**Version as of 9 January 2019**

**Draft compromise amendments - Art. 6 (MiFIR)**

***COMP BX***

Article 6

Amendments to Regulation (EU) No 600/2014 on markets in financial instruments

Regulation (EU) No 600/2104 is amended as follows:

(25) Article 1 is amended as follows:

(a) in paragraph 1, the following point (g) is added:

'(g) the authorisation and supervision of data reporting service providers';

(b) in Article 1, the following paragraph 5a is inserted:

‘‘5a. Articles 40 and 42 also apply to in respect of management companies of undertakings for collective investment in transferable securities (UCITS) and UCITS investment companies authorised in accordance with Directive 2009/65/EC and of managers of alternative investment funds (AIFMs) authorized in accordance with Directive 2011/61/EU .";

(26) Article 2(1) is amended as follows:

(a) points (34), (35) and (36) are replaced by the following:

"(34) ‘approved publication arrangement’ or ‘APA’ means a person authorised under this Regulation to provide the service of publishing trade reports on behalf of investment firms pursuant to Articles 20 and 21;

(35) ‘consolidated tape provider’ or ‘CTP’ means a person authorised under this Regulation to provide the service of collecting trade reports for financial instruments listed in Articles 6, 7, 10, 12 and 13, 20 and 21 from regulated markets, MTFs, OTFs and APAs and consolidating them into a continuous electronic live data stream providing price and volume data per financial instrument;

(36) ‘approved reporting mechanism’ or ‘ARM’ means a person authorised under this Regulation to provide the service of reporting details of transactions to competent authorities or to ESMA on behalf of investment firms;";

(b) the following point (36a) is inserted:

'(36a) ‘data reporting service providers’ means the persons referred to in points (34)

to (36) and persons referred to in Article 38a27a(2)];'; (27) Article 22 is replaced by the following:

'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 referred to in 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, ESMA and competent authorities 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. ESMA shall develop draft regulatory technical standards to specify the content and frequency of data requests and the formats and the timeframe in which trading venues, APAs and CTPs are to respond to data requests referred to in paragraph 1, the type of data that is to be stored, and the minimum period of time for which trading venues, APAs and CTPs are to store data in order to be able to respond to data requests in accordance with paragraph 2.

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

(28) Article 26 is replaced by the following:

'Article 26 ***(1122 Balz)***

Obligation to report transactions

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

***The competent authorities shall, in accordance with Article 85 of Directive 2014/65/EU, establish the necessary arrangements in order to ensure that the competent authority of the most relevant market in terms of liquidity for those financial instruments also receives that information.***

***The competent authorities***  shall ***without delay*** make available to ***ESMA***  any information reported in accordance with this Article.

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

(a) financial instruments which are admitted to trading or traded on a 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 trading venue; and

(c) financial instruments where the underlying is an index or a basket composed of financial instruments traded on a 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 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 Article 57 of Directive 2014/65/EU.

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.

ESMA shall develop by [PO: Please insert date 24 months after date of entry into force] guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 to ensure that the application of legal entity identifiers within the Union complies with international standards, in particular those established by the Financial Stability Board.

7. The reports shall be made to ***the competent authority*** 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 competent authority***.

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 Article 66(4) of Directive 2014/65/EU 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 home Member State 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 home Member State 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 Regulation (EU) No 648/2012, 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 Regulation (EU) No 648/2012 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. When, in accordance with Article 35(8) of Directive 2014/65/EU, reports provided for under this Article are transmitted to ***the competent authority***, it shall transmit that information to the competent authorities of the home Member State of the investment firm, unless the competent authorities of the home Member State decide that they do not want to receive that information.

9. ESMA shall develop draft regulatory 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) the criteria for defining a relevant market in accordance with paragraph 1; (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 Member States 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.

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.

10. By [PO: Please insert date 24 months after date of entry into force], ESMA shall submit a report to the Commission on the functioning of this Article, including its interaction with the related reporting obligations under Regulation (EU) No 648/2012, and whether the content and format of transaction reports received and ***exchanged between*** competent authorities comprehensively enables monitoring of the activities of investment firms in accordance with Article 24 of this Regulation. The Commission may take steps to propose any changes in this regard***, including providing for transactions to be transmitted only to a single system***. The Commission shall forward ESMA’s report to the European Parliament and to the Council.';

(29) Article 27 is replaced by the following:

'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 ESMA 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 ESMA with reference data relating to those financial instruments.

Identifying reference data shall be made ready for submission to ESMA 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. ESMA shall publish those reference data immediately on its website. ESMA shall give competent authorities access without delay to those reference data.

2. In order to allow competent authorities 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, ESMA shall, after consultation with the competent authorities, establish the necessary arrangements in order to ensure that:

(a) ESMA effectively receives 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;

(c) the financial instrument reference data received pursuant to paragraph 1 is efficiently and without delay transmitted to the relevant competent authorities.

(d) there are effective mechanisms in place between ESMA and the competent authorities to resolve data delivery or data quality issues.

3. ESMA shall develop draft regulatory 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 ESMA and transmitting it to competent authorities 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 ESMA and the competent authorities pursuant to paragraph 2.

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.

***3 a. ESMA may suspend the reporting obligations specified in Article 27(1) for certain or all financial instruments where all of the following conditions are met:***

***(a) The suspension is necessary in order to preserve the integrity and quality of the reference data subject to reporting obligation as specified in Article 27(1) of MiFIR which may be put at risk by any of the following:***

***(i) serious incompleteness, inaccuracy or corruption of the submitted data, or***

***(ii) unavailability in a timely manner, disruption or damage of the functioning of systems used for the submission, collection, procession or storage of the respective reference data by ESMA, national competent authorities, market infrastructures, clearing and settlement systems and important market participants.***

***(b) The existing Union regulatory requirements under Union law that are applicable do not address the threat.***

***(c) The suspension does not have any detrimental effect on the efficiency of financial markets or investors that are disproportionate to the benefits of the action.***

***(d) The suspension does not create any regulatory arbitrage.***

***When taking the measure referred to in the first subparagraph, ESMA shall take into account the extent to which the measure ensures the accuracy and completeness of the reported data for the purposes specified in Article 27(2) of MiFIR.***

***Before deciding to take the measure referred to in the first subparagraph, ESMA shall notify the relevant competent authorities.***

***The Commission shall be empowered to adopt delegated acts in accordance with Article 50 specifying criteria and factors to be taken into account by ESMA in determining in which cases the measure referred to in the first subparagraph may be adopted and cease to apply. (1123 Hübner)***

(30) the following Title IVa is inserted:

‘TITLE IVa

DATA REPORTING SERVICES

CHAPTER 1

Authorisation of data reporting service providers

Article 27a

Requirement for authorisation

1. The operation of an APA, a CTP or an ARM as a regular occupation or business shall be subject to prior authorisation by ESMA in accordance with this Title.

2. An investment firm or a market operator operating a trading venue may also provide the services of an APA, a CTP or an ARM, subject to the prior verification by ESMA that the investment firm or the market operator comply with this Title. The provision of those services shall be included in their authorisation.

3. ESMA shall establish a register of all data reporting services providers in the Union. The register shall be publicly available and shall contain information on the services for which the data reporting services provider is authorised and it shall be updated on a regular basis.

Where ESMA has withdrawn an authorisation in accordance with Article 27d, that withdrawal shall be published in the register for a period of 5 years..

4. Data reporting services providers shall provide their services under the supervision of ESMA. ESMA shall regularly review the compliance of data reporting services providers with this Title. ESMA shall monitor that data reporting services providers comply at all times with the conditions for initial authorisation established under this Title.

Article 27b

Authorisation of data reporting service providers

1. Data reporting service providers shall be authorised by ESMA for the purposes of

Title IVa where:

(a) the data service provider is a legal person established in the Union; and

(b) the data service provider meets the requirements laid down in Title IVa.

2. The authorisation referred to in paragraph 1 shall specify the data reporting service which the data reporting services provider is authorised to provide. Where an authorised data reporting services provider seeks to extend its business to additional data reporting services, it shall submit a request to ESMA for extension of that authorisation.

3. An authorised data reporting service provider shall comply at all times with the conditions for authorisation referred to in Title IVa. An authorised data reporting

service provider shall, without undue delay, notify ESMA of any material changes to the conditions for authorisation.

4. The authorisation referred to in paragraph 1 shall be effective and valid for the entire territory of the Union and shall allow the data reporting service provider to provide the services for which it has been authorised, throughout the Union.

Article 27c

Procedures for granting and refusing applications for authorisation

1. The applicant data reporting service provider shall submit an application providing all information necessary to enable ESMA to confirm that the data reporting service provider has established, at the time of initial authorisation, all the necessary arrangements to meet its obligations under the provisions of this Title, including a programme of operations setting out, inter alia, the types of services envisaged and the organisational structure.

2. ESMA shall assess whether the application for authorisation is complete within 20 working days of receipt of the application.

Where the application is not complete, ESMA shall set a deadline by which the data reporting service provider is to provide additional information.

After assessing an application as complete, ESMA shall notify the data reporting service provider accordingly.

3. ESMA shall, within six months from the receipt of a complete application, assess the compliance of the data reporting service provider with this Title and shall adopt a fully reasoned decision granting or refusing authorisation and shall notify the applicant data service provider accordingly within five working days.

4. ESMA shall develop draft regulatory technical standards to determine:

(a) the information to be provided to it under paragraph 6, including the programme of operations;

(b) the information included in the notifications under Article 27b(3).

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.

8. ESMA shall develop draft implementing technical standards to determine standard forms, templates and procedures for the notification or provision of information provided for in paragraph 2 of this Article and in Article 27e(3)..

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 27d

Withdrawal of authorisation

1. ESMA may withdraw the authorisation of a data reporting service provider where the latter:

(a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has provided no services for the preceding six months;

(b) obtained the authorisation by making false statements or by any other irregular means;

(c) no longer meets the conditions under which it was authorised;

(d) has seriously and systematically infringed the provisions of this Regulation.

2. ESMA shall, without undue delay, notify the competent authority in the Member State where the data reporting service provider is established of a decision to withdraw the authorisation of a data reporting service provider.';

Article 27e

Requirements for the management body of a data reporting services provider

1. The management body of a data reporting services provider shall at all times be of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties.

The management body shall possess adequate collective knowledge, skills and experience to be able to understand the activities of the data reporting services provider. Each member of the management body shall act with honesty, integrity and independence of mind to effectively challenge the decisions of the senior management where necessary and to effectively oversee and monitor management decision-making where necessary.

Where a market operator seeks authorisation to operate an APA, a CTP or an ARM pursuant to Article 27c and the members of the management body of the APA, the CTP or the ARM are the same as the members of the management body of the regulated market, those persons are deemed to comply with the requirement laid down in the first subparagraph.

2. Data reporting services provider shall notify to ESMA all members of its management body and of any changes to its membership, along with all information needed to assess whether the entity complies with paragraph 1.

3. The management body of a data reporting services provider shall define and oversee the implementation of the governance arrangements that ensure effective and prudent management of an organisation including the segregation of duties in the organisation and the prevention of conflicts of interest, and in a manner that promotes the integrity of the market and the interest of its clients.

4. ESMA shall refuse authorisation if it is not satisfied that the person or the persons who shall effectively direct the business of the data reporting services provider are of sufficiently good repute, or if there are objective and demonstrable grounds for believing that proposed changes to the management of the provider pose a threat to its sound and prudent management and to the adequate consideration of the interest of its clients and the integrity of the market.

5. ESMA shall develop draft regulatory technical standards [PO: Please insert date

24 months after entry into force] for the assessment of the suitability of the members of the management body described in paragraph 1, taking into account different roles and functions carried out by them and the need to avoid conflicts of interest between members of the management body and users of the APA, CTP or ARM.

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

Chapter 2

CONDITIONS FOR APAS, CTPS AND ARMS

Article 27f

Organisational requirements for APAs

1. An APA shall have adequate policies and arrangements in place to make public the information required under Articles 20 and 21 as close to real time as is technically possible, on a reasonable commercial basis. The information shall be made available free of charge 15 minutes after the APA has published it. The APA shall efficiently and consistently disseminate such information in a way that ensures fast access to the information, on a non-discriminatory basis and in a format that facilitates the consolidation of the information with similar data from other sources.

2. The information made public by an APA in accordance with paragraph 1 shall include, at least, the following details:

(a) the identifier of the financial instrument;

(b) the price at which the transaction was concluded; (c) the volume of the transaction;

(d) the time of the transaction;

(e) the time the transaction was reported; (f) the price notation of the transaction;

(g) the code for the trading venue the transaction was executed on, or where the transaction was executed via a systematic internaliser the code ‘SI’ or otherwise the code ‘OTC’;

(h) if applicable, an indicator that the transaction was subject to specific conditions.

3. An APA shall operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients. In particular, an APA who is also a market operator or investment firm shall treat all information collected in a non-discriminatory fashion and shall operate and maintain appropriate arrangements to separate different business functions.

4. An APA shall have sound security mechanisms in place designed to guarantee the security of the means of transfer of information, minimise the risk of data corruption and unauthorised access and to prevent information leakage before publication. The APA shall maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.

5. The APA shall have systems in place that can effectively check trade reports for completeness, identify omissions and obvious errors and request re-transmission of any such erroneous reports.

6. ESMA shall develop draft regulatory technical standards to determine common formats, data standards and technical arrangements facilitating the consolidation of information as referred to in paragraph 1.

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.

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 50 specifying what constitutes a reasonable commercial basis to make information public as referred to in paragraph 1 of this Article.

8. ESMA shall develop draft regulatory technical standards specifying:

(a) the means by which an APA may comply with the information obligation referred to in paragraph 1;

(b) the content of the information published under paragraph 1, including at least the information referred to in paragraph 2 in such a way as to enable the publication of information required under this Article;

(c) the concrete organisational requirements laid down in paragraphs 3, 4 and

5.

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 27g

Organisational requirements for CTPs

1. A CTP shall have adequate policies and arrangements in place to collect the information made public in accordance with Articles 6 and 20, consolidate it into a continuous electronic data stream and make the information available to the public as close to real time as is technically possible, on a reasonable commercial basis.

That information shall include, at least, the following details: (a) the identifier of the financial instrument;

(b) the price at which the transaction was concluded; (c) the volume of the transaction;

(d) the time of the transaction;

(e) the time the transaction was reported; (f) the price notation of the transaction;

(g) the code for the trading venue the transaction was executed on, or where the transaction was executed via a systematic internaliser the code ‘SI’ or otherwise the code ‘OTC’;

(h) where applicable, the fact that a computer algorithm within the investment firm was responsible for the investment decision and the execution of the transaction;

(i) if applicable, an indicator that the transaction was subject to specific conditions;

(j) if the obligation to make public the information referred to in Article 3(1) was waived in accordance with point (a) or (b) of Article 4(1), a flag to indicate which of those waivers the transaction was subject to.

The information shall be made available free of charge 15 minutes after the CTP has published it. The CTP shall be able to efficiently and consistently disseminate such information in a way that ensures fast access to the information, on a non- discriminatory basis and in formats that are easily accessible and utilisable for market participants.

2. A CTP shall have adequate policies and arrangements in place to collect the information made public in accordance with Article 10 and Article 21, consolidate it into a continuous electronic data stream and make following information available to the public as close to real time as is technically possible, on a reasonable commercial basis including, at least, the following details:

(a) the identifier or identifying features of the financial instrument; (b) the price at which the transaction was concluded;

(c) the volume of the transaction; (d) the time of the transaction;

(e) the time the transaction was reported; (f) the price notation of the transaction;

(g) the code for the trading venue the transaction was executed on, or where the transaction was executed via a systematic internaliser the code ‘SI’ or otherwise the code ‘OTC’;

(h) if applicable, an indicator that the transaction was subject to specific conditions.

The information shall be made available free of charge 15 minutes after the CTP has published it. The CTP shall be able to efficiently and consistently disseminate such information in a way that ensures fast access to the information, on a non- discriminatory basis and in generally accepted formats that are interoperable and easily accessible and utilisable for market participants.

3. The CTP shall ensure that the data provided is consolidated from all the regulated markets, MTFs, OTFs and APAs and for the financial instruments specified by regulatory technical standards under point (c) of paragraph 8.

4. The CTP shall operate and maintain effective administrative arrangements designed to prevent conflicts of interest. In particular, a market operator or an APA, who also operate a consolidated tape, shall treat all information collected in a non-

discriminatory fashion and shall operate and maintain appropriate arrangements to separate different business functions.

5. The CTP shall have sound security mechanisms in place designed to guarantee the security of the means of transfer of information and to minimise the risk of data corruption and unauthorised access. The CTP shall maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.

ESMA shall develop draft regulatory technical standards to determine data standards and formats for the information to be published in accordance with Articles 6, 10, 20 and 21 , including financial instrument identifier, price, quantity, time, price notation, venue identifier and indicators for specific conditions the transactions was subject to as well as technical arrangements promoting an efficient and consistent dissemination of information in a way ensuring for it to be easily accessible and utilisable for market participants as referred to in paragraphs 1 and 2, including identifying additional services the CTP could perform which increase the efficiency of the market.

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.

6. The Commission shall adopt delegated acts in accordance with Article 89 clarifying what constitutes a reasonable commercial basis to provide access to data streams as referred to in paragraphs 1 and 2 of this Article.

7. ESMA shall develop draft regulatory technical standards specifying:

(a) the means by which the CTP may comply with the information obligation referred to in paragraphs 1 and 2;

(b) the content of the information published under paragraphs 1 and 2;

(c) the financial instruments data of which must be provided in the data stream and for non-equity instruments the trading venues and APAs which need to be included;

(d) other means to ensure that the data published by different CTPs is consistent and allows for comprehensive mapping and cross-referencing against similar data from other sources, and is capable of being aggregated at Union level;

(e) the concrete organisational requirements laid down in paragraphs 4 and 5. 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 27h

Organisational requirements for ARMs

1. An ARM shall have adequate policies and arrangements in place to report the information required under Article 26 as quickly as possible, and no later than the close of the working day following the day upon which the transaction took place.

2. The ARM shall operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients. In particular, an ARM that is also a market operator or investment firm shall treat all information collected in a non-discriminatory fashion and shall operate and maintain appropriate arrangements to separate different business functions.

3. The ARM shall have sound security mechanisms in place designed to guarantee the security and authentication of the means of transfer of information, minimise the risk of data corruption and unauthorised access and to prevent information leakage, maintaining the confidentiality of the data at all times. The ARM shall maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.

4. The ARM shall have systems in place that can effectively check transaction reports for completeness, identify omissions and obvious errors caused by the investment firm and where such error or omission occurs, to communicate details of the error or omission to the investment firm and request re-transmission of any such erroneous reports.

The ARM shall have systems in place to enable the ARM to detect errors or omissions caused by the ARM itself and to enable the ARM to correct and transmit, or re-transmit as the case may be, correct and complete transaction reports to the competent authority.

5. ESMA shall develop draft regulatory technical standards specifying:

(a) the means by which the ARM may comply with the information obligation referred to in paragraph 1; and

(b) the concrete organisational requirements laid down in paragraphs 2, 3 and 4.

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.

(31) the following Title VIa is inserted:

'TITLE VIa

ESMA powers and competences

CHAPTER 1

COMPETENCES AND PROCEDURES

Article 38a

Exercise of ESMA's powers

The powers conferred on ESMA or any official of or other person authorised by ESMA by Articles 38b to 38e shall not be used to require the disclosure of information or documents which are subject to legal privilege.

Article 38b

Request for information

1. ESMA may by simple request or by decision require the following persons to provide all information to enable ESMA to carry out its duties under this Regulation:

(a) an APA, a CTP, an ARM, and an investment firm or a market operator operating a trading venue to operate the data reporting services of an APA, a CTP or an ARM, and the persons that control them or are controlled by them;

(b) the managers of the persons referred to in point (a);

(c) the auditors and advisors of the persons referred to in point (a);

2. Any simple request for information referred to in paragraph 1 shall: (a) refer to this Article as the legal basis of that request;

(b) state the purpose of the request; (c) specify the information required;

(d) include a time limit within which the information is to be provided;

(e) include a statement that there is no obligation on the person from whom the information is requested to provide that information but that in case of a voluntary reply to the request, the information provided must not be incorrect or misleading;

(f) indicate the amount of the fine to be issued in accordance with Article 38e where the information provided is incorrect or misleading.

3. When requiring to supply information under paragraph 1 by decision, ESMA

shall:

(a) refer to this Article as the legal basis of that request; (b) state the purpose of the request;

(c) specify the information required;

(d) set a time limit within which the information is to be provided;

(e) indicate the periodic penalty payments provided for in Article 38g where the production of the required information is incomplete;

(f) indicate the fine provided for in Article 38f, where the answers to questions asked are incorrect or misleading;

(g) indicate the right to appeal the decision before ESMA’s Board of Appeal and to have the decision reviewed by the Court of Justice of the European Union (‘Court of Justice’) in accordance with Articles 60 and 61 of Regulation (EU) No 1095/2010.

4. The persons referred to in paragraph 1 or their representatives and, in the case of legal persons or associations having no legal personality, the persons authorised to represent them by law or by their constitution shall supply the information requested. Lawyers duly authorised to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.

5. ESMA shall, without delay, send a copy of the simple request or of its decision to the competent authority of the Member State where the persons referred to in paragraph 1 concerned by the request for information are domiciled or established.

Article 38c

General investigations

1. In order to carry out its duties under this Regulation, ESMA may conduct necessary investigations of persons referred to in Article 38b(1). To that end, the officials and other persons authorised by ESMA shall be empowered to:

(a) examine any records, data, procedures and any other material relevant to the execution of its tasks irrespective of the medium on which they are stored;

(b) take or obtain certified copies of or extracts from such records, data, procedures and other material;

(c) summon and ask any person referred to in Article 38b(1) or their representatives or staff for oral or written explanations on facts or documents relating to the subject matter and purpose of the inspection and to record the answers;

(d) interview any other natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;

(e) request records of telephone and data traffic.

2. The officials and other persons authorised by ESMA for the purposes of the investigations referred to in paragraph 1 shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the investigation. That authorisation shall also indicate the periodic penalty payments provided for in Article 38i where the production of the required records, data, procedures or any other material, or the answers to questions asked to persons referred to in Article 38b(1) are not provided or are incomplete, and the fines provided for in Article 38h, where the answers to questions asked to persons referred to in Article 38b(1) are incorrect or misleading.

3. The persons referred to in Article 38b(1) are required to submit to investigations launched on the basis of a decision of ESMA. The decision shall specify the subject matter and purpose of the investigation, the periodic penalty payments provided for in Article 38i, the legal remedies available under Regulation (EU) No 1095/2010 and the right to have the decision reviewed by the Court of Justice.

4. In good time before an investigation referred to in paragraph 1, ESMA shall inform the competent authority of the Member State where the investigation is to be carried out of the investigation and of the identity of the authorised persons. Officials of the competent authority concerned shall, upon the request of ESMA, assist those authorised persons in carrying out their duties. Officials of the competent authority concerned may also attend the investigations upon request.

5. If a request for records of telephone or data traffic referred to in point (e) of paragraph 1 requires authorisation from a judicial authority according to applicable national law, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

6. Where a national judicial authority receives an application for the authorisation of a request for records of telephone or data traffic referred to in point (e) of paragraph

1, that authority shall verify the following:

(a) the decision adopted by ESMA referred to in paragraph 3 is authentic;

(b) any measures to be taken are proportionate and not arbitrary or excessive. For the purposes of point (b), the national judicial authority may ask ESMA for

detailed explanations, in particular relating to the grounds ESMA has for suspecting

that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the investigation or demand that it be provided with the information on ESMA’s file. The lawfulness of ESMA’s decision shall be subject to review only by the Court of Justice following the procedure set out in Regulation (EU) No

1095/2010.

Article 38d

On-site inspections

1. In order to carry out its duties under this Regulation, ESMA may conduct all necessary on-site inspections at any business premises of the persons referred to in Article 38b(1).

2. The officials and other persons authorised by ESMA to conduct an on-site inspection may enter any business premises of the persons subject to an investigation decision adopted by ESMA and shall have all the powers stipulated in Article 38b(1). They shall also have the power to seal any business premises and books or records for the period of, and to the extent necessary for, the inspection.

3. In sufficient time before the inspection, ESMA shall give notice of the inspection to the competent authority of the Member State where the inspection is to be conducted. Where the proper conduct and efficiency of the inspection so require, ESMA, after informing the relevant competent authority, may carry out the on-site inspection without prior notice. Inspections in accordance with this Article shall be conducted provided that the relevant authority has confirmed that it does not object to those inspections.

4. The officials and other persons authorised by ESMA to conduct an on-site inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection and the periodic penalty payments provided for in Article 38g where the persons concerned do not submit to the inspection.

5. The persons referred to in Article 38b(1) shall submit to on-site inspections ordered by decision of ESMA. The decision shall specify the subject matter and purpose of the inspection, appoint the date on which it is to begin and indicate the periodic penalty payments provided for in Article 38i, the legal remedies available under Regulation (EU) No 1095/2010 as well as the right to have the decision reviewed by the Court of Justice

6. Officials of, as well as those authorised or appointed by, the competent authority of the Member State where the inspection is to be conducted shall, at the request of

ESMA, actively assist the officials and other persons authorised by ESMA. Officials of the competent authority of the Member State concerned may also attend the on- site inspections.

7. ESMA may also require competent authorities to carry out specific investigatory tasks and on-site inspections as provided for in this Article and in Article 38b(1) on its behalf.

8. Where the officials and other accompanying persons authorised by ESMA find that a person opposes an inspection ordered pursuant to this Article, the competent authority of the Member State concerned shall afford them the necessary assistance, requesting, where appropriate, the assistance of the police or of an equivalent enforcement authority, so as to enable them to conduct their on-site inspection.

9. If the on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7 requires authorisation by a judicial authority according to national law, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

10. Where a national judicial authority receives an application for the authorisation of an on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7, that authority shall verify the following:

(a) the decision adopted by ESMA referred to in paragraph 4 is authentic; (b) any measures to be taken are proportionate and not arbitrary or

excessive.

For the purposes of point (b), the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the investigation or demand that it be provided with the information on ESMA’s file. The lawfulness of ESMA’s decision shall be subject to review only by the Court of Justice following the procedure set out in Regulation (EU) No

1095/2010.

Article 38e

Exchange of information

ESMA and the competent authorities shall, without undue delay, provide each other with the information required for the purposes of carrying out their duties under this Regulation.

Article 38f

Professional secrecy

The obligation of professional secrecy referred to in Article 76 of Directive

2014/65/EU shall apply to ESMA and all persons who work or who have worked for ESMA or for any other person to whom ESMA has delegated tasks, including auditors and experts contracted by ESMA.

Article 38g

Supervisory measures by ESMA

1. Where ESMA finds that a person listed in point (a) of Article 38a(1) has committed one of the infringements listed in Title IVa, it shall take one or more of the following actions:

(a) adopt a decision requiring the person to bring the infringement to an end; (b) adopt a decision imposing fines pursuant to Articles 38h and 38i;

(c) issue public notices.

2. When taking the actions referred to in paragraph 1, ESMA shall take into account the nature and seriousness of the infringement, having regard to the following criteria:

(a) the duration and frequency of the infringement;

(b) whether financial crime has been occasioned, facilitated or otherwise attributable to the infringement;

(c) whether the infringement has been committed intentionally or negligently. (d) the degree of responsibility of the person responsible for the infringement; (e) the financial strength of the person responsible for the infringement, as

indicated by the total turnover of the responsible legal person or the annual

income and net assets of the responsible natural person;

(f) the impact of the infringement on investors’ interests;

(g) the importance of the profits gained, losses avoided by the person responsible for the infringement or the losses for third parties derived from the infringement, insofar as they can be determined;

(h) the level of cooperation of the person responsible for the infringement with ESMA, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

(i) previous infringements by the person responsible for the infringement;

(j) measures taken after the infringement by the person responsible for the infringement to prevent its repetition.

3. Without undue delay, ESMA shall notify any action taken pursuant to paragraph 1 to the person responsible for the infringement, and shall communicate it to the competent authorities of the Member States and to the Commission. It shall publicly disclose any such decision on its website within 10 working days from the date when it was adopted.

The disclosure to the public referred to in the first subparagraph shall include the following:

(a) a statement affirming the right of the person responsible for the infringement to appeal the decision;

(b) where relevant, a statement affirming that an appeal has been lodged and specifying that such an appeal does not have suspensive effect;

(c) a statement asserting that it is possible for ESMA’s Board of Appeal to

suspend the application of the contested decision in accordance with Article

60(3) of Regulation (EU) No 1095/2010.

CHAPTER 2

ADMINISTRATIVE SANCTIONS AND OTHER MEASURES

Article 38h

Fines

1. Where in accordance with Article 38k(5), ESMA finds that any person has, intentionally or negligently, committed one of the infringements listed in Title IVa, it shall adopt a decision imposing a fine in accordance with paragraph 2 of this Article..

An infringement shall be considered to have been committed intentionally if ESMA finds objective factors which demonstrate that a person acted deliberately to commit the infringement.

2. The maximum amount of the fine referred to in paragraph 1 shall be EUR 200 000 or, in the Member States whose currency is not the euro, the corresponding value in the national currency. .

3. When determining the level of a fine pursuant to paragraph 1, ESMA shall take into account the criteria set out in Article 38g(2).

Article 38i

Periodic penalty payments

1. ESMA shall, by decision, impose periodic penalty payments in order to compel:

(a) a person to put an end to an infringement in accordance with a decision taken pursuant to Article 38b(1)(a);

(b) a person referred to in Article 38b(1):

– to supply complete information which has been requested by a decision pursuant to Article 38b;

– to submit to an investigation and in particular to produce complete records, data, procedures or any other material required and to complete and correct other information provided in an investigation launched by a decision pursuant to Article 38c;

– to submit to an on-site inspection ordered by a decision taken pursuant to Article 38d.

2. A periodic penalty payment shall be effective and proportionate. The periodic penalty payment shall be imposed for each day of delay.

3. Notwithstanding paragraph 2, the amount of the periodic penalty payments shall be 3 % of the average daily turnover in the preceding business year, or, in the case of natural persons, 2 % of the average daily income in the preceding calendar year. It

shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.

4. A periodic penalty payment shall be imposed for a maximum period of six months following the notification of ESMA’s decision. Following the end of the period, ESMA shall review the measure.

Article 38j

Disclosure, nature, enforcement and allocation of fines and periodic penalty payments

1. ESMA shall disclose to the public every fine and periodic penalty payment that has been imposed pursuant to Articles 38h and 38i unless such disclosure to the public would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved. Such disclosure shall not contain personal data within the meaning of Regulation (EC) No 45/2001.

2. Fines and periodic penalty payments imposed pursuant to Articles 38h and 38i shall be of an administrative nature.

3. Where ESMA decides to impose no fines or penalty payments, it shall inform the European Parliament, the Council, the Commission, and the competent authorities of the Member State concerned accordingly and shall set out the reasons for its decision.

4. Fines and periodic penalty payments imposed pursuant to Articles 38h and 38i shall be enforceable.

5. Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out.

6. The amounts of the fines and periodic penalty payments shall be allocated to the general budget of the European Union.

Article 38k

Procedural rules for taking supervisory measures and imposing fines

1. Where, in carrying out its duties under this Regulation, ESMA finds that there are serious indications of the possible existence of facts liable to constitute one or more of the infringements listed in Title IVa, ESMA shall appoint an independent investigation officer within ESMA to investigate the matter. The appointed officer shall not be involved or have been directly or indirectly involved in the supervision or the authorisation process of the data reporting service provider concerned and shall perform its functions independently from ESMA.

2. The investigation officer referred to in paragraph 1 shall investigate the alleged infringements, taking into account any comments submitted by the persons who are subject to the investigations, and shall submit a complete file with his findings to ESMA.

3. In order to carry out its tasks, the investigation officer may exercise the power to request information in accordance with Article 38b and to conduct investigations and on-site inspections in accordance with Articles 38c and 38d.

4. Where carrying out his tasks, the investigation officer shall have access to all documents and information gathered by ESMA in its supervisory activities.

5. Upon completion of his investigation and before submitting the file with his findings to ESMA, the investigation officer shall give the persons subject to the investigations the opportunity to be heard on the matters being investigated. The investigation officer shall base his findings only on facts on which the persons concerned have had the opportunity to comment.

6. The rights of the defence of the persons concerned shall be fully respected during investigations under this Article.

7. When submitting the file with his findings to ESMA, the investigation officer shall notify the persons who are subject to the investigations. The persons subject to the investigations shall be entitled to have access to the file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information affecting third parties.

8. On the basis of the file containing the investigation officer’s findings and, when requested by the persons subject to the investigations, after having heard the those persons in accordance with Article 38l, ESMA shall decide if one or more of the infringements listed in Title IVa have been committed by the persons subject to the investigations and, in such a case, shall take a supervisory measure in accordance with Article 38m.

9. The investigation officer shall not participate in ESMA’s deliberations or in any other way intervene in ESMA’s decision-making process.

10. The Commission shall adopt delegated acts in accordance with Article 50 [PO: Please insert date 24 months after entry into force] by to specifying further the rules of procedure for the exercise of the power to impose fines or periodic penalty payments, including provisions on the rights of the defence, temporal provisions, and the collection of fines or periodic penalty payments, and the limitation periods for the imposition and enforcement of fines and periodic penalty payments.

11. ESMA shall refer matters for criminal prosecution to the relevant national authorities where, in carrying out its duties under this Regulation, it finds that there are serious indications of the possible existence of facts liable to constitute criminal offences. In addition, ESMA shall refrain from imposing fines or periodic penalty payments where a prior acquittal or conviction arising from identical fact or facts which are substantially the same has already acquired the force of res judicata as the result of criminal proceedings under national law.

Article 38l

Hearing of the persons concerned

1. Before taking any decision pursuant to Articles 38g, 38h and 38i, ESMA shall give the persons subject to the proceedings the opportunity to be heard on its findings. ESMA shall base its decisions only on findings on which the persons subject to the proceedings have had an opportunity to comment.

The first subparagraph shall not apply if urgent action is needed in order to prevent significant and imminent damage to the financial system. In such a case ESMA may

adopt an interim decision and shall give the persons concerned the opportunity to be heard as soon as possible after taking its decision.

2. The rights of the defence of the persons subject to investigations shall be fully respected in the proceedings. They shall be entitled to have access to ESMA’s file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information or ESMA’s internal preparatory documents.

Article 38m

Review by the Court of Justice

The Court of Justice shall have unlimited jurisdiction to review decisions whereby ESMA has imposed a fine or a periodic penalty payment. It may annul, reduce or increase the fine or periodic penalty payment imposed.

Article 38n

Authorisation and supervisory fees

1. ESMA shall charge fees to the data reporting service providers in accordance with this Regulation and in accordance with the delegated acts adopted pursuant to paragraph 3. Those fees shall fully cover ESMA’s necessary expenditure relating to the authorisation and supervision of data reporting service providers and the reimbursement of any costs that the competent authorities may incur carrying out work pursuant to this Regulation, in particular as a result of any delegation of tasks in accordance with Article 38o.

2. The amount of an individual fee charged to a particular data reporting service providers shall cover all administrative costs incurred by ESMA for its activities in relation to the prospectus, including supplements thereto, drawn up by such issuer, offeror or person asking for admission to trading on a regulated market. It shall be proportionate to the turnover of the issuer, offeror or person asking for admission to trading on a regulated market.

3. The Commission shall adopt a delegated act in accordance with Article 50 by [PO: Please insert date 24 months after entry into force] by to specifying further the type of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid.'

Article 38o

Delegation of tasks by ESMA to competent authorities

1. Where necessary for the proper performance of a supervisory task, ESMA may delegate specific supervisory tasks to the competent authority of a Member State in accordance with the guidelines issued by ESMA pursuant to Article 16 of Regulation (EU) No 1095/2010. Such specific supervisory tasks may, in particular, include the power to carry out requests for information in accordance with Article 38b and to conduct investigations and on-site inspections in accordance with Article 38c and Article 38d.

2. Prior to delegation of a task, ESMA shall consult the relevant competent authority about:

(a) the scope of the task to be delegated;

(b) the timetable for the performance of the task; and

(c) the transmission of necessary information by and to ESMA.

3. In accordance with the regulation on fees adopted by the Commission pursuant to Article 38n(3), ESMA shall reimburse a competent authority for costs incurred as a result of carrying out delegated tasks.

4. ESMA shall review the decision referred to in paragraph 1 at appropriate intervals. A delegation may be revoked at any time.

(32) 5. A delegation of tasks shall not affect the responsibility of ESMA and shall not limit ESMA’s ability to conduct and oversee the delegated activity."; Article 50 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. The power to adopt delegated acts referred to in Article 1(9), Article 2(2), Article

13(2), Article 15(5), Article 17(3), Article 19(2) and (3), Article 27c, Article 31(4), Article 40(8), Article 41(8), Article 42(7), Article 45(10) and Article 52(10) and (12) shall be conferred for an indeterminate period of time from 2 July 2014.';

(b) in paragraph 3, the first sentence is replaced by the following:

'The delegation of power referred to in Article 1(9), Article 2(2), Article 13(2), Article 15(5), Article 17(3), Article 19(2) and (3), Article 27c, Article 31(4), Article

40(8), Article 41(8), Article 42(7), Article 45(10) and Article 52(10) and (12) may be revoked at any time by the European Parliament or by the Council.';

(c) in paragraph 5, the first sentence is replaced by the following:

'A delegated act adopted pursuant to Article 1(9), Article 2(2), Article 13(2), Article

15(5), Article 17(3), Article 19(2) and (3), Article 27c, Article 31(4), Article 40(8), Article 41(8), Article 42(7), Article 45(10) and Article 52(10) or (12) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object.';

(33) in Article 52, the following paragraphs 13 and 14 are added:

'13. The Commission shall, after consulting ESMA, present reports to the European Parliament and the Council on the functioning of the consolidated tape established in accordance with Title IVa. The report relating to Article 27d(1) shall be presented by

3 September 2019. The report relating to Article 27d(2) shall be presented by 3 September 2021.

The reports referred to in the first subparagraph shall assess the functioning of the consolidated tape against the following criteria:

(a) the availability and timeliness of post trade information in a consolidated format capturing all transactions irrespective of whether they are carried out on trading venues or not;

(b) the availability and timeliness of full and partial post trade information that is of a high quality, in formats that are easily accessible and usable for market participants and available on a reasonable commercial basis.

Where the Commission concludes that the CTPs have failed to provide information in a way that meets the criteria set out in the second subparagraph, the Commission shall attach a request to its report for ESMA to launch a negotiated procedure for the appointment though a public procurement process run by ESMA of a commercial entity operating a consolidated tape. ESMA shall launch the procedure after receiving the request from the Commission on the conditions specified in the Commission’s request and in accordance with Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (\*\*).

14. The Commission shall, where the procedure outlined in paragraph 13 is initiated, adopt delegated acts in accordance with Article 50, by specifying measures in order to:

(a) provide for the contract duration of the commercial entity operating a consolidated tape and the process and conditions for renewing the contract and the launching of new public procurement;

(b) provide that the commercial entity operating a consolidated tape shall do so on an exclusive basis and that no other entity shall be authorised as a CTP in accordance with Article 27a;

(c) empower ESMA to ensure adherence with tender conditions by the commercial entity operating a consolidated tape appointed through a public procurement;

(d) ensure that the post-trade information provided by the commercial entity operating a consolidated tape is of a high quality, in formats that are easily accessible and usable for market participants and in a consolidated format capturing the entire market;

(e) ensure that the post trade information is provided on a reasonable commercial basis, on both a consolidated and unconsolidated basis, and meets the needs of the users of that information across the Union;

(f) ensure that trading venues and APAs shall make their trade data available to the commercial entity operating a consolidated tape appointed through a public procurement process run by ESMA at a reasonable cost;

(g) specify arrangements applicable where the commercial entity operating a consolidated tape appointed through a public procurement fails to fulfil the tender conditions;

(h) specify arrangements under which CTPs authorised under Article 27a may continue to operate a consolidated tape where the empowerment provided for in point (b) of this paragraph is not used or, where no entity is appointed through the public procurement, until such time as a new public procurement is completed and a commercial entity is appointed to operate a consolidated tape.

\* Directive 2013/34/EU of the European Parliament and of the Council of 26

June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives

78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

\*\* Regulation (EU, Euroatom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euroatom) No

1605/2002 (OJ L 298, 26.10.2012, p. 1).';

***(33a) in Article 39, a new paragraph 2a is to be inserted:***

***“2a. In accordance with point (dc) of Article 9 of Regulation (EU) No 1093/2010 and Regulation (EU) No 1095/2010, EBA and ESMA may coordinate mystery shopping activities of competent authorities concerning the conduction of inquiries into a particular type of financial institution or type of product or type of conduct, including approaching financial institutions in the role of a potential consumer. The information obtained from such inquiries may be used in support of tasks related to consumer protection, financial activities and financial innovation.” (1127 Giegold)***

***(33b) in Article 40, paragraph 6 is amended as follows:***

6. ESMA shall review a prohibition or restriction imposed under paragraph 1 at appropriate intervals, ***as soon as possible*** and at least every ***6*** months. ***The Authority may renew the prohibition or restriction twice, after which period it shall become permanent, unless the Authority considers otherwise. (409 Hübner, 410 Giegold, 412 Berès et al, 1128 Giegold, 1129 Giegold)***

***(33c) in Article 41, paragraph 6 is amended as follows:***

6.   EBA shall review a prohibition or restriction imposed under paragraph 1 at appropriate intervals, ***as soon as possible*** and at least every ***6*** months. ***The Authority may renew the prohibition or restriction twice, after which period it shall become permanent, unless the Authority considers otherwise. (409 Hübner, 410 Giegold, 412 Berès et al, 1128 Giegold, 1129 Giegold)***

6. EBA shall review a prohibition or restriction imposed under paragraph 1 at appropriate intervals, ***as soon as possible*** and at least every ***6*** months. ***The Authority may renew the prohibition or restriction twice, after which period it shall become permanent, unless the Authority considers otherwise. (409 Hübner, 410 Giegold, 412 Berès et al, 1128 Giegold, 1129 Giegold)***

(34) the following Articles 54a and 54b are inserted:

'Article 54a

Transitional measures related to ESMA

1. All competences and duties related to the supervisory and enforcement activity in the field of data reporting services providers that are conferred on competent authorities pursuant to Article 67 of Directive 2014/65/EU shall be terminated on [PO: Please insert date 36 months after entry into force]. Those competences and duties shall be taken-up by ESMA on the same date.

2. Any files and working documents related to the supervisory and enforcement activity in the field of data reporting services providers, including any ongoing examinations and enforcement actions, or certified copies thereof, shall be taken over by ESMA on the date referred to in paragraph 1.

However, an application for authorisation that has been received by competent authorities before [PO: Please insert date 30 months after entry into force] shall not be transferred to ESMA, and the decision to register or refuse registration shall be taken by the relevant authority.

3. The competent authorities referred to in paragraph 1 shall ensure that any existing records and working papers, or certified copies thereof, shall be transferred to ESMA as soon as possible and in any event by data reporting services providers. Those competent authorities shall also render all necessary assistance and advice to ESMA to facilitate effective and efficient transfer and taking-up of supervisory and enforcement activity in the field of data reporting services providers.

4. ESMA shall act as the legal successor to the competent authorities referred to in paragraph 1 in any administrative or judicial proceedings that result from supervisory and enforcement activity pursued by those competent authorities in relation to matters that fall under this Regulation.

5. Any authorisation of a data reporting services provider granted by a competent authority referred to in paragraph 1 shall remain valid after the transfer of competences to ESMA

Article 54b

Relations with auditors

1. Any person authorised within the meaning of Directive 2006/43/EC of the European Parliament and of the Council (\*), performing in a data reporting services provider the task described in Article 34 of Directive 2013/34/EU or Article 73 of Directive 2009/65/EC or any other task prescribed by law, shall have a duty to report

promptly to ESMA any fact or decision concerning that undertaking of which that person has become aware while carrying out that task and which is liable to:

(a) constitute a material infringement of the laws, regulations or administrative provisions which lay down the conditions governing authorisation or which specifically govern pursuit of the activities of data reporting services provider;

(b) affect the continuous functioning of the data reporting services provider;

(c) lead to refusal to certify the accounts or to the expression of reservations.

That person shall also have a duty to report any facts and decisions of which the person becomes aware in the course of carrying out one of the tasks referred to in the first subparagraph in an undertaking having close links with the data reporting services provider within which he is carrying out that task.

2. The disclosure in good faith to the competent authorities, by persons authorised within the meaning of Directive 2006/43/EC, of any fact or decision referred to in paragraph 1 shall not constitute a breach of any contractual or legal restriction on disclosure of information and shall not involve such persons in liability of any kind.

\* Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87).'.

*AMs tabled to Article 6 that fall if COMP is adopted: 1111 Berès et al, 1112 Swinburne, 1113 Berès et al, 1114 Swinburne, 1115 Berès et al, 1116 Swinburne, 1117 Berès et al, 1118 Berès et al, 1119 Berès et al, 1120 Berès et al, 1121 Swinburne, 1122 Balz, 1123 Hübner, 1124 Berès et al, 1125 Berès et al, 1126 Berès et al, 1127 Giegold, 1128 Giegold, 1129 Giegold, 1130 Giegold, 1131 Giegold, 1132 Berès et al, 1133 Berès et al, 1134 Berès et al, 1135 Berès et al, 1136 Berès et al, 1137 Berès et al, 1183 Berès et al*

*AMs not addressed in COMP:*