



European Securities and
Markets Authority

Opinion

**Amendments to Commission Delegated Regulation (EU) 2017/587 (RTS
1)**



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Glossary

ESMA	European Securities and Markets Authority
EU	European Union
MiFID II	Markets in Financial Instruments Directive and amending Directive 2002/92/EC and Directive 2011/61/EU – Directive 2014/65/EU of the European Parliament and of the Council
MiFIR	Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2016 on markets in financial instruments and amending Regulation (EU) No 648/2012
MiFIR Quick Fix	Regulation (EU) No 2016/1033 of the European Parliament and of the Council of 23 June 2016 amending Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) No 909/2014 on improving securities settlement in the European Union and on central securities depositories
RTS	Regulatory Technical Standards
RTS 1	Commission Delegated Regulation (EU) 2017/587 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser
RTS 11	Commission Delegated Regulation (EU) 2017/588 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the tick size regime for shares, depositary receipts and exchange-traded funds

1 Legal Basis

1. In accordance with Article 4(6), Article 7(2), Article 14(7), Article 20(3), Article 22(4) and Article 23(3) of 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 (MiFIR), the European Securities and Markets Authority (ESMA) shall develop draft regulatory technical standards (RTS) to specify transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments.

2 Background and Procedure

2. On 26 March 2018, ESMA submitted a proposal for an amendment of Commission Delegated Regulation (EU) 2017/587 (RTS 1) to the European Commission (the Commission) pursuant to Article 10(1) of Regulation No (EU) 1095/2010 (the ESMA Regulation) and Article 14(7) of MiFIR.
3. On 10 August 2018, the Commission informed ESMA of its intention to endorse the amendment to RTS 1 subject to changes in accordance with Article 10(1) of the ESMA Regulation¹.
4. In particular, the Commission intends to limit the obligation that quotes of systematic internalisers only adequately reflect prevailing market conditions where such quotes mirror the minimum price increments applicable to shares and depositary receipts, and not to all applicable equity and equity-like instruments as proposed by ESMA.
5. In addition, the Commission proposed a number of technical amendments to the other proposals submitted by ESMA.
6. ESMA notes that the letter from the Commission was received in excess of the three month period foreseen in Article 10(1) of the ESMA Regulation.
7. Pursuant to Article 10(1) of the ESMA Regulation, this notification from the Commission triggers a period of six weeks during which ESMA may amend its draft RTS on the basis of the Commission's proposed amendments and resubmit it in the form of a formal opinion. ESMA shall send a copy of its formal opinion to the European Parliament and to the Council.
8. It is for the Board of Supervisors to adopt such formal opinion in accordance with Article 44(1) of the ESMA Regulation.

¹ The letter from the Commission is in Annex II.

3 Executive Summary

9. ESMA agrees to limit the application of tick sizes to quotes of systematic internalisers to shares and depositary receipts. While ESMA continues to believe that its proposal applicable to all equity and equity-like instruments better achieves the legislative goals expressed in the empowerment of Article 14(7) of MiFIR, ESMA considers that the amendment of the Commission will ensure the application of tick sizes to quotes of systematic internalisers for most equity instruments in a timely fashion.
10. ESMA also agrees to the other amendments of the Commission that are of a technical nature and are not intended to change the substance of the ESMA proposals. ESMA notes that none of those changes are mentioned in the letter of 10 August 2018.

4 ESMA Opinion

11. In its opinion, ESMA limits its comments to substantial changes the Commission has introduced to the ESMA draft technical standard. ESMA considers that the Commission has introduced such changes to the draft provision amending Article 10 of RTS 1 and – in respect of the other technical points – to the draft provision amending Article 17 of RTS 1.

4.1 Amendments to Article 10 of RTS 1 as proposed by ESMA

12. ESMA understands that the Commission in its letter dated 10 August 2018 asks ESMA to reconsider the scope of the proposed ESMA amendment in respect of the instrument classes to which the amendment should apply.
13. ESMA understands that in the Commission's view any amendment to RTS 1 cannot result in the introduction of a comprehensive application of tick sizes to quotes published by systematic internalisers.
14. However, ESMA also understands that the Commission shares ESMA's concerns that the non-application of tick sizes may have negative effects on the liquidity and efficient valuation and pricing in financial markets as far as shares and depositary receipts are concerned.
15. As a consequence, the Commission intends to endorse the technical standard if the application of tick sizes to quotes of systematic internalisers is limited to shares and depositary receipts.
16. ESMA notes, that Article 14(7) of MiFIR empowers ESMA to develop draft RTS specifying further the determination of whether prices quoted by systematic internalisers reflect prevailing market conditions without differentiating between different types of classes of financial instruments.

17. Given emerging concerns on whether the quotes from a systematic internaliser can adequately reflect prevailing market conditions when those quotes do not adhere to the minimum tick sizes applicable on trading venues, ESMA proposed in its amendment to RTS 1 to clarify that systematic internaliser quotes would only be considered to reflect prevailing market conditions if those quotes respect the price levels that could also be traded on a trading venue at the time of publication.
18. ESMA also notes that ESMA has been empowered under Article 14(7) of MiFIR “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”.
19. ESMA considers that the wording of the empowerment demonstrates clearly that it is the intent of the co-legislators to ensure an efficient valuation across all different types of classes of financial instruments. In addition, ESMA believes that investment firms should be able to obtain the best deal for their clients regardless of the specific type of financial instrument the clients intend to invest in.
20. Based on these principles expressed in the empowerment of Article 14(7) of MiFIR, ESMA proposed to amend Article 10 of RTS 1 as follows: “The prices published by a systematic internaliser shall reflect prevailing market conditions where they are close in prices to quotes of equivalent sizes for the same financial instrument on the most relevant market in terms of liquidity as determined in accordance with Article 4 for that financial instrument **and where the price levels could be traded on a trading venue at the time of publication**”.
21. ESMA continues to believe that this proposal achieves the legislative goals expressed in the empowerment in Article 14(7) of MiFIR. While ESMA takes note of the Commission’s concerns that the co-legislators did not provide that quotes of systematic internalisers need to respect tick size increments, ESMA would like to highlight that the ESMA proposal would not have led to a result where all quotes by systematic internaliser would have to respect tick sizes but only the quotes to which the provisions of Article 14 to 17 of MiFIR apply – i.e. quotes that are up to the standard market sizes defined in Table 3 of Annex II of RTS 1. ESMA rather intended to tie systematic internaliser quotes to price levels that can be traded on trading venues which automatically limits the application of tick sizes for systematic internalisers to shares, depositary receipts and ETFs as the only classes of financial instruments to which tick sizes apply as per RTS 11.
22. ESMA therefore remains of the view that its proposal has respected the boundaries and better meets the legislative intent of the empowerment in Article 14(7) of MiFIR.
23. ESMA however agrees with the Commission that any concerns about efficient valuation and price formation are most relevant for shares and also for depositary receipts due to their specific nature which is similar to shares. ESMA notes that shares and depositary receipts are the two instrument classes benefiting from the most precisely calibrated tick size regime.

24. Therefore, given the need to address the application of tick sizes to systematic internaliser quotes in a timely fashion ESMA agrees to the amendment of Article 10 of RTS 1 set out in the annex to the Commission's letter dated 10 August 2018.

4.2 Other amendments to RTS 1 as proposed by ESMA

25. ESMA understands that all other changes to the ESMA draft amended RTS 1 are of a technical nature and are not intended to change the substance of the ESMA proposals. ESMA notes that none of those changes are mentioned in the letter of 10 August 2018.

26. ESMA wishes to highlight that it proposed to amend Article 17(2) of RTS 1 in order to provide a simpler and clearer legislative text in order to increase legal certainty.

27. ESMA notes that the amendment made by the Commission, set out in the annex to its letter, meets the intention of ESMA's proposal, therefore ESMA agrees to this amendment.

Annex I: Revised draft regulatory technical standard



Brussels, **XXX**
[...](2018) **XXX** draft

COMMISSION DELEGATED REGULATION (EU) .../...

of **XXX**

amending and correcting Delegated Regulation (EU) 2017/587 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser

(Text with EEA relevance)

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of **XXX**

amending and correcting Delegated Regulation (EU) 2017/587 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 648/2012¹, and in particular Article 4(6), Article 14(7), Article 22(4) and Article 23(3) thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2017/587² sets out transparency requirements for trading venues and systematic internalisers in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments. In particular, Delegated Regulation (EU) 2017/587 specifies that prices quoted by systematic internalisers reflect prevailing market conditions, as required by Article 14(3) of Regulation (EU) No 600/2014, where those prices are close in price, at the time of publication, to quotes of equivalent sizes for the same financial instrument on the most relevant market in terms of liquidity. Systematic internalisers may therefore provide quotes that are not subject to the minimum price increment ('tick size') with which trading venues are to comply.
- (2) The ability of systematic internalisers to provide quotes using price increments smaller than those available to trading venues may result in marginally better prices available to investors. Those quotes, however, undermine the overall quality of the liquidity available, the efficient valuation and pricing of financial instruments, and the level playing field between trading venues and systematic internalisers. This is most relevant

¹ OJ L 173, 12.6.2014, p. 84.

² Commission Delegated Regulation (EU) 2017/587 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser (OJ L 87, 31.3.2017, p.387).

for shares and depositary receipts which are subject to a wider range of tick sizes than other financial instruments.

- (3) To ensure effective price formation, the overall quality of the liquidity available and the efficient valuation of shares and depositary receipts, prices quoted by systematic internalisers for those instruments should only be deemed to reflect prevailing market conditions where those prices are subject to minimum price increments corresponding to the tick sizes applicable to prices published by trading venues.
- (4) Regulation (EU) 2016/1033 of the European Parliament and of the Council³ removes securities financing transactions from the scope of the transparency provisions for trading venues and systematic internalisers. It is therefore necessary to remove references to securities financing transactions from Delegated Regulation (EU) 2017/587.
- (5) Delegated Regulation (EU) 2017/587 should therefore be amended accordingly.
- (6) A number of provisions of Delegated Regulation (EU) 2017/587 diverge from the draft regulatory technical standards on which that Regulation is based⁴. To the extent that those divergences are errors that affect the substance of those provisions, they should be corrected.
- (7) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority ('ESMA') to the Commission.
- (8) In accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁵, ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group,

HAS ADOPTED THIS REGULATION:

Article 1
Amendments to Delegated Regulation (EU) 2017/587

Delegated Regulation (EU) 2017/587 is amended as follows:

- (1) in Article 2, point (h) is deleted;
- (2) in Article 6, point (h) is deleted;
- (3) Article 10 is replaced by the following:

‘Article 10

Prices reflecting prevailing market conditions

³ Regulation (EU) 2016/1033 of the European Parliament and of the Council of 23 June 2016 amending Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) No 596/2014 on market abuse and Regulation (EU) No 909/2014 on improving securities settlement in the European Union and on central securities depositories (OJ L 175, 30.6.2016, p. 1).

⁴ Final Report "Draft Regulatory and Implementing Technical Standards MiFID II/MiFIR" of 28 September 2015 (ESMA/2015/1464).

⁵ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

(Article 14(3) of Regulation (EU) No 600/2014)

The prices published by a systematic internaliser shall be deemed to reflect prevailing market conditions where they are close in price, at the time of publication, to quotes of equivalent sizes for the same financial instrument on the most relevant market in terms of liquidity as determined in accordance with Article 4 for that financial instrument.

However, the prices published by a systematic internaliser in respect of shares and depositary receipts shall be deemed to reflect prevailing market conditions only where those prices meet the requirements set out in the first paragraph of this Article and respect minimum price increments corresponding to the tick sizes specified in Article 2 of Commission Delegated Regulation (EU) No 2017/588 (*).

(*). Commission Delegated Regulation (EU) 2017/588 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the tick size regime for shares, depositary receipts and exchange-traded funds (OJ L 87, 31.3.2017, p. 411).’.

Article 2

Corrections to Delegated Regulation (EU) 2017/587

Delegated Regulation (EU) 2017/587 is corrected as follows:

- (1) in Article 2, point (b) is replaced by the following:
‘(b) the transaction is part of a portfolio trade which includes five or more different shares.’;
- (2) in Article 3, paragraph 2 is replaced by the following:
‘2. The transparency requirements referred to in paragraph 1 shall also apply to any 'actionable indication of interest' as defined in Article 2(1)(33) of Regulation (EU) No 600/2014 and pursuant to Article 3 of that Regulation.’;
- (3) in Article 11, paragraphs 4 and 5 are replaced by the following:
‘4. Before a share, depositary receipt, ETF, certificate or other similar financial instrument is traded for the first time on a trading venue in the Union, the competent authority shall estimate the average value of transactions for that financial instrument taking into account any previous trading history of that financial instrument and of other financial instruments that are considered to have similar characteristics, and ensure publication of that estimate;
5. The estimated average value of transactions laid down in paragraph 4 shall be used to determine the standard market size for a share, depositary receipt, ETF, certificate or other similar financial instrument during a six-week period following the date that the share, depositary receipt, ETF, certificate or other similar financial instrument was first admitted to trading or first traded on a trading venue.’;

(4) in Article 17, paragraph 2 is replaced by the following:

- ‘2. Competent authorities, market operators and investment firms including investment firms operating a trading venue shall use the information published in accordance with paragraph 1 from 1 April of the year in which the information is published.’

Article 3
Entry into force

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

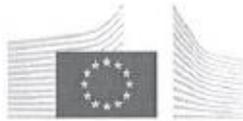
This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President

Annex II: Letter from the Commission

Ref: Aes(2018)4200798 - 10.08.2018



EUROPEAN COMMISSION

Directorate-General for Financial Stability, Financial Services and Capital Markets Union

Director General

Brussels, 10 AOUT 2018
FISMA.C3/SB/psc - 4492587

Mr Steven Maijoor
Chairman
European Securities and Markets
Authority (ESMA)
CS 60747 - 103, rue de Grenelle
F - 75345 Paris Cedex 07

By email only:
steven.maijoor@esma.europa.eu

Dear Mr Maijoor,

On 26 March 2018, ESMA submitted a draft amendment to the MiFID II regulatory technical standard (RTS 1) concerning the transparency requirements in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments. The draft RTS 1 amendment submitted by ESMA seeks to introduce respect of the minimum tick size increments when systematic internalisers quote prices for all of the above financial instruments mentioned in Article 14 MiFIR.

With this letter I would like to inform ESMA that the Commission intends to endorse the proposed amendments to RTS 1 once changes are introduced to reflect the RTS set out in the annex. The reasons for these changes can be summarised as follows:

- The co-legislators did not provide that quotes of systematic internalisers would need to respect tick size increments. Technical standards can therefore not be employed to achieve this result.
- There is evidence that not applying tick sizes to shares and depositary receipts risks negative repercussions on the liquidity in those two asset classes. Quoting prices outside the tick size increments might also hinder the efficient valuation and pricing of shares and depositary receipts. As efficient price formation is an important feature underpinning the introduction of tick size increments, systematic internalisers quoting prices for shares and depositary receipts below the standard market size should respect tick size increments in order to accurately reflect prevailing market conditions.
- Confining the proposed amendments to shares and depositary receipts addresses concerns about efficient price formation while remaining in line with the

legislative intent not to introduce a general obligation that all quotes by systematic internalisers have to respect the tick size increments.

In light of the above, I inform you that the Commission, acting in accordance with the procedure set out in the fifth and sixth subparagraphs of Article 10(1) of Regulation (EU) No 1095/2010, intends to endorse the draft amendment to RTS 1 submitted by ESMA once the above-mentioned concerns are taken into account and the necessary modifications are made.

Let me express my appreciation for the work undertaken by ESMA to deliver the proposed amendments to RTS 1. Should ESMA agree to the reformulations set out in the annex to this letter, my services would propose that the Commission adopts the amended RTS as a matter of urgency.

I am looking forward to continuing our good cooperation on this RTS.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Olivier Guersent', is positioned above the printed name.

Olivier Guersent

Enclosure:

- Amended draft amendment to the MiFID 2 regulatory technical standard (RTS 1) on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser

Cc: Roberto Gualtieri MEP, Chair of the Committee on Economic and Monetary Affairs, European Parliament; Jeppe Tranholm-Mikkelsen, Secretary-General of the Council of the European Union