



European Securities and  
Markets Authority

# Consultation Paper

**Amendment to Commission Delegated Regulation (EU) 2017/588 (RTS 11)**



## Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

- respond to the question stated;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **7 September 2018**.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading 'Your input - Consultations'. Please follow the instructions given in the document 'Reply form for the MiFID/MIFIR Consultation Paper' also published on the ESMA website.

### Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

### Data protection

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading [Legal Notice](#).

### Who should read this paper

All interested stakeholders are invited to respond to this consultation paper. This consultation paper is primarily of interest to trading venues offering trading in equity instruments but responses are also sought from any other market participant which might be impacted by the proposals contained in this document including investment firms, trade associations and industry bodies, as well as institutional and retail investors.

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## Acronyms used

CA	Competent Authority
CP	Consultation Paper
ESMA	European Securities and Markets Authority
ETF	Exchange Traded Fund
EU	European Union
FITRS	Financial Instruments Transparency System
MiFID I	Directive 2004/39 of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directive 85/611/EC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC
MIFID II	Directive 2014/65/EU of the European Parliament and the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349)
MIFIR	Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84)
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 (OJ L 175, 30.6.2016, p. 1)
MTF	Multilateral Trading Facility
OTC	Over-the-counter
RTS	Regulatory Technical Standard
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 (OJ L 87, 31.3.2017, p. 387)
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 (OJ L 87, 31.3.2017, p. 411)

SI Systematic internaliser

TV Trading Venue

## Executive Summary

### Reasons for publication

Under Delegated Regulation (EU) 2017/588 (RTS 11), the minimum tick size applicable to shares and depositary receipts is calibrated to the average daily number of transactions (ADNT) on the most liquid market in the EU. While this metric is a good and simple liquidity indicator for the vast majority of equity instruments, it may not be well suited to instruments where the main pool of liquidity is located outside the EU (third country instruments). In these cases, the mandatory tick size may be calculated based only on a subset of the overall trading activity. EU trading venues might therefore be subject to minimum tick sizes that are larger than those applicable on non-EU venues which would, as an unintended result, put them at a competitive disadvantage. This might result in scarcer and less deep liquidity being available on EU trading venues which can be detrimental for investors trading on those EU venues but also for orderly trading on EU markets.

In this context, ESMA considers it necessary to introduce amendments to RTS 11 to ensure that the tick sizes applicable to third country instruments are adequate and appropriately calibrated. This consultation paper (CP) explains ESMA's proposal. Stakeholders are invited to provide feedback on this proposal. The input from stakeholders will help ESMA to finalise its proposed amendments to RTS 11.

### Contents

Section 1 provides a description of the issue identified with respect to the tick sizes applicable to third country instruments. Section 2 describes the different options ESMA has explored to address the issue identified, explains which option has ESMA's preference and how it proposes to integrate this solution into RTS 11.

### Next Steps

On the basis of the responses received to this CP, ESMA may finalise a draft RTS amending RTS 11 and submit a final report to the European Commission for endorsement.

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# 1 Introduction

## 1.1 Regulatory framework and description of the issue

1. From 3 January 2018, trading venues in the EU must comply with a mandatory tick size regime as prescribed under Article 49 of MiFID II and as further specified in RTS 11. Under this regime, orders in shares and depositary receipts are subject to minimum tick sizes that are determined based on both (i) the average daily number of transactions (ADNT) on the most relevant market in terms of liquidity (i.e. the trading venue in the EU with the highest turnover) and (ii) the price of the order.
2. MiFID II and RTS 11 do not include any specific provisions with respect to third country instruments, i.e. financial instruments traded or admitted to trading on an EU trading venue where the most liquid trading venue by turnover is located outside the Union. As a consequence, the minimum tick size for these financial instruments is determined solely on trading activity in the EU, with no consideration of the liquidity on non-EU venues. This interpretation was clarified in a Q&A published on 18 November 2016 (Q&A3 in section 4 of ESMA's Q&As on market structures topics, ESMA70-872942901-38, [here](#)).
3. For financial instruments where only a marginal proportion of trading is executed on EU trading venues, the minimum tick size is therefore, from a worldwide perspective, based on "underestimated" liquidity. This might unintentionally create a competitive disadvantage for EU trading venues offering these instruments for trading compared to their non-EU competitors since the latter are usually subject to a narrower tick size regime, or no mandatory tick size regime at all, and can therefore offer tighter spreads. This might trigger a liquidity shift from EU trading venues to third country venues and ultimately resulting in scarcer and less deep liquidity available on EU trading venues to the detriment of investors trading on those EU venues and ultimately orderly markets in the EU.

## 1.2 Reported evidence of the competitive impact on EU TVs and remedial actions taken

4. It appears that such impact on the competitiveness of EU trading venues offering trading in third country instruments has already materialised in the first days of application of the new tick size regime. Some EU venues have reported to their competent authority, and to ESMA, a drop in their market share for certain third country instruments (essentially third country shares) since the implementation of MiFID II on 3 January 2018. According to those TVs, this drop in market share results from the applicable tick sizes determined in accordance with the RTS 11 methodology that requires them to have in place larger price increments than the ones used by their non-EU competitors. ESMA is concerned about the possible impacts this drop in liquidity could have for investors trading those financial instruments in the EU and about any deteriorating trading conditions this reduced liquidity may cause.

5. For instance, in Switzerland the MiFID II tick size regime is being applied. However, Swiss venues use their domestic trading volumes for their tick size determination and are therefore more likely to have smaller tick sizes – the turnover on the Swiss venues being higher in the majority of cases. By way of illustration, the table below lists the 20 SMI20 constituent stocks traded both on SIX Swiss Exchange and EU trading venues together with the data on ADNT, tick size adopted and the average spread as computed by these exchanges.

**Table 1: Comparison of some tick sizes on SIX and EU TVs (i.e. as per ESMA transitional calculations)**

	ISIN	SIX			ESMA		
		Last Traded Price	Tick Size	Spread	Price Band	ADNT	Tick S
ABB LTD	CH0012221716	26.88	0.01	0.01	20 ≤ price < 50	3,053.84	0.01
ADECCO	CH0012138605	78.26	0.02	0.04	50 ≤ price < 100	1,356.48	0.05
CS GROUP	CH0012138530	18.12	0.005	0	10 ≤ price < 20	2,997.34	0.005
GEBERIT	CH0030170408	430.20	0.1	0.1	200 ≤ price < 500	1,407.15	0.2
GIVAUDAN	CH0010645932	2,256.00	1	0.06	2,000 ≤ price < 5,000	828.57	2
JULIUS BAER	CH0102484968	62.82	0.02	0.02	50 ≤ price < 100	1,548.28	0.05
LAFARGE	CH0012214059	59.20	0.02	0.02	50 ≤ price < 100	2,330.62	0.02
LONZA GROUP	CH0013841017	264.90	0.1	0.1	200 ≤ price < 500	2,024.75	0.1
NESTLE	CH0038863350	82.64	0.02	0.02	50 ≤ price < 100	4,039.09	0.02
NOVARTIS	CH0012005267	83.32	0.02	0.02	50 ≤ price < 100	3,194.95	0.02
RICHEMONT	CH0210483332	90.06	0.2	0.02	50 ≤ price < 100	3.37	0.5
ROCHE	CH0012032048	245.20	0.05	0.05	200 ≤ price < 500	3,328.24	0.1
SGS	CH0002497458	2,574.00	1	1	2,000 ≤ price < 5,000	486.56	5
SIKA	CH0000587979	8,285.00	5	5	5,000 ≤ price < 10,000	703.22	5
SWATCH GROUP	CH0012255144	408.50	0.1	0.1	200 ≤ price < 500	2,041.91	0.1
SWISS LIFE HD	CH0014852781	354.70	0.1	0.1	200 ≤ price < 500	1,141.15	0.2
SWISS RE	CH0126881561	92.16	0.02	0.02	50 ≤ price < 100	1,585.07	0.05
SWISSCOM	CH0008742519	520.20	0.2	0.2	500 ≤ price < 1,000	1,418.43	0.5
UBS GROUP	CH0244767585	18.64	0.005	0	10 ≤ price < 20	2,713.30	0.005
ZURICH INSURANCE	CH0011075394	312.70	0.1	0.1	200 ≤ price < 500	1,840.73	0.2

Data taken as at 14:00 on 11 January 2018 - Orange denotes ESMA tick size higher than SIX

6. On the first days of application of MiFID II, some UK trading venues reported lower volumes on Swiss instruments. According to the information provided to ESMA, one trading venue saw its market share falling from 17% to 15%, whilst another Multilateral Trading Facility (MTF) saw a bigger relative intraday market share of SMI20 instruments fall from 4.73% (average in December) to 2.32%. Similar drops were reported on German venues. In comparison, SIX Swiss Exchange's market share for SMI20 instruments allegedly rose from an average of 61% to 71%.



## 2 Proposed amendment to RTS 11

### 2.1 Amendment to Article 3 of RTS 11

7. As mentioned above, MiFID II and RTS 11 do not offer flexibility for CAs to include the liquidity observed on non-EU trading venues for the determination of the ADNT for third country instruments.
8. With respect to the transitional calculations, Article 5(3) of RTS 11 only provides that: *“competent authorities shall ensure that the tick sizes for financial instruments referred to under points (b) and (c) of paragraph 2 [i.e. instruments admitted to trading or traded for the first time between 13 September 2017 and 2 January 2018] and for which they are the competent authority, do not contribute to disorderly trading conditions. Where a competent authority identifies a risk for the orderly functioning of the markets due to such tick sizes, it shall determine and publish an updated average daily number of transactions for the relevant financial instruments to address that risk. It shall do so on the basis of longer and more comprehensive trading history data of those instruments”*.
9. Therefore, while this provision envisions the possibility to adjust the transitional calculations in case the assigned tick size turns out to be inappropriate for a specific instrument, it does so only with respect to instruments admitted to trading or traded for the first time between 13 September 2017 and 2 January 2018.
10. With respect to yearly calculations, the legal text only envisions the possibility to recalculate the applicable tick size in cases of corporate actions.

#### Proposal

11. ESMA has therefore explored different options that could potentially address the identified concern. The following approaches have been considered:

- a. Authorising EU trading venues to use the tick size applicable to the most liquid third country venue:

ESMA has considered authorising EU trading venues to disregard, for third country instruments, the applicable tick size determined in accordance with the procedure set out under RTS 11 and, instead, require them to apply the tick size applicable on the most liquid third country venue. While this solution would work for third countries that have established a clear mandatory tick size regime similar to the one applicable in the EU, it would not work for others, particularly those that do not have a mandatory tick size regime. In the latter case, this option will fail to harmonise the tick sizes used by EU trading venues.

- b. Subjecting third country shares to a regime similar to Exchange-Traded Funds (ETFs):

Under this option, the tick size applicable to third country instruments would no longer be based on the ADNT on the most relevant market in terms of liquidity. Third country instruments would be, by default, subject to a tick size corresponding to the most liquid liquidity band of the Annex of RTS 11, as is currently the case for ETFs that are under the scope of the mandatory tick size regime. ESMA acknowledges that this solution would be easy to set in place and would avoid resource intensive ISIN-by-ISIN reconciliations amongst CAs. However, this approach would not allow a calibration of the applicable tick size reflecting the liquidity profile of the traded instrument as mentioned under Article 49(2)(a) of MiFID II.

c. Taking into account trading volumes executed on the most liquid third country venue for the determination of the ADNT:

A further solution could consist of amending or complementing the provisions of RTS 11 to ensure that for certain third country instruments the ADNT reflects not only the liquidity available in the EU but also trading on third-country venues. However, ESMA considers that establishing a formal methodology and procedure allowing the inputting of data from third country venues into the RTS 11 calculations as challenging from both a legal and practical standpoint. This would require trading venues or, alternatively, CAs to collect data from third country venues and report it to ESMA<sup>1</sup>. The reporting of third-country venues data would also require important modifications of the ESMA IT system (FITRS) that appear challenging to implement within a short timeframe.

d. Allowing the CAs of trading venues trading a third country instrument to coordinate and to agree on an adjusted ADNT that reflects the liquidity available on third country venues on a case-by-case basis:

An alternative solution would be to allow the CAs of trading venues that trade third country instruments to coordinate amongst themselves to agree on an adjusted ADNT that better reflects the liquidity available on the trading venues in a third country. This “safety valve” would allow CAs to better take into account the overall liquidity of a third country instrument without prescribing a specific and rigid methodology for doing so. This would also allow CAs to use only data that is publicly available in case it proves challenging to collect the data directly from third country venues. However, this would not always ensure that the resulting applicable tick size (determined based on this adjusted ADNT) would be aligned perfectly with the tick sizes applicable on non-EU venues.

12. There is an unavoidable trade-off between alignment with relevant third country tick sizes on the one hand and consistency with the broader EU regime on the other. There are also constraints around data availability, given that EU authorities cannot require data submissions by third country trading venues. On balance, and also considering ESMA’s

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<sup>1</sup> The calculation of the ADNT has, in the vast majority of cases, been delegated to ESMA and is performed automatic by the ESMA Financial Instruments Transparency System (FITRS).

mandate in Article 49(3) of MiFID II, ESMA's view is that option (d) is the best approach. Although option (d) would not always ensure that the resulting applicable tick size (determined based on this adjusted ADNT) is fully aligned with the tick sizes applicable on non-EU venues, it would alleviate the issue observed and make sure that the applicable tick size in the EU is calibrated in a convergent way and takes into account the liquidity profile of the concerned instruments.

13. ESMA would therefore suggest adding the following paragraph to Article 3 of RTS 11:

*8. The competent authority for a specific share which has its main pool of liquidity located outside the Union may, for that share, adjust the average daily number of transactions calculated as per the procedure prescribed under paragraphs 2 to 7 so as to take into account more comprehensive trading data and ensure that trading in the concerned share is not unduly constrained and does not create disorderly trading conditions.*

*Prior to this adjustment, the competent authority for the share shall coordinate with the competent authorities of the other trading venues operating in the Union where this share is also traded to ensure that they agree with the proposed adjusted average daily number of transactions. Pending such an agreement between those competent authorities, the average daily number of transactions calculated in accordance with the procedure set out in paragraphs 2 to 7 shall continue to apply.*

14. In ESMA's view, this proposal is in line with the objective of MiFID II since it would ensure not only that the applicable tick sizes for third country instruments are appropriately calibrated and do not negatively affect the trading in this instrument, but also that the same minimum tick size applies to all European trading venues offering trading in the same instrument.

#### Instruments within the scope

15. ESMA considers that in order to maintain predictability and legal certainty of the mandatory tick size regime and to make sure that this exception does not become the norm, it is important to frame the scope of instruments for which the ADNT could be adjusted.
16. Primarily, ESMA is of the view that adjustments should be limited to instruments that not only have been admitted to trading in a non-EU jurisdiction but also genuinely have their most liquid trading venue (calculated in turnover terms) located outside the EU. ESMA has also considered the possibility of identifying third country instruments based on their ISIN's first two letters, but this method for identifying third country instruments has not proved to provide accurate results and has therefore been discarded.
17. In addition, ESMA believes that these ad hoc adjustments of the ADNT should be limited to cases where such adjustments are necessary for EU trading venues to maintain their competitiveness and market share. ESMA considers that this would be the particular case for shares that are traded with reasonable frequency on an EU trading venues – i.e. on average at least once per day.

18. ESMA would therefore suggest adding the following paragraph 9 to Article 3 of RTS 11:

*9. The possibility to make adjustments to the average daily number of transactions as set out in paragraph 8 shall be limited to shares for which the two following conditions are fulfilled:*

*(a) the competent authority for the relevant share proposing the adjustment shall be able to reasonably demonstrate, based on numerical evidence, that the most liquid trading venue for that share is located outside the Union;*

*(b) the average daily number of transactions calculated in accordance with the procedure set out in paragraphs 2 to 7 is equal to or greater than one.*

19. A preliminary analysis undertaken by ESMA indicates that up to 10,000 financial instruments may qualify as third country financial instruments (i.e. instruments for which the venue with the highest turnover is located outside the EU). Out of those 10,000 financial instruments, around 1,500 appear to have an ADNT equal to or greater than one, and would therefore pass the second test.

20. The number of third country instruments is likely to increase as a consequence of the UK's withdrawal from the EU. While it remains difficult to accurately assess the number of shares that might become third country instruments post-Brexit, due to current uncertainties, under ESMA's current estimation roughly 18% of the shares currently reported into FIRDS have their most liquid trading venue located in the UK. If we considered shares that are currently available for trading not only on a UK trading venue but also in another EU jurisdiction, this represents around 1,900 potentially affected shares in addition to the 1,500 instruments mentioned in the previous paragraph.

21. Lastly, ESMA has not considered it necessary to include depositary receipts within the scope of the financial instruments for which the ADNT could be adjusted. Depositary receipts appear, by design, to fall outside the scope of third country financial instruments described above (i.e. instruments for which the most liquid trading facility is located outside the EU). Depositary receipts are usually created to facilitate trading in foreign shares on local exchanges and it therefore appears less likely that those instruments are traded in several jurisdictions (including a non-EU jurisdiction). In addition, ESMA has not collected tangible evidence that highlights that those instruments are affected by the issue described in this paper.

#### Operational implementation and dissemination of the information regarding the adjusted ADNT

22. Currently, the ADNT to be determined for the purposes of the mandatory tick size regime as per the methodology prescribed under Article 3 of RTS 11 is automatically calculated and published by FITRS. ESMA would prefer not to recalibrate its system at this stage to avoid causing any disruption or creating any additional reporting burden for CAs and trading venues.

23. It is therefore proposed, at least for the time being, to maintain the system as it currently is. The system will therefore continue to calculate and publish the ADNT on the most relevant market in terms of liquidity for all shares and depositary receipts admitted to trading and traded on the TV in the Union. The adjusted ADNT based on which the applicable tick size will be determined will be communicated by CAs to the concerned venues bilaterally.
24. ESMA sees merit in publishing those adjusted ADNTs centrally on its website and is investigating possible arrangements that would allow for such a publication. ESMA will also put in place adequate arrangements to ensure coordination between CAs when agreeing on an adjusted ADNT leading to a consistent application of the tick size regime in the EU.
25. As a consequence of these considerations, ESMA is suggesting to add the following paragraph 10 to Article 3 of RTS 11:

*10. Competent authorities, the day after they agreed on an adjusted average daily number of transactions as set out in paragraph 8, shall communicate this adjusted average daily number of transactions to the trading venues in their respective jurisdiction where the relevant share is admitted to trading or traded.*

*The trading venues shall apply the adjusted average daily number of transactions the day after it has been communicated to them.*

**Q1: Do you agree with the proposed amendments to RTS 11 described above? If you do not, please explain why and what alternative you would suggest.**

**Q2: Do you agree not to include depositary receipts in the scope of instruments for which the ADNT could be adjusted? If not, please provide evidence supporting their inclusion.**

## **2.2 Other amendment to RTS 11**

26. ESMA has received comments, in particular during the consultation launched in October 2017 regarding the amendment of RTS 1, concerning the methodology used to determine the ADNT and the minimum applicable tick sizes. In particular, some respondents recommended amending the RTS 11 methodology to determine the ADNT so as to include not only transactions executed on the most relevant market in terms of liquidity but also transactions executed on other EU trading venues. Another respondent stressed that the regime might be inadequate for certain ETFs, artificially constraining trading and ultimately increasing the cost of trading for investors.
27. ESMA agrees that it is crucial that the minimum applicable tick size is adequately calibrated and does not unduly constrain prices and trading in general. However, in ESMA's view, these comments are mainly reiterating the arguments made during the finalisation of RTS 11 in 2015, without adding any new elements. In addition, while it might

be too early to draw definitive conclusions, the first weeks of application of the MiFID II tick size regime have not fundamentally called into question the way the regime is being calibrated beyond instruments for which the main pool of liquidity is located outside the EU.

28. In particular, the recent study published by the Autorité des Marchés Financiers<sup>2</sup> on the observed impact of the new tick size regime over the first months of application of the MiFID II / MiFIR concludes that this new regime has led to *“a sharp increase in depth and a significant reduction in the number of messages sent to the market, at the cost, however, of a widening of the spread for the most liquid securities. The outcome for market participants is a slight additional cost that is offset by the benefits of noise reduction and the increase in the quantity available at the best limits. [...] For small caps, implementing appropriate tick sizes (compared to the constant €0.01 tick previously applicable on these stocks) resulted in a more dynamic order book and, above all, a sharp increase in traded volumes”*.
29. For these reasons, it appears premature to envisage an in-depth revision of the regime and methodology of RTS 11 that, so far, has not shown any fundamental flaws, as far as ESMA is aware. ESMA therefore does not propose any other amendments to RTS 11 beyond the one described in the section above.
30. ESMA has also been informed that some uncertainty remains regarding the scope of ETFs within the tick size regime. It appears that it is not fully clear to all market participants which ETFs are meant to comply with the mandatory tick size regime, and practically how to identify those ETFs. While ESMA does not want to radically change the regime for ETFs, it would welcome views regarding possible clarifications.

**Q3: Do you agree with ESMA’s assessment that the first months of application of the new tick size regime have not fundamentally called into question the calibration of this regime? If not, please provide evidence of any detrimental effects that you consider the current regime is causing.**

**Q4: Do you consider that ESMA should introduce some clarifications regarding ETFs within the scope of the mandatory tick size regime? If yes, please explain which ones.**

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<sup>2</sup> MiFID II: impact of the new tick size regime, Autorité des Marchés Financiers, March 2018 ([here](#))

### 3 Annexes

#### 3.1 Annex I: Summary of questions

**Q1: Do you agree with the proposed amendments to RTS 11 described above? If you do not, please explain why and what alternative you would suggest.**

**Q2: Do you agree not to include depositary receipts in the scope of instruments for which the ADNT could be adjusted? If not, please provide evidence supporting their inclusion.**

**Q3: Do you agree with ESMA’s assessment that the first months of application of the new tick size regime have not fundamentally called into question the calibration of this regime? If not, please provide evidence of any detrimental effects that you consider the current regime is causing.**

**Q4: Do you consider that ESMA should introduce some clarifications regarding ETFs within the scope of the mandatory tick size regime? If yes, please explain which ones.**

**CBA Q5: This first question aims at identifying the category of firm/entity you belong to:**

Category	Number of employees	Total turnover in 2017 (in millions euros)
Trading venue	[1-50]	
	[51-250]	
	[251-1000]	
	>1000	
Sell-side firm	[1-50]	
	[51-250]	
	[251-1000]	
	>1000	
		Assets under management on

		31/12/2017 (in millions euros)
<b>Buy-side firm</b>	[1-50]	
	[51-250]	
	[251-1000]	
	>1000	
<b>Other (please specify)</b>	[1-50]	
	[51-250]	
	[251-1000]	
	>1000	

**CBA Q6: (Not for trading venues)** Based on the definition of third country shares provided in the draft RTS, how often do you trade any of those instruments on an EU trading venues (on average):

Never

On a daily basis

On a weekly basis

On a monthly basis

Less than on a monthly basis

**CBA Q7: (For trading venues only)** Based on the definition of third country shares provided in the draft RTS, how many shares traded on your trading venue would be eligible for a revised tick size regime? Which percentage of the total number of shares traded on your trading venue does this account for? Which percentage of total turnover does this account for?

Third country shares (shares for which the most liquid venue is located outside the EU and traded at least once a week on the most liquid EU venue)	As of 30/06/2018
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Number of third country shares traded on your trading venue	
% of total number of shares traded on your trading venue meeting the third country share definition	
% of total share trading attributable to shares meeting the third country share definition during 1H2018	
Market share in those third country shares (average)  If average is not meaningful, please provide a range of %	

**CBA Q8: Based on the draft RTS, which impacts do you expect from the revised tick size regime for third country shares?**

Revised tick size regime	Positive Impact	Negative impact
Impact on your business model/ organisation/ client relationship		
Impact on your revenues		
Impact on market structure (e.g. principal vs agency trading, etc.)		
Impact on market liquidity and execution costs		
Other impacts. Please elaborate		

**CBA Q9: Is there any specific provision in the draft RTS that you would expect to be a source of significant concerns or cost? If so, please elaborate**

**CBA Q10: Please provide an indication, even a rough one, of compliance costs (in thousands of euros)**

Draft amendment to RTS11	a. IT costs	b. Training costs	c. Staff costs	d. Other costs (please identify)	Total costs (if a, b, c or d are not available separately)
One-off costs					
Recurring costs (on an annual basis}					

**CBA Q11: Taking into account the size of your firm, would you qualify overall compliance costs as “low”, “medium” or “high”?**

<p>Please enter here “Low”, “Medium” or “High”</p>
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### 3.2 Annex II: Cost-benefit analysis

This section provides a high-level cost-benefit analysis (CBA) of the draft amendment to RTS 11 on tick sizes. A more detailed CBA will be published together with the final ESMA proposal.

The final CBA should ideally include some quantitative data to provide a more refined assessment of the impact of the ESMA proposal on market participants. To that end, market participants are invited to respond to the questions below.

#### 3.2.1 Questions for the final CBA

**CBA Q5: This first question aims at identifying the category of firm/entity you belong to:**

Category	Number of employees	Total turnover in 2017 (in millions euros)
Trading venue	[1-50]	
	[51-250]	
	[251-1000]	
	>1000	
Sell-side firm	[1-50]	
	[51-250]	
	[251-1000]	
	>1000	
		Assets under management on 31/12/2017 (in millions euros)
Buy-side firm	[1-50]	
	[51-250]	
	[251-1000]	

	>1000	
<b>Other (please specify)</b>	[1-50]	
	[51-250]	
	[251-1000]	
	>1000	

**CBA Q6: (Not for trading venues)** Based on the definition of third country shares provided in the draft RTS, how often do you trade any of those instruments on an EU trading venues (on average):

Never

On a daily basis

On a weekly basis

On a monthly basis

Less than on a monthly basis

**CBA Q7: (For trading venues only)** Based on the definition of third country shares provided in the draft RTS, how many shares traded on your trading venue would be eligible for a revised tick size regime? Which percentage of the total number of shares traded on your trading venue does this account for? Which percentage of total turnover does this account for?

<b>Third country shares (shares for which the most liquid venue is located outside the EU and traded at least once a week on the most liquid EU venue)</b>	<b>As of 30/06/2018</b>
Number of third country shares traded on your trading venue	
% of total number of shares traded on your trading venue meeting the third country share definition	

% of total share trading attributable to shares meeting the third country share definition during 1H2018	
Market share in those third country shares (average) If average is not meaningful, please provide a range of %	

**CBA Questions 8 to 11 should be answered by all respondents**

**CBA Q8: Based on the draft RTS, which impacts do you expect from the revised tick size regime for third country shares?**

Revised tick size regime	Positive Impact	Negative impact
Impact on your business model/ organisation/ client relationship		
Impact on your revenues		
Impact on market structure (e.g. principal vs agency trading, etc.)		
Impact on market liquidity and execution costs		
Other impacts. Please elaborate		

**CBA Q9: Is there any specific provision in the draft RTS that you would expect to be a source of significant concerns or cost? If so, please elaborate**

**CBA Q10: Please provide an indication, even a rough one, of compliance costs (in thousands of euros)**

Draft amendment to RTS11	a. IT costs	b. Training costs	c. Staff costs	d. Other costs (please identify)	Total costs (if a, b, c or d are not available separately)
One-off costs					
Recurring costs (on an annual basis)					

**CBA Q11: Taking into account the size of your firm, would you qualify overall compliance costs as “low”, “medium” or “high”?**

Please enter here “Low”, “Medium” or “High”

### 3.2.2 High-Level Cost-Benefit Analysis

Pursuant to Articles 10(1) and 15 of the Regulation establishing ESMA, ESMA is empowered to develop draft regulatory technical standards (RTS) or draft implementing technical standards (ITS) where the European Parliament and the Council delegate power to the Commission to adopt the RTS/ITS by means of delegated acts under Article 290 TFEU in order to ensure consistent harmonisation in the areas specifically set out in the legislative acts within the scope of action of ESMA. The same article obliges ESMA to conduct open public consultations on draft RTS/ITS and to analyse the related potential costs and benefits, where appropriate. Such consultations and analyses shall be proportionate in relation to the scope, nature and impact of the draft RTS/ITS.

This section contains a high-level cost-benefit analysis (CBA) of the proposed amendments to RTS 11.

This document has four sections: (1) an introduction to the topic discussed (Introduction), (2) the baseline considered to determine the incremental costs and benefits arising from the draft RTS (Baseline), (3) an identification of the stakeholders subject to those amendments and how

they may be affected (Stakeholders) and (4) an analysis of the costs and benefits arising from the incremental obligations attributed to the standard compared to the baseline (Cost Benefit Analysis). The stakeholders identified are trading venues, members and participants of trading venues, buy-side firms and end investors, and competent authorities.

### **3.2.2.1 Introduction**

Under RTS 11, the minimum tick size applicable to shares and depositary receipts is calibrated to the ADNT on the most liquid market in the EU. While this metric appears as a straightforward liquidity indicator for the vast majority of equity instruments, experience since MiFID II entry into application demonstrated it may not be well suited to instruments for which the most liquid venue is located outside the EU (third country instruments).

The amendments proposed to RTS 11 aim at ensuring that the tick sizes applicable to third country instruments are adequate and properly calibrated to contribute to the orderly functioning of the market in those instruments.

The costs and benefits section provides a high-level analysis of the potential effects of the draft RTS on the stakeholders directly and indirectly affected. A more detailed CBA will be provided in the Final Report taking into account the responses to the CP, including to the CBA questions above. In practice, however, it may sometimes be very difficult to disentangle the effects of the Level 1 legislation, for which an impact assessment covering the general aspects of the Directive has been already performed and published by the European Commission, and the effects of the Level 2 Regulation. It may also be difficult to disentangle the impact of RTS 11, which has already been assessed in the CBA published by ESMA, and the costs attached to the proposed amendment.

ESMA notes that the costs incurred by market participants in relation to RTS 11 may partially depend on whether the tick size regime will apply to systematic internalisers' quotes. However, this issue is not within the scope of this consultation and is not taken into consideration in the CBA.

### **3.2.2.2 Baseline**

From a legal perspective, the baseline to consider is Article 49 of MiFID II that introduces a tick size regime for trading venues, as supplemented by RTS 11 specifying the tick size regime for shares, depositary receipts and ETFs.

Under RTS 11, the minimum tick size is based on (i) the ADNT on the most relevant market in terms of liquidity, i.e. the EU trading venue with the highest turnover (ii) the price of the order.

The ADNT is currently automatically calculated and published by FITRS, a database operated by ESMA.

For CAs, the additional obligations for CAs arising from the proposed amendments to RTS 11 would consist in determining whether an instrument traded on their domestic trading venues

is eligible to an adjusted ADNT calculation. The CA would then have to determine an adjusted ADNT, in coordination with the CAs of the other trading venues where the third country instrument is traded, and communicate that information to the relevant trading venue(s).

The additional obligation created by the proposed amendment to RTS 11 would however only apply with respect to instruments for which the CA of the trading venue trading those instruments considers that the ADNT based on EU liquidity results in an applicable tick size that unduly constrains trading or does not allow for orderly trading conditions.

### 3.2.2.3 Stakeholders

The stakeholders identified are:

- Trading venues: Trading venues trading third country shares may have to adjust parameters in their IT systems to take into account the new tick size determined by their relevant competent authorities. Those potential additional efforts are expected to be far outweighed by the positive impact on the competitiveness of those trading venues compared to the non-EU trading venues trading the same shares.
- Members and participants of trading venues: Likewise, those stakeholders will have to do one-off and potentially on-going adjustments to their IT system parameters, including brokers using order management systems.
- Institutional investors, buy-side firms and end-investors more broadly: Those stakeholders will be impacted to the extent that they will potentially have to adjust their IT systems, including trading algorithms to the new tick sizes resulting from the amended RTS.
- Competent authorities: Competent authorities for trading venues trading potentially in-scope third country instruments would need to gather liquidity data on those third country instruments to assess eligibility. They may however consider delegating the gathering of liquidity data to trading venues. Under the preferred solution reflected in the draft RTS, relevant NCAs would also have to engage in a coordination effort with each other to agree on a revised ADNT.

### 3.2.2.4 Cost-Benefit Analysis

In order to remedy the current situation where EU trading venues are put at a disadvantage with non-EU trading venue due to the mandatory tick size regime under RTS 11 and to ensure orderly markets, the CP considers four possible options that would apply to “third-country shares” traded in the EU. Those options are summarised in the table below.

<b>Policy Objective</b>	Ensuring that the tick size for third country shares contributes to orderly markets and does not create an unlevelled playing field for EU trading venues compared to non-EU trading venues.
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Option 1	Allow EU trading venues to use the tick size of the most liquid third country venue.
Option 2	Apply the same tick size regime to third country shares as to ETFs.
Option 3	Take into account trading volumes on the most liquid third country venue to determine the ADNT.
Preferred Option 4	Allow CAs of EU trading venues where third country shares are traded to agree on an adjusted ADNT on a case-by-case basis.

On balance, ESMA's view is that option 4 is the preferable approach. Although it would not always ensure that the resulting applicable tick size (determined based on this adjusted ADNT) is aligned with the tick sizes applicable on non-EU venues, it would alleviate the issue observed and make sure that the applicable tick size in the EU is calibrated in a convergent way.

The CBA below further considers (i) the four options spelled out in the CP and (ii) the scope of instruments to which the proposed amendment to RTS 11 would apply, whatever the option retained under (i).

### Options for amending the tick size regime applicable to third country shares under RTS 11

- Option 1: Allow EU trading venues to use the tick size of the most liquid third country venue.

<b>Policy Objective</b>	Ensuring that the tick sizes applicable to third country shares contributes to orderly markets and does not create an unlevelled playing field for EU trading venues compared to non-EU trading venues.
<b>Technical Proposal</b>	EU trading venues would apply the same tick size as the one applicable on the most liquid third country venue.
<i>Benefits</i>	<p>This option would contribute to ensuring that EU trading venues are not put at a disadvantage with non-EU trading venues trading the same instruments.</p> <p>Where the third country venue is subject to a mandatory tick size, this option would provide predictability and legal certainty.</p> <p>Furthermore, where two or more EU trading venues would be trading the same third-country instrument, the same tick would</p>

	continue to apply across the EU, preserving a harmonised EU regime.
<p><i>Cost to regulator:</i></p> <ul style="list-style-type: none"> <li>- <i>One-off</i></li> <li>- <i>On-going</i></li> </ul>	<p>CAs would incur on-going costs to periodically assess that the relevant instruments continue to qualify as third country instruments, i.e. still have their most liquid venue located outside the EU.</p> <p>Costs for regulators would ultimately depend on the number of instruments identified. However, CAs may also consider outsourcing the identification of those third country instruments to the EU trading venue(s) trading those instruments.</p> <p>Regulators would also need to adjust parameters of their market surveillance tool to the revised tick size.</p> <p>In addition, CAs would incur one-off staff costs to check that the tick size applied by its domestic trading venue(s) is the same as the one applicable on the third country venue.</p>
<p><i>Compliance cost:</i></p> <ul style="list-style-type: none"> <li>- <i>One-off</i></li> <li>- <i>On-going</i></li> </ul>	<p>Trading venues trading third country shares will incur one-off staff costs to determine the tick size applicable to those instruments on the most liquid third country venue and possibly amend rule book/annexes. They will also incur one-off IT costs to adjust the parameters of their trading system(s)</p> <p>Where the non-EU trading venue would be subject to mandatory tick size regimes which are rather stable, it is not expected that EU trading venues will incur any on-going costs to track potential changes in the third country venue tick size regime.</p> <p>On-going compliance costs might be more significant in case of potentially more volatile non-mandatory tick size regime on the non-EU venue.</p>
<i>Cost to other stakeholders</i>	Members and participants of trading venues as well as other market participants conducting algorithmic and HFT trading or using order routing systems for order execution may incur one-off costs to adjust the parameters of the IT used.
<i>Indirect costs</i>	Where the most liquid third country venue would not be subject to a mandatory tick size regime, it will be more difficult and costly for EU trading venues to track potential changes in tick sizes on this third country venue. This may potentially end up in EU trading venues applying different tick sizes for third country shares. Stakeholders would then lose the benefit of an EU harmonised tick size regime

	as well as the predictability and legal certainty benefits of this Option.
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- Option 2: Subjecting third country shares to a regime similar to ETFs

<b>Policy Objective</b>	Ensuring that the tick sizes applicable to third country shares contributes to orderly markets and does not create an unlevelled playing field for EU trading venues compared to non-EU trading venues.
<b>Technical Proposal</b>	The tick size for third country shares would no longer be based on the ADNT. All third country shares would be assigned a tick size corresponding to the most liquid liquidity band, as is currently the case for ETFs.
<i>Benefits</i>	<p>This proposal would be easy to put in place and would provide predictability and legal certainty to stakeholders. As the rule would be fixed and publicised ex-ante, there is less risk of market disruption.</p> <p>Furthermore, where two or more EU trading venues would be trading the same third-country share, the same minimum tick would continue to apply across the EU, preserving a harmonised EU regime. There would be no need for potentially time-consuming case-by-case coordination and agreement amongst the NCAs involved to agree on a revised ADNT.</p>
<i>Cost to regulator:</i> <ul style="list-style-type: none"> <li>- <i>One-off</i></li> <li>- <i>On-going</i></li> </ul>	Regulators will incur non-significant one-off costs to adjust parameters of their market surveillance tool to the revised tick size.
<i>Compliance cost:</i> <ul style="list-style-type: none"> <li>- <i>One-off</i></li> <li>- <i>On-going</i></li> </ul>	<p>Trading venues trading third country shares will incur one-off staff costs to possibly amend rule book/annexes as well as one-off IT costs to adjust the parameters of their trading system(s).</p> <p>Those costs are expected to be non-significant.</p>
<i>Cost to other stakeholders</i>	Same as under Option 1
<i>Indirect costs</i>	This option would not allow for an appropriate calibration of the tick size for third country shares that takes into account the specific liquidity profile of each of those instruments. The minimum tick size would be completely disconnected from, and possibly lower, than

	the tick size that apply on the third country venue, with potentially unknown consequences.
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- Option 3: Taking into account trading volumes on the most liquid third country venue to determine the ADNT

<b>Policy Objective</b>	Ensuring that the tick sizes applicable to third country shares contributes to orderly markets and does not create an unlevelled playing field for EU trading venues compared to non-EU trading venues.
<b>Technical Proposal</b>	The CA of an EU trading venue where a third country share is traded would be required to report the number of transactions executed on the most liquid third country venue to FITRS so that the system can include this data in its calculation.
<i>Benefits</i>	This proposal would alleviate the concerns identified by trading venues with respect to unlevelled playing field with third country venues. It will also ensure that the applicable tick size in the EU is calibrated in a convergent way.
<i>Cost to regulator:</i> <ul style="list-style-type: none"> <li>- <i>One-off</i></li> <li>- <i>On-going</i></li> </ul>	<p>CAs will incur one-off and on-going costs to collect data from third-country venues and report it to ESMA.</p> <p>The magnitude of the costs incurred will depend on the number of instruments eligible to the revised approach. Costs may also depend on the readiness and willingness of non-EU trading venues to share data that may not be available for free. CAs may however consider outsourcing those costs to the requesting EU trading venues.</p> <p>Regulators will incur non-significant one-off costs to adjust parameters of their market surveillance tool to the revise tick size.</p> <p>The reporting of third-country venue data would require significant and costly changes to FITRS that would be challenging to implement within a short timeframe.</p>
<i>Compliance cost:</i> <ul style="list-style-type: none"> <li>- <i>One-off</i></li> <li>- <i>On-going</i></li> </ul>	<p>Where requested by CAs, trading venues will incur one-off and on-going costs to collect trading data from third-country trading venues.</p> <p>The magnitude of the costs incurred will depend on the number of instruments eligible to the revised approach. Costs may also</p>

	<p>depend on the readiness and willingness of non-EU trading venues to share this data and whether it would be available for free .</p> <p>Trading venues trading third country shares will incur one-off staff costs to possibly amend rule book/annexes as well as one-off and on-going IT costs to adjust the parameters of their trading system(s). Those latter costs are expected to be non-significant.</p>
<i>Cost to other stakeholders</i>	Same as under Option 1
<i>Indirect costs</i>	The proposal will not always ensure that the resulting applicable tick size is aligned with the third country venue tick size.

- Option 4: Allowing the CAs of trading venues trading a third country share to use an adjusted ADNT that reflects the liquidity available on third country venues on a case-by-case basis

<b>Policy Objective</b>	Ensuring that the tick sizes applicable to third country shares contributes to orderly markets and does not create an unlevelled playing field for EU trading venues compared to non-EU trading venues.
<b>Technical Proposal</b>	<p>The CAs of an EU trading venues where a third country share is traded may determine an adjusted ADNT reflecting the liquidity available on third country venues on a case-by-case basis.</p> <p>Where a third country share is traded on EU trading venues in more than one Member State, relevant CAs would need to coordinate between amongst themselves and agree on the adjusted ADNT.</p>
<i>Benefits</i>	<p>This proposal would alleviate the concerns identified by trading venues with respect to unlevelled playing field with third country venues. It will also ensure that the applicable tick size in the EU is calibrated in a convergent way through coordination and agreement amongst relevant CAs.</p> <p>The flexibility provided would allow CAs to better take into account the overall liquidity of a third country instrument without prescribing a specific and rigid methodology for doing so. The proposal would alleviate constraints around data availability from the third trading venue as other public data sources could be used.</p>

<p><i>Cost to regulator:</i></p> <ul style="list-style-type: none"> <li>- <i>One-off</i></li> <li>- <i>On-going</i></li> </ul>	<p>CAs would incur one-off and on-going staff costs to assess, or check when outsourced to trading venues, the liquidity available on third country venues and determine an adjusted ADNT.</p> <p>Where the third country share is traded on EU trading venues in more than one Member State, relevant CAs will also incur one-off and on-going staff costs to coordinate amongst themselves and agree on an adjusted ADNT.</p> <p>Regulators will incur non-significant one-off and recurring IT costs to adjust parameters of their market surveillance tool to the revised tick sizes.</p>
<p><i>Compliance cost:</i></p> <ul style="list-style-type: none"> <li>- <i>One-off</i></li> <li>- <i>On-going</i></li> </ul>	<p>Where requested by CAs, trading venues will incur one-off and on-going costs to collect third country trading data from public sources. The magnitude of the costs incurred will depend on the number of instruments eligible to the revised approach.</p> <p>Trading venues trading third country instruments will incur one-off staff costs to possibly amend rule book/annexes as well as one-off and on-going IT costs to adjust the parameters of their trading system(s). Those latter costs are expected to be non-significant.</p>
<p><i>Cost to other stakeholders</i></p>	<p>Same as under Option 1</p> <p>It is worth noting that, at least for the time being, the adjusted ADNT that serves as a reference for the applicable tick size will not be reported to FITRS by the relevant CA and will only be communicated bilaterally to the concerned trading venues. The “old” ADNT will continue to appear in FIRDS.</p> <p>FITRS will therefore no longer serve as an exhaustive database for ADNT. However, no potential costs for stakeholders could be clearly identified so far.</p>
<p><i>Indirect costs</i></p>	<p>The resulting applicable tick size (determined based on the adjusted ADNT) may not be aligned perfectly with the tick sizes applicable on non-EU venues.</p> <p>Where the third country share is traded on EU trading venues in more than one Member State, the agreement to be reached amongst relevant CAs will contribute to ensuring that the adjusted ADNT is reasonably calibrated. Such safeguard will not exist where the instrument is only traded in one Member State and where the adjusted ADNT would be set by a single CA.</p>

## Scope of instruments eligible to RTS 11 amendment

Whereas under RTS 11, the tick size regime applies to shares, depositary receipts and certain ETFs, the CP proposes to introduce a revised approach for shares only and not for depositary receipts. It indeed appears unlikely that a depositary receipt aiming at facilitating trading of the underlying share in the EU has its main pool of liquidity outside the EU.

The CP also proposes to limit the scope of eligible instruments to circumstances where this appears indeed necessary to address effective competition concerns.

<b>Policy Objective</b>	Ensure that the revised tick size approach is limited to circumstances justified by EU competitiveness and orderly trading concerns.
<b>Technical Proposal</b>	The revised tick size regime would only apply to shares traded on an EU trading venue where the CA for that venue can reasonably demonstrate that the most liquid trading venue for that share is located outside the EU and where the share trades at least once a day on that trading venue.
<i>Benefits</i>	The draft RTS will contribute to predictability and legal certainty by ensuring that the mandatory tick size regime under current RTS 11 remains the predominant one and that the exceptions are limited and do not become the norm.
<i>Cost to regulator:</i>  - <i>One-off</i>  - <i>On-going</i>	<p>CAs of trading venues where third country shares are traded would incur one-off staff costs to identify third country shares traded on their domestic trading venues that are eligible to the exemption, i.e. that have their liquid venue located outside the EU. However, the test would only have to be performed for the subset of shares that trades at least once a day.</p> <p>CAs would incur on-going costs to periodically assess that the relevant shares continue to qualify as third country instruments.</p> <p>Costs for regulators would ultimately depend on the number of instruments identified. In addition, CAs may also consider outsourcing the identification of those third country shares to the EU trading venue(s) trading those shares.</p>
<i>Compliance cost:</i>  - <i>One-off</i>  - <i>On-going</i>	<p>Trading venues may be required by CAs to identify third country shares traded on them and that are eligible to the exemption, i.e. that have their most liquid trading venue located outside the EU and that are traded at least once a day.</p>

	One-off and on-going costs would depend on the number of shares potentially eligible to the revised approach.
<i>Cost to other stakeholders</i>	Investors, including retail investors, trading shares that have their most liquid venue located outside the EU but that trade less than once a day on average will not benefit from reduced tick size on EU venues. However, the related potential costs are expected to be limited due to infrequent trading in those instruments.
<i>Indirect costs</i>	None identified



### 3.3 Annex III: Draft amendments to RTS 11

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

of [ ]

**amending Delegated Regulation (EU) 2017/588 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the tick size regime for shares, depositary receipts and exchange-traded funds**

**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2011/61/EU, and in particular Article 49(3) and (4) thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2017/588<sup>3</sup> sets out the mandatory tick size regime for shares, depositary receipts and certain exchange-traded funds. In particular, under Delegated Regulation (EU) 2017/588 the minimum tick size applicable to shares is calibrated to the average daily number of transaction on the most liquid market in the Union. While this metric is a good and simple liquidity indicator for the vast majority of equity instruments, it is not well suited to those shares for which the trading venue with the highest turnover is located outside the Union. In this case, the mandatory tick size may be calculated only on a small subset of the overall activity. It is therefore important to introduce the possibility for the competent authorities of the trading venues where those shares are traded to agree on an adjusted average daily number of transaction reflecting more accurately the overall liquidity profile for those financial instruments.
- (2) The mandatory tick size was established in order to harmonise price increments on trading venues in the Union and to prevent tick sizes being used as a tool for competition. This might otherwise result in ever smaller tick sizes being used with detrimental effects on market depth, on the quality of liquidity and ultimately on the orderly functioning of

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<sup>3</sup> 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).

markets. It is therefore crucial that any adjusted average daily number of transactions is agreed in a coordinated manner between European Securities and Markets Authority (ESMA) and all competent authorities supervising trading venues where the concerned share is traded so as to ensure that the applicable tick size remains the same on all trading venues in the Union.

- (3) In order to ensure legal certainty and predictability of the mandatory tick size regime, it is important to limit the possibility for competent authorities to agree on adjustments of the applicable averages daily number of transactions to cases where such adjustments are necessary to maintain the competitiveness of trading venues operating in the Union and the orderly functioning of markets. This would notably be the case for shares for which the most liquid trading venue in turnover terms is located outside the Union and that are traded regularly in the Union.
- (4) This Regulation is based on the draft regulatory technical standards submitted by the ESMA to the Commission.
- (5) 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 in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>4</sup>,

HAS ADOPTED THIS REGULATION:

### *Article 1*

#### **Amendment to Delegated Regulation (EU)2017/588**

In Article 3, the following paragraphs 8 to 10 are added:

‘8. The competent authority for a specific share which has its main pool of liquidity located outside the Union may, for that share, adjust the average daily number of transactions calculated as per the procedure prescribed under paragraphs 2 to 7 so as to take into account more comprehensive trading data and ensure that trading in the concerned share is not unduly constrained and does not create disorderly trading conditions.

Prior to this adjustment, the competent authority for the share shall coordinate with the competent authorities of the other trading venues operating in the Union where this share

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<sup>4</sup> 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).

is also traded to ensure that they agree with the proposed adjusted average daily number of transactions. Pending such an agreement between those competent authorities, the average daily number of transactions calculated in accordance with the procedure set out in paragraphs 2 to 7 shall continue to apply.

9. The possibility to make adjustments to the average daily number of transactions as set out in paragraph 8 shall be limited to shares for which the two following conditions are fulfilled:

- (a) the competent authority for the relevant share proposing the adjustment shall be able to reasonably demonstrate, based on numerical evidence, that the most liquid trading venue for that share is located outside the Union;
- (b) the average daily number of transactions calculated in accordance with the procedure set out in paragraphs 2 to 7 is equal to or greater than one.

10. Competent authorities, the day after they agreed on an adjusted average daily number of transactions as set out in paragraph 8, shall communicate this adjusted average daily number of transactions to the trading venues in their respective jurisdiction where the relevant share is admitted to trading or traded.

The trading venues shall apply the adjusted average daily number of transactions the day after it has been communicated to them.

## *Article 2*

### **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*



*[For the Commission  
On behalf of the President]*

*[Position]*