EUROPEAN
COMMISSION

Brussels, XXX
[…](2017) XXX draft

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to package orders

(Text with EEA relevance)

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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) 648/2012[1], and in particular Article 9(6) thereof,

Whereas:

(1) Regulation (EU) No 600/2014 provides for a pre-trade transparency regime for package orders that are comprised of a number of interlinked and contingent components in derivatives and other non-equity financial instruments or physical assets. Regulation (EU) No 600/2014 specifies that the pre-trade transparency requirements apply also to package orders and the conditions under which waivers from such pre-trade transparency requirements can be granted by competent authorities. At the same time, Regulation (EU) No 600/2014 recognises that for certain package orders it is important to restrict the use of pre-trade transparency waivers available to package orders, in particular, where such package orders as a whole are sufficiently standardised and frequently traded to be considered as having a liquid market.

(2) Package orders are common in all asset classes and may include a multitude of different components within the same asset class or across asset classes. Therefore, the notion of package orders can comprise an unlimited number of combinations of components. It is therefore appropriate to adopt a holistic approach establishing qualitative criteria to identify those package orders which should be considered as standardised and liquid as a whole. Such qualitative criteria should include general criteria applicable across all asset classes as well as criteria which are specific to the different asset classes comprising a package order.

(3) The determination of the classes of derivatives subject to the trading obligation for derivatives under Regulation (EU) No 600/2014 requires the derivatives within those classes to be standardised and sufficiently liquid. Therefore, it is appropriate to consider a package order as liquid as a whole where all components are of the same asset class and are subject to the trading obligation. Nevertheless, based on feedback provided by market participants, package orders where all components are above a certain size or which include a multitude of components, do not seem to be sufficiently standardised or liquid. Therefore, this Regulation clarifies that package orders where all components are subject to the trading obligation should only have a liquid market

[1] OJ L 173, 12.6.2014, p. 84.

where the package is composed of no more than four components or where not all components are above a size that is large in scale compared to normal market size.

(4) The possibility to trade financial instruments on a trading venue demonstrates that those instruments are standardised and relatively liquid. Therefore, it is appropriate to consider potentially liquid as a whole package orders where all components are available for trading on a venue. A package should be considered as being available for trading if a trading venue offers to trade it to its members and participants or clients.

(5) While it is possible to trade package orders in a multitude of different components, liquidity is concentrated in packages including only components from the same asset class such as interest rate derivatives, equity derivatives, credit derivatives or commodity derivatives. Therefore, packages composed only of derivatives of one of these asset classes should be eligible for having a liquid market, whereas packages composed of derivative components from more than one of these asset classes are not frequently traded and, as a consequence, do not have a liquid market. Furthermore, package orders including components of asset classes other than interest rate derivatives, equity derivatives, credit derivatives or commodity derivatives both derivative asset classes such as foreign exchange derivatives and other non-equity asset classes such as bonds are not sufficiently standardised and consequently, not having a liquid market.

(6) This Regulation specifies a methodology for determining package orders that are liquid as a whole even when one or more of the components may not have a liquid market or are above a size that is large in scale compared to normal market size. However, feedback from market participants indicates that package orders where none of the components have a liquid market, where all components are above a size that is large in scale compared to normal market size, or which are a combination of components that do not have a liquid market or are above a size that is large in scale compared to normal market size, are not standardised and frequently traded. This Regulation therefore does not consider that such package orders have a liquid market as a whole.

(7) For package orders consisting of interest rate swaps, most transactions are concentrated in package orders where the components have certain benchmark tenors. It is therefore appropriate to consider only those package orders as being liquid as a whole. In order to differentiate contracts starting immediately after the execution of the trade from contracts starting at a predetermined date in the future, the tenor of a contract should be calculated based on the date at which the obligations under the contract come into effect, that is on the effective date. However, it is important not to interpret those tenors in a too strict manner but rather as targeted intervals around a benchmark tenor to adequately take into account the liquidity pattern of those instruments as well as to avoid circumvention of the rules.

(8) Many market participants trade package orders consisting of two contracts with a different expiry date. In particular, roll forwards are highly standardised and frequently traded. They consist of a trade replacing a position in a contract that is nearest to expiry with a position in a contract expiring at the next maturity date, thereby allowing market participants to maintain an investment position beyond the initial expiration of a contract. It is therefore appropriate to consider those package orders as having a liquid market as a whole.

(9) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that this Regulation and the provisions laid down in Regulation (EU) No 600/2014 apply from the same date.

(10) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(11) 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 established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[2],

HAS ADOPTED THIS REGULATION:

Article 1

Package orders for which there is a liquid market as a whole

There is a liquid market for a package order as a whole where one of the following conditions is satisfied:

(a) the package order consists of no more than four components that belong to classes of derivatives that have been declared subject to the trading obligation for derivatives in accordance with the procedure described under Article 32 of Regulation (EU) No 600/2014 unless all components are orders that are large in scale compared to normal market size or are not of the same asset class as defined in Commission Delegated Regulation (EU) …/2017 [non-equity transparency];

(b) the package order meets the general criteria under Article 2 and the asset-class specific criteria under Articles 3 to 6.

Article 2

General criteria for identifying package orders for which there is a liquid market as a whole

1. There is a liquid market for a package order as a whole where all of the following criteria are met:

   (a) all components of the package order are available for trading on the same trading venue;

   (b) all components of a package order are subject to the clearing obligation in accordance with Article 5 of Regulation (EU) No 648/2012 of the European Parliament and of the Council[3] or the clearing obligation in accordance with Article 29(1) of Regulation (EU) No 600/2014.

2. There is no liquid market for a package order as a whole where it is only composed of components that:

   (a) are large in scale compared to normal market size;

   (b) do not have a liquid market; or

[2] 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)-

[3] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

(c) are a combination thereof.

3. There is no liquid market for a package order as a whole where:

(a) it includes components other than the components referred to in Articles 3 to 6; or

(b) it is composed of components from more than one asset class as defined in Commission Delegated Regulation (EU) …/2017 [non-equity transparency].

Article 3

Asset-class specific criteria for package orders with only interest rate derivative components

There is a liquid market for a package order consisting of interest rate derivatives, as defined in section 5 of Annex III of Commission Delegated Regulation (EU)…/2017 [non-equity transparency], where the following criteria are met:

(a) the package order has no more than three components;

(b) all components belong to the same sub-asset class as defined in section 5 of Annex III Commission Delegated Regulation (EU)…/2017 [non-equity transparency];

(c) the notional currency of the components is EUR, USD or GBP;

(d) all components are denominated in the same currency;

(e) where the package order consists of interest rate swaps, the components have a tenor of 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 15, 20 or 30 years;

(f) where the package order consists of interest rate future components, the components fall within one or more of the following categories:

(1) for interest rate futures based on 3 month interest rates, contracts with a maturity not exceeding 6 months;

(2) for interest rate futures based on 2, 5 and 10 year interest rates, contracts with the expiration date closest to the current date;

(g) where the package order consists of bond futures, the package order replaces a position in a contract that is nearest to expiry with a position in a contract with the same underlying expiring at the next maturity date.

For the purpose of paragraph (e), a component shall be deemed to have a tenor of 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 15, 20 or 30 years where the period of time between the date when the obligations under the contract come into effect and the termination date of the contract equals one of the periods above, plus or minus five days.

Article 4

Asset-class specific criteria for equity derivatives

There is a liquid market for a package order consisting of equity derivatives, as defined in section 6 of Annex III of Commission Delegated Regulation (EU) …/2017 [non-equity transparency], where the following criteria are met:

(a) the package order has no more than two components;

(b) all components belong to the same sub-asset class as defined in section 6 of Annex III of Commission Delegated Regulation (EU) …/2017 [non-equity transparency];

(c) the notional currency of the components is EUR, USD or GBP;

(d) all components are denominated in the same currency;

(e) all components have the same underlying index;

(f) the expiry date of all components does not exceed 6 months;

(g) where the package order contains options, all options have the same expiry date.

Article 5
Asset-class specific criteria for credit derivatives

There is a liquid market for a package order consisting of index credit default swaps, as defined in section 9 of Annex III of Commission Delegated Regulation (EU)…/2017 [non-equity transparency], where the following criteria are met:

(a) the package order has no more than two components;

(b) all components have the same underlying index;

(c) the notional currency of the components is EUR or USD;

(d) all components are denominated in the same currency;

(e) the package order replaces a position in a next-to-recent version of an index series (latest off-the-run) with a position in the most recent version (on-the-run);

(f) all components have a tenor of 5 years.

Article 6
Asset-class specific criteria for commodity derivatives

There is a liquid market for a package order consisting of commodity derivative futures, as defined in section 7 of Annex III of Commission Delegated Regulation (EU)…/2017 [non-equity transparency], where the following criteria are met:

(a) the package order has no more than two components;

(b) all components have the same underlying commodity defined at the most granular level as specified in table 2 of the Annex of Commission Delegated Regulation (EU) …/2017 [reference data];

(c) the notional currency of the components is EUR, USD or GBP;

(d) all components are denominated in the same currency;

(e) the package order replaces a position in a contract that is nearest to expiry with a position in a contract expiring at the next maturity date.

Article 7
Entry into force and application

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

This Regulation shall apply from 3 January 2018.

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

Done at Brussels,

For the Commission
The President
[…]

On behalf of the President
[…]
[Position]