European Securities and Markets Authority

MiFID II/MiFIR Annual Report

under Commission Delegated Regulation (EU) 2017/583 (RTS 2)

23 July 2021 | ESMA70-156-4596

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1 Executive Summary

Reasons for publication

This final report covers the mandate under Article 17 of Commission Delegated Regulation (EU) 2017/583 (RTS 2) whereby ESMA is required to analyse whether it is appropriate to move to the following stage in terms of transparency with regard to (i) the average daily number of trades threshold used for the quarterly liquidity assessment of bonds, and (ii) the trade percentile used for determining the pre-trade SSTI thresholds.

If that move is deemed appropriate, ESMA is required to submit an amended version of the regulatory technical standard to the Commission adjusting the thresholds for the relevant parameters.

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After an introduction (Section 2), this report analyses the feedback received to the proposal to change the thresholds for the liquidity criterion 'average daily number of trades' for bonds in (Section 3) as well as the trade percentiles that are used to determine the size specific to the financial instruments for non-equity instruments (Section 4). Considering the limited transparency in the bond market, the paper confirms the proposal to move to stage 3 for the liquidity criterion 'average daily number of trades' and the SSTI threshold for bonds and not to move to stage 2 for the SSTI threshold for other non-equity instruments.

Next Steps

This report is submitted to the European Commission and the amended regulatory technical standards are expected to be adopted and published in the Official Journal (OJ).

2 Introduction

1. Article 17 of Commission Delegated Regulation (EU) 2017/583 (RTS 2) requires ESMA to submit to the Commission an assessment of the operation of the thresholds for the liquidity criterion 'average daily number of trades' for bonds as well as the trade percentiles that are used to determine the size specific to the financial instrument (SSTI) thresholds for non-equity instruments.

2. The transparency regime for non-equity instruments is currently subject to a four-stage phase-in for the determination of the liquidity status of bonds (based on the criterion 'average daily number of trades') and the level of the pre-trade SSTI thresholds for non-equity instruments (based on trade percentiles). Therefore, ESMA's assessment below is intended to inform the decision of the Commission to move to the next stage or to remain on the current stage for the mentioned criteria.

3. In its first report[1] ESMA proposed to move to stage 2 for the liquidity assessment of bonds and for the calculation of their pre-trade SSTI threshold but not for the threshold of other non-equity instruments.

4. The European co-legislators approved ESMA's proposal to move to the second stage of the phase-in for bonds[2]. This second stage is applying since 15 April 2021 to the thresholds of both the liquidity determination of bonds and the pre-trade SSTI of bonds.

5. Therefore, currently the thresholds for both the liquidity determination of bonds and the pre-trade SSTI for bonds are at the second stage of the phase-in. Consequently, ESMA has to propose if the move to the third stage is appropriate at this point in time.

6. For such assessment, according to Article 17(5) of RTS 2, ESMA should take the following factors into account:

   - the evolution of trading volumes in non-equity instruments covered by the pre-trade transparency obligations;

   - the impact on liquidity providers of the percentile thresholds used to determine the SSTI; and

   - any other relevant factors.

7. Where, based on this assessment, ESMA considers that the thresholds should be adjusted to the next stage, it should submit to the Commission an amended version of RTS 2.

[1] esma70-156-3300_mifid_ii_mifir_annual_report_under_commission_delegated_regulation_eu_2017.583_rts_2.pdf (europa.eu)
[2] Commission delegated regulation (EU) 2021/529 of 18 December 2020 establishing regulatory technical standards amending Delegated Regulation (EU) 2017/583 as regards adjustment of liquidity thresholds and trade percentiles used to determine the size specific to the instrument applicable to certain non-equity instruments (OJ L 106, 26.3.2021, p.47).

8. To inform its decision ESMA published a Consultation Paper (CP)[3] on 12 May 2021. The consultation period ended on 11 June and in total 15 replies were received.

3 Average daily number of trades for the determination of bond liquidity

3.1 General approach and legal framework

9. The quarterly liquidity assessment for bonds (except ETCs and ETNs) is currently performed on the basis of three parameters:

- Average daily notional amount greater or equal to EUR 100,000;
- Average daily number of trades greater or equal to 10 (S2);
- Percentage of days traded over the period considered greater or equal to 80%.

10. Under the phase-in, the parameters for the average daily notional amount and the percentage of days traded remain unchanged. Only the average daily number of trades is foreseen to be gradually reduced. More precisely, when moving from stage 2 to stage 3, the average daily number of trades would be reduced from 10 to 7. The four stages for the average daily number of trades and the liquidity parameters are presented in the table below.

FIGURE 1 - LIQUIDITY DETERMINATION OF BONDS (EXCEPT ETCS AND ETNS)

Average daily notional amount	Average daily number of trades				% of days traded
EUR 100 000	S1	S2	S3	S4	80%
	15	10	7	2	

11. In the CP, ESMA analysed the current number of bonds considered to be liquid from 2020Q1 to 2020Q4. Most of them were classified as illiquid and only between 900 and 1500 of total bonds were considered liquid (see Figure 2).

[3] https://www.esma.europa.eu/sites/default/files/library/esma70-156-2189_cp_review_report_transparency_non-equity_tod.pdf

FIGURE 2 - LIQUID BONDS PER BOND TYPE, 2020Q1-2020Q4, BASED ON THE APPLICATION OF STAGE 2, WITH UK DATA

	2020Q1	2020Q2	2020Q3	2020Q4
Liquid	**1,463**	**1,211**	**1,042**	**922**
of which				
Convertible	8	6	4	2
Other public	71	40	44	30
Sovereign	667	584	508	514
Covered	23	13	14	6
Corporate	596	488	395	313
Other	79	64	63	41
Illiquid	**45,678**	**45,036**	**46,198**	**37,155**
Total	**47,141**	**46,247**	**47,240**	**38,077**
% of liquid bonds	*3.10%*	*2.62%*	*2.21%*	*2.42%*
Number of liquid bonds multi-listed in the EU and the UK	*1,431*	*1,183*	*1,016*	*919*
Number of illiquid bonds multi-listed in the EU and the UK	*32,123*	*33,131*	*34,402*	*32,328*

Source: FITRS

12. Furthermore, ESMA simulated the impact of moving to stage 3 (S3) of the phase-in by calculating how many bonds would have qualified as liquid, during the same four consequential quarters[4], using an average number of daily trades equal to 7 (S3) instead of 10 (S2) (see Figure 3).

FIGURE 3 - LIQUID BONDS PER BOND TYPE, 2020Q1-2020Q4, BASED ON THE APPLICATION OF STAGE 3, WITH UK DATA [5]

[4] The EU27 calculations exclude ISINs admitted to trading/traded only on UK trading venues. Furthermore, for the ISINs admitted to trading/traded in the EU27 exclude the trading volume is calculated excluding trading activity executed on the UK trading venues, by UK SIs (and reported to any APA) and OTC volume reported to UK APAs.

[5] The difference in the number of liquid bonds between Figure 2 and Figure 3 is due to the fact that the former is based on the quarterly results published by ESMA and the latter to a simulation performed outside the IT system. There reasons explaining such differences are (i) corrections on quantitative data performed after the quarterly bond liquidity assessment are taken into

	2020Q1	2020Q2	2020Q3	2020Q4
Liquid	**2,152**	**1,792**	**1,440**	**1,263**
of which				
Convertible	23	15	7	3
Other public	98	53	59	45
Sovereign	868	750	655	647
Covered	44	29	24	6
Corporate	959	813	588	481
Other	131	109	91	65
Illiquid	**44,989**	**44,454**	**45,801**	**36,813**
Total	**47,141**	**46,246**	**47,241**	**38,076**
% of liquid bonds	*4.57%*	*3.87%*	*3.05%*	*3.32%*
Number of liquid bonds multi-listed in the EU and the UK	2,140	1,756	1,405	1,259
Number of illiquid bonds multi-listed in the EU and the UK	31,450	32,558	34,013	31,988

13. The consequence is that, compared to stage 2, the number of liquid bonds under the application of stage 3 would have increased in each quarter of 2020 (between 300 and 700 bonds).

14. The same analysis was carried out taking into account the effect of Brexit, i.e. the fact that the UK data is excluded from 1 January 2021 (See Figure 4 and 5).

FIGURE 4 - LIQUID BONDS PER BOND TYPE, 2020Q1-2020Q4, BASED ON THE APPLICATION OF STAGE 2, WITHOUT UK DATA

	2020Q1	2020Q2	2020Q3	2020Q4
Liquid	**605**	**414**	**369**	**473**
of which				
Convertible	1	1	0	0

account under the re-calculations; (ii) corrections on reference data, including the start trading date or the classification of the instrument, performed after the quarterly bond liquidity assessment are taken into account under the re-calculations; (iii) corrections on the calendars for days open in a trading venue; (iv) the difficulty to exactly replicate the calculation of the third parameter, i.e. the percentage of days traded, outside the IT system.

Other public	44	23	17	18
Sovereign	239	206	185	240
Covered	2	0	1	1
Corporate	262	141	133	174
Other	40	32	23	25
Illiquid	**22,876**	**23,375**	**23,123**	**28,126**
Total	**23,481**	**23,789**	**23,492**	**28,599**
% of liquid bonds	*2.58%*	*1.74%*	*1.57%*	*1.65%*

Source: FITRS

FIGURE 5 - LIQUID BONDS PER BOND TYPE, 2020Q1-2020Q4, BASED ON THE APPLICATION OF STAGE 3, WITHOUT UK DATA

	2020Q1	2020Q2	2020Q3	2020Q4
Liquid	**808**	**583**	**542**	**668**
of which				
Convertible	1	1	0	0
Other public	58	26	25	31
Sovereign	318	276	264	324
Covered	4	0	2	1
Corporate	357	225	208	265
Other	49	40	30	32
Illiquid	**22,674**	**23,206**	**22,950**	**27,931**
Total	**23,482**	**23,789**	**23,492**	**28,599**
% of liquid bonds	*3.44%*	*2.45%*	*2.31%*	*2.34%*
Change of the number of liquid bonds compared to S2	*203*	*169*	*173*	*195*

Source: FITRS

15. ESMA notes that the move from stage 2 to 3 would again increase the number of liquid bonds but to a lesser extent, between 150 and 210.

16. Considering that the analysis above, confirmed in the analysis of the 2020 Annual Report of waivers and deferrals for non-equity instruments[6], highlights that the current level of real-time pre- and post-trade transparency remains very low, as represented by the limited number of bonds subject to real-time transparency and, that one of the key objectives of MiFID II/MiFIR was to increase transparency and thereby improve the functioning of financial markets, ESMA recommended in the CP to move to stage 3 for bonds.

3.2 Feedback from the consultation

17. The minority of the respondents concurred with ESMA's analysis and a few respondents also suggested a direct move to stage 4. However, the majority of respondents were not in favour of the move to stage 3 for bonds

18. The respondents opposed to moving to stage 3 supported their view with the following arguments:

- it is too early to move to the following stage since the application of stage 2 has just started. At least 1 year of data under stage 2 shall be used for the assessment;
- the period used is a period of stress due to the Covid-19 crisis and Brexit;
- data quality has to be further improved before moving to the following stage;
- if the move negatively impacts the markets but it only becomes apparent after moving to stage 3 of the liquidity parameters, there is no provision contained within the relevant regulation to roll back any decision to the current existing (stage 2) thresholds;
- newly issued bonds are not taken into account in the analysis, once new issuances are included the amount of liquid bonds transparency increases significantly, for example, in Q1 2021 (1st January - 31st March 2021) ESMA's FITRS calculated 1,720 liquid bonds;
- the effects of the move to stage 3 for the issuance size parameter to be used for new covered and corporate bonds shall be taken into account;
- the population of bonds has now decreased and is more in line with a realistic picture of the market. Furthermore, this means that the percentage of liquid bonds is now larger than expected;
- the target of liquid bonds shall not be a percentage over the total number of bonds but rather in terms of nominal amount and number of transactions;
- the comparison with the US, as a good example of transparent market, shall take into account the differences in terms of execution protocols, market depth, number of

[6] https://www.esma.europa.eu/sites/default/files/library/esma70-156-3926_annual_report_2020_non-equity_waivers_and_deferrals.pdf

participants, and the fact that the US model regards only corporate bonds and was built over 18 years.

3.3 ESMA's assessment and recommendations

19. ESMA appreciates the arguments provided against the move to stage 3. However, ESMA wishes to point market participants to the following considerations:

- as it was the case for the move to stage 2 a simulation was made to assess the effects of the move to stage 3. As expected, the effect of Brexit will cause a further decrease of the number of liquid bonds in the EU. Therefore, ESMA considers that the new number of liquid bonds in absolute terms is still low and transparency in the bond market is still limited. No comparison in terms of percentage has been made because the total number of bonds has now decreased, and it would not be appropriate to compare such figures;

- according to the legislative framework ESMA has to assess the move to the following stage on a yearly basis. On the basis of the simulation made, the expected number of liquid bonds will still be small. Therefore, the assessment made is that the effects to the market appear to be limited;

- new bonds are not included in the analysis because they are considered independently from the analysis of the bonds deemed to be liquid under the quarterly assessment in RTS 2. Despite them providing additional transparency to the market the number is volatile and depends on new issuances.

- the move to the following stage for the issuance size of covered and corporate bonds is automatic and expected since the application of the legislative framework under MiFID II/MiFIR. Therefore, this effect shall be considered independently from the annual assessment of the thresholds for the quarterly liquidity determination;

- the fact that the percentage of liquid bonds is larger due to the decrease of the denominator in relation to the total number of bonds cannot be considered as an argument to delay the move to stage 3. Furthermore, such decrease is not due to the Brexit impact but to a trading venue that delisted many bonds in Q4 2019 and to the fact that only bonds with trading activity were included. Considering that the different ESMA reports have been published at different points in times, this explains the differences in the numbers among those;

- as far as the comparison with the US as a good example of a transparent market is concerned, it should be noted that the US framework includes not only corporate bonds but also other instruments, including US treasury securities, which began reporting information in 2017. In addition, FINRA is currently consulting on further enhancing the requirements applicable to these instruments. Furthermore, despite the EU non-equity transparency regime being applicable since 2018 only, the EU bond markets have a longer history and certain instruments had even reached a higher degree of transparency than the one provided by MiFID II/MiFIR (e.g. some covered bond markets). The example of the US illustrates that concerns that existed prior to the application of the transparency regime were unfounded and the current framework in the US can certainly be considered as a success. ESMA is of the view that the same has happened in the EU prior to the application of MiFID II, i.e. many concerns that were raised at the time, in particular with regards to detrimental effects of transparency requirements, did not materialise after the application of MiFIR.

20. Therefore, ESMA maintains its proposal to move to stage 3 in order to make progress towards a more transparent trading environment for bonds in line with the legislative intentions of MiFIR.

4 Trade percentile for the determination of the pre-trade SSTI threshold

4.1 General approach and legal framework

21. Article 17 of RTS 2 requires ESMA to assess by 30 July of each year whether the percentile to be used for the pre-trade SSTI thresholds for non-equity instruments should be changed and set to the value provided for the following stage. In the CP, ESMA therefore has assessed whether the transparency regime should move to stage 2 for all non-equity instruments other than bonds and move to stage 3 for bonds for the determination of the SSTI threshold.

22. For non-equity instruments other than bonds, ESMA considered that the level of completeness and the quality of the data were still considered insufficient to perform the annual transparency calculations in the year 2020 for a number of instrument classes. Despite ESMA's continuous work with NCAs and reporting entities to improve data completeness and data quality it was still not possible to perform such calculations for the full scope of instruments yet.

23. In addition, considering that ESMA only provided the first annual transparency calculations for non-equity instruments other than bonds for a limited scope and that 2020 was a peculiar year due to Covid-19, ESMA still considers it premature to assess a move to stage 2 for those instruments at this point in time.

24. ESMA will have a full year of data related to the trading activity excluding the UK, which is a main pool of liquidity for certain derivatives, only in 2022. For all those reasons, ESMA considers that at this point in time it is not in a position to conduct a solid impact analysis and to properly assess the impact of moving to the following stage for the pre-trade SSTI threshold for non-equity instruments other than bonds.

25. As far as bonds (excluding ETCs and ETNs) are concerned, ESMA performed the annual transparency calculations related to the determination of the pre- and post-trade LIS and SSTI thresholds since 2019.

26. Consequently, in order to determine if the value of the pre-trade SSTI threshold should be changed ESMA presented in the CP a simulation of what the value of such threshold would be using a trade percentile of respectively 50% and 40%, on the basis of data reported to FITRS in the year 2020.

27. The results of the analysis are presented in Table 6 below. The table also includes the results of using the stage 2 threshold based on 2018 data provided in the 2020 Annual Review Report[7]. The results of last year's simulation were relatively accurate as they were similar to the ones based on 2020 data with the exception of covered bonds and other public bonds.

28. The increase in value with the stage 3 percentile is relevant mainly for sovereign bonds and other public bonds. Considering that both types of bonds usually trade in big sizes, in the range of EUR 6 and 3 million respectively[8], it therefore appears to be appropriate to move to stage 3 as the impact on large sizes should be limited.

TABLE 6 PRE-TRADE SSTI THRESHOLDS, WITH UK DATA

Bond type	(data of year 2018) SSTI pre-trade_40%	(data of year 2020) SSTI pre-trade_40%[9]	(data of year 2020) SSTI pre-trade_50%
Corporate Bond	500,000	500,000	600,000
Convertible Bond	700,000	800,000	1,000,000
Other Public Bond	600,000	1,000,000	2,000,000
Covered Bond	1,500,000	500,000	700,000
Sovereign Bond	1,500,000	1,000,000	2,000,000
Other Bond	500,000	500,000	600,000

Source: FITRS

29. Table 7 provides the same analysis but, as for bond liquidity, the data from the UK is excluded[10] since the annual calculations for SSTI in bonds next year will include the trading activity of the EU only. Similarly, the major increases are expected for sovereign and other public bonds.

TABLE 7 PRE-TRADE SSTI THRESHOLDS, WITHOUT UK DATA

Bond type	(data of year 2018) SSTI pre-trade_40%	(data of year 2020) SSTI pre-trade_40%	(data of year 2020) SSTI pre-trade_50%
Corporate Bond	500,000	400,000	600,000
Convertible Bond	700,000	600,000	900,000
Other Public Bond	600,000	1,500,000	2,500,000

[7] esma70-156-3300_mifid_ii_mifir_annual_report_under_commission_delegated_regulation_eu_2017.583_rts_2.pdf (europa.eu)
[8] These figures were calculated before data corrections. The numbers will be re-calculated for the Final Report.
[9] The results might differ from the public results of the annual transparency calculations since this analysis was performed earlier and data corrections might have occurred in the meantime.
[10] Using the same methodology as in section 2.1

Covered Bond	1,500,000	400,000	600,000
Sovereign Bond	1,500,000	900,000	1,500,000
Other Bond	500,000	400,000	600,000

Source: FITRS

30. Taking into account the analysis provided, the CP suggests that the move to stage 3 would enhance pre-trade transparency in bond markets hence improving pricing efficiency. In addition, the fact that the bond market remains largely characterised by large size trades counterpoints to the argument that an increase in the pre-trade threshold could be prejudicial for end-investors.

31. ESMA considered in its consultation that a move to stage 3 would still keep the pre-trade SSTI threshold sufficiently low which would still efficiently protect liquidity providers from potential market impact stemming from large orders, while ensuring that a higher share of liquid bonds would be subject to the MiFIR pre-trade transparency regime. Such increased transparency would contribute to more informed investors, a better functioning price formation process and ultimately lower transaction costs for end investors.

32. Therefore, ESMA proposed to move to stage 3 for the determination of the SSTI threshold for bonds.

4.2 Feedback from the consultation

33. The large majority of respondents agreed with ESMA's assessment not to move to stage 2 for non-equity instruments other than bonds, mainly due to the fact that data quality is still limited, and no annual transparency calculations have been performed yet. Therefore, respondents agree with ESMA that it is still premature to move to the next stage.

34. A minority of respondents however consider that the current framework did not deliver meaningful real-time pre-trade transparency in non-equity instruments and consider that ESMA should take immediate steps to rectify the situation. In their view, moving to stage 2 for non-equity instruments other than bonds would be a step in the right direction to achieving the overarching MiFID II objective of delivering meaningful pre-trade transparency. According to these respondents, even with a move to stage 2, the SSTI waiver would still capture the largest majority of transactions and would not be detrimental to liquidity.

35. As far as the proposal for bonds is concerned, a majority of respondents disagreed with ESMA's proposal of moving to stage 3.

36. Respondents argue that currently there are still some data quality issues for bond instruments, in particular with relation to Brexit. In their view, such a decision should not be based on a dataset deemed insufficient and non-exhaustive.

37. Furthermore, respondents note that the rationale of the phase-in process established on RTS 2 is based on the premise to move cautiously between the different stages of the process. Respondents argue that the annual transparency calculations for stage 2 have

only applied since 30 April this year and that this should call for a delay in moving to stage 3 of the phase-in mechanism.

38. Some respondents also believe that a move to stage 3 could jeopardize the activity of liquidity providers in particular in some bond categories without bringing any clear benefits to market participants. In this context, some respondents challenge the observations on the CP that infers that the SSTI waiver has become less important and that there has been a reduction in market making activity over the last years.

39. There were however a number of respondents who agreed with ESMA's proposal to move to stage 3 for the determination of the SSTI threshold for bonds. In line with the arguments put forward for other non-equity instruments, these respondents are of the view that the pre-trade transparency regime for bond instruments did not deliver on its objectives and ESMA should continue to take steps to increase pre-trade transparency in fixed income markets.

40. According to those respondents, the difference between moving to stage 3 and the average executed sizes is large enough to consider that it would not expose liquidity providers to undue risk.

41. Some respondents also commented on the SSTI waiver generally stating that it creates added complexity and further clouds the pre-trade transparency picture in bond markets. Therefore, these respondents would call for a complete removal of the SSTI waiver. Whilst considering that this is not within the scope of this consultation, these respondents would agree to a move to stage 3 to limit the use of the SSTI waiver, which in their view will bring added benefits to the market and result in more competition, would foster the price formation process and investor confidence.

4.3 ESMA's assessment and recommendations

42. Regarding non-equity instruments other than bonds, the respondents concurred with ESMA that it would be premature to move to stage 2 for the pre-trade SSTI thresholds.

43. ESMA takes note of some respondents' feedback that the pre-trade transparency regime in non-equity instruments, in particular derivatives, have not yet delivered on the objectives of the legislation. However, ESMA still considers that at this point in time it is not in a position to properly assess the impact of moving to the following stage for the pre-trade SSTI threshold for non-equity instruments other than bonds. ESMA will remain working closely with NCAs and reporting entities to improve data completeness and data quality in order to be able to perform such calculations for the full scope of instruments as soon as possible.

44. ESMA therefore does not recommend moving to stage 2 and using the 40^{th} percentile for the calculation of the SSTI thresholds of non-equity financial instruments other than bonds (i.e. SFPs, interest rate derivatives, commodity derivatives, credit derivatives, C10 derivatives, CFDs, emission allowances and emission allowance derivatives).

45. With respect to bonds, ESMA understands some concerns raised by market participants with regards to their opposition to move to stage 3 for the determination of the SSTI threshold for bonds.

46. ESMA however does not entirely agree with the arguments put forward by respondents. On issues around data quality, ESMA understands that there are some issues but not to an extent to prevent ESMA from performing the analysis required under Article 17 of RTS 2 and justify the move to the next stage of the phase in process. Contrary to other non-equity instruments, in particular derivatives, ESMA has performed the necessary quarterly transparency calculations for a number of years and the regime has been applied for some time.

47. In this respect, ESMA agrees with those respondents that argue that the pre-trade transparency regime has not achieved its objectives for bonds. As demonstrated on the MiFID II Review Report on the non-equity transparency regime, the general transparency in the bond market remains limited which contradicts the policy objectives of MiFID II. There is still a lack of real-time pre-trade transparency and steps should be taken to better promote such transparency.

48. With the data currently available and the evidence presented by respondents, ESMA keeps its view that a move to stage 3 for the determination of the SSTI threshold for bonds is appropriate at this stage. While this amendment and the consequent increases of SSTI thresholds for bonds should strengthen transparency in the bond market, ESMA is confident that this should not create significant disruptions for market participants. The MiFIR framework offers other possible pre-trade waivers which in combination will continue to offer protection to a large proportion of orders and quotes in bonds.

49. Therefore, ESMA maintains its proposal from the CP, to move to stage 3 for the pre-trade SSTI for bonds.

5 Annexes

5.1 Annex I

Legislative mandate to develop technical standards

<u>Article 17 of COMMISSION DELEGATED REGULATION (EU) 2017/583 (RTS 2)</u>

<u>Provisions for the liquidity assessment for bonds and for the determination of the pre-trade size specific to the instrument thresholds based on trade percentiles</u>

[…]

4. ESMA shall, by 30 July of the year following the date of application of Regulation (EU) No 600/2014 and by 30 July of each year thereafter, submit to the Commission an assessment of the operation of the thresholds for the liquidity criterion 'average daily number of trades' for bonds as well as the trade percentiles that determine the size specific to the financial instruments covered by paragraph 8. The obligation to submit the assessment of the operation of the thresholds for the liquidity criterion for bonds ceases once S4 in the sequence of paragraph 6 is reached. The obligation to submit the assessment of the trade percentiles ceases once S4 in the sequence of paragraph 8 is reached.

5.The assessment referred to in paragraph 4 shall take into account:

(a) the evolution of trading volumes in non-equity instruments covered by the pre-trade transparency obligations pursuant to Article 8 and 9 of Regulation (EU) No 600/2014;

(b) the impact on liquidity providers of the percentile thresholds used to determine the size specific to the financial instrument; and

(c) any other relevant factors.

6.ESMA shall, in light of the assessment undertaken in accordance with paragraphs 4 and 5, submit to the Commission an amended version of the regulatory technical standard adjusting the threshold for the liquidity criterion ‘average daily number of trades’ for bonds according to the following sequence:

(a) S2 (10 daily trades) by 30 July of the year following the date of application of Regulation (EU) No 600/2014;

(b) S3 (7 daily trades) by 30 July of the year thereafter; and

(c) S4 (2 daily trades) by 30 July of the year thereafter.

7.Where ESMA does not submit an amended regulatory technical standard adjusting the threshold to the next stage according to the sequence referred to in paragraph 6, the ESMA assessment undertaken in accordance with paragraphs 4 and 5 shall explain why adjusting the threshold to the relevant next stage is not warranted. In this instance, the move to the next stage will be postponed by one year.

8.ESMA shall, in light of the assessment undertaken in accordance with paragraphs 4 and 5, submit to the Commission an amended version of the regulatory technical standard adjusting the threshold for trade percentiles according to the following sequence:

(a) S2 (40th percentile) by 30 July of the year following the date of application of Regulation (EU) No 600/2014;

(b) S3 (50th percentile) by 30 July of the year thereafter; and

(c) S4 (60th percentile) by 30 July of the year thereafter.

9.Where ESMA does not submit an amended regulatory technical standard adjusting the threshold to the next stage according to the sequence referred to in paragraph 8, the ESMA assessment undertaken in accordance with paragraphs 4 and 5 shall explain why adjusting the threshold to the relevant next stage is not warranted. In this instance, the move to the next stage will be postponed by one year.

5.2 Annex II

Draft technical standards

COMMISSION DELEGATED REGULATION (EU) No …/..

of [date]

establishing regulatory technical standards amending Delegated Regulation (EU) 2017/583 as regards adjustment the liquidity thresholds and trade percentile used to determine the size specific to the instrument applicable to certain non-equity instruments

(Text with EEA relevance)

THE EUROPEAN COMMISSION

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

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012[11], and in particular the fourth subparagraph of Article 9(5) thereof,

Whereas:

(1) Commission Delegated Regulation (EU) 2017/583[12] sets out the transparency regime applicable to bonds, structured finance products, emission allowances and derivatives. In order to ensure a smooth implementation of this new regime, the application of certain transparency thresholds has been phased-in allowing in practice to gradually broaden the application of the new transparency obligations. This concerns, in particular the 'average daily number of trades' criterion used for the determination of bonds for which there is a liquid market as well as the trade percentiles used to determine the size specific to the instrument which allows for pre-trade transparency obligations to be waived.

(2) Under this phased-in approach, moving to the next stage is not automatic but based on an assessment that the European Securities and Markets Authority (ESMA) is required to submit annually to the Commission. The ESMA's assessment has to analyse the evolution of trading volumes for the concerned financial instruments under the current stage and to anticipate the possible impact a move to the next stage could have on both available liquidity and market participants. If appropriate, ESMA is required to submit, together with its report, a revised regulatory standard to move to the next stage.

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

[12] Commission Delegated Regulation (EU) 2017/583 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 bonds, structured finance products, emission allowances and derivatives (OJ L 87, 31.3.2017, p. 229–349)

(3) ESMA has conducted its assessment and, taking into account the limited level of transparency, the limited effects to competition in the market and the fact that the threshold would still be sufficiently low to protect liquidity providers from potential market impact stemming from large orders, considers that it is appropriate to move to stage S3 and accordingly amend Commission Delegated Regulation (EU) 2017/583 for bonds for which there is a liquid market and for the size specific to the instrument for bonds. This should increase the level of transparency available in the bond market without a negative impact on liquidity. ESMA considers that at this point in time there is not enough evidence to move to stage S2 for the size specific to the instrument for other classes of financial instruments.

(4) This Regulation is based on the draft regulatory technical standards submitted by 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 advice 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[13],

HAS ADOPTED THIS REGULATION

Article 1

Amendments to Delegated Regulation (EU) 2017/583

Article 17 of Delegated Regulation (EU) 2017/583 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. For determining the bonds for which there is not a liquid market for the purposes of Article 6 and according to the methodology specified in point (b) of Article 13(1), the approach for the liquidity criterion "average daily number of trades" shall be taken applying the "average daily number of trades" corresponding to stage S3 (7 daily trades).';

(b) paragraph 3 is replaced by the following:

'3. For determining the size specific to the financial instrument for the purposes of Article 5 and according to the methodology specified under point (b)(i) of Article 13(2), the

[13] 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).

approach for the trade percentile to be applied shall be used applying the trade percentile corresponding to the stage S3 (50th percentile).

For determining the size specific to the financial instrument for the purposes of Article 5 and according to the methodology specified under points (b)(ii) to (iv) of Article 13(2), the approach for the trade percentile to be applied shall be used applying the trade percentile corresponding to the stage S1 (30th percentile).'.

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

Ursula von der Leyen