

PUBLIC STATEMENT

Joint work plan of ESMA and NCAs for opinions on MiFID II pre-trade transparency waivers and position limits

The European Securities and Markets Authority (ESMA) together with the national competent authorities (NCAs) have finalised an updated work plan for the opinions on pre-trade transparency waivers and position limits that must be issued under the Markets in Financial Instruments Directive (MiFID II) and Regulation (MiFIR). The updated work plan has the full support of both ESMA and NCAs.

In view of the large number of opinions to be issued, about 700 for pre-trade transparency waivers and 110 for position limits, and in order to avoid processing bottlenecks, the work plan presents a pragmatic approach for ensuring the implementation of the MiFID II/MiFIR waivers and position limits as of 3 January 2018 pending the issuance of the opinions.

Opinions on Pre-trade transparency waivers

Under MiFIR, NCAs have to submit pre-trade transparency waivers to ESMA that subsequently needs to issue opinions on the compatibility of pre-trade transparency waivers with MiFIR and the Commission Delegated Regulations (EU) 2017/587¹ and (EU) 2017/583² of 14 July 2016.

MiFIR does not include transitional provisions for the issuance of ESMA opinions. In order to avoid a bottleneck of waiver notifications around MiFIR's application date, and to enable the use of waivers by the application date, ESMA initially envisaged reviewing the equity and non-equity waivers notified by NCAs by the end of 2017. However, due to the high number and complexity of pre-trade transparency waivers that need to be submitted and assessed, ESMA together with the NCAs consider it necessary to revise the initial work plan and in particular to

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. 387–410).

² 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)..

cater for the situation where an ESMA opinion is not issued prior to 3 January 2018.

Equity instrument waivers

ESMA has decided to prioritise the work on equity waivers and intends to finalise the opinions on those waivers by the end of 2017.

Non-Equity instrument waivers

ESMA aims to finalise as many opinions on non-equity instrument waivers as possible before 3 January 2018. However, it is unlikely to be in a position to issue opinions on a majority of waiver notifications.

All NCAs committed that pending an ESMA opinion they will grant the requested waivers based on their own compliance assessment only and subject to one of the following conditions:

- The waiver is granted on a temporary basis;
- The waiver is granted on a provisional basis; or
- The waiver is granted via other administrative arrangements ensuring that it could be reconsidered following the ESMA opinion and that the trading venue requesting the waivers is duly informed.

In order to ensure supervisory convergence ESMA intends to publish Q&As addressing the key issues identified in the non-equity waiver notifications received. Waivers notified to ESMA that miss essential information allowing for a compliance assessment under MiFIR, or not complying with the Q&As, will not be eligible to the process described above.

Opinions on Positions limits for commodity derivatives

ESMA, under MiFID II, must publish opinions on the position limits notified by NCAs for commodity derivative contracts, the compatibility of the limits proposed with MiFID II and the methodology set out in the Commission Delegated Regulation (EU) 2017/591 of 1 December 2016 (RTS 21)³. No transitional provisions are foreseen in that area under MiFID II.

³ Commission Delegated Regulation (EU) 2017/591 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the application of position limits to commodity derivatives

Setting position limits for commodity derivatives under MiFID II is a new and technically challenging task for NCAs, which has an immediate and potentially far-reaching impact on commodity derivatives trading. The calibration of position limits has therefore required gathering and analysing large amounts of data by NCAs while the late publication of RTS 21 affected NCAs' timelines for setting position limits

ESMA together with NCAs, given the complexity and the timing of position limit notifications, agreed that it will not be possible to finalise and publish all the position limit opinions for liquid commodity derivative contracts by the end of the year. However, ESMA and NCAs recognise that it is important for market participants to know limits sufficiently far in advance of 3 January 2018 to apply for appropriate exemptions, enter positions with confidence or reduce positions which would not be permissible under the regime without damaging markets.

Therefore, ESMA together with NCAs have agreed that NCAs will publish limits ahead of its opinions. Those limits will enter into force, and be monitored by NCAs, on 3 January 2018. Following the issuance of opinions, all NCAs have agreed to modify the position limits in accordance with the opinion, or provide ESMA with a justification for why the change is not necessary.

Lead-time for market participants

Both for pre-trade transparency waivers and/or position limits, where NCAs would amend their initial decision after ESMA has issued a non-compliant opinion, market participants will be given sufficient lead-time to adapt to the revised trading environment.



Notes for editors

- ESMA's mission is to enhance investor protection and promote stable and orderly financial markets.

It achieves these objectives through four activities:

- assessing risks to investors, markets and financial stability;
- completing a single rulebook for EU financial markets;
- promoting supervisory convergence; and
- directly supervising specific financial entities.
- ESMA achieves its mission within the European System of Financial Supervision (ESFS) through active cooperation with the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA), the European Systemic Risk Board, and with national authorities with competencies in securities markets (NCAs).

Further information:

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