



Latest Level 3 ESMA Q & As related to MiFID II/MiFIR

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ESMA published and updated in the last couple of days additional Level 3 Q&A papers. Due to the specification and clarification purposes of the Level 3 papers, this should help you during the implementation phase and could clarify open questions. Please find the relevant June and May 2017 Q&As below.

PwC provides you with this Newsletter an overview of the latest questions related to the following topics:

1. Investor Protection

- Information on costs and charges
- Post-sale reporting
- Appropriateness / complex financial instruments

2. Transparency

- None-Equity transparency
- Pre-trade transparency waivers
- The systematic internaliser regime
- Data reporting services providers
- Third country issues

3. Market Structure

- Direct Electronic Access (DEA) and algorithmic trading

4. Commodity Derivatives

- Position Limits
- Ancillary Activity
- Third country issues

We are happy to discuss with you any thoughts and issues or are happy to review your solutions with regard to MiFID II and MiFIR.

Please do not hesitate to contact us.

1. MiFID II and MiFIR – Investor Protection (6 June 2017 | ESMA35-43-349)

Link to the document:

https://www.esma.europa.eu/sites/default/files/library/esma35-43-349_mifid_ii_qas_on_investor_protection_topics_o.pdf

Information on costs and charges

- Question 6- Does the PRIIPs calculation methodology cover product cost components that need to be disclosed under MiFID II cost disclosure?
- Question 7- How should investment firms use the product`s costs as presented in the PRIIPs KID?
- Question 8- Should the PRIIPs methodology also be applied when calculating costs and charges of financial instruments that do not fall within the scope of PRIIPs?

- Question 9- How does the investment firm obtain access to the relevant data for a financial instrument to apply the PRIIPs methodology?
- Question 10- What steps should an investment firm take when calculating the costs of products that fall within the PRIIPS transition period, like UCITS during the 3 January 2018 to 31 December 2019 period?
- Question 11- What should an investment firm do when they are unable to obtain the relevant data from the manufacturer?
- Question 12- Which methodology should an investment firm use when calculating the 'costs related to transactions initiated in the course of the provision of an investment service' for its ex-post cost disclosure?
- Question 13-
 - i. When providing information of costs and charges to clients, on which basis should costs be aggregated?
 - ii. What is the level of aggregation that firms need to apply?
- Question 14- How should investment firms provide ex-ante disclosure of information on costs and charges to clients when there is no available data on actually incurred costs?

Post- Sale Reporting

- Question 4 – When fulfilling the obligation to report on a portfolio depreciating by the 10% threshold, how should the firm take account of a client making additions to the portfolio after the reporting period has started?
- Question 5 – When fulfilling the obligation to report on a portfolio depreciating by the 10% threshold, how should a firm value on a daily basis, as requested by the answer to question 1, financial instruments within the portfolio for which there is no secondary market or daily price reference?
- Question 6- How should a firm fulfil the obligation under Article 62 if a firm's reporting period commences after the introduction of MiFID 2 on 3 January 2018?
- Question 7-
 - i. When fulfilling the obligation to report on a portfolio depreciating by the 10% threshold, on what basis should a firm calculate the 10% threshold?
 - ii. Should a firm continue to refer to the value of the portfolio at the beginning of the reporting period or refer to the portfolio value at the previous value that triggered the reporting obligation?

Appropriateness / Complex Financial Instruments

- Question 1- Can shares in non-UCITS collective investment undertakings explicitly excluded under point (i) of Article 25(4)(a) of MiFID II be nevertheless assessed against the criteria set out in Article 57 of the MiFID II Delegated Regulation and as a consequence potentially be deemed non-complex financial instruments for the purposes of the appropriateness test?

2. MiFID II and MiFIR – Transparency (31 May 2017 | ESMA 70-872942901-35)

Link to the document:

https://www.esma.europa.eu/sites/default/files/library/esma70-872942901-35_qas_transparency_issues.pdf

None-Equity transparency

- Question 1- How is the term "an underlying physical asset" in the context of the definition of an Exchange For Physical (EFP) to be understood? Can a financial instrument be considered as a physical asset?

Pre-trade transparency waivers

- Question 5- How should the "current volume weighted spread reflected in the order book" be calculated for negotiated transactions under Article 4(1)(b)(i) of MiFIR?

The systematic internaliser regime

- Question 5-
 - i. Can systematic internalisers meet their quoting obligations under Article 18(1) of MiFIR for liquid instruments by providing executable quotes on a continuous basis?
 - ii. Can client orders routed by an automated order router (AOR) system be considered as 'prompting for a quote' according to Article 18(1)(a) of MiFIR?
 - iii. For how long should quotes provided by systematic internalisers be firm, or executable?
 - iv. What are the obligations for systematic internalisers dealing in non-equity instruments for which there is no liquid market under Article 18(2) of MiFIR?
 - v. Which arrangements should systematic internalisers use when publishing firm quotes? Should these be the same arrangements as for equity instruments?
 - vi. Should systematic internalisers disclose their identity when publishing firm quotes?
- Question 6-
 - i. What information should the notification from systematic internalisers to their NCA contain?
 - ii. For what period of time should an investment firm follow the obligations for systematic internalisers after crossing the relevant thresholds in a financial instrument?
 - iii. When/How often do investment firms have to notify their NCAs of their systematic internaliser status?

Data reporting services providers

- Question 1- What is the time limit for investment firms to report post-trade information to APAs, in particular should information be delayed in case of deferral? Who decides on the applicable deferral period given the possibility of disagreement between the APA and the investment Firm?
- Question 2- Who will assign the identifier for the APA?

Third country issues

- Question 1- Should EU investment firms trading on a third-country trading venue make information about these transactions public through an APA in the EU (Articles 20 and 21 of MiFIR)?

3. MiFID II and MiFIR – Market Structure (31 May 2017 | ESMA70-872942901-38)

Link to the document:

https://www.esma.europa.eu/sites/default/files/library/esma70-872942901-38_qas_markets_structures_issues.pdf

Direct Electronic Access (DEA) and algorithmic trading

- Question 13- What is meant by “continuous” assessment and monitoring of market and credit risk in Article 17(2) of RTS 6 which relates to investment firms’ post trade controls?

4. MiFID II and MiFIR – Commodity Derivatives (31 May 2017 | ESMA70-872942901-28)

Link to the document:

https://www.esma.europa.eu/sites/default/files/library/cdtf_qas.pdf

Position Limits

- Question 2- What is the definition of lot for energy products?

Ancillary Activity

- Question 4-Who has to notify annually the relevant competent authority that they make use of the ancillary activity exemption?
- Question 5- To which competent authority should a person provide notification that it makes use of the ancillary activity exemption?
- Question 6- By when does a firm that wants to make use of the ancillary activity exemption need to notify its competent authority?
- Question 7- When does a firm that can no longer make use of the ancillary activity exemption need to apply for a license?
- Question 8- What are the criteria that liquidity provision contracts need to meet in order to qualify for the privileged transactions exemption under Article 2(4) of MiFID II?
- Question 9- Should the capital employed test be calculated only on the same positions as included in the market size test or for all commodity derivatives traded in the group?

Third Country issues

- Question 1- Should economically equivalent contracts traded on a third-country venue be considered EEOTC for position limit and position reporting purposes under MiFID II?