this Regulation also applies to CCPs and persons with proprietary rights to benchmarks.

5.Title VIII of this Regulation applies to third-country firms providing investment services or activities in Gibraltar following an applicable equivalence decision by the Minister with or without a branch.

5ZA. For the purposes of paragraphs 1f and 5, references to applicable equivalence decisions by the Minister include references to applicable decisions made by the European Commission as they applied immediately before IP completion day.

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.

6.Articles 8, 10, 18 and 21 shall not apply to regulated markets, market operators and investment firms in respect of a transaction where the counterparty is a member of a relevant central bank and where that transaction is entered into in performance of monetary, foreign exchange and financial stability policy which that member is legally empowered to pursue and where that member has given prior notification to its counterparty that the transaction is exempt.

7.Paragraph 6 shall not apply in respect of transactions entered into by any member of a relevant central bank in performance of their investment operations.

8.The Minister may make technical standards specifying the monetary, foreign exchange and financial stability policy operations and the types of transactions to which paragraphs 6 and 7 apply.

9.In paragraphs 6 and 7 "relevant central bank" means–

(a) the European System of Central Banks; and

(b) any other central bank that the Minister may by regulations designate .

Article 2

Definitions

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

(1) “investment firm” means a legal person whose regular occupation or business is the provision or performance of investment services and activities on a professional basis;

(2) “investment services and activities” means–

(a) any service in relation to financial instruments which is provided to third parties which is specified by any of paragraphs 48 to 56 of Schedule 2 to the Act; or

(b) any activity in relation to financial instruments which is specified by any such paragraph;

(3) “ancillary services” means any of the services listed in paragraph 45(2) of Schedule 2 to the Act;

(4) “execution of orders on behalf of clients”–

(a) means acting to conclude agreements to buy or sell one or more financial instruments on behalf of clients; and

(b) includes the conclusion of agreements to sell financial instruments issued by an investment firm or a credit institution at the moment of their issuance;

(5) “dealing on own account” means trading against proprietary capital resulting in the conclusion of transactions in one or more financial instruments;

(6) “market maker” means a person who holds out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against that person's proprietary capital at prices defined by that person;

(7) “client” means any individual or legal person to whom an investment firm provides investment or ancillary services;

(8) “professional client” means a client who meets the criteria in Schedule 1 to the Investment Services Regulations;

(9) “financial instrument” means a financial instrument of a kind specified by paragraph 46 of Schedule 2 to the Act;

(10) “market operator” means a person who manages or operates the business of a regulated market, and may be the regulated market itself;

(11) “multilateral system” means any system or facility in which multiple third party buying and selling trading interests in financial instruments are able to interact in the system;

(12) “systematic internaliser” has the meaning given in paragraph 81(1) of Schedule 2 to the Act;

(13) "regulated market" means a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third party buying and selling interests in financial instruments (in the system and in accordance with its non-discretionary rules) in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules or systems, and which–

(a) in Gibraltar, is authorised and functions regularly in accordance with provisions contained in or

made under the Act (a "Gibraltar regulated market");

(b) in the United Kingdom, is a UK regulated market within the meaning of Article 2.1(13A) of Regulation (EU) No 600/2014 as it applies in the United Kingdom (a "UK regulated market"); and

(c) in an EU State, is authorised and functions regularly in accordance with Title III of Directive 2014/65/EU (an "EU regulated market");

(14)
"multilateral trading facility" or "MTF" means a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments (in the system and in accordance with non-discretionary rules) in a way which results in a contract and–

(a) in Gibraltar, complies with provisions contained in or made under the Act (a "Gibraltar MTF");

(b) in the United Kingdom, complies with the requirements of Article 2.1(14A)(b) of Regulation (EU) No 600/2014 as it applies in the United Kingdom (a "UK MTF"); or

(c) in an EU State, complies with Title III of Directive 2014/65/EU (an "EU MTF");

(15)
"organised trading facility" or "OTF" means a multilateral system which is not a regulated market or an MTF and in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that that results in a contract and–

(a) in Gibraltar, complies with provisions contained in or made under the Act (a "Gibraltar OTF");

(b) in the United Kingdom, complies with the requirements of Article 2.1(15A)(b) of Regulation (EU) No 600/2014 as it applies in the United Kingdom (a "UK OTF"); or

(c) in an EU State, complies with the requirements of Title III of Directive 2014/65/EU (an "EU OTF");

(16)
"trading venue" means a regulated market, an MTF or an OTF, and–

(a) "Gibraltar trading venue" means a Gibraltar regulated market, Gibraltar MTF or Gibraltar OTF;

(b) "UK trading venue" means a UK regulated market, UK MTF or UK OTF;

(c) "EU trading venue" means an EU regulated market, EU MTF or EU OTF;

(17)
'liquid market' means:

(a) for the purposes of Articles 9, 11, and 18, a market for a financial instrument or a class of financial instruments, where there are ready and willing buyers and sellers on a continuous basis, and where the market is assessed in accordance with the following criteria, taking into consideration the specific market structures of the particular financial instrument or of the particular class of financial instruments:

(i) the average frequency and size of transactions over a range of market conditions, having regard to the nature and life cycle of products within the class of financial instrument;

(ii) the number and type of market participants, including the ratio of market participants to traded financial instruments in a particular product;

(iii) the average size of spreads, where available;

(b) for the purposes of Articles 4, 5 and 14, a market for a financial instrument that is traded daily where the market is assessed according to the following criteria:

(i) the free float;

(ii) the average daily number of transactions in those financial instruments;

(iii) the average daily turnover for those financial instruments;

(18) "competent authority" means–

(a) in Gibraltar, the GFSC; and

(b) in another country or territory, the authority which exercises functions equivalent to those exercised by the GFSC under the Act and this Regulation;

(19) "credit institution" means an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account;

(20) "branch" means a place of business which–

(a) is a part of an investment firm (other than its head office);

(b) has no legal personality; and

(c) provides investment services or performs investment activities and any ancillary services for which the investment firm has Part 7 permission or is authorised in its home jurisdiction;

(21) "close links" has the meaning given in regulation 2(1) of the Investment Services Regulations;

(22) "management body"–

(a) means the board of directors, committee of management or other body of an investment firm, market operator or data reporting services provider which is empowered to set the strategy, objectives and overall direction of the firm, operator or provider, and which oversees and monitors management decision-making; and

(b) includes persons who effectively direct the business of the firm, operator or provider;

(23) "structured deposit" has the meaning given in paragraph 77(2) of Schedule 2 to the Act;

(24) "transferable securities" means those classes of securities which are negotiable on the capital market, with the exception of instruments of payment, such as–

(a) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares;

(b) bonds or other forms of securitised debt, including depositary receipts in respect of such securities; or

(c) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or

yields, commodities or other indices or measures;

(25) "depositary receipts" means those securities which are negotiable on the capital market and which represent ownership of the securities of a non-domiciled issuer while being able to be admitted to trading on a regulated market and traded independently of the securities of the non-domiciled issuer;

(25A) "money market instruments" means those classes of instruments which are normally dealt with on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment;

(26) "exchange-traded fund" or "ETF" means a fund of which at least one unit or share class is traded throughout the day on at least one trading venue and with at least one market maker which takes action to ensure that the price of its units or shares on the trading venue does not vary significantly from its net asset value and, where applicable, from its indicative net asset value;

(27) 'certificates' means those securities which are negotiable on the capital market and which in case of a repayment of investment by the issuer are ranked above shares but below unsecured bond instruments and other similar instruments;

(28) 'structured finance products' means those securities created to securitise and transfer credit risk associated with a pool of financial assets entitling the security holder to receive regular payments that depend on the cash flow from the underlying assets;

(29) "derivatives" means those financial instruments defined in point (24)(c) or referred to in paragraph 46(4) to (10) of Schedule 2 to the Act;

(30) "commodity derivatives" means those financial instruments defined in point (24)(c)–

(a) which relate to a commodity or an underlying referred to in paragraph 46(10) of Schedule 2 to the Act; or

(b) which are referred to in paragraph 46(5), (6), (7) or (10) of that Schedule;

(31) 'CCP' means a CCP within the meaning of Article 2(1) of EMIR;

(32) 'exchange-traded derivative' means a derivative that is traded on a regulated market or on a third-country market considered to be equivalent to a regulated market in accordance with Article 28 of this Regulation, and as such does not fall within the definition of an OTC derivative as defined in Article 2(7) of EMIR;

(33) 'actionable indication of interest' means a message from one member or participant to another within a trading system in relation to available trading interest that contains all necessary information to agree on a trade;

(34) "approved publication arrangement" or "APA" means a person with Part 7 permission to carry on the activity specified by paragraph 87(1) of Schedule 2 to the Act (providing the service of publishing trade reports on behalf of investment firms);

(35) "consolidated tape provider" or "CTP" means a person with Part 7 permission to carry on the activity specified by paragraph 88(1) of Schedule 2 to the Act (providing the service of collecting trade reports for financial instruments listed in Articles 6, 7, 10, 12, 13, 20 and 21 of this Regulation from regulated markets, MTFs, OTFs and APAs and consolidating them into a continuous electronic live data stream providing price and volume data);

(36) "approved reporting mechanism" or "ARM" means a person with Part 7 permission to carry on the activity specified by paragraph 89(1) of Schedule 2 to the Act (providing the service of reporting details of transactions to competent authorities on behalf of investment firms;

(37) *Omitted*

(38) *Omitted*

(39) *Omitted*

(40) ‘interoperability arrangement’ means an interoperability arrangement as defined in Article 2(12) of EMIR;

(41) “third-country financial institution” means an entity, the head office of which is established in a third country, that is authorised or licensed under the law of that third country to carry out any of the services or activities that, in Gibraltar, are regulated in accordance with the Act under–

(a) the Investment Services Regulations;

(b) the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020;

(c) the Financial Services (Insurance Companies) Regulations 2020;

(d) the Financial Services (UCITS) Regulations 2020;

(e) the Financial Services (Alternative Investment Fund Managers) Regulations 2020; or

(f) the Financial Services (Occupational Pensions Institutions) Regulations 2020;

(42) “third country firm” means a firm–

(a) which is a credit institution providing investment services or performing investment activities or an investment firm; and

(b) whose registered office or (if it has no registered office) its head office is located in a third country;

(43) ‘wholesale energy product’ means wholesale energy products as defined in Article 2(4) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council;

(44) ‘agricultural commodity derivatives’ means derivative contracts relating to products listed in Article 1 of, and Annex I, Parts I to XX and XXIV/1 to, Regulation (EU) No 1308/2013 of the European Parliament and of the Council;

(45) ‘liquidity fragmentation’ means a situation in which:

(a) participants in a trading venue are unable to conclude a transaction with one or more other participants in that venue because of the absence of clearing arrangements to which all participants have access; or

(b) a clearing member or its clients would be forced to hold their positions in a financial instrument in more than one CCP which would limit the potential for the netting of financial exposures;

(46) “sovereign debt” means a debt instrument issued by a sovereign issuer (within the meaning of paragraph 69(1) of Schedule 2 to the Act);

(47) ‘portfolio compression’ means a risk reduction service in which two or more counterparties wholly or partially terminate some or all of the derivatives submitted by those counterparties for inclusion in the portfolio compression and replace the terminated derivatives with another derivative whose combined notional value is less than the combined notional value of the terminated derivatives;

(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.

(51) “Act” means the Financial Services Act 2019;

(52) “EMIR” means Regulation (EU) No 648/2012, as it forms part of the law of Gibraltar;

(53) “GFSC” means the Gibraltar Financial Services Commission within the meaning of section 21 of the Act;

(54) “Investment Services Regulations” means the Financial Services (Investment Services) Regulations 2020;

(55) “Minister” means the Minister with responsibility for financial services;

(56) “Part 7 permission” means permission under Part 7 of the Act;

(57) unless the context otherwise requires, references in this Regulation–

(a) to a trading venue are to a Gibraltar trading venue;

(b) to a regulated market are to a Gibraltar regulated market;

(c) to an MTF are to a Gibraltar MTF;

(d) to an OTF are to a Gibraltar OTF; and

(e) to an EU regulated market, EU MTF or EU OTF include EU regulated markets, MTFs and OTFs in EEA countries;

(58) unless the context otherwise requires, references in this Regulation to a “third country” (including in expressions including the words “third country”) are to be read as references to a country or territory other than Gibraltar;

2.The Minister may by regulations specify certain technical elements of the definitions laid down in paragraph 1 to adjust them to market developments.

TITLE II

TRANSPARENCY FOR TRADING VENUES

CHAPTER 1

Transparency for equity instruments

Article 3

Pre-trade transparency requirements for trading venues in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments

1.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 shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on a trading venue. That requirement shall also apply to actionable indication of interests. Market operators and investment firms operating a trading venue shall make that information available to the public on a continuous basis during normal trading hours.

2.The transparency requirements referred to in paragraph 1 shall be calibrated for different types of trading systems including order-book, quote-driven, hybrid and periodic auction trading systems.

3.Market operators and investment firms operating a trading venue shall give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements they employ for making public the information referred to in paragraph 1 to investment firms which are obliged to publish their quotes in shares, depositary receipts, ETFs, certificates and other similar financial instruments pursuant to Article 14.

Article 4

Waivers for equity instruments

1.The GFSC waive the obligation for market operators and investment firms operating a trading venue to make public the information referred to in Article 3(1) for:

(a) systems matching orders based on a trading methodology by which the price of the financial instrument referred to in Article 3(1) is derived from the trading venue where that financial instrument was first admitted to trading or the most relevant market in terms of liquidity, where that reference price is widely published and is regarded by market participants as a reliable reference price. The continued use of that waiver shall be subject to the conditions set out in Article 5.

(b) systems that formalise negotiated transactions which are:

  (i) made within the current volume weighted spread reflected on the order book or the quotes of the market makers of the trading venue operating that system, subject to the conditions set out in Article 5;

  (ii) in an illiquid share, depositary receipt, ETF, certificate or other similar financial instrument that does not fall within the meaning of a liquid market, and are dealt within a percentage of a suitable reference price, being a percentage and a reference price set in advance by the system operator; or

  (iii) subject to conditions other than the current market price of that financial instrument;

(c) orders that are large in scale compared with normal market size;

(d) orders held in an order management facility of the trading venue pending disclosure.

2.The reference price referred to in paragraph 1(a) shall be established by obtaining:

(a) the midpoint within the current bid and offer prices of the trading venue where that financial instrument was first admitted to trading or the most relevant market in terms of liquidity; or

(b) when the price referred to in point (a) is not available, the opening or closing price of the relevant trading session.

Orders shall only reference the price referred to in point (b) outside the continuous trading phase of the relevant trading session.

3.Where trading venues operate systems which formalise negotiated transactions in accordance with paragraph 1(b)(i):

(a) those transactions shall be carried out in accordance with the rules of the trading venue;

(b) the trading venue shall ensure that arrangements, systems and procedures are in place to prevent and detect market abuse or attempted market abuse in relation to such negotiated transactions in accordance with Article 16 of the Market Abuse Regulation;

(c) the trading venue shall establish, maintain and implement systems to detect any attempt to use the waiver to circumvent other requirements of this Regulation, the Act or the Investment Services Regulations and to report attempts to the GFSC.

Where the GFSC grants a waiver in accordance with paragraph 1(b)(i) or (iii), the GFSC shall monitor the use of the waiver by the trading venue to ensure that the conditions for use of the waiver are respected.

4.*Omitted*.

5.The GFSC may withdraw a waiver granted under paragraph 1 as specified under paragraph 6,if it observes that the waiver is being used in a way that deviates from its original purpose or if it believes that the waiver is being used to circumvent the requirements established in this Article.

6.The Minister may make technical standards specifying–

(a) the range of bid and offer prices or designated market-maker quotes, and the depth of trading interest at those prices, to be made public for each class of financial instrument concerned in accordance with Article 3(1), taking into account the necessary calibration for different types of trading systems as referred to in Article 3(2);

(b) the most relevant market in terms of liquidity of a financial instrument in accordance with paragraph 1(a);

(c) the specific characteristics of a negotiated transaction in relation to the different ways the member or participant of a trading venue can execute such a transaction;

(d) the negotiated transactions that do not contribute to price formation which avail of the waiver provided for under paragraph 1(b)(iii);

(e) the size of orders that are large in scale and the type and the minimum size of orders held in an order management facility of a trading venue pending disclosure for which pre-trade disclosure may be waived under paragraph 1 for each class of financial instrument concerned;

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 5

Volume Cap Mechanism

1.In order to ensure that the use of the waivers provided for in Article 4(1)(a) and 4(1)(b)(i) does not unduly harm price formation, trading under those waivers is restricted as follows:

(a) the percentage of trading in a financial instrument carried out on a trading venue under those waivers shall be limited to 4 % of the total volume of trading in that financial instrument on all trading venues across the relevant area over the previous 12 months.

(b) overall trading in the relevant area in a financial instrument carried out under those waivers shall be limited to 8 % of the total volume of trading in that financial instrument on all trading venues across the relevant area over the previous 12 months.

That volume cap mechanism shall not apply to negotiated transactions which are in a share, depositary receipt, ETF, certificate or other similar financial instrument for which there is not a liquid market as determined in accordance with Article 2(1)(17)(b) and are dealt within a percentage of a suitable reference price as referred to in Article 4(1)(b)(ii), or to negotiated transactions that are subject to conditions other than the current market price of that financial instrument as referred to in Article 4(1)(b)(iii).

2.When the percentage of trading in a financial instrument carried out on a trading venue under the waivers appears to the GFSC to have exceeded the limit referred to in paragraph 1(a), the GFSC shall within two working days suspend their use on that venue in that financial instrument based on the data published by the GFSC referred to in paragraph 4, for a period of six months.

3.When the percentage of trading in a financial instrument carried out on all trading venues across the relevant area under those waivers appears to the GFSC to have exceeded the limit referred to in paragraph 1(b), the GFSC shall within two working days suspend the use of those waivers in Gibraltar for a period of six months.

3A. Paragraphs 2 and 3 do not apply during the period ("the transitional period")–

(a) of four years beginning with IP completion day; or

(b) ending on the day directed by the Minister, by notice in the Gazette, where this is earlier.

3B. During the transitional period, the GFSC may suspend the use of a waiver provided for in Article 4(1)(a) and 4(1)(b)(i) for a period of up to six months to ensure that its use does not unduly harm price formation if the GFSC considers it necessary to do so to advance the GFSC's market confidence objective under section 23(2)(a) of the Act.

3C. The GFSC may renew a suspension imposed under paragraph 3B at the end of the six-month period referred to in that paragraph if it considers that the conditions which led it to impose a suspension still exist at that date.

3D. In deciding whether to suspend the use of a waiver under paragraph 3B, or to renew a suspension under paragraph 3C, the GFSC–

(a) must also take into account–

  (i) its consumer protection objective and market confidence objective under section 23(2)(a) and (e) of the Act;

  (ii) the thresholds applying under Article 5 of Regulation (EU) No 600/2014 as it has effect in EU law; and

  (iii) the most recent information published by ESMA under Article 5(4), 5(5) and 5(6) of that Regulation before IP completion day;

(b) may take into account—

  (i) any relevant information produced under Article 3, or under equivalent pre-trading transparency requirements in other jurisdictions, about the use of the waiver in Gibraltar, or under equivalent waiver arrangements in any other country or territory, in relation to the financial instrument; and

(ii) any relevant information available in relation to trading volumes in the financial instrument concerned, whether in Gibraltar or in any other country or territory.

3E.In deciding whether to issue a direction terminating the transitional period, the Minister must take into account whether the GFSC is able to carry out its functions relating to transparency under this Regulation and its implementing measures.

4.The Minister may direct the GFSC to publish within ten working days of the end of each calendar month, the total volume of trading in the relevant area per financial instrument in the previous 12 months, the percentage of trading in a financial instrument carried out across the relevant area under those waivers and on each trading venue in the previous 12 months, and the methodology that is used to derive those percentages.

5.In the event that a report published in accordance with paragraph 4 identifies any trading venue where trading in any financial instrument carried out under the waivers has exceeded 3,75 % of the total trading in the relevant area in that financial instrument, based on the previous 12 months' trading, the GFSC shall publish an additional report within ten working days of the 15th day of the calendar month in which the report referred to in paragraph 4 is published. That report shall contain the information specified in paragraph 4 in respect of those financial instruments where 3,75 % has been exceeded.

6.In the event that a report published in accordance with paragraph 4 identifies that overall trading in the relevant area in any financial instrument carried out under the waivers has exceeded 7,75 % of the total trading in the relevant area in the financial instrument, based on the previous 12 months' trading, the GFSC shall publish an additional report within ten working days of the 15th on the day of the calendar month in which the report referred to in paragraph 4 is published. That report shall contain the information specified in paragraph 4 in respect of those financial instruments where 7,75 % has been exceeded.

7.In order to ensure a reliable basis for monitoring the trading taking place under those waivers and for determining whether the limits referred to in paragraph 1 have been exceeded, operators of trading venues shall be obligated to have in place systems and procedures to:

(a) enable the identification of all trades which have taken place on its venue under those waivers; and

(b) ensure it does not exceed the permitted percentage of trading allowed under those waivers as referred to in paragraph 1(a) under any circumstances.

8. Without limiting Article 4(5), the GFSC may suspend the use of those waivers from the date of application of this Regulation and thereafter on a monthly basis.

9.The Minister may make technical standards specifying the method (including the flagging of transactions) by which the GFSC is to collate, calculate and publish the transaction data, as outlined in paragraph 4, in order to provide an accurate measurement of the total volume of trading per financial instrument and the percentages of trading that use those waivers across the relevant area and per trading venue.

10.For the purposes of this Article, "the relevant area" consists of Gibraltar and those countries or territories specified in regulations made by the Minister in accordance with Article 50(2).

Article 6

Post-trade transparency requirements for trading venues in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments

1.Market operators and investment firms operating a trading venue shall make public the price, volume and time of the transactions executed in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on that trading venue. Market operators and investment firms operating a trading venue shall make details of all such transactions public as close to real-time as is technically possible.

2.Market operators and investment firms operating a trading venue shall give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements they employ for making public the information under paragraph 1 of this Article to investment firms which are obliged to publish the details of their transactions in shares, depositary receipts, ETFs, certificates and other similar financial instruments pursuant to Article 20.

Article 7

Authorisation of deferred publication

1.The GFSC may authorise market operators and investment firms operating a trading venue to provide for deferred publication of the details of transactions based on their type or size.

In particular, the GFSC may authorise the deferred publication in respect of transactions that are large in scale compared with the normal market size for that share, depositary receipt, ETF, certificate or other similar financial instrument or that class of share, depositary receipt, ETF, certificate or other similar financial instrument.

Market operators and investment firms operating a trading venue shall obtain the GFSC's prior approval of proposed arrangements for deferred trade-publication, and shall clearly disclose those arrangements to market participants and the public. The GFSC shall monitor the application of those arrangements for deferred trade-publication.

2.The Minister may make technical standards specifying the following in such a way as to enable the publication of information required under regulation 9 of the Financial Services (Data Reporting Services Providers) Regulations 2020:

(a) the details of transactions that investment firms, including systematic internalisers and market operators and investment firms operating a trading venue shall make available to the public for each class of financial instrument concerned in accordance with Article 6(1), including identifiers for the different types of transactions published under Article 6(1) and Article 20, distinguishing between those determined by factors linked primarily to the valuation of the financial instruments and those determined by other factors;

(b) the time limit that would be deemed in compliance with the obligation to publish as close to real time as possible including when trades are executed outside ordinary trading hours.

(c) the conditions for authorising investment firms, including systematic internalisers and market operators and investment firms operating a trading venue to provide for deferred publication of the details of transactions for each class of financial instruments concerned in accordance with paragraph 1 of this Article and with Article 20(1);

(d) the criteria to be applied when deciding the transactions for which, due to their size or the type, including liquidity profile of the share, depositary receipt, ETF, certificate or other similar financial instrument involved, deferred publication is allowed for each class of financial instrument concerned.

CHAPTER 2

Transparency for non-equity instruments

Article 8

Pre-trade transparency requirements for trading venues in respect of bonds, structured finance products, emission allowances and derivatives

1.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. That requirement shall also apply to actionable indication of interests. Market operators and investment firms operating a trading venue shall make that information available to the public on a continuous basis during normal trading hours. That publication obligation does not apply to those derivative transactions of non-financial counterparties which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the non-financial counterparty or of that group.

2.The transparency requirements referred to in paragraph 1 shall be calibrated for different types of trading systems, including order-book, quote-driven, hybrid, periodic auction trading and voice trading systems.

3.Market operators and investment firms operating a trading venue shall give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements they employ for making public the information referred to in paragraph 1 to investment firms which are obliged to publish their quotes in bonds, structured finance products, emission allowances and derivatives pursuant to Article 18.

4.Market operators and investment firms operating a trading venue shall, where a waiver is granted in accordance with Article 9(1)(b), make public at least indicative pre-trade bid and offer prices which are close to the price of the trading interests advertised through their systems in bonds, structured finance products, emission allowances and derivatives traded on a trading venue. Market operators and investment firms operating a trading venue shall make that information available to the public through appropriate electronic means on a continuous basis during normal trading hours. Those arrangements shall ensure that information is provided on reasonable commercial terms and on a non-discriminatory basis.

Article 9

Waivers for non-equity instruments

1.The GFSC may waive the obligation for market operators and investment firms operating a trading venue to make public the information referred to in Article 8(1) for:

(a) orders that are large in scale compared with normal market size and orders held in an order management facility of the trading venue pending disclosure;

(b) actionable indications of interest in request-for-quote and voice trading systems that are above a size specific to the financial instrument, which would expose liquidity providers to undue risk and takes into account whether the relevant market participants are retail or wholesale investors;

(c) derivatives which are not subject to the trading obligation specified in Article 28 and other financial instruments for which there is not a liquid market;

(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.

2.*Omitted*.

2a. The GFSC may waive the obligation referred to in Article 8(1) for each individual component of a package order.

3.The GFSC may withdraw a waiver granted under paragraph 1 if it observes that the waiver is being used in a way that deviates from its original purpose or if it considers that the waiver is being used to circumvent the requirements established in this Article.

4.As the competent authority responsible for supervising one or more trading venues on which a class of bond, structured finance product, emission allowance or derivative is traded, the GFSC may temporarily suspend the obligations referred to in Article 8 where the liquidity of that class of financial instrument falls below a specified threshold. The specified threshold must be defined on the basis of objective criteria specific to the market for the financial instrument concerned. Notification of such temporary suspension must be published on the GFSC's website.

The temporary suspension shall be valid for an initial period not exceeding three months from the date of its publication on the GFSC's website. Such a suspension may be renewed for further periods not exceeding three months at a time if the grounds for the temporary suspension continue to be applicable. Where the temporary suspension is not renewed after that three-month period, it shall automatically lapse.

5.The Minister may make technical standards specifying:

(a) the parameters and methods for calculating the threshold of liquidity referred to in paragraph 4 in relation to the financial instrument, which must be set so that when the threshold is reached, it represents a significant decline in liquidity across all venues within the relevant area for the financial instrument concerned based on the criteria used under Article 2(1)(17);

(b) the range of bid and offer prices or quotes and the depth of trading interests at those prices, or indicative pre-trade bid and offer prices which are close to the price of the trading interest, to be made public for each class of financial instrument concerned in accordance with Article 8(1) and (4), taking into account the necessary calibration for different types of trading systems as referred to in Article 8(2);

(c) the size of orders that are large in scale and the type and the minimum size of orders held in an order management facility pending disclosure for which pre-trade disclosure may be waived under paragraph 1 for each class of financial instrument concerned;

(d) the size specific to the financial instrument referred to in paragraph 1(b) and the definition of request-for-quote and voice trading systems for which pre-trade disclosure may be waived under paragraph 1, and in specifying the size specific to the financial instrument that would expose liquidity providers to undue risk and takes into account whether the relevant market participants are retail or wholesale investors, the Minister must take the following factors into account:

  (i) whether, at such sizes, liquidity providers would be able to hedge their risks;

  (ii) where a market in the financial instrument, or a class of financial instruments, consists in part of retail investors, the average value of transactions undertaken by those investors;

(e) the financial instruments or the classes of financial instruments for which there is not a liquid market where pre-trade disclosure may be waived under paragraph 1;

(f) in order to ensure the consistent application of paragraph (1)(e)(i) and (ii), the methodology for determining those package orders for which there is a liquid market, including the assessment of whether packages are standardised and frequently traded when determining whether there is a liquid market for a package order as a whole.

6. For the purposes of this Article, "the relevant area" consists of Gibraltar and those countries or territories specified in regulations made by the Minister in accordance with Article 50(2).

Article 10

Post-trade transparency requirements for trading venues in respect of bonds, structured finance products, emission allowances and derivatives

1.Market operators and investment firms operating a trading venue shall make public the price, volume and time of the transactions executed in respect of bonds, structured finance products, emission allowances and derivatives traded on a trading venue. Market operators and investment firms operating a trading venue shall

make details of all such transactions public as close to real-time as is technically possible.

2.Market operators and investment firms operating a trading venue shall give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements they employ for making public the information under paragraph 1 to investment firms which are obliged to publish the details of their transactions in bonds, structured finance products, emission allowances and derivatives pursuant to Article 21.

Article 11

Authorisation of deferred publication

1.The GFSC shall be able to authorise market operators and investment firms operating a trading venue to provide for deferred publication of the details of transactions based on the size or type of the transaction.

In particular, the GFSC may authorise the deferred publication in respect of transactions that:

(a) are large in scale compared with the normal market size for that bond, structured finance product, emission allowance or derivative traded on a trading venue, or for that class of bond, structured finance product, emission allowance or derivative traded on a trading venue; or

(b) are related to a bond, structured finance product, emission allowance or derivative traded on a trading venue, or a class of bond, structured finance product, emission allowance or derivative traded on a trading venue for which there is not a liquid market;

(c) are above a size specific to that bond, structured finance product, emission allowance or derivative traded on a trading venue, or that class of bond, structured finance product, emission allowance or derivative traded on a trading venue, which would expose liquidity providers to undue risk and takes into account whether the relevant market participants are retail or wholesale investors.

Market operators and investment firms operating a trading venue shall obtain the GFSC's prior approval of proposed arrangements for deferred trade-publication, and shall clearly disclose those arrangements to market participants and the public.

2.As the competent authority responsible for supervising one or more trading venues on which a class of bond, structured finance product, emission allowance or derivative is traded, the GFSC may temporarily suspend the obligations referred to in Article 10 where the liquidity of that class of financial instrument falls below the threshold determined in accordance with the methodology as referred to in Article 9(5)(a). That threshold must be defined on the basis of objective criteria specific to the market for the financial instrument concerned. Notification of such temporary suspension must be published on the GFSC's website.

The temporary suspension shall be valid for an initial period not exceeding three months from the date of its publication on the GFSC's website. Such a suspension may be renewed for further periods not exceeding three months at a time if the grounds for the temporary suspension continue to be applicable. Where the temporary suspension is not renewed after that three-month period, it shall automatically lapse.

3.The GFSC may, in conjunction with an authorisation of deferred publication:

(a) request the publication of limited details of a transaction or details of several transactions in an aggregated form, or a combination thereof, during the time period of deferral;

(b) allow the omission of the publication of the volume of an individual transaction during an extended time period of deferral;

(c) regarding non-equity instruments that are not sovereign debt, allow the publication of several transactions in an aggregated form during an extended time period of deferral;

(d) regarding sovereign debt instruments, allow the publication of several transactions in an aggregated form for an indefinite period of time.

In relation to sovereign debt instruments, points (b) and (d) may be used either separately or consecutively whereby once the volume omission extended period lapses, the volumes could then be published in aggregated form.

In relation to all other financial instruments, when the deferral time period lapses, the outstanding details of the transaction and all the details of the transactions on an individual basis shall be published.

4.The Minister may make technical standards specifying the following in such a way as to enable the publication of information required under regulation 9 of the Financial Services (Data Reporting Services Providers) Regulations 2020:

(a) the details of transactions that investment firms, including systematic internalisers, and market operators and investment firms operating a trading venue shall make available to the public for each class of financial instrument concerned in accordance with Article 10(1), including identifiers for the different types of transactions published under Article 10(1) and Article 21(1), distinguishing between those determined by factors linked primarily to the valuation of the financial instruments and those determined by other factors;

(b) the time limit that would be deemed in compliance with the obligation to publish as close to real time as possible including when trades are executed outside ordinary trading hours;

(c) the conditions for authorising investment firms, including systematic internalisers, and market operators and investment firms operating a trading venue, to provide for deferred publication of the details of transactions for each class of financial instrument concerned in accordance with paragraph 1 of this Article and with Article 21(4);

(d) the criteria to be applied when determining the size or type of a transaction for which deferred publication and publication of limited details of a transaction, or publication of details of several transactions in an aggregated form, or omission of the publication of the volume of a transaction with particular reference to allowing an extended length of time of deferral for certain financial instruments depending on their liquidity, is allowed under paragraph 3.

CHAPTER 3

Obligation to offer trade data on a separate and reasonable commercial basis

Article 12

Obligation to make pre-trade and post-trade data available separately

1.Market operators and investment firms operating a trading venue shall make the information published in accordance with Articles 3, 4 and 6 to 11 available to the public by offering pre-trade and post-trade transparency data separately.

2.The Minister may make technical standards specifying the offering of pre-trade and post-trade transparency data, including the level of disaggregation of the data to be made available to the public as referred to in paragraph 1.

Article 13

Obligation to make pre-trade and post-trade data available on a reasonable commercial basis

1.Market operators and investment firms operating a trading venue shall make the information published in accordance with Articles 3, 4 and 6 to 11 available to the public on a reasonable commercial basis and ensure non-discriminatory access to the information. Such information shall be made available free of charge 15 minutes after publication.

2.The Minister may make technical standards specifying what constitutes a reasonable commercial basis to make information public as referred to in paragraph 1.

TITLE III

TRANSPARENCY FOR SYSTEMATIC INTERNALISERS AND INVESTMENT FIRMS TRADING OTC AND TICK SIZE REGIME FOR SYSTEMATIC INTERNALISERS

Article 14

Obligation for systematic internalisers to make public firm quotes in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments

1.Investment firms shall make public firm quotes in respect of those shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on a trading venue for which they are systematic internalisers and for which there is a liquid market.

Where there is not a liquid market for the financial instruments referred to in the first subparagraph, systematic internalisers shall disclose quotes to their clients upon request.

2.This Article and Articles 15, 16 and 17 shall apply to systematic internalisers when they deal in sizes up to standard market size. Systematic internalisers shall not be subject to this Article and Articles 15, 16 and 17 when they deal in sizes above standard market size.

3.Systematic internalisers may decide the size or sizes at which they will quote. The minimum quote size shall be at least the equivalent of 10 % of the standard market size of a share, depositary receipt, ETF, certificate or other similar financial instrument traded on a trading venue. For a particular share, depositary receipt, ETF, certificate or other similar financial instrument traded on a trading venue each quote shall include a firm bid and offer price or prices for a size or sizes which could be up to standard market size for the class of shares, depositary receipts, ETFs, certificates or other similar financial instruments to which the financial instrument belongs. The price or prices shall reflect the prevailing market conditions for that share, depositary receipt, ETF, certificate or other similar financial instrument.

4.Shares, depositary receipts, ETFs, certificates and other similar financial instruments shall be grouped in classes on the basis of the arithmetic average value of the orders executed in the market for that financial instrument. The standard market size for each class of shares, depositary receipts, ETFs, certificates and other similar financial instruments shall be a size representative of the arithmetic average value of the orders executed in the market for the financial instruments included in each class.

5.The market for each share, depositary receipt, ETF, certificate or other similar financial instrument shall be comprised of all orders executed in the relevant area in respect of that financial instrument excluding those that are large in scale compared to normal market size.

5A. For the purposes of this Article, “the relevant area” consists of Gibraltar and those countries or territories specified in regulations made by the Minister in accordance with Article 50(2).

6.The GFSC must determine at least annually, on the basis of the arithmetic average value of the orders executed in the market in respect of each share, depositary receipt, ETF, certificate and other similar financial instrument, the class to which it belongs. That information shall be made public to all market participants and published by the GFSC on its website.

7.In order to ensure the efficient valuation of shares, depositary receipts, ETFs, certificates and other similar financial instruments and maximise the possibility of investment firms to obtain the best deal for their clients, the Minister may make technical standards further specifying further the arrangements for the publication of a firm quote as referred to in paragraph 1, the determination of whether prices reflect prevailing market conditions as referred to in paragraph 3, and of the standard market size as referred to in paragraphs 2 and 4.

Article 15

Execution of client orders

1.Systematic internalisers shall make public their quotes on a regular and continuous basis during normal trading hours. They may update their quotes at any time. They shall be allowed, under exceptional market conditions, to withdraw their quotes.

Firms that meet the definition of systematic internaliser must notify the GFSC in the form and manner that it directs. The GFSC must publish a list of the systematic internalisers in Gibraltar for which it has received notifications.

The quotes shall be made public in a manner which is easily accessible to other market participants on a reasonable commercial basis.

2.Systematic internalisers shall, while complying with regulation 42 of the Investment Services Regulations, execute the orders they receive from their clients in relation to the shares, depositary receipts, ETFs, certificates and other similar financial instruments for which they are systematic internalisers at the quoted prices at the time of reception of the order.

However, in justified cases, they may execute those orders at a better price provided that the price falls within a public range close to market conditions.

3.Systematic internalisers may execute orders they receive from their professional clients at prices different than their quoted ones without having to comply with the requirements established in paragraph 2, in respect of transactions where execution in several securities is part of one transaction or in respect of orders that are subject to conditions other than the current market price.

4.Where a systematic internaliser quoting only one quote or whose highest quote is lower than the standard market size receives an order from a client of a size bigger than its quotation size, but lower than the standard market size, it may decide to execute that part of the order which exceeds its quotation size, provided that it is executed at the quoted price, except where otherwise permitted under the conditions laid down in paragraphs 2 and 3. Where the systematic internaliser is quoting in different sizes and receives an order between those sizes, which it chooses to execute, it shall execute the order at one of the quoted prices in compliance with regulation 43 of the Investment Services Regulations, except where otherwise permitted under the conditions of paragraphs 2 and 3 of this Article.

5.The Minister may make technical standards specifying what constitutes a reasonable commercial basis to make quotes public as referred to in paragraph 1.

Article 16

Obligations of competent authority

The GFSC must check the following:

(a) that investment firms regularly update bid and offer prices published in accordance with Article 14 and maintain prices which reflect the prevailing market conditions;

(b) that investment firms comply with the conditions for price improvement laid down in Article 15(2).

Article 17

Access to quotes

1.Systematic internalisers shall be allowed to decide, on the basis of their commercial policy and in an objective non-discriminatory way, the clients to whom they give access to their quotes. To that end there shall be clear standards for governing access to their quotes. Systematic internalisers may refuse to enter into or discontinue business relationships with clients on the basis of commercial considerations such as the client credit status, the counterparty risk and the final settlement of the transaction.

2.In order to limit the risk of exposure to multiple transactions from the same client, systematic internalisers shall be allowed to limit in a non-discriminatory way the number of transactions from the same client which they undertake to enter at the published conditions. They may, in a non-discriminatory way and in accordance with regulation 43 of the Investment Services Regulations, limit the total number of transactions from different clients at the same time provided that this is allowable only where the number and/or volume of orders sought by clients considerably exceeds the norm.

3.In order to ensure the efficient valuation of shares, depositary receipts, ETFs, certificates and other similar financial instruments and maximise the possibility for investment firms to obtain the best deal for their clients, the Minister may by regulations specify:

(a) the criteria specifying when a quote is published on a regular and continuous basis and is easily accessible as referred to in Article 15(1) as well as the means by which investment firms may comply with their obligation to make public their quotes, which shall include the following possibilities:

  (i) through the facilities of any regulated market which has admitted the financial instrument in question to trading;

  (ii) through an APA;

  (iii) through proprietary arrangements;

(b) the criteria specifying those transactions where execution in several securities is part of one transaction or those orders that are subject to conditions other than current market price as referred to in Article 15(3);

(c) the criteria specifying what can be considered as exceptional market conditions that allow for the withdrawal of quotes as well as the conditions for updating quotes as referred to in Article 15(1);

(d) the criteria specifying when the number and/or volume of orders sought by clients considerably exceeds the norm as referred to in paragraph 2.

(e) the criteria specifying when prices fall within a public range close to market conditions as referred to in Article 15(2).

Article 17a

Tick sizes

Systematic internalisers’ quotes, price improvements on those quotes and execution prices shall comply with tick sizes set in accordance with regulation 47 of the Investment Services Regulations.

Application of tick sizes shall not prevent systematic internalisers matching orders large in scale at mid?point within the current bid and offer prices.

Article 18

Obligation for systematic internalisers to make public firm quotes in respect of bonds, structured finance products, emission allowances and derivatives

1.Investment firms shall make public firm quotes in respect of bonds, structured finance products, emission allowances and derivatives traded on a trading venue for which they are systematic internalisers and for which there is a liquid market when the following conditions are fulfilled:

(a) they are prompted for a quote by a client of the systematic internaliser;

(b) they agree to provide a quote.

2.In relation to bonds, structured finance products, emission allowances and derivatives traded on a trading venue for which there is not a liquid market, systematic internalisers shall disclose quotes to their clients on request if they agree to provide a quote. That obligation may be waived where the conditions specified in Article 9(1) are met.

3.Systematic internalisers may update their quotes at any time. They may withdraw their quotes under exceptional market conditions.

4.Firms which meet the definition of systematic internaliser must notify the GFSC in writing. The GFSC must publish a list of the systematic internalisers in Gibraltar for which it has received notifications.

5.Systematic internalisers shall make the firm quotes published in accordance with paragraph 1 available to their other clients. Notwithstanding, they shall be allowed to decide, on the basis of their commercial policy and in an objective non-discriminatory way, the clients to whom they give access to their quotes. To that end, systematic internalisers shall have in place clear standards for governing access to their quotes. Systematic internalisers may refuse to enter into or discontinue business relationships with clients on the basis of commercial considerations such as the client credit status, the counterparty risk and the final settlement of the transaction.

6.Systematic internalisers shall undertake to enter into transactions under the published conditions with any other client to whom the quote is made available in accordance with paragraph 5 when the quoted size is at or below the size specific to the financial instrument determined in accordance with Article 9(5)(d).

Systematic internalisers shall not be subject to the obligation to publish a firm quote pursuant to paragraph 1 for financial instruments that fall below the threshold of liquidity determined in accordance with Article 9(4).

7.Systematic internalisers shall be allowed to establish non-discriminatory and transparent limits on the number of transactions they undertake to enter into with clients pursuant to any given quote.

8.The quotes published pursuant to paragraph 1 and 5 and those at or below the size referred to in paragraph 6 shall be made public in a manner which is easily accessible to other market participants on a reasonable commercial basis.

9.The quoted price or prices shall be such as to ensure that the systematic internaliser complies with its obligations under regulation 42 of the Investment Services Regulations, where applicable, and shall reflect prevailing market conditions in relation to prices at which transactions are concluded for the same or similar financial instruments on a trading venue.

However, in justified cases, they may execute orders at a better price provided that the price falls within a public range close to market conditions.

10.Systematic internalisers shall not be subject to this Article when they deal in sizes above the size specific to the financial instrument determined in accordance with Article 9(5)(d).

11. In respect of a package order and without prejudice to paragraph 2, the obligations in this Article shall only apply to the package order as a whole and not to any component of the package order separately.

Monitoring by GFSC

1.The GFSC shall monitor the application of Article 18 regarding the sizes at which quotes are made available to clients of the investment firm and to other market participants relative to other trading activity of the firm, and the degree to which the quotes reflect prevailing market conditions in relation to transactions in the same or similar financial instruments on a trading venue.

2.The Minister may by regulations specify the sizes referred to in Article 18(6) at which a firm shall enter into transactions with any other client to whom the quote is made available. The size specific to the financial instrument shall be determined in accordance with the criteria set in Article 9(5)(d).

3.The Minister may by regulations specify what constitutes a reasonable commercial basis to make quotes public as referred to in Article 18(8).

Article 20

Post-trade disclosure by investment firms, including systematic internalisers, in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments

1.Investment firms which, either on own account or on behalf of clients, conclude transactions in shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on a trading venue, shall make public the volume and price of those transactions and the time at which they were concluded. That information shall be made public through an APA.

2.The information which is made public in accordance with paragraph 1 of this Article and the time-limits within which it is published shall comply with the requirements adopted pursuant to Article 6, including the regulatory technical standards adopted in accordance with Article 7(2)(a). Where the measures adopted pursuant to Article 7 provide for deferred publication for certain categories of transaction in shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on a trading venue, that possibility shall also apply to those transactions when undertaken outside trading venues.

3.The Minister may make technical standards to specify the following:

(a) identifiers for the different types of transactions published under this Article, distinguishing between those determined by factors linked primarily to the valuation of the financial instruments and those determined by other factors;

(b) the application of the obligation under paragraph 1 to transactions involving the use of those financial instruments for collateral, lending or other purposes where the exchange of financial instruments is determined by factors other than the current market valuation of the financial instrument;

(c) the party to a transaction that has to make the transaction public in accordance with paragraph 1 if both parties to the transaction are investment firms.

Article 21

Post-trade disclosure by investment firms, including systematic internalisers, in respect of bonds, structured finance products, emission allowances and derivatives

1.Investment firms which, either on own account or on behalf of clients, conclude transactions in bonds, structured finance products, emission allowances and derivatives traded on a trading venue shall make public the volume and price of those transactions and the time at which they were concluded. That information shall be made public through an APA.

2.Each individual transaction shall be made public once through a single APA.

3.The information which is made public in accordance with paragraph 1 and the time-limits within which it is published shall comply with the requirements adopted pursuant to Article 10, including the regulatory technical standards adopted in accordance with Article 11(4)(a) and (b).

4.The GFSC shall be able to authorise investment firms to provide for deferred publication, or may request the publication of limited details of a transaction or details of several transactions in an aggregated form, or a combination thereof, during the time period of the deferral or may allow the omission of the publication of the volume for individual transactions during an extended time period of deferral, or in the case of non-equity financial instruments that are not sovereign debt, may allow the publication of several transactions in an aggregated form during an extended time period of deferral, or in the case of sovereign debt instruments may allow the publication of several transactions in an aggregated form for an indefinite period of time, and may temporarily suspend the obligations referred to in paragraph 1 on the same conditions as laid down in Article 11.

Where the measures adopted pursuant to Article 11 provide for deferred publication and publication of limited details or details in an aggregated form, or a combination thereof, or for omission of the publication of the volume for certain categories of transactions in bonds, structured finance products, emission allowances and derivatives traded on a trading venue, that possibility shall also apply to those transactions when undertaken outside trading venues.

4A. During the transitional period referred to in Article 5(3A), the GFSC may suspend the obligations referred to in Article 21(1) in relation to a specified class of financial instruments as described in paragraph 4 for a specified period otherwise than on the conditions laid down in Article 11 if the GFSC considers that it is necessary to do so to advance the GFSC's market confidence objective under section 23(2)(a) of the Act.

4B. In deciding whether to suspend those obligations–

(a) the GFSC must also take into account–

  (i) its consumer protection objective and market confidence objective under section 23(2)(a) and (e) of the Act; and

  (ii) the most recent specified threshold published before IP completion day on the basis of calculations under Article 16 of Commission Delegated Regulation (EU) 2017/583;

(b) the GFSC may also take into account any other relevant information available in relation to liquidity in the relevant class of financial instrument concerned, whether in Gibraltar or in any other country or territory.

5.The Minister may make technical standards in such a way as to enable the publication of information required under regulation 9 of the Financial Services (Data Reporting Services Providers) Regulations 2020 to specify the following:

(a) the identifiers for the different types of transactions published in accordance with this Article, distinguishing between those determined by factors linked primarily to the valuation of the financial instruments and those determined by other factors;

(b) the application of the obligation under paragraph 1 to transactions involving the use of those financial instruments for collateral, lending or other purposes where the exchange of financial instruments is determined by factors other than the current market valuation of the financial instrument;

(c) the party to a transaction that has to make the transaction public in accordance with paragraph 1 if both parties to the transaction are investment firms.

Article 22

Providing information for the purposes of transparency and other calculations

1.In order to carry out calculations for determining the requirements for the pre-trade and post-trade transparency and the trading obligation regimes imposed by Articles 3 to 11, Articles 14 to 21 and Article 32,

which are applicable to financial instruments and for determining whether an investment firm is a systematic internaliser, the GFSC may require information from:

(a) trading venues;

(b) APAs; and

(c) CTPs.

2.Trading venues, APAs and CTPs shall store the necessary data for a sufficient period of time.

3.*Omitted*.

4.The Minister may make technical standards to specify the content and frequency of data requests and the formats and the timeframe in which trading venues, APAs and CTPs must respond to such requests in accordance with paragraph 1, the type of data that must be stored, and the minimum period of time for which trading venues, APAs and CTPs must store data in order to be able to respond to such requests in accordance with paragraph 2.

Article 23

Trading obligation for investment firms

1.An investment firm shall ensure the trades it undertakes in shares admitted to trading on a regulated market or traded on a trading venue shall take place on a regulated market, MTF or Gibraltar systematic internaliser, or a third-country trading venue assessed as equivalent by the Commission in accordance with Article 25(4)(a) of Directive 2014/65/EU before IP completion day, or by the GFSC in accordance with regulation 40(9) of the Investment Services Regulations on or after IP completion day, as appropriate, unless their characteristics include that they:

(a) are non-systematic, ad-hoc, irregular and infrequent; or

(b) are carried out between eligible and/or professional counterparties and do not contribute to the price discovery process.

1A.For the purposes of paragraph 1, a “Gibraltar systematic internaliser” is a systematic internaliser which–

(a) has its head office in Gibraltar; or

(b) operates through a branch in Gibraltar.

2.An investment firm that operates an internal matching system which executes client orders in shares, depositary receipts, ETFs, certificates and other similar financial instruments on a multilateral basis must ensure it has Part 7 permission to operate a multilateral trading facility and comply with all relevant provisions pertaining to such permissions.

3.The Minister may make technical standards to specify the particular characteristics of those transactions in shares that do not contribute to the price discovery process as referred to in paragraph 1, taking into consideration cases such as:

(a) non-addressable liquidity trades; or

(b) where the exchange of such financial instruments is determined by factors other than the current market valuation of the financial instrument.

TITLE IV

TRANSACTION REPORTING

Article 24

Obligation to uphold integrity of markets

The GFSC shall monitor the activities of investment firms to ensure that they act honestly, fairly and professionally and in a manner which promotes the integrity of the market.

Article 25

Obligation to maintain records

1.Investment firms shall keep at the disposal of the GFSC, for five years, the relevant data relating to all orders and all transactions in financial instruments which they have carried out, whether on own account or on behalf of a client. In the case of transactions carried out on behalf of clients, the records shall contain all the information and details of the identity of the client, and the information required under Part 3 of the Proceeds of Crime Act 2015.

2.The operator of a trading venue shall keep at the disposal of the GFSC, for at least five years, the relevant data relating to all orders in financial instruments which are advertised through their systems. The records shall contain the relevant data that constitute the characteristics of the order, including those that link an order with the executed transaction(s) that stems from that order and the details of which shall be reported in accordance with Article 26(1) and (3).

3.The Minister may make technical standards to specify the details of the relevant order data required to be maintained under paragraph 2 of this Article that is not referred to in Article 26.

Those technical standards shall include the identification code of the member or participant which transmitted the order, the identification code of the order, the date and time the order was transmitted, the characteristics of the order, including the type of order, the limit price if applicable, the validity period, any specific order instructions, details of any modification, cancellation, partial or full execution of the order, the agency or principal capacity.

Article 26

Obligation to report transactions

1.Investment firms which execute transactions in financial instruments shall report complete and accurate details of such transactions to the GFSC as quickly as possible, and no later than the close of the following working day.

2.The obligation laid down in paragraph 1 shall apply to:

(a) financial instruments which are admitted to trading or traded on a Gibraltar, UK or EU trading venue or for which a request for admission to trading has been made;

(b) financial instruments where the underlying is a financial instrument traded on a Gibraltar, UK or EU trading venue; and

(c) financial instruments where the underlying is an index or a basket composed of financial instruments traded on a Gibraltar, UK or EU trading venue

The obligation shall apply to transactions in financial instruments referred to in points (a) to (c) irrespective of whether or not such transactions are carried out on the Gibraltar, UK or EU trading venue.

3.The reports shall, in particular, include details of the names and numbers of the financial instruments bought or sold, the quantity, the dates and times of execution, the transaction prices, a designation to identify

the clients on whose behalf the investment firm has executed that transaction, a designation to identify the persons and the computer algorithms within the investment firm responsible for the investment decision and the execution of the transaction, a designation to identify the applicable waiver under which the trade has taken place, means of identifying the investment firms concerned, and a designation to identify a short sale as defined in Article 2(1)(b) of Regulation (EU) No 236/2012 in respect of any shares and sovereign debt within the scope of Articles 12, 13 and 17 of that Regulation. For transactions not carried out on a trading venue, the reports shall include a designation identifying the types of transactions in accordance with the measures to be adopted pursuant to Article 20(3)(a) and Article 21(5)(a). For commodity derivatives, the reports shall indicate whether the transaction reduces risk in an objectively measurable way in accordance with regulation 68 of the Investment Services Regulations.

4.Investment firms which transmit orders shall include in the transmission of that order all the details as specified in paragraphs 1 and 3. Instead of including the mentioned details when transmitting orders, an investment firm may choose to report the transmitted order, if it is executed, as a transaction in accordance with the requirements under paragraph 1. In that case, the transaction report by the investment firm shall state that it pertains to a transmitted order.

5.The operator of a trading venue shall report details of transactions in financial instruments traded on its platform which are executed through its systems by a firm which is not subject to this Regulation in accordance with paragraphs 1 and 3.

6.In reporting the designation to identify the clients as required under paragraphs 3 and 4, investment firms shall use a legal entity identifier established to identify clients that are legal persons.

7.The reports shall be made to the GFSC either by the investment firm itself, an ARM acting on its behalf or by the trading venue through whose system the transaction was completed, in accordance with paragraphs 1, 3 and 9.

Investment firms shall have responsibility for the completeness, accuracy and timely submission of the reports which are submitted to the GFSC.

By way of derogation from that responsibility, where an investment firm reports details of those transactions through an ARM which is acting on its behalf or a trading venue, the investment firm shall not be responsible for failures in the completeness, accuracy or timely submission of the reports which are attributable to the ARM or trading venue. In those cases and subject to regulation 11(4) of the Financial Services (Data Reporting Services Providers) Regulations 2020 the ARM or trading venue shall be responsible for those failures.

Investment firms must nevertheless take reasonable steps to verify the completeness, accuracy and timeliness of the transaction reports which were submitted on their behalf.

The GFSC shall require the trading venue, when making reports on behalf of the investment firm, to have sound security mechanisms in place designed to guarantee the security and authentication of the means of transfer of information, to minimise the risk of data corruption and unauthorised access and to prevent information leakage maintaining the confidentiality of the data at all times. The GFSC shall require the trading venue to maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.

Trade-matching or reporting systems, including trade repositories registered or recognised in accordance with Title VI of EMIR, may be approved by the competent authority as an ARM in order to transmit transaction reports to the competent authority in accordance with paragraphs 1, 3 and 9.

Where transactions have been reported to a trade repository in accordance with Article 9 of EMIR which is approved as an ARM and where those reports contain the details required under paragraphs 1, 3 and 9 and are transmitted to the competent authority by the trade repository within the time limit set in paragraph 1, the obligation on the investment firm laid down in paragraph 1 shall be considered to have been complied with.

Where there are errors or omissions in the transaction reports, the ARM, investment firm or trading venue reporting the transaction shall correct the information and submit a corrected report to the competent authority.

8.*Omitted*.

9.The Minister may make technical standards to specify:

(a) data standards and formats for the information to be reported in accordance with paragraphs 1 and 3, including the methods and arrangements for reporting financial transactions and the form and content of such reports;

(b) *Omitted*

(c) the references of the financial instruments bought or sold, the quantity, the dates and times of execution, the transaction prices, the information and details of the identity of the client, a designation to identify the clients on whose behalf the investment firm has executed that transaction, a designation to identify the persons and the computer algorithms within the investment firm responsible for the investment decision and the execution of the transaction, a designation to identify the applicable waiver under which the trade has taken place, the means of identifying the investment firms concerned, the way in which the transaction was executed, data fields necessary for the processing and analysis of the transaction reports in accordance with paragraph 3; and

(d) the designation to identify short sales of shares and sovereign debt as referred to in paragraph 3;

(e) the relevant categories of financial instrument to be reported in accordance with paragraph 2;

(f) the conditions upon which legal entity identifiers are developed, attributed and maintained, by Gibraltar in accordance with paragraph 6, and the conditions under which those legal entity identifiers are used by investment firms so as to provide, pursuant to paragraphs 3, 4 and 5, for the designation to identify the clients in the transaction reports they are required to establish pursuant to paragraph 1;

(g) the application of transaction reporting obligations to branches of investment firms;

(h) what constitutes a transaction and execution of a transaction for the purposes of this Article.

(i) when an investment firm is deemed to have transmitted an order for the purposes of paragraph 4.

Article 27

Obligation to supply financial instrument reference data

1.With regard to financial instruments admitted to trading on regulated markets or traded on MTFs or OTFs, trading venues shall provide the GFSC with identifying reference data for the purposes of transaction reporting under Article 26.

With regard to other financial instruments covered by Article 26(2) traded on its system, each systematic internaliser shall provide the GFSC with reference data relating to those financial instruments.

Identifying reference data shall be made ready for submission to the GFSC in an electronic and standardised format before trading commences in the financial instrument that it refers to. The financial instrument reference data shall be updated whenever there are changes to the data with respect to a financial instrument. The data is to be transmitted without delay to the GFSC.

2.In order to allow the GFSC to monitor, pursuant to Article 26, the activities of investment firms to ensure that they act honestly, fairly and professionally and in a manner which promotes the integrity of the market, the GFSC shall establish the necessary arrangements in order to ensure that:

(a) the GFSC effectively receive the financial instrument reference data pursuant to paragraph 1;

(b) the quality of the data so received is appropriate for the purpose of transaction reporting under Article 26;

3.The Minister may make technical standards to specify:

(a) data standards and formats for the financial instrument reference data in accordance with paragraph 1, including the methods and arrangements for supplying the data and any update thereto to the GFSC in

accordance with paragraph 1, and the form and content of such data;

(b) the technical measures that are necessary in relation to the arrangements to be made by the GFSC pursuant to paragraph 2.

TITLE V

DERIVATIVES

Article 28

Obligation to trade on regulated markets, MTFs or OTFs

1.Financial counterparties as defined in Article 2(8) of EMIR and non-financial counterparties that meet the conditions referred to in Article 10(1)(b) thereof shall conclude transactions which are neither intragroup transactions as defined in Article 3 of that Regulation nor transactions covered by the transitional provisions in Article 89 of that Regulation with other such financial counterparties or other such non-financial counterparties that meet the conditions referred to in Article 10(1)(b) of EMIR in derivatives pertaining to a class of derivatives that has been declared subject to the trading obligation in accordance with the procedure set out in Article 32 and listed in the register referred to in Article 34 only on:

(a) regulated markets;

(b) MTFs;

(c) OTFs; or

(d) third-country trading venues, where–

(i) either–

(aa) a decision has been adopted before IP completion day by the European Commission in accordance with paragraph 4 of this Article as it had effect in the European Union before IP completion day; or

(bb) the Minister has made regulations in accordance with paragraph 4 of this Article as it applies in Gibraltar on and after IP completion day; and

(ii) the third country provides for an effective equivalent system for recognition of Gibraltar trading venues to admit to trading or trade derivatives declared subject to a trading obligation in that third country on a non-exclusive basis.

2.The trading obligation shall also apply to counterparties referred to in paragraph 1 which enter into derivatives transactions pertaining to a class of derivatives that has been declared subject to the trading obligation with third-country financial institutions or other third-country entities that would be subject to the clearing obligation if they were established in Gibraltar. The trading obligation shall also apply to third-country entities that would be subject to the clearing obligation if they were established in Gibraltar, which enter into derivatives transactions pertaining to a class of derivatives that has been declared subject to the trading obligation, provided that the contract has a direct, substantial and foreseeable effect within Gibraltar or where such obligation is necessary or appropriate to prevent the evasion of any provision of this Regulation.

The GFSC shall regularly monitor the activity in derivatives which have not been declared subject to the trading obligation as described in paragraph 1 in order to identify cases where a particular class of contracts may pose systemic risk and to prevent regulatory arbitrage between derivative transactions subject to the trading obligation and derivative transactions which are not subject to the trading obligation.

3.Derivatives declared subject to the trading obligation pursuant to paragraph 1 shall be eligible to be admitted to trading on a regulated market or to trade on any trading venue as referred to in paragraph 1 on a

non-exclusive and non-discriminatory basis.

4.The Minister may by regulations specify that the legal and supervisory framework of a third country ensures that a trading venue authorised in that third country complies with legally binding requirements which are equivalent to the requirements for the trading venues referred to in paragraph 1(a), (b) or (c) of this Article, resulting from this Regulation, the Investment Services Regulations and the Market Abuse Regulation, and which are subject to effective supervision and enforcement in that third country.

Those decisions shall be for the sole purpose of determining eligibility as a trading venue for derivatives subject to the trading obligation.

The legal and supervisory framework of a third country is considered to have equivalent effect where that framework fulfils all the following conditions:

(a) trading venues in that third country are subject to authorisation and to effective supervision and enforcement on an ongoing basis;

(b) trading venues have clear and transparent rules regarding admission of financial instruments to trading so that such financial instruments are capable of being traded in a fair, orderly and efficient manner, and are freely negotiable;

(c) issuers of financial instruments are subject to periodic and ongoing information requirements ensuring a high level of investor protection;

(d) it ensures market transparency and integrity via rules addressing market abuse in the form of insider dealing and market manipulation;

Regulations made by the Minister under this paragraph may be limited to a category or categories of trading venues. In that case, a third-country trading venue is only included in paragraph 1(d) if it falls within a category covered by such regulations.

5.In order to ensure consistent application of this Article, the Minister may make technical standards to specify the types of contracts referred to in paragraph 2 which have a direct, substantial and foreseeable effect within Gibraltar and the cases where the trading obligation is necessary or appropriate to prevent the evasion of any provision of this Regulation.

Article 29

Clearing obligation for derivatives traded on regulated markets and timing of acceptance for clearing

1.The operator of a regulated market shall ensure that all transactions in derivatives that are concluded on that regulated market are cleared by a CCP.

2.CCPs, trading venues and investment firms which act as clearing members in accordance with Article 2(14) of EMIR shall have in place effective systems, procedures and arrangements in relation to cleared derivatives to ensure that transactions in cleared derivatives are submitted and accepted for clearing as quickly as technologically practicable using automated systems.

In this paragraph, ‘cleared derivatives’ means

(a) all derivatives which are to be cleared pursuant to the clearing obligation under paragraph 1 of this Article or pursuant to the clearing obligation under Article 4 of EMIR;

(b) all derivatives which are otherwise agreed by the relevant parties to be cleared.

3.The Minister may make technical standards to specify the minimum requirements for systems, procedures and arrangements, including the acceptance timeframes, under this Article taking into account the need to ensure proper management of operational or other risks.

Article 30

Indirect Clearing Arrangements

1.Indirect clearing arrangements with regard to exchange-traded derivatives are permissible provided that those arrangements do not increase counterparty risk and ensure that the assets and positions of the counterparty benefit from protection with equivalent effect to that referred to in Articles 39 and 48 of EMIR.

2.The Minister may make technical standards to specify the types of indirect clearing service arrangements, where established, that meet the conditions referred to in paragraph 1, ensuring consistency with provisions established for OTC derivatives under Chapter II of Commission Delegated Regulation (EU) No 149/2013. For cases other than CCPs, technical standards may also specify the types of indirect clearing service arrangements that meet conditions for reasonable and transparent commercial terms.

Article 31

Portfolio Compression

1.When providing portfolio compression, investment firms and market operators shall not be subject to the best execution obligation in regulation 42 of the Investment Services Regulations, the transparency obligations in Articles 8, 10, 18 and 21 of this Regulation and the obligation in regulation 4(6) of the Investment Services Regulations. The termination or replacement of the component derivatives in the portfolio compression shall not be subject to Article 28 of this Regulation.

2.Investment firms and market operators providing portfolio compression shall make public through an APA the volumes of transactions subject to portfolio compressions and the time they were concluded within the time limits specified in Article 10.

3.Investment firms and market operators providing portfolio compressions shall keep complete and accurate records of all portfolio compressions which they organise or participate in. Those records shall be made available promptly to the GFSC upon request.

4.The Minister may by regulations specify the following:

(a) the elements of portfolio compression,

(b) the information to be published pursuant to paragraph 2,

in such a way as to make use as far as possible of any existing record keeping, reporting or publication requirements.

Article 32

Trading obligation procedure

1.The Minister may make technical standards to specify the following:

(a) which of the class of derivatives declared subject to the clearing obligation in accordance with Article 5(2) and (4) of EMIR or a relevant subset thereof shall be traded on the venues referred to in Article 28(1) of this Regulation;

(b) the date or dates from which the trading obligation takes effect, including any phase-in and the categories of counterparties to which the obligation applies where such phase-in and such categories of counterparties have been provided for in technical standards in accordance with Article 5(2)(b) of EMIR.

2.In order for the trading obligation to take effect:

(a) the class of derivatives pursuant to paragraph 1(a) or a relevant subset thereof must be admitted to trading or traded on at least one trading venue as referred to in Article 28(1), and

(b) there must be sufficient third-party buying and selling interest in the class of derivatives or a relevant subset thereof so that such a class of derivatives is considered sufficiently liquid to trade only on the venues referred to in Article 28(1).

3.In developing the technical standards referred to in paragraph 1, the Minister shall consider the class of derivatives or a relevant subset thereof as sufficiently liquid pursuant to the following criteria:

(a) the average frequency and size of trades over a range of market conditions, having regard to the nature and lifecycle of products within the class of derivatives;

(b) the number and type of active market participants including the ratio of market participants to products/contracts traded in a given product market;

(c) the average size of the spreads.

In preparing those technical standards, the Minister shall take into consideration the anticipated impact that trading obligation might have on the liquidity of a class of derivatives or a relevant subset thereof and the commercial activities of end users which are not financial entities.

the Minister shall determine whether the class of derivatives or relevant subset thereof is only sufficiently liquid in transactions below a certain size.

4.*Omitted.*

5.*Omitted*.

6.The Minister may make technical standards to specify the criteria referred to in paragraph 2(b).

Article 33

Mechanism to avoid duplicative or conflicting rules

1.*Omitted*.

2.The Minister may by regulations specify that the legal, supervisory and enforcement arrangements of the relevant third country:

(a) are equivalent to the requirements resulting from Articles 28 and 29;

(b) ensure protection of professional secrecy that is equivalent to that set out in this Regulation;

(c) are being effectively applied and enforced in an equitable and non-distortive manner so as to ensure effective supervision and enforcement in that third country.

3.Regulations on equivalence as referred to in paragraph 2 shall have the effect that counterparties entering into a transaction subject to this Regulation shall be deemed to have fulfilled the obligation contained in Articles 28 and 29 where at least one of the counterparties is established in that third country and the counterparties are in compliance with those legal, supervisory and enforcement arrangements of the relevant third country.

4.Where regulations made under paragraph 2 are revoked, transactions by counterparties shall automatically be subject again to all requirements contained in Articles 28 and 29 of this Regulation.

Article 34

Register of derivatives subject to the trading obligation

1. The GFSC may publish and maintain on its website a register specifying–

(a) every derivative that appears to the GFSC to be subject to the obligation to trade on the venues referred to in Article 28(1);

(b) the venues where the derivative is admitted to trading or traded;

(c) the dates from which the obligation takes effect.

2. The GFSC may draw on such information as it considers appropriate to maintain the register, including information published in the register maintained by–

(a) the UK Financial Conduct Authority under Article 34 of Regulation (EU) No 600/2014 as it has effect in the United Kingdom; or

(b) ESMA under Article 34 of Regulation (EU) No 600/2014 as it has effect in EU law.

TITLE VI

NON-DISCRIMINATORY CLEARING ACCESS FOR FINANCIAL INSTRUMENTS

Article 35

Non-discriminatory access to a CCP

1.Without prejudice to Article 7 of EMIR, a CCP shall accept to clear financial instruments on a non-discriminatory and transparent basis, including as regards collateral requirements and fees relating to access, regardless of the trading venue on which a transaction is executed. This in particular shall ensure that a trading venue has the right to non-discriminatory treatment of contracts traded on that trading venue in terms of:

(a) collateral requirements and netting of economically equivalent contracts, where the inclusion of such contracts in the close-out and other netting procedures of a CCP based on the applicable insolvency law would not endanger the smooth and orderly functioning, the validity or enforceability of such procedures; and

(b) cross-margining with correlated contracts cleared by the same CCP under a risk model that complies with Article 41 of EMIR.

A CCP may require that the trading venue comply with the operational and technical requirements established by the CCP including the risk management requirements. The requirement in this paragraph does not apply to any derivative contract that is already subject to the access obligations under Article 7 of EMIR.

A CCP is not bound by this Article if it is connected by close links to a trading venue which has given notification under Article 36(5).

2.A request to access a CCP by a trading venue shall be formally submitted to a CCP and the GFSC. The request shall specify to which types of financial instruments access is requested.

3.The CCP shall provide a written response to the trading venue within three months in the case of transferable securities and money market instruments, and within six months in the case of exchange-traded derivatives, either permitting access, under the condition that the GFSC has granted access pursuant to paragraph 4, or denying access. The CCP may deny a request for access only under the conditions specified in paragraph 6(a). If a CCP denies access it shall provide full reasons in its response and inform the GFSC in writing of the decision. The CCP shall make access possible within three months of providing a positive response to the access request.

4.The GFSC shall grant a trading venue access to a CCP only where such access:

(a) would not require an interoperability arrangement, in the case of derivatives that are not OTC derivatives pursuant to Article 2(7) of EMIR; or

(b) would not threaten the smooth and orderly functioning of the markets, in particular due to liquidity fragmentation, or would not adversely affect systemic risk.

Nothing in point (a) of the first subparagraph shall prevent access being granted where the request referred to in paragraph 2 requires interoperability and the trading venue and all CCPs party to the proposed interoperability arrangement have consented to the arrangement and the risks to which the incumbent CCP is exposed to arising from inter-CCP positions are collateralised at a third party.

Where the need for an interoperability arrangement is the reason or is part of the reason for denying a request, the trading venue will advise the CCP and inform the GFSC which other CCPs have access to the trading venue and the GFSCA will publish that information so that investment firms may make alternative access arrangements.

If the GFSC refuses access it shall issue its decision within two months following receipt of the request referred to in paragraph 2 and provide full reasons to the CCP and the trading venue including the evidence on which the decision is based.

5.As regards transferable ?ecurities and money market instruments, a CCP that has been newly established and authorised as a CCP as defined in Article 2(1) of EMIR to clear under Article 17 of EMIR or recognised under Article 25 of EMIR or authorised under a pre-existing national authorisation regime for a period of less than three years on 2 July 2014 may, before 3 January 2018, apply to the GFSC for permission to avail itself of transitional arrangements. The GFSC may decide that this Article does not apply to the CCP in respect of transferable securities and money market instruments, for a transitional period until 3 July 2020.

Where such a transitional period is approved, the CCP cannot benefit from the access rights under Article 36 or this Article in respect of transferable securities and money market instruments for the duration of that transitional arrangement.

Where a CCP which has been approved for the transitional arrangements under this paragraph is connected by close links to one or more trading venues, those trading venues shall not benefit from access rights under Article 36 or this Article in respect of transferable securities and money market instruments for the duration of the transitional arrangement.

A CCP which is authorised during the three year period prior to entry into force, but is formed by a merger or acquisition involving at least one CCP authorised prior to that period, shall not be permitted to apply for the transitional arrangements under this paragraph.

6.The Minister may make technical standards to specify:

(a) the specific conditions under which an access request may be denied by a CCP, including the anticipated volume of transactions, the number and type of users, arrangements for managing operational risk and complexity or other factors creating significant undue risks;

(b) the conditions under which access must be permitted by a CCP, including confidentiality of information provided regarding financial instruments during the development phase, the non-discriminatory and transparent basis as regards clearing fees, collateral requirements and operational requirements regarding margining;

(c) the conditions under which granting access will threaten the smooth and orderly functioning of markets or would adversely affect systemic risk;

(d) the procedure for making a notification under paragraph 5;

(e) the conditions for non-discriminatory treatment in terms of how contracts traded on that trading venue are treated in terms of collateral requirements and netting of economically equivalent contracts and cross-margining with correlated contracts cleared by the same CCP.

Article 36

Non-discriminatory access to a trading venue

1.Without prejudice to Article 8 of EMIR, a trading venue shall provide trade feeds on a non-discriminatory and transparent basis, including as regards fees related to access, upon request to any CCP authorised or recognised by EMIR that wishes to clear transactions in financial instruments that are concluded on that trading venue. That requirement does not apply to any derivative contract that is already subject to the access obligations under Article 8 of EMIR.

A trading venue is not bound by this Article if it is connected by close links to a CCP which has given notification that it is availing of the transitional arrangements under Article 35(5).

2.A request to access a trading venue by a CCP shall be formally submitted to a trading venue and the GFSC.

3.The trading venue shall provide a written response to the CCP within three months in the case of transferable securities and money market instruments, and within six months in the case of exchange-traded derivatives, either permitting access, under the condition that the GFSC has granted access pursuant to paragraph 4, or denying access. The trading venue may deny access only under the conditions specified under paragraph 6(a). When access is denied the trading venue shall provide full reasons in its response and inform the GFSC in writing of the decision. The trading venue shall make access possible within three months of providing a positive response to the access request.

4.The GFSC shall grant a CCP access to a trading venue only where such access:

(a) would not require an interoperability arrangement, in the case of derivatives that are not OTC derivatives pursuant to Article 2(7) of EMIR; or

(b) would not threaten the smooth and orderly functioning of the markets, in particular due to liquidity fragmentation and the trading venue has put in place adequate mechanisms to prevent such fragmentation, or would not adversely affect systemic risk.

Nothing in point (a) of the first subparagraph shall prevent access being granted where the request referred to in paragraph 2 requires interoperability and the trading venue and all CCPs party to the proposed interoperability arrangement have consented to the arrangement and the risks to which the incumbent CCP is exposed to arising from inter-CCP positions are collateralised at a third party.

Where the need for an interoperability arrangement is the reason or is part of the reason for denying a request, the trading venue will advise the CCP and inform the GFSC which other CCPs have access to the trading venue and the GFSC will publish that information so that investment firms may make alternative access arrangements.

If the GFSC denies access it shall issue its decision within two months following receipt of the request referred to in paragraph 2 and provide full reasons to, the trading venue and the CCP including the evidence on which its decision is based.

5.This paragraph applies to trading venues which fell below the relevant threshold for exchange-traded derivatives in the calendar year preceding the entry into application of this Regulation and notified ESMA and the GFSC that they did not wish to be bound by this Article for exchange-traded derivatives included within that threshold. A trading venue which remains below the relevant threshold in every year of that, or any further, thirty month period may, at the end of the period, notify the GFSC and its competent authority that it wishes to continue to not be bound by this Article for further thirty months. Where notification is given the trading venue cannot benefit from the access rights under Article 35 or this Article for exchange-traded derivatives included within the relevant threshold, for the duration of the opt-out. ESMA shall publish a list of all notifications that it receives.

The relevant threshold for the opt-out is an annual notional amount traded of EUR 1 000 000 million. The notional amount shall be single-counted and shall include all transactions in exchange-traded derivatives concluded under the rules of the trading venue.

Where a trading venue is part of a group which is connected by close links, the threshold shall be calculated by adding the annual notional amount traded of all the trading venues in the group as a whole that are based in Gibraltar.

Where a trading venue which has made a notification under this paragraph is connected by close links to one or more CCPs, those CCPs shall not benefit from access rights under Article 35 or this Article for exchange-traded derivatives within the relevant threshold, for the duration of the opt-out.

6.The Minister may make technical standards to specify:

(a) the specific conditions under which an access request may be denied by a trading venue, including conditions based on the anticipated volume of transactions, the number of users, arrangements for managing operational risk and complexity or other factors creating significant undue risks;

(b) the conditions under which access shall be granted, including confidentiality of information provided regarding financial instruments during the development phase and the non-discriminatory and transparent basis as regards fees related to access;

(c) the conditions under which granting access will threaten the smooth and orderly functioning of the markets, or would adversely affect systemic risk;

(d) the procedure for making a notification under paragraph 5, including further specifications for calculation of the notional amount and the method by which the GFSC may verify the calculation of the volumes and approve the opt-out.

Article 37

Omitted

Article 38

Access for third-country CCPs and trading venues

1.A trading venue established in a third country may request access to a CCP established in Gibraltar only if the Minister has made regulations in accordance with Article 28(4) relating to that third country. A CCP established in a third country may request access to a trading venue in Gibraltar subject to that CCP being recognised under Article 25 of EMIR CCPs and trading venues established in third countries shall only be permitted to make use of the access rights in Articles 35 to 36 provided that the Minister has made regulations in accordance with paragraph 3 that the legal and supervisory framework of the third country is considered to provide for an effective equivalent system for permitting CCPs and trading venues authorised under foreign regimes access to CCPs and trading venues established in that third country.

2.*Omitted*.

3.The Minister may by regulations determine that the legal and supervisory framework of a third country ensures that a trading venue and CCP authorised in that third country complies with legally binding requirements which are equivalent to the requirements referred to in paragraph 1 of this Article and which are subject to effective supervision and enforcement in that third country.

The legal and supervisory framework of a third country is considered equivalent where that framework fulfils all the following conditions:

(a) trading venues in that third country are subject to authorisation and to effective supervision and enforcement on an ongoing basis;

(b) it provides for an effective equivalent system for permitting CCPs and trading venues authorised under foreign regimes access to CCPs and trading venues established in that third country;

(c) the legal and supervisory framework of that third country provides for an effective equivalent system under which CCPs and trading venues authorised in foreign jurisdictions are permitted access on a fair reasonable and non discriminatory basis to:

(i) relevant price and data feeds and information of composition, methodology and pricing of benchmarks for the purposes of clearing and trading; and

(ii) licences,

from persons with proprietary rights to benchmarks established in that third country.

TITLE VII

SUPERVISORY MEASURES ON PRODUCT INTERVENTION AND POSITIONS

CHAPTER 1

Product monitoring and intervention

Article 39

Market monitoring

1.*Omitted*.

2.*Omitted*.

3.The GFSC shall monitor the market for financial instruments and structured deposits which are marketed, distributed or sold in or from their Member State.

Article 40

Omitted

Article 41

Omitted

Article 42

Product intervention by GFSC

1.The GFSC may prohibit or restrict the following in or from Gibraltar:

(a) the marketing, distribution or sale of certain financial instruments or structured deposits or financial instruments or structured deposits with certain specified features; or

(b) a type of financial activity or practice.

2.The GFSC may take the action referred to in paragraph 1 if it is satisfied on reasonable grounds that:

(a) either

(i) a financial instrument, structured deposit or activity or practice gives rise to significant investor protection concerns or poses a threat to the orderly functioning and integrity of financial markets or commodity markets or to the stability of whole or part of Gibraltar's financial system; or

(ii) a derivative has a detrimental effect on the price formation mechanism in the underlying market;

(b) existing regulatory requirements under the law of Gibraltar applicable to the financial instrument, structured deposit or activity or practice do not sufficiently address the risks referred to in point (a) and the issue would not be better addressed by improved supervision or enforcement of existing requirements; and

(c) the action is proportionate taking into account the nature of the risks identified, the level of sophistication of investors or market participants concerned and the likely effect of the action on investors and market participants who may hold, use or benefit from the financial instrument, structured deposit or activity or practice;

Where the conditions set out in the first subparagraph are fulfilled, the GFSC may impose the prohibition or restriction referred to in paragraph 1 on a precautionary basis before a financial instrument or structured deposit has been marketed, distributed or sold to clients.

A prohibition or restriction may apply in circumstances, or be subject to exceptions, specified by the GFSC.

3.Subject to paragraph 4, the GFSC must not impose a prohibition or restriction under this Article unless not less than one month before the measure is due to take effect, it has published details of the decision to impose the prohibition or restriction on its website in accordance with paragraph 5.

4.In exceptional cases where the GFSC deems it necessary to take urgent action under this Article in order to prevent detriment arising from the financial instruments, structured deposits, practices or activities referred to in paragraph 1, the GFSC may take action on a provisional basis provided that all the criteria in this Article are met and that, in addition, it is clearly established that waiting for one month would not adequately address the specific concern or threat. The GFSC shall not take action on a provisional basis for a period exceeding three months.

5.The GFSC shall publish on its website notice of any decision to impose any prohibition or restriction referred to in paragraph 1. The notice shall specify details of the prohibition or restriction, a time after the publication of the notice from which the measures will take effect and the evidence upon which it is satisfied each of the conditions in paragraph 2 are met. The prohibition or restriction shall only apply in relation to actions taken after the publication of the notice.

6.The GFSC shall revoke a prohibition or restriction if the conditions in paragraph 2 no longer apply.

7.The Minister may by regulations specify criteria and factors to be taken into account by the GFSC in determining when there is a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or commodity markets or to the stability of the of Gibraltar's financial system referred to in paragraph 2(a).

Those criteria and factors shall include:

(a) the degree of complexity of a financial instrument or structured deposit and the relation to the type of client to whom it is marketed, distributed and sold;

(b) the degree of innovation of a financial instrument or structured deposit, an activity or a practice;

(c) the leverage a financial instrument or structured deposit or practice provides;

(d) in relation to the orderly functioning and integrity of financial markets or commodity markets, the size or the notional value of an issuance of financial instruments or structured deposits.

Omitted

CHAPTER 2

Omitted

Article 44

Omitted

Article 45

Omitted

TITLE VIII

PROVISION OF SERVICES AND PERFORMANCE OF ACTIVITIES BY THIRD-COUNTRY FIRMS FOLLOWING AN EQUIVALENCE DECISION WITH OR WITHOUT A BRANCH

Article 46

General provisions

1.A third-country firm may provide investment services or perform investment activities with or without any ancillary services to eligible counterparties and to professional clients within the meaning of Section I of Schedule 1 to the Investment Services Regulations in Gibraltar without the establishment of a branch where it is registered in the register of third-country firms kept by the GFSC in accordance with Article 47.

2.The GFSC shall register a third-country firm that has applied for the provision of investment services or performance of activities in Gibraltar in accordance with paragraph 1 only where the following conditions are met:

(a) an equivalence decision in accordance with Article 47(1) was adopted:
  (i) by the Commission before IP completion day and was not revoked before that that date; or
  (ii) by the Minister after IP completion day;

(b) the firm is authorised in the jurisdiction where its head office is established to provide the investment services or activities to be provided in Gibraltar and it is subject to effective supervision and enforcement ensuring a full compliance with the requirements applicable in that third country;

(c) cooperation arrangements have been established pursuant to Article 47(2).

3.*Omitted*.

4.The third-country firm referred to in paragraph 1 shall submit its application to the GFSC after the adoption before IP completion day by the Commission of the decision referred to in Article 47 determining or the making of regulations under that Article by the Minister specifying that the legal and supervisory framework of the third country in which the third-country firm is authorised is equivalent to the requirements described in Article 47(1).

The applicant third-country firm shall provide the GFSC with all information necessary for its registration. Within 30 working days of receipt of the application, the GFSC shall assess whether the application is

complete. If the application is not complete, the GFSC shall set a deadline by which the applicant third-country firm is to provide additional information.

The registration decision shall be based on the conditions set out in paragraph 2.

Within 180 working days of the submission of a complete application, the GFSC shall inform the applicant third-country firm in writing with a fully reasoned explanation whether the registration has been granted or refused.

5.Third-country firms providing services in accordance with this Article shall inform clients established in Gibraltar, before the provision of any investment services, that they are not allowed to provide services to clients other than eligible counterparties and professional clients within the meaning of Section I of Schedule 1 to the Investment Services Regulations and that they are not subject to supervision in Gibraltar. They shall indicate the name and the address of the competent authority responsible for supervision in the third country.

The information in the first subparagraph shall be provided in writing and in a prominent way.

Where an eligible counterparty or professional client within the meaning of Section I of Schedule 1 to the Investment Services Regulations established or situated in Gibraltar initiates at its own exclusive initiative the provision of an investment service or activity by a third-country firm, this Article does not apply to the provision of that service or activity by the third-country firm to that person including a relationship specifically related to the provision of that service or activity. An initiative by such clients shall not entitle the third-country firm to market new categories of investment product or investment service to that individual.

6.Third-country firms providing services or performing activities in accordance with this Article shall, before providing any service or performing any activity in relation to a client established in Gibraltar, offer to submit any disputes relating to those services or activities to the jurisdiction of a court or arbitral tribunal in Gibraltar.

7.The Minister may make technical standards to specify the information that the applicant third-country firm shall provide the GFSC in its application for registration in accordance with paragraph 4 and the format of information to be provided in accordance with paragraph 5.

Article 47

Equivalence determination

1.The Minister may by regulations specify that the legal and supervisory arrangements of a third country ensure that firms authorised in that third country comply with legally binding prudential and business conduct requirements which have equivalent effect to the requirements set out in this Regulation, the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020, the Investment Services Regulations and the implementing measures related to those enactments and that the legal framework of that third country provides for an effective equivalent system for the recognition of investment firms authorised under third-country legal regimes.

The prudential and business conduct framework of a third country may be considered to have equivalent effect where that framework fulfils all the following conditions:

(a) firms providing investment services and activities in that third country are subject to authorisation and to effective supervision and enforcement on an ongoing basis;

(b) firms providing investment services and activities in that third country are subject to sufficient capital requirements and appropriate requirements applicable to shareholders and members of their management body;

(c) firms providing investment services and activities are subject to adequate organisational requirements in the area of internal control functions;

(d) firms providing investment services and activities are subject to appropriate conduct of business rules;

(e) it ensures market transparency and integrity by preventing market abuse in the form of insider dealing and market manipulation

2.The GFSC shall establish cooperation arrangements with the relevant competent authorities of third countries whose legal and supervisory frameworks have been recognised as effectively equivalent in accordance with paragraph 1 (including by a decision made by the Commission under that paragraph as it had effect before IP completion day). Such arrangements shall specify at least:

(a) the mechanism for the exchange of information between the GFSC and the competent authorities of third countries concerned, including access to all information regarding the firms authorised in third countries that is requested by the GFSC;

(b) the mechanism for prompt notification to the GFSC where a third-country competent authority deems that a third-country firm that it is supervising and the GFSC has registered in the register provided for in Article 48 infringes the conditions of its authorisation or other law to which it is obliged to adhere;

(c) the procedures concerning the coordination of supervisory activities including, where appropriate, on-site inspections.

3. *Omitted.*

The branch shall remain subject to the supervision of the Member State where the branch is established in accordance with Article 39 of Directive 2014/65/EU. However, and without prejudice to the obligations to cooperate laid down in Directive 2014/65/EU, the competent authority of the Member State where the branch is established and the competent authority of the host Member State may establish proportionate cooperation agreements in order to ensure that the branch of the third-country firm providing investment services within the Union delivers the appropriate level of investor protection.

4.A third-country firm may no longer use the rights under Article 46(1) where the Minister revokes regulations made under paragraph 1 of this Article in relation to that third country.

Article 48

Register

The GFSC shall keep a register of the third-country firms allowed to provide investment services or perform investment activities in Gibraltar in accordance with Article 46. The register shall be publicly accessible on the the GFSC's website and shall contain information on the services or activities which the third-country firms are permitted to provide or perform and the reference of the competent authority responsible for their supervision in the third country.

Article 49

Withdrawal of registration

1.The GFSC shall withdraw the registration of a third-country firm in the register established in accordance with Article 48 where:

(a) the GFSC has well-founded reasons based on documented evidence to believe that, in the provision of investment services and activities in Gibraltar, the third-country firm is acting in a manner which is clearly prejudicial to the interests of investors or the orderly functioning of markets; or

(b) the GFSC has well-founded reasons based on documented evidence to believe that, in the provision of investment services and activities in Gibraltar, the third-country firm has seriously infringed the provisions applicable to it in the third country and on the basis of which the Minister has made regulations in accordance with Article 47(1);

(c) the GFSC has referred the matter to the competent authority of the third country and that third-country competent authority has not taken the appropriate measures needed to protect investors and the proper functioning of the markets in Gibraltar or has failed to demonstrate that the third-country firm concerned complies with the requirements applicable to it in the third country; and

(d) the GFSC has informed the third-country competent authority of its intention to withdraw the registration of the third-country firm at least 30 days before the withdrawal.

2.The GFSC shall inform the Minister of any measure adopted in accordance with paragraph 1 without delay and shall publish its decision on its website.

3.The Minister shall assess whether the conditions under which regulations under Article 47(1) have been made continue to persist in relation to the third country concerned.

TITLE IX

REGULATIONS

CHAPTER 1

Delegated acts

Article 50

Regulations

1.Any power to make regulations conferred on the Minister by this Regulation includes the power to–

(a) make any supplementary, incidental, consequential, transitional or saving provision which the Minister considers necessary or expedient; and

(b) make different provision for different purposes.

2. The Minister may only make regulations under Article 5(10), 9(6) or 14(5A) specifying that a country or territory is in the relevant area in relation to one or more financial instruments for the purposes of that Article if the Minister is satisfied that the GFSC is able to obtain sufficient reliable trading data to enable it to assess–

(a) in the case of Article 5(10) or 9(6), the volume of trading in the financial instruments concerned in that country or region; or

(b) in the case of Article 14(5A), the total orders executed in the financial instruments concerned in that country or territory.

CHAPTER 2

Implementing acts

Article 51

Committee procedure

1.The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2.Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

TITLE X

FINAL PROVISIONS

Article 52

Omitted

Article 53

Amendment of Regulation (EU) No 648/2012

Regulation (EU) No 648/2012 is amended as follows:

(1) in Article 5(2), the following subparagraph is added:

‘In the developing of the draft regulatory technical standards under this paragraph ESMA shall not prejudice the transitional provision relating to C6 energy derivative contracts as laid down in Article 95 of Directive 2014/65/EU.’;

(2) Article 7 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1.A CCP that has been authorised to clear OTC derivative contracts shall accept clearing such contracts on a non-discriminatory and transparent basis, including as regards collateral requirements and fees related to access, regardless of the trading venue. This in particular shall ensure that a trading venue has the right to non-discriminatory treatment in terms of how contracts traded on that trading venue are treated in terms of:

(a) collateral requirements and netting of economically equivalent contracts, where the inclusion of such contracts in the close-out and other netting procedures of a CCP based on the applicable insolvency law would not endanger the smooth and orderly functioning, the validity or enforceability of such procedures; and

(b) cross-margining with correlated contracts cleared by the same CCP under a risk model that complies with Article 41.

A CCP may require that a trading venue comply with the operational and technical requirements established by the CCP, including the risk-management requirements.’;

(b) the following paragraph is added:

‘6.The conditions laid down in paragraph 1 regarding non-discriminatory treatment in terms of how contracts traded on that trading venue are treated in terms of collateral requirements and netting of economically equivalent contracts and cross-margining with correlated contracts cleared by the same CCP shall be further

specified by the technical standards adopted pursuant to Article 35(6)(e) of Regulation (EU) No 600/2014.';

(3) In Article 81(3), the following subparagraph is added:

'A trade repository shall transmit data to competent authorities in accordance with the requirements under Article 26 of Regulation (EU) No 600/2014(33)'.

Article 54

Transitional provisions

1.Third-country firms shall be able to continue to provide services and activities in Gibraltar, in accordance with the Act until three years after the adoption by before IP completion day of a decision in relation to the relevant third country in accordance with Article 47 or after the Minister has made regulations under that Article after IP completion day.

2.*Omitted*.

Article 55

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall apply from 3 January 2018.

Notwithstanding the second paragraph, Article 1(8) and (9), Article 2(2), Article 4(6), Article 5(6) and (9),] Article 7(2), Article 9(5), Article 11(4), Article 12(2), Article 13(2), Article 14(7), Article 15(5), Article 17(3), Article 19(2) and (3), Article 20(3), Article 21(5), Article 22(4), Article 23(3), Article 25(3), Article 26(9), Article 27(3), Article 28(4), Article 28(5), Article 29(3), Article 30(2), Article 31(4), Article 32(1), (5) and(6), Article 33(2), Article 35(6), Article 36(6), Article 37(4), Article 38(3), Article 40(8), Article 41(8), Article 42(7), Article 45(10), Article 46(7), Article 47(1) and (4), Article 52(10) and (12) and Article 54(1) shall apply immediately following the entry into force of this Regulation.