



## Latest Level 3 ESMA Q & As related to MiFID II/MiFIR – July 2017

### Contacts



**Guenther Dobrauz**  
Partner  
PwC Legal FS Regulatory and Compliance Services  
+41 58 792 14 07  
[guenther.dobrauz@ch.pwc.com](mailto:guenther.dobrauz@ch.pwc.com)



**Michael Taschner**  
Senior Manager  
PwC Legal FS Regulatory and Compliance Services  
+41 58 792 10 87  
[michael.taschner@ch.pwc.com](mailto:michael.taschner@ch.pwc.com)



**Orkan Sahin**  
Senior  
PwC Legal FS Regulatory and Compliance Services  
+41 58 792 19 94  
[orkan.sahin@ch.pwc.com](mailto:orkan.sahin@ch.pwc.com)

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 ESMA Q&As from 7 July and 10 July 2017 listed below.

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

**1. Investor protection and intermediaries topics (10 July 2017)**

- Best execution
- Recording of telephone conversations and electronic communications'

**2. Market structures topics (7 July 2017)**

- Direct Electronic Access (DEA) and algorithmic trading
- Multilateral and bilateral systems
- Access to CCPs and trading venues

**3. Data reporting (7 July 2017)**

- Field 14 and Field 17 – Total issued nominal amount
- Field 30 – Quantity
- Reference data for financial instrument
- Transaction reporting
- Order record keeping

**4. Commodity derivatives topics (7 July 2017)**

- Position limits
- Position reporting

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 and intermediaries topics (10 July 2017 | ESMA35-43-349)

**Link to the document:**

[https://www.esma.europa.eu/sites/default/files/library/esma35-43-349\\_mifid\\_ii\\_qa\\_on\\_investor\\_protection\\_topics.pdf](https://www.esma.europa.eu/sites/default/files/library/esma35-43-349_mifid_ii_qa_on_investor_protection_topics.pdf)

**Best execution**

- Question 15 – Do the RTS 27 reporting requirements apply to Securities Financing Transactions (SFTs)?

**Recording of telephone conversations and electronic communications'**

- Question 12 – Do the record keeping requirements set out in Article 16(7) of

MiFID II apply only when, through a given channel, the execution and transmission of the order is allowed in addition to the reception and transmission of the order?

## **2. MiFID II and MiFIR – Market structures topics (7 July 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](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 14 – Does the format established for the record-keeping obligations of HFT firms established in RTS 6 apply to their non-algorithmic trading desks?
- Question 15 – Article 2(2) of Commission Delegated Regulation (EU) 2017/582 (RTS 26) requires trading venues to provide tools to ensure pre-execution screening on an order-by-order basis by each clearing member of the limits set and maintained by that clearing member for its client pursuant to RTS 6. Which specific provision of RTS 6 is the reference to limits in Article 2(2) of RTS 26 referring to?
- Question 16 – Article 2(1) of RTS 26 provides an exemption from pre-trade, order-by-order checking for on-venue traded cleared derivatives if certain conditions are met. When this exemption applies to clearing members, does it also exempt clearing members from the requirement under Article 26(2) of RTS 6 to have “appropriate pre-trade and post-trade procedures for managing the risk of breaches of position limits”?
- Question 17 – Does the ‘kill functionality’ require having to integrate different systems in-house using a software approach so that a single button can cancel all orders in all asset classes for all house trading and client trading?
- Question 18 – Under Article 3(2)(a) of Commission Delegated Regulation (EU) 2017/580 (RTS 24), there is a requirement to flag orders submitted to a trading venue “as part of a market making strategy pursuant to Articles 17 and 48 of [MiFID II]”. Should a firm start flagging orders when it decides to submit orders with a view to make markets in a particular instrument, or only when it concludes a formal agreement with the trading venue subsequent to triggering such an obligation under Article 1 of Commission Delegated Regulation (EU) 2017/578 (RTS 8)?
- Question 19 – Could trading venues set out different OTRs for different types of market participants (e.g. firms engaged in a market making scheme)?
- Question 20 – In terms of the Order to Trade Ratio (OTR), how should a trading venue tackle cases where a market participant has executed no trades after the submission of a high number of orders?
- Question 21 – Article 1(2)(d) of RTS 8 establishes that quotes shall be deemed to have competitive prices where they are posted at or within the maximum bid-ask range set by the trading venue. Does this mean that trading venues have to have published maximum bid-ask ranges for all instruments traded on their venues or only for the instruments on which they have a market making scheme in place?
- Question 22 – Under which circumstances a trading venue may cancel, vary or correct a transaction?

### **Multilateral and bilateral systems**

- Question 3 – Article 18(3) of MiFID II requires that investment firms and market operators operating an MTF or OTF establish, publish and maintain and implement transparent and non-discriminatory rules, based on objective criteria, governing access to its facility. A similar requirement is applied to

regulated markets through Article 53(1) of MiFID II. What sort of behaviour or restrictions should be considered as non-objective, or discriminatory?

- Question 4 – Can a person that is not authorised as an investment firm but meets the requirements of Article 53(3) of MiFID II be a member or participant of a regulated market or an MTF?
- Question 19 – Should a system providing quote streaming and order execution services to multiple SIs be authorised as a multilateral system?

#### **Access to CCPs and trading venues**

- Question 1 – When should CCPs notify the transitional arrangements foreseen in Article 35(5) of MiFIR?
- Question 2 – Is a CCP using an open offer trade acceptance model obliged to accept a request for access from a trading venue using a novation trade acceptance model?

### **3. MiFIR – Data reporting (7 July 2017 | ESMA70-1861941480-56)**

#### **Link to the document:**

[https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-56\\_gas\\_mifir\\_data\\_reporting.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-56_gas_mifir_data_reporting.pdf)

#### **Field 14 and Field 17 – Total issued nominal amount**

- Question 1 –
  - i. In the case of Bonds or other forms of securitised debt, what should be reported in Commission Delegated Regulation (EU) 2017/585 Annex Table 3 Field 14 (Total issued nominal amount) if the total nominal amount changes?
  - ii. Similarly, what should be reported in Commission Delegated Regulation (EU) 2017/585 Annex Table 3 Field 17 (Nominal value per unit/minimum traded value) if nominal value per unit/minimum traded value changes?

#### **Field 30 – Quantity**

- Question 1 –
  - i. How shall Field 30 (Quantity) in Commission Delegated Regulation (EU) 2017/590 Annex I Table 2 be reported for a transaction where there have previously been acquisitions or disposals that are excluded from the meaning of a transaction?
  - ii. For example, a decrease in notional amount in a financial instrument which has previously had pre-determined contractual down payments exempted from transaction reporting under Commission Delegated Regulation (EU) 2017/590 Article 2(5)(j)?

#### **Reference data for financial instrument**

- Question 1 – What information trading venues need to provide with respect to reference data reported under Commission Delegated Regulation (EU) 2017/585 for bonds where the coupon is calculated based on a complex formula involving several indices?

#### **Transaction reporting**

- Question 3 – Could there be circumstances where the buyer and seller in a transaction report made under Article 26 of MiFIR are the same?
- Question 4 –
  - i. How shall Field 30 (Quantity) in Commission Delegated Regulation (EU) 2017/590 Annex I Table 2 be reported for a transaction where there have previously been acquisitions or disposals that are

excluded from the meaning of a transaction?

- ii. For example, a decrease in notional amount in a financial instrument which has previously had pre-determined contractual down payments exempted from transaction reporting under Commission Delegated Regulation (EU) 2017/590 Article 2(5)(j)?

#### **Order record keeping**

- Question 1 – Are actionable indications of interest subject to the order record keeping requirements for Investment Firms and trading venues under Article 25(1) and (2) of MiFIR?

### **4. MiFID II and MiFIR – Commodity derivatives topics (7 July 2017 | ESMA70-872942901-28)**

#### **Link to the document:**

[https://www.esma.europa.eu/sites/default/files/library/esma70-872942901-28\\_cdtf\\_qas.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-872942901-28_cdtf_qas.pdf)

#### **Position limits**

- Question 14 – Is it necessary for a Non-Financial Entity (NFE) to apply to the relevant NCA of a trading venue for a position limit exemption in all contracts in which that NFE holds positions?

#### **Position reporting**

- Question 1 – Do positions held by an investment firm on behalf of their clients add to the investment firm's own positions?
- Question 2 – How should investment firms report the positions in commodity derivatives of persons who receive investment or ancillary services from a non-investment firm that is an "end client" of the investment firm?
- Question 3 – Who should submit position reports under Article 58(2) of MiFID II?
- Question 4 – Should investment firms include positions traded on a trading venue and economically equivalent OTC contracts in position reports under Article 58(2) of MiFID II?
- Question 5 – Does the requirement for trading venues to make public weekly aggregate position reports and to communicate that report to the competent authority and to ESMA apply to securitised derivatives?
- Question 6 –
  - i. At what level should Asset Managers aggregate positions?
  - ii. Is this to be done at group level or a lower level (e.g. fund/legal entity identifier etc.)?
- Question 7 – Which MIC should be used by trading venues for position reporting?
- Question 8 – By when do positions have to be reported under Articles 58(1)(b) and 58(2) of MiFID II?
- Question 9 – Does the requirement under Article 58(1)(b) and (2) of MiFID II to submit daily position reports to the NCA apply to securitised derivatives with a total number of securities in issue not exceeding 2.5 million?
- Question 10 – How does ESMA propose to address the breaches of applicable non-EU laws and regulations regarding data protection and bank secrecy which may potentially arise from the reporting of client and end client positions?