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ESMA_QA_2794

Submission Date
03/03/2026

Status: Answer Published

Additional Information

Level 1 Regulation
Securities Financing Transactions Regulation (SFTR) Regulation (EU) 2015/2365-MDP

Topic
* SFTR Art. 4

Subject Matter
Updating the Loan Value and Security Price Fields following lifecycle events

Question
For securities lending and borrowing transactions, should Field 2.49 – ‘Security or Commodity Price’ and Field 2.56 – ‘Loan Value’ be updated and reported whenever

mark-to-market adjustments are agreed between counterparties?

ESMA Answer

03-03-2026

Original language

Yes, Field 2.49 – ‘Security or Commodity Price’ and Field 2.56 – ‘Loan Value’ should be updated whenever a lifecycle event occurs, including mark-to-market adjustments agreed between counterparties.

Under SFTR, ‘Cash Marks’ and ‘Fee Marks’ are considered as lifecycle events and must be reported using action type ‘MODI’. When counterparties adjust the loan value to reflect market price movements, the corresponding reports should be amended to reflect the updated values.

This is consistent with ESMA’s guidance in Table 6 of Section 4.10 (*‘Mapping business events to action types and levels’*) of the Guidelines on reporting under SFTR, which identifies cash marks and fee marks (events #22 and #23) as business events which allow a MODI report.

ESMA_QA_2785

Submission Date
23/02/2026

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Directive 2014/65/EU - Markets in Financial Instruments Directive (MiFID II)

Topic
Safeguarding of client assets

Subject Matter
Interests earned from client funds deposited at a credit institution?

Question
Does MiFID II permit investment firms to earn interest on client funds deposited in a savings account at a credit institution?

ESMA_QA_2784

Submission Date
23/02/2026

Status: Answer Published

Additional Information

Level 1 Regulation
Directive 2014/65/EU - Markets in Financial Instruments Directive (MiFID II)

Level 2 Regulation
Regulation 2017/565 - MiFID II Delegated Regulation

Topic
Remuneration

Subject Matter
MiFID II remuneration rules applicable to tied agents

Question

1. Does a tied agent have to be remunerated with both a variable component of remuneration (based on the actual activities performed by the tied agent, i.e., dependent on performance) and a fixed component of remuneration, as stipulated in Article 27 of Regulation (EU) 2017/565?

2. Would the answer to the first question change if the tied agent is engaged by a person falling under Article 3 of the MiFID II Directive, i.e., assuming that a Member State adopts this optional exemption under Article 3 of the MiFID II Directive and incorporates it into its national legislation?

ESMA Answer

23-02-2026

Original language

1. Tied agents of investment firms are in scope of the definition of “relevant persons” of Article 2(1) of Delegated Regulation 2017/565 and, as such, the requirement in the second subparagraph of Article 27(4) of the same regulation to maintain for relevant persons a balance between fixed and variable remuneration also applies to them.?

Recital 41 of Delegated Regulation 2017/565 confirms that “*Relevant persons should also include tied agents.”* However, it introduces some flexibility in the application of the remuneration requirements applicable to “relevant persons” due to tied agents’ special status and national specificities applicable to it: “*When determining the remuneration for tied agents, firms should take the tied agents' special status and the respective national specificities into consideration. However, in such cases, firms' remuneration policies and practices should still define*

appropriate criteria to be used to assess the performance of relevant persons, including qualitative criteria encouraging the relevant persons to act in the best interests of the client."

This recital should be understood as permitting the variable remuneration of tied agents of investment firms to represent a larger part of the remuneration than other categories of relevant persons, while the fixed component, when compatible with national laws, remains sufficient to ensure that the interests of the investment firm or its relevant persons are not favoured to the detriment of the interests of clients.

2. While ESMA acknowledges that the implementation of the exemption under Article 3 of MiFID II is a national discretion, it notes that Member States making use of this exemption shall submit the "exempted" persons to requirements which are at least analogous with the requirement in paragraph 2 which includes the requirements on remuneration of tied agents under Article 27 of Regulation (EU) 2017/565.

ESMA_QA_2779

Submission Date
16/02/2026

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic
EU-CCPs

Additional Legal Reference
Article 7a

Subject Matter
AAR threshold calculation

Question

In calculating the second AAR condition under Article 7a(1) of EMIR, should only cleared interest rate derivatives be included, or both cleared and uncleared?

ESMA Answer

27-02-2026

Original language

In accordance with Article 7a(2) of EMIR, for the purpose of calculating the second condition under Article 7a(1), a counterparty belonging to a group subject to consolidated supervision in the Union shall only consider derivatives contracts cleared by that counterparty or by other entities within the group, with the exception of intragroup transactions.

ESMA_QA_2778

Submission Date
16/02/2026

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic
EU-CCPs

Additional Legal Reference
Article 7a(3)

Subject Matter
AAR stress testing

Question

In accordance with Article 7a(4) of EMIR, the AAR requirements set out under points (a), (b), and (c) of Article 7a(3) shall be “regularly stress-tested at least once a year”. In relation to the stress-testing referred to under Article 7a(4) of EMIR:
- Should the stress testing apply to three times the trade count or to the gross notional value cleared?
- Should the stress testing apply for each type of products under Article 6 of Commission Delegated Regulation (EU) 2026/305, or at subcategories or account level ?
- What is the timeline for the first annual stress test?

ESMA Answer

27-02-2026

Original language

In accordance with Article 7a(4) of EMIR, the AAR operational requirements should be "stress-tested at least once a year". Accordingly, Article 3(2) of Commission Delegated Regulation (EU) 2026/305 requires the tests to take place annually.

On this basis, it is understood that the active accounts should be stress tested for the first time no later than one year following the entry into application of the active account requirement, hence before 24 June 2026.

The first reporting including the results of these stress tests is expected in July 2026.

Furthermore, Article 2 of Commission Delegated Regulation (EU) 2026/305 clearly specifies that stress testing must consider a three-fold increase of the gross notional

value cleared respectively:

- By the CCP (point (c) of Article 2(1) of Commission Delegated Regulation (EU) 2026/305)
- In the active account by the counterparty (point (d) of Article 2(1) of Commission Delegated Regulation (EU) 2026/305)

Finally, Article 2(1)(d) of Commission Delegated Regulation (EU) 2026/305 further requires demonstrating that the counterparty or clearing service provider has the operational capacity to clear up to "*three times the gross notional value cleared in the account by the counterparty".*

It is therefore understood that where a counterparty has three different accounts (e.g. for EUR OTC IRD, PLN OTC IRD and EUR STIR), the three accounts should be stress tested separately.

ESMA_QA_2777

Submission Date
16/02/2026

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic
EU-CCPs

Additional Legal Reference
Article 7a

Subject Matter
AAR representativeness obligation

Question

When and how should a counterparty comply with the representativeness obligation and subsequent reporting when it reaches the EUR 6 billion threshold for the first time?

ESMA Answer

27-02-2026

Original language

Counterparties must monitor their positions on a continuous basis against the relevant thresholds. Therefore, a counterparty subject to the AAR becomes subject to the representativeness obligation as soon as it reaches the EUR 6 billion threshold in the relevant categories referred to in Article 7a(6) of EMIR.

As a result, the first reporting is expected to be submitted at the next reporting date (either January or July, whichever is sooner).

However, it is recognised that full compliance with the representativeness obligation (i.e. clearing 5 trades on a yearly average in the account) can only be demonstrated once a complete year has passed.

ESMA_QA_2776

Submission Date
16/02/2026

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic
EU-CCPs

Additional Legal Reference
Article 7a

Subject Matter
AAR representativeness obligation

Question

Are counterparties immediately relieved from the representativeness obligation, including reporting, when they no longer meet the EUR 6 billion threshold set out under Article 7a(4) of EMIR?

ESMA Answer

27-02-2026

Original language

The representativeness obligation, including reporting, ceases to apply as soon as a counterparty no longer meets the EUR 6 billion threshold set out under Article 7a(4) of EMIR.

However, to enable NCAs to verify compliance, a counterparty must still submit the reporting covering the last period during which it was subject to the representativeness obligation.

Counterparties must keep monitoring their positions on a continuous basis against the relevant thresholds.

ESMA_QA_2775

Submission Date
16/02/2026

Status: Answer Published

Additional Information

Level 1 Regulation
Transparency Directive (TD) Directive 2004/109/EC

Level 3 Regulation
Guidelines on Alternative Performance Measures

Topic
Alternative Performance Measures (APM)

Subject Matter
Interaction of the APM Guidelines with IFRS 18 Presentation and Disclosure in Financial Statements; APM Guidelines and paragraphs 117 to 125 of IFRS 18

Question

How should an issuer present alternative performance measures in light of the IFRS 18 Presentation and Disclosures in Financial Statements? Which are the main differences between the scope and requirements of the APM Guidelines and IFRS 18?

ESMA Answer

16-02-2026

Original language

While it is expected that IFRS 18 impacts primarily the financial statements of issuers, this Q&A focuses solely on the interaction between the IFRS 18 requirements and the ESMA Guidelines on Alternative Performance Measures (APM Guidelines). In particular, it provides insights into the main differences in concepts, scope and principles between 'Management-defined Performance Measures (MPMs)' under IFRS 18 and alternative performance measures (APMs) as defined in the APM Guidelines. This Q&A also provides guidance on how issuers may ensure compliance with the APM Guidelines in light of the new requirements introduced by IFRS 18 **(effective on 1 January 2027)**.

ESMA notes that the APM Guidelines are still fit for purpose and will continue to fully apply after IFRS 18 enters into force. In the following sections, ESMA highlights the most relevant similarities and differences that issuers should take into account when complying with the APM Guidelines, considering the requirements arising from IFRS 18.

1.1. Measure location (where the measures are disclosed):

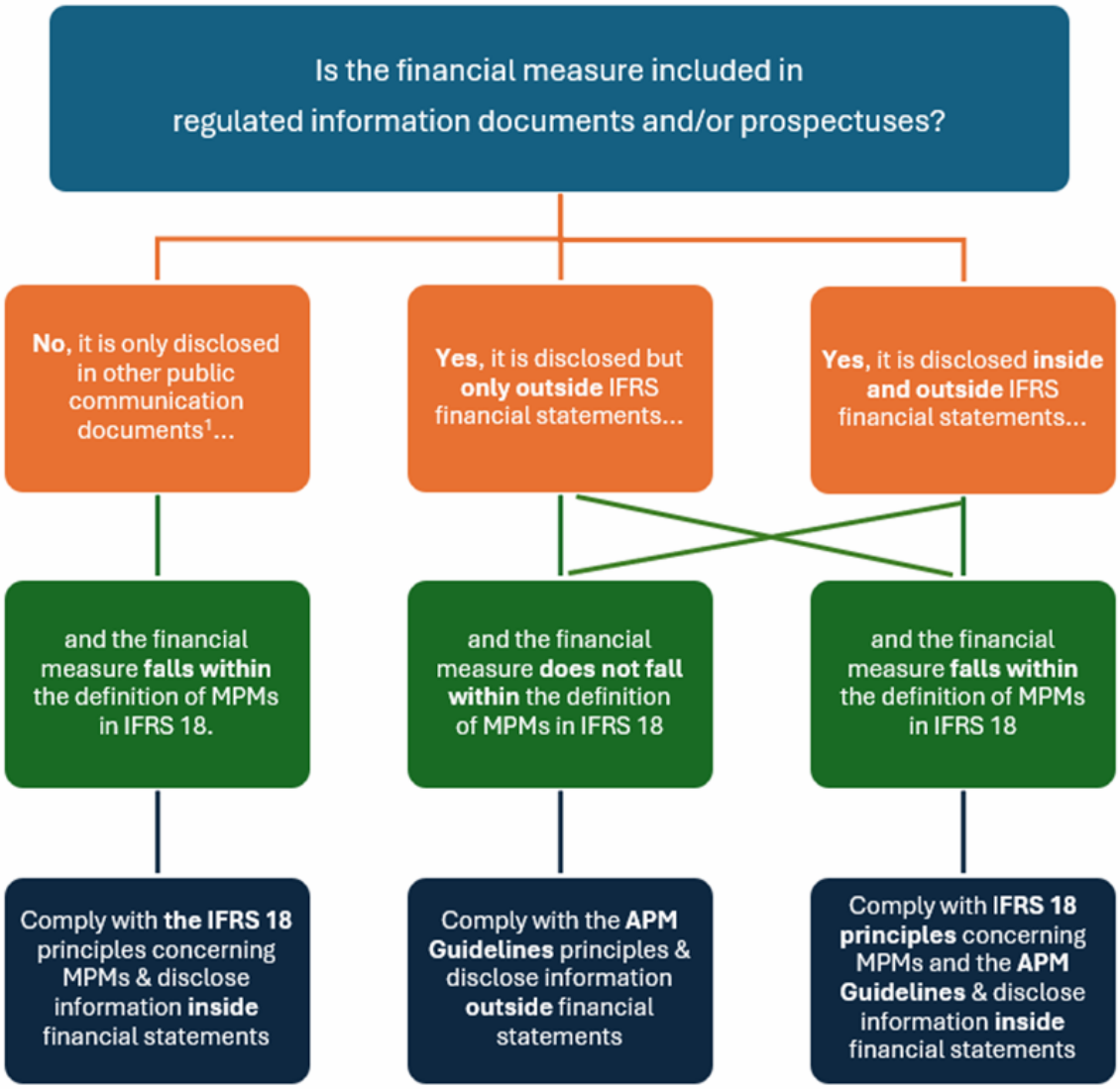
ESMA highlights that the application scope of the APM Guidelines and IFRS 18 requirements is different:

- **The APM Guidelines** apply to regulated information[1] (e.g. ad-hoc disclosures published under Article 17 of MAR[2] and management reports published pursuant to the Transparency Directive) and prospectuses drawn up in accordance with the Prospectus Regulation[3].

- **IFRS 18** requires issuers to disclose, inside the financial statements, subtotals of income and expenses that are, among other criteria[4], used in public communications.

The concept of public communications included in IFRS 18 is generally broader than the scope of application of the APM Guidelines, as it may also include measures contained in documents that are not covered by MAR, TD or PR[5] (e.g. websites of the issuer and other communication documents) [6]. Hence, when assessing the application of IFRS 18 and its interaction with the APM Guidelines, issuers may need to consider if all measures used in the different communication documents meet the definition of an MPM.

The following flow-chart illustrates the different compliance scenarios that apply based on the location[7] of the measure:



[1] Exclude written transcripts of oral communications and social media posts (paragraph B119 of IFRS 18)

* MPMs as defined in paragraph 117 of IFRS 18

1.2. Definition of APM vs MPM

Both IFRS 18 as well as the APM Guidelines include broad definitions of APMs and MPMs. These definitions are intended to capture a broad range of measures that are (i) in the case of IFRS 18, not specifically required to be presented or defined by

IFRS Accounting Standards; and (ii) in the case of the APM Guidelines, not defined or specified by the applicable financial reporting framework or by any other legislation. ESMA highlights, however, the following:

APMs under the APM Guidelines	MPMs under IFRS 18
The APM Guidelines apply to measures calculated based on figures determined by any financial reporting framework, including national GAAPs and IFRS. They cover performance, position, and cash-flow measures (e.g. ratios, net debt, segment data) that: - are not defined or specified in the applicable financial framework or other legislation, - are presented outside the financial statements, and - are disclosed within regulated information documents and/or prospectuses.	IFRS 18 defines MPMs as a subtotal of income and expenses that is used to communicate to investors management's view of an aspect of the financial performance of the company **as whole** and it is **not listed in IFRS 18** or **specifically required** by IFRSs. These may include measures that are presented on the face of the statement of the profit or loss.

Based on the above types of measures covered, generally MPMs represent a subset of APMs as defined by the APM Guidelines. When assessing which principles and requirements are applicable, issuers should verify where the performance measure is disclosed and whether it meets the definitions of MPMs and/or APMs. Depending on this assessment, issuers may need to assess where

the applicable disclosures should be included. Notably:

1. if measures are MPMs but are not disclosed within regulated information documents, all the applicable disclosures **should be included inside financial statements** as required by IFRS 18 (in a single note), or

2. if measures are MPMs, fall within the scope of the definition of an APM and are included in regulated information documents and/or prospectus, the principles of the APM Guidelines and IFRS 18 apply. **Please refer to section 1.3 of this Q&A and to Q&A #1868 on the APM Guidelines, regarding the location of the applicable disclosures and other principles, or**

3. if measures fall within the definition of an APM pursuant to the APM Guidelines, are disclosed in documents under the scope of the APM Guidelines and are not MPMs - the applicable disclosures should be provided **outside financial statements**.

Finally, ESMA notes that **IFRS 18 does not define 'earnings before interest, tax, depreciation and amortisation' (EBITDA)**. However, the Standard specifically lists 'operating profit or loss before depreciation, amortisation and impairments' within the scope of IAS 36' (OPDAI) which may provide similar information to many of the EBITDA measures currently used. Therefore, if EBITDA does not accurately describe the corresponding measure (e.g., an issuer, applying classification requirements of IFRS 18 correctly, has no income and expenses in the investing category and no interest income in the operating category)[8], this measure is both MPM and APM and issuers should comply with the relevant principles in IFRS 18 and the APM Guidelines.

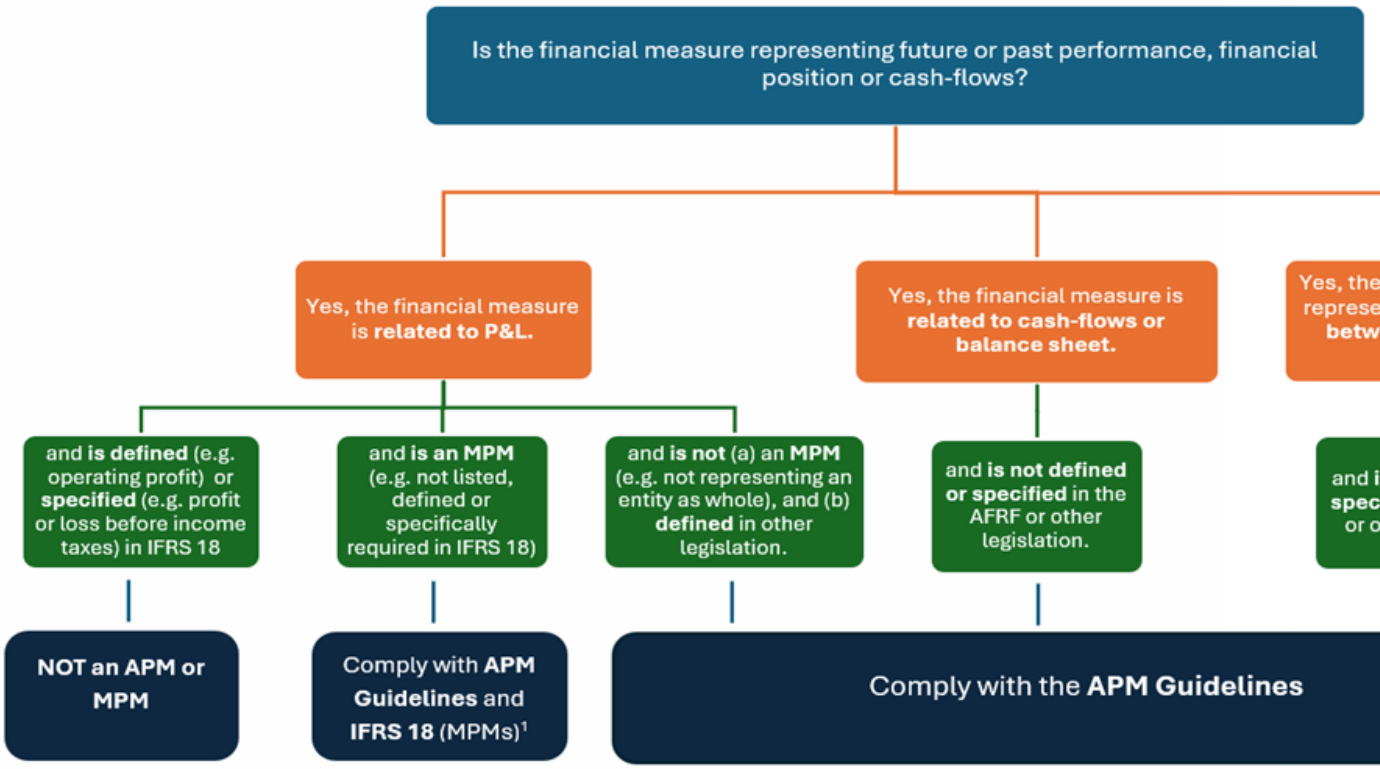
1.2.1 Measures specified (listed) in IFRS 18

Subtotals of income and expenses that are specifically required to be presented or disclosed by IFRS Accounting Standards as well as those listed in paragraph 118 or

B123 of IFRS 18 do not meet the definition of an MPM. Generally, these measures also do not fall within the scope of the APM Guidelines as they are defined or specified in the applicable financial reporting framework (i.e., IFRS Accounting Standards). Totals and subtotals specified by IFRS 18 (i.e. not meeting the definition of MPMs and APMs) include: operating profit, profit before financing and income taxes, operating profit or loss and all income and expenses classified in the investing category, profit or loss before income taxes, profit or loss from continuing operations.

Issuers should, however, be cautious as **any deviation from** the application of IFRS 18 requirements regarding the calculation of such measures (e.g. excluding or including any expenses or income items that are not in line with paragraphs 118 or B123 of IFRS 18) may lead to the application of the APM Guidelines (if these measures are presented outside financial statements and within regulated information documents or prospectuses).

The following flow-chart illustrates different scenarios where the financial measure may be in the scope (definitions) of the APM Guidelines only, IFRS 18 only or both:



[1] Please refer to section 1.3 of this Q&A

*AFRF- the Applicable Financial Reporting Framework

*MPMs as defined in paragraph 117 of IFRS 18

1.3. Application of the APM Guidelines to MPMs (What to disclose)

ESMA acknowledges that the principles included in IFRS 18 requiring additional disclosure of information in relation to MPMs are generally consistent with the principles included in the APM Guidelines requiring additional disclosure of information in the context of APMs. Therefore, it is not expected that the introduction of IFRS 18 will increase the reporting burden related to the measures that are currently in scope of the APM Guidelines. However, ESMA highlights key differences to consider:

1. **Timing:** IFRS 18 requires issuers to disclose information such as reconciliations, explanations, definitions concerning MPMs in IFRS financial statements when the financial statements are published. Conversely, the APM Guidelines require similar disclosures when these measures are disclosed to the public, i.e., the disclosures required by the APM Guidelines **should generally be provided at the same time and in the same document where the APM is disclosed** (regulated information documents and/or prospectuses). Please refer to **d)** below regarding compliance by reference principle.

2. **Reconciliations:** the principles included in the APM Guidelines **do not require** the disclosure of the income tax effect and the effect on non-controlling interests for each item included in the reconciliation between APMs and figures included inside financial statements. IFRS 18 requires such disclosure when a given measure meets the definition of an MPM. Furthermore, IFRS 18 requires a reconciliation between the MPM and the most directly comparable subtotal listed in paragraph 118 or total or subtotal specifically required to be presented or disclosed by IFRS. While this requirement is not fully aligned with the principle included in the APM Guidelines in paragraph 26, if issuers apply the reconciliation requirements in IFRS 18, they will also comply with the reconciliation requirements in the APM Guidelines.

3. **Prominence:** According to the APM Guidelines, APMs should not be displayed with more prominence, emphasis or authority than measures directly stemming from financial statements. Considering IFRS 18's entry into force and the new concept of MPMs (which requires certain information to be included in the notes to IFRS Financial Statements), ESMA highlights that issuers **should not display any APMs** (including measures that meet the definition of an MPM) with more prominence, emphasis or authority **than**

measures defined or specifically required by IFRS. I.e., if issuers disclose APMs (including MPMs) in regulated information documents and prospectuses, issuers should also include in these documents, measures defined by IFRS with, at least, equal prominence.

4. **Compliance by reference:** while IFRS 18 requires issuers to disclose all information on MPMs in one note to the financial statements, the APM Guidelines do not set specific requirements as to where and how such disclosures should be provided, allowing issuers to comply by reference[9] (i.e., issuers are not required to include all the information prescribed in the APM Guidelines in the same document where an APM is disclosed provided that the **issuer includes a direct reference to other documents previously published** which contain this information and are readily and easily accessible to users).

   Where APMs are simultaneously MPMs, issuers may use the compliance by reference principle to direct users to the information included in a specific note to the published IFRS financial statements (where these disclosures - e.g. reconciliations, explanations - are included). This procedure may avoid repetition of (some of) the information (i.e. issuers may not need to disclose twice the same information e.g. in the financial statements and in the regulated information documents). However, ESMA notes that there are limits for the compliance by reference, in this respect, please refer to **Q&A #1876 on the APM Guidelines.**

   Finally, ESMA notes that prospectuses are covered by a separate regime for incorporation by reference as provided under Article 19 of Regulation (EU) 2017/1129, which includes a specific list of the types of documents (which includes financial statements) from which information can be incorporated by reference into a prospectus.

To the extent that the relevant disclosures (e.g., reconciliations and explanations) are included in a document from which information can be incorporated by reference into a prospectus, ESMA considers that this information should be incorporated by reference into the issuer's prospectus in accordance with Article 19.

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[1] As defined in Article 2 (k) of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (Transparency Directive or TD).

[2] Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (Market Abuse Regulation or MAR).

[3] Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (Prospectus Regulation)

[4] See paragraph 117 of IFRS 18 for further div.

[5] See paragraphs B119 – B122 of IFRS 18 for further div.

[6] Please note that measures disclosed in social media posts are outside the scope of IFRS 18.

[7] This flow-chart does not address the differences in the definitions of APM & MPM (please refer section 1.2).

[8] See paragraphs BC363-365 of Basis for Conclusions on IFRS 18.

[9] Where compliance by reference is permitted or possible (Paragraph 45 of the APM Guidelines).

ESMA_QA_2769

Submission Date
12/02/2026

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
MiCA

Topic
Market abuse in crypto-asset market

Subject Matter
Personal scope of persons professionally arranging or executing transactions under MiCA

Question
What entities should be considered as Persons Professionally Arranging or Executing Transactions (PPAETs) for the obligation to prevent, detect and report

market abuse or attempted market abuse under Article 92(1) of MiCA?

ESMA_QA_2753

Submission Date
21/01/2026

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Prospectus Regulation 2017/1129

Topic
Public offer

Subject Matter
Prospectus exemption

Question
Is a prospectus required under Article 1(5)(ba) of the Prospectus Regulation (PR) for reverse acquisitions?

Unlike Article 1(6b) of the PR, which requires a prospectus for reverse acquisitions within the meaning of paragraph B19 of IFRS 3, Business Combinations, Article 1(5)(ba) of the PR does not explicitly address this issue.

ESMA_QA_2747

Submission Date
05/01/2026

Status: Question Published

Additional Information

Level 1 Regulation
Regulation 2020/1503 - European crowdfunding service providers for business

Topic
Control functions (Compliance, Risk and Audit)

Additional Legal Reference
Article 5

Subject Matter
Due diligence

Question

How should the due diligence requirements set out in Article 5(2) of the ESCPR be applied by CSPs?

ESMA_QA_2742

Submission Date
19/12/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Prospectus Regulation 2017/1129

Topic
Public offer

Subject Matter
Prospectus QA exemption

Question
Do subscription rights fall under the exemptions in Article 1(5)(a) and (ba) of the Prospectus Regulation?

ESMA Answer

19-12-2025

Original language

Yes, subscription rights fall under these exemptions provided they relate to shares which themselves qualify under these exemptions.

ESMA_QA_2741

Submission Date
19/12/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Prospectus Regulation 2017/1129

Topic
Public offer

Subject Matter
Prospectus Q&A exemption

Question
Is there an obligation to update a document drawn up in accordance with Annex IX of the Prospectus Regulation (PR) in relation to a significant new factor, material mistake or material inaccuracy relating to the information included in a document?

ESMA Answer

19-12-2025

Original language

No. Documents drawn up in accordance with Annex IX PR are not prospectuses. Therefore, Article 23 of the Prospectus Regulation on supplements does not apply.

ESMA_QA_2740

Submission Date
18/12/2025

Status: Answer Published

Additional Information

Level 1 Regulation
ESGR - Regulation (EU) 2024/3005

Topic
Temporary regime for small providers

Subject Matter
Small ESG rating provider no longer meeting temporary regime size requirements

Question
If an ESG rating provider established in the Union registered under the temporary regime ceases to meet the criteria in order to be categorised as a small undertaking, can it continue operating until it is authorised pursuant to Article 8?

ESMA Answer

18-12-2025

Original language

If a small ESG rating provider ceases to meet the criteria for the temporary regime, Article 5(3) of the Regulation applies, i.e. the ESG rating provider becomes subject to all provisions of the Regulation and must apply to ESMA for authorisation under Article 6 within six months.

The ESG rating provider remains listed in the register referred to in Article 14 and may continue providing services in the EU until its application has been examined by ESMA and a decision to grant authorisation adopted. In this instance, the register is updated to reflect that the ESG rating provider has become authorised in accordance with Article 8 and is no longer registered under the temporary regime for small ESG rating providers.

If it does not apply for authorisation within the six-month period or if ESMA decides to refuse authorisation, the ESG rating provider must immediately cease all activities and will be removed from the register of ESG rating providers.

ESMA_QA_2739

Submission Date
18/12/2025

Status: Answer Published

Additional Information

Level 1 Regulation
ESGR - Regulation (EU) 2024/3005

Topic
Temporary regime for small providers

Subject Matter
Content of temporary regime notification

Question
What information should a small ESG rating provider submit to ESMA for its assessment to determine whether to register a small ESG rating provider for the purposes of the temporary regime pursuant to Article 5(2)?

ESMA Answer

18-12-2025

Original language

ESMA will need to review, as a minimum, the annual audited financial statements and employment records of the notifying entity.

In the case of a newly established legal entity, projected figures may be used provisionally for ESMA's assessment. This may include founding accounts, business projections and “bona fide” estimates accompanied by managerial sign-off.

ESMA_QA_2738

Submission Date
18/12/2025

Status: Answer Published

Additional Information

Level 1 Regulation
ESGR - Regulation (EU) 2024/3005

Topic
Temporary regime for small providers

Subject Matter
ESMA assessment of temporary regime notification

Question
Does ESMA's assessment to determine whether to register a small ESG rating provider for the purposes of the temporary regime pursuant to Article 5(2) of Regulation (EU) 2024/3005 include the assessment of the notifying entity's

compliance with the requirements of Article 15(1), (5) and (7), Articles 23 and 24 and Articles 32 to 37 of the Regulation?

ESMA Answer

18-12-2025

Original language

No. ESMA’s assessment is limited to verifying whether the notifier qualifies as a small undertaking or as a small group through the fulfilment of the quantitative criteria listed in Article 3(2), first subparagraph, or Article 3(5), first subparagraph of Directive 2013/34/EU, notably balance sheet total, net turnover and number of employees during the financial year.

ESMA_QA_2737

Submission Date
18/12/2025

Status: Answer Published

Additional Information

Level 1 Regulation
ESGR - Regulation (EU) 2024/3005

Topic
Temporary regime for small providers

Subject Matter
Group-affiliated small ESG rating providers

Question
Is a small ESG rating provider that is part of a medium-sized or large group eligible for the temporary regime under Article 5 of Regulation (EU) 2024/3005 when it is operating independently of the group’s resources and consolidated capacity?

ESMA Answer

18-12-2025

Original language

No. Particular attention must be paid to Recital 48, according to which ESMA should ensure that risks of circumvention of the Regulation are avoided, “particularly by preventing small undertakings within medium-sized or large groups according to the criteria laid down in Directive 2013/34/EU from benefitting from the temporary regime”.

The temporary regime was introduced to facilitate the market entry of smaller ESG rating providers by allowing them to benefit from more proportionate requirements for a three-year period.

ESMA_QA_2736

Submission Date
18/12/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Alternative Investment Fund Managers Directive (AIFMD) Directive 2011/61/EU

Level 3 Regulation
Liquidity stress testing - Guidelines on liquidity stress testing in UCITS and AIFs - ESMA34-39-882

Topic
AIFMD scope

Additional Legal Reference
Directive [EU] 2024/927 amending UCITS Directive and AIFM Directive with regard to the new liquidity management tools (LMTs) requirements for UCITS and open-ended AIFs coming into effect on 16 April 2026

Subject Matter

NEW LIQUIDITY MANAGEMENT TOOLS REQUIREMENTS FOR UCITS AND OPEN ENDED AIFS COMING INTO EFFECT ON 16 APRIL 2026: DOES THE SCOPE OF LMTs EXTEND TO NON-EU OPEN ENDED AIFs?

Question

The AIFMD II (Directive (EU) 2024/927), which will enter into effect on 16 April 2026 imposes a requirement on EU open ended alternative investment funds (EU AIFs) and UCITS to specify/include in their rules or instruments of incorporation two (2) liquidity management tools (LMTs), which are defined in the Annex V of the AIMFD II.

The AIFMD II is silent when it comes of the requirement of LMTs for non-EU open-ended AIFs such as Cayman Islands domiciled open-ended unit trusts. Can the ESMA provide clarifications on whether the requirement to choose two (2) liquidity management tools (LMTs) for open-ended EU AIFs apply also to non-EU open ended AIFs managed by an EU AIFM, even if those non-EU AIFs are not marketed in the Union?

ESMA Answer

18-12-2025

Original language

Dear Mr Biguma,

According to Article 2 of the AIFMD, the AIFMD applies to:

(a) EU AIFMs which manage one or more AIFs irrespective of whether such AIFs are EU AIFs or non-EU AIFs;

(b) non-EU AIFMs which manage one or more EU AIFs; and

(c) non-EU AIFMs which market one or more AIFs in the Union irrespective of whether such AIFs are EU AIFs or non-EU AIFs.

Therefore, following letter a), the AIFMD applies also to EU AIFMs that manage non-EU AIFs. This means that the obligation to select at least two LMTs also applies to EU AIFMs that manage non-EU AIFs, as these AIFMs are subject to the AIFMD.

We draw your attention to the fact that Article 16(2b) refers to 'AIFs' and not to 'EU AIFs'.

Thank you,

ESMA

ESMA_QA_2734

Submission Date
17/12/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Alternative Investment Fund Managers Directive (AIFMD) Directive 2011/61/EU

Level 2 Regulation
AIFMD - Regulation 231/2013 with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision

Level 3 Regulation
ESMA Guidelines on funds' names using ESG or sustainability-related terms (ESMA34-1592494965-657)

Topic
Funds' names

Subject Matter

Exclusion related to UNGC/OECD Guidelines

Question

For the purposes of applying the exclusions in the Guidelines, how should fund managers apply the exclusion referred to in Article 12(1)(c) of Commission Delegated Regulation (EU) 2020/1818 (i.e. “companies that benchmark administrators find in violation of the United Nations Global Compact (UNGC) principles or the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises”)?

ESMA Answer

19-12-2025

Original language

For the purposes of applying the exclusions referred to in paragraphs 16-18 of the Guidelines, the exclusion referred to in Article 12(1)(c) of Commission Delegated Regulation (EU) 2020/1818 should be considered to be applied by the fund manager itself, not by a benchmark administrator. Therefore, for the purposes of applying the Guidelines, the exclusion should be understood as follows: “companies that fund managers finds in violation of the United Nations Global Compact (UNGC) principles or the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises”.

ESMA_QA_2733

Submission Date
17/12/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Undertakings for Collective Investment in Transferable Securities Directive (UCITS) Directive 2009/65/EC

Level 2 Regulation
UCITS - Directive 2010/43/EU on organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company

Level 3 Regulation
ESMA Guidelines on funds' names using ESG or sustainability-related terms (ESMA34-1592494965-657)

Topic
Funds' names

Subject Matter

Exclusion related to UNGC/OECD Guidelines

Question

For the purposes of applying the exclusions in the Guidelines, how should fund managers apply the exclusion referred to in Article 12(1)(c) of Commission Delegated Regulation (EU) 2020/1818 (i.e. “companies that benchmark administrators find in violation of the United Nations Global Compact (UNGC) principles or the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises”)?

ESMA Answer

19-12-2025

Original language

For the purposes of applying the exclusions referred to in paragraphs 16-18 of the Guidelines, the exclusion referred to in Article 12(1)(c) of Commission Delegated Regulation (EU) 2020/1818 should be considered to be applied by the fund manager itself, not by a benchmark administrator. Therefore, for the purposes of applying the Guidelines, the exclusion should be understood as follows: “companies that fund managers finds in violation of the United Nations Global Compact (UNGC) principles or the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises”.

ESMA_QA_2689

Submission Date
14/11/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic
EU-CCPs

Subject Matter
CCP / clearing-like activities

Question
In EMIR, a CCP is defined as a legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming

the buyer to every seller and the seller to every buyer. EMIR defines clearing as the process of establishing positions, including the calculation of net obligations, and ensuring that financial instruments, cash, or both, are available to secure the exposures arising from those positions. The definition of a CCP, however, seems to be fulfilled also by entities that are not authorised as CCPs, e.g. by firms acting as prime brokers. Prime brokers typically interpose themselves between the counterparties on a matched principal trading (MPT) basis. When they do this for markets for which it is customary to margin positions, they determine a net position on the basis of which they ask margin from their counterparties. With these activities it could be argued that prime brokers fulfil the definition of a CCP under EMIR. Another example of this are investment firms that operate an OTF offering MPT for derivatives (explicitly allowed under Article 20(2) of MiFID II).

Questions:

1. Is an authorisation as a CCP pursuant to Article 14 of EMIR mandatory for any legal person established in the Union meeting the definition of a “CCP” and providing “clearing services” in respect of financial instruments, or is it limited to entities offering clearing in OTC derivatives subject to the EMIR clearing obligation and/or in exchange-traded financial instruments? In this regard, is the intent of the legal entity (to offer clearing services as a CCP) relevant?

2. Are there other constitutive elements (e.g. intent, type of clients (retail/wholesale), loss mutualisation, unilateral margin) of the definition of “CCP”, apart from the “interposition”, i.e. becoming the buyer to every seller and the seller to every buyer, element (Article 2, point (1) of EMIR)?

3. What constitutes a “clearing service” in this context; should it be understood as “clearing” just as defined in Article 2, point (3) of EMIR or are there additional constitutive elements to be taken into account?

4. As regards the “interposition” element, where an investment firm (e.g. an OTF operator) executes transactions via matched principal trading (e.g. in accordance with Article 4(1), point (38), of MiFID II), do such matched principal trading transactions qualify as “interposition” (by the investment firm) for the purpose of the definition of a “CCP” pursuant to Article 2, point (1), of EMIR? If so, how would an investment firm (e.g. an OTF operator) using matched principal trading for the execution of transactions differ from a CCP?

5. Do CCP clearing services need to be performed by a separate legal entity from

other regulated functions (e.g. the investment firm function), or can one legal entity perform CCP clearing services together with other activities (not linked to clearing) such as investment firm services?

ESMA_QA_2675

Submission Date
28/10/2025

Status: Question Rejected

Additional Information

Level 1 Regulation
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

Topic
ICT third-party risk management

Additional Legal Reference
Art. 30, DORA

Subject Matter
Contractual agreement with ICT service providers

Question

Art. 30 (1) & (2) of DORA demand that financial institutions have signed contractual agreements with all their ICT service providers, in particular in Art. 30(2) &(3) the elements that shall be included in the contractual arrangements are listed.

Are ICT service providers permitted under DORA to charge the financial institutions "merely for signing" a DORA addendum or updated contractual arrangements in the framework of Art. 30, DORA?

ESMA_QA_2663

Submission Date
10/10/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Regulation (EU) 2019/2088 - Sustainable Finance Disclosure Regulation (SFDR)

Topic
Disclosures

Additional Legal Reference
Article 9(3) - Joint SFDR Q&A II.1

Subject Matter
Disclosure obligations under Article 9(3)

Question

The European Commission clarified in Q&A II.1 that, pursuant to Article 9(3) of SFDR, financial products tracking a Paris-aligned Benchmark (PAB) or a Climate Transition Benchmark (CTB) are deemed to make sustainable investments. Based on this clarification, can such financial products hold investments eligible under PAB/CTB requirements, which may, however, not qualify as sustainable investments within the meaning of Article 2(17) of SFDR under the relevant financial market participant's own methodology?
Can the clarification provided by Q&A II.1 also be extended to:
- Financial products disclosing under Article 9(3) of SFDR that apply all requirements of Commission Delegated Regulation (EU) 2020/1818 for PABs/CTBs, but that do not passively track such indices?
- Other types of financial products that have a reduction in carbon emissions as their objective and disclose under Article 9(3) of SFDR (i.e. without tracking a PAB/CTB or applying the requirements applicable to these indices)?

ESMA_QA_2662

Submission Date
10/10/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Regulation (EU) 2019/2088 - Sustainable Finance Disclosure Regulation (SFDR)

Topic
Disclosures

Additional Legal Reference
Art 2.1(b)

Subject Matter
Investment firms’ SFDR disclosure obligations

Question

In the case where a financial market participant, such as a fund manager (delegator), delegates the portfolio management of a fund to an investment firm (delegatee), is the delegatee investment firm subject to the same SFDR disclosure obligations for the portfolio management it performs for that fund as when it deals with discretionary portfolio management mandates with end investors?

ESMA_QA_2660

Submission Date
08/10/2025

Status: Answer Published

Additional Information

Level 1 Regulation
European Market Infrastructure Regulation (EMIR) Regulation (EU) No 648/2012-MDP

Topic
* EMIR Art.9 reporting

Subject Matter
Notification of Errors and Omissions related to exchange-traded derivatives involving multiple Entities Responsible for Reporting (‘ERRs’) managed by the same Management Company/AIFM

Question

In the case of exchange-traded derivatives (‘ETDs’), can reporting counterparties (which are in this case, their own ERRs) submit a single consolidated Errors and Omissions Notification?

ESMA Answer

08-10-2025

Original language

Yes. Where multiple ERRs are affected and these ERRs correspond to sub-funds or entities managed by the same Management Company/AIFM, a single consolidated Errors and Omissions Notification may be submitted for ETDs.

The updated Errors and Omissions Notification includes a Boolean indicator allowing reporting counterparties to specify whether the issue relates to ETDs involving multiple ERRs. Where this field is marked as ‘yes’, the notification should include the relevant div of all affected ERRs.

ESMA_QA_2655

Submission Date
26/09/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU-Investor Protection and Intermediaries

Topic
Best Execution

Subject Matter
Derivatives settled in stablecoins

Question
Can derivatives settled in stablecoins—namely asset-referenced tokens or electronic money tokens as defined in Article 3(6) and (7) of Regulation (EU)

2023/1114 on markets in crypto-assets (MiCA) - be classified as financial instruments under Section C of Annex I to Directive 2014/65/EU? More specifically, can such instruments be deemed to meet the criterion of derivatives settled in cash?

In addition, does EU legislation permit the use of unauthorised stablecoins – namely asset-referenced tokens and electronic money tokens that do not comply with Titles III and IV of MiCA – for the settlement of derivatives?

ESMA_QA_2654

Submission Date
25/09/2025

Status: Answer Published

Additional Information

Level 1 Regulation
MiCA

Topic
White paper

Additional Legal Reference
143(2)

Subject Matter
Offerors and CASPs' responsibilities with regards to white papers for Title II tokens admitted to trading prior to 30 December 2024

Question

What are the respective responsibilities of offerors, persons seeking admission to trading, operators of trading platforms and other CASPs mentioned in Article 66(3) of MiCA with regard to white papers for crypto-assets other than ARTs and EMTs that were admitted to trading prior to 30 December 2024?

ESMA Answer

14-10-2025

Original language

Article 143(2) of MiCA provides that "*by way of derogation from Title II, only the following requirements shall apply in relation to crypto-assets other than asset-referenced tokens and e-money tokens that were admitted to trading before 30 December 2024:*

a. Articles 7 and 9 shall apply to marketing communications published after 30 December 2024;

b. Operators of trading platforms shall ensure by 31 December 2027 that a crypto-asset white paper, in the cases required by this Regulation, is drawn up, notified and published in accordance with Articles 6, 8 and 9 and updated in accordance with Article 12"

For Title II crypto-assets admitted to trading prior to 30 December 2024, offerors and persons seeking admission to trading must therefore only comply with marketing rules. There is no white paper requirement.

Operators of trading platforms must, by 31 December 2027, ensure there is a white paper. In line with Article 66(3) of MiCA, they must also publish hyperlinks to any existing (registered) white papers.

Finally, the other CASPs referenced in Article 66(3) must only publish hyperlinks to any existing (registered) white papers. Where there are no such white papers, they do not have the responsibility to ensure they are produced.

If the crypto-asset is not available on a trading platform, there might not be a white paper for it even after 31 December 2027.

ESMA_QA_2648

Submission Date
19/09/2025

Status: Question Rejected

Additional Information

Level 1 Regulation
Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU-Investor Protection and Intermediaries

Level 2 Regulation
Regulation 2017/565 - MiFID II Delegated Regulation

Level 3 Regulation
ESMA/2012/188 - Guidelines - Compliance function (MiFID)

Topic
Outsourcing

Additional Legal Reference
EBA/GL/2019/02 (EBA Guidelines)

Subject Matter

Outsourcing; Critical and important functions; Principle of Proportionality

Question

In light of the first subparagraph of Article 16(5) of Directive 2014/65/EU (MiFID II), as well as Article 2(3) and Article 30(1) of Commission Delegated Regulation (EU) 2017/565, can it be affirmed that where a management company has delegated to an entity the performance of crucial elements of the marketing of UCITS funds, including their registration and listing for marketing purposes, the activity of that entity in entering into brokerage and distribution agreements with third-party intermediaries for the purpose of marketing such funds constitutes outsourcing of a critical and important function?

Furthermore, and in the light of the EBA Guidelines on Outsourcing Arrangements (EBA/GL/2019/02), to what extent does the principle of proportionality guide the assessment carried out during the risk evaluation of such outsourcing arrangements? In particular, do factors such as the continuity and duration of the agreement with third-party intermediaries, the scope and materiality of the delegated tasks, and the frequency and regularity of such delegation have an impact on whether the relationship should be qualified as the outsourcing of a critical or important function under the above-mentioned instruments?

ESMA_QA_2646

Submission Date
18/09/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

Topic
ICT third-party risk management

Additional Legal Reference
28(6), 30(3)(e)

Subject Matter
Audit frequency limitations

Question

As DORA requires financial entities to pre-determine the frequency of audits and inspections on the basis of a risk-based approach, are financial entities not permitted to agree on a maximum audit frequency (e.g. once per year) with their ICT third-party service providers?

ESMA Answer

18-09-2025

Original language

DORA does not limit the financial entities in the way to implement the relevant audit requirements, including regarding the audit frequency. In case the contracts between the financial entities and their ICT third-party service providers would refer to a (maximum) audit frequency, the frequency shall be agreed by the financial entities (i.e., not imposed by the ICT third-party service providers) and shall not prevent the financial entities to implement the DORA audit requirements on a risk-based approach.

Therefore, financial entities shall also ensure that the contractual arrangements grant them the ability to carry out an audit on an ad-hoc basis when they find it necessary to comply with the DORA requirements (for example, in the event of doubts regarding the proper performance of the contract), without the clause on the audit frequency preventing it. If such conditions are met, the financial entities and their ICT third-party service providers may agree on an audit frequency in their contracts.

ESMA_QA_2645

Submission Date
17/09/2025

Status: Question Rejected

Additional Information

Level 1 Regulation
Packaged Retail and Insurance-based Investment Products Regulation (PRIIPS) Regulation (EU) No 1286/2014

Level 2 Regulation
PRIIPS - Regulation 2017/653 on the presentation, content, review and revision of key information documents and the conditions for fulfilling the requirement to provide such documents

Topic
Disclosures

Additional Legal Reference
Additionally MiFID 2 - article 44

Subject Matter

Intent to Present Future Performance in Percentage Terms in Robo-Advisory App – Compliance with MiFID II (incl. Article 44) and PRIIPs

Question

We are currently exploring the possibility of presenting future performance in percentage terms within our robo-advisory application. The app provides automated investment recommendations based on client profiling and risk tolerance, and may in the future include visual projections of potential returns.

These projections would be expressed as percentages, clearly labeled as hypothetical, and accompanied by appropriate disclaimers and risk warnings. The format would follow the structure and methodology of performance scenarios as outlined in Annex IV of the PRIIPs Regulation.

In this context, we would like to clarify:

Is it permissible to present future performance in percentage terms if the format aligns with the performance scenarios described in PRIIPs Annex IV?
Would such a presentation be compliant with Article 44 of MiFID II, particularly in digital interfaces?

ESMA_QA_2638

Submission Date
10/09/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Alternative Investment Fund Managers Directive (AIFMD) Directive 2011/61/EU

Topic
AIFMD scope

Subject Matter
Application of the delegation requirements foreseen under Article 1(9)(b) AIFMD II, respectively, Article 2(4)(b) AIFMD II

Question
It follows from Article 1(9)(b) and Article 2(4)(b) AIFMD II that the AIFM or UCITS management company shall ensure that the performance of the functions in Annex

I or II of the respective directives, as well as the provision of the services referred to in Articles 6(4) or 6(3), complies with the requirements of AIFMD II. Considering that portfolio management and risk management may be delegated to entities located in the EU or to regulated entities located in third countries, to which extent are delegates or subdelegates of AIFMs or UCITS management companies subject to the AIFMD and UCITS Directive?

ESMA_QA_2630

Submission Date
27/08/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic
EU-CCPs

Subject Matter
EMIR 3.0 Active Account Requirement and Reporting Obligation

Question
Should counterparties that clear 100% of their relevant derivatives contracts in the EU still be required to comply with the representativeness obligation under Article

7a(3)(d) of EMIR, the reporting obligation under Article 7b(1), and the representativeness reporting requirements outlined in the RTS?

ESMA Answer

13-10-2025

Original language

As clarified by ESMA_QA_2517, counterparties that clear 85% of the relevant derivatives contracts in a CCP authorised under Article 14 of EMIR are exempted from the operational, stress testing and reporting requirements referred under Article 7a and 7b of EMIR. They are not exempted from the representativeness obligation under Article 7a(3), point (d), of EMIR

However, the representativeness requirement requires counterparties to clear trades representative of the trades "that are cleared at a clearing service of substantial systemic importance". Therefore, where is no activity at a clearing service of substantial systemic importance, the representativeness requirement should not apply.

ESMA_QA_2626

Submission Date
07/08/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic
EU-CCPs

Subject Matter
Reporting of the representativeness obligation

Question
Does the 85% exemption from reporting for entities under Article 7b also apply to the reporting of the representativeness obligation, or does it only apply to the

reporting of activities, risk exposures, and operational conditions?

ESMA Answer

13-10-2025

Original language

A counterparty can benefit from the exemption mentioned in Article 7a(5) of EMIR at any point in time by demonstrating that it clears at least 85 % of its derivative contracts belonging to the categories referred to in Article 7a(6) of EMIR at a CCP authorised under Article 14 of EMIR.

As confirmed by Q&A 2517, entities that clear 85% or more of the relevant derivatives contracts in a CCP authorised under Article 14 of EMIR are exempted from:

• the operational requirements referred to in Article 7a(3), points (a), (b) and (c), of EMIR;
• the stress-testing requirement referred to in Article 7a(4), fourth subparagraph, of EMIR;
• the reporting requirements referred to in Article 7b of EMIR.

Article 7b(1) of EMIR 3 states: "*A financial counterparty or a non-financial counterparty that is subject to the obligation referred to in Article 7a shall (...) report every six months to its competent authority the information necessary to assess compliance with that obligation*."

Article 7b(1) refers broadly to “the obligation referred to in Article 7a”, which includes: operational conditions (legal, IT, and internal processes) and the representativeness obligation (Article 7a(3)(d)). Therefore, entities benefitting from the exemption mentioned in Article 7a(5) are exempted from reporting requirements necessary to demonstrate compliance with the representativeness obligation.

ESMA_QA_2624

Submission Date
01/08/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Market Abuse Regulation (MAR) Regulation (EU) No 596/2014 - Market Intergrity

Topic
Managers' transactions

Additional Legal Reference
Article 19 of MAR as amended and integrated by the Listing Act

Subject Matter
Scope of the exception in Article 19(12a) of MAR to PDMRs’ general prohibition to trade during the closed period

Question

Shall a PDMR be allowed to adhere to a takeover bid, a share capital increase, a subscription of shares arising from stock splits, a merger, a rights issue or a spin-off during a closed period pursuant to Article 19(12a) of MAR?

ESMA Answer

01-08-2025

Original language

Recital (76) of Regulation (EU) 2024/2809 amending MAR, provides examples of transactions and activities that might be covered by the exemption for PDMRs to trade during the closed period under Article 19(12a) of MAR. Among the examples provided, the text refers to the transactions and activities that might result from “duly authorised corporate actions not implying advantageous treatment for the [PDMR]”. Considering that a takeover bid, as well as the other mentioned transactions, should in principle grant PDMRs an equivalent treatment to that of any other shareholder, a PDMR should be allowed to adhere to these transactions during a closed period provided that the corporate action has been authorized or approved by the issuer’s governing body or the competent authority.

A case-by-case assessment remains necessary to verify that the relevant conditions are met. It should be recalled that the prohibition of insider dealing remains applicable during closed periods.

ESMA_QA_2618

Submission Date
25/07/2025

Status: Question Rejected

Additional Information

Level 1 Regulation
Directive 2014/65/EU - Markets in Financial Instruments Directive (MiFID II)

Level 2 Regulation
Regulation 2017/565 - MiFID II Delegated Regulation

Level 3 Regulation
ESMA35-43-869 - Guidelines - Suitability (MiFID)

Topic
Suitability

Subject Matter

Arrangements necessary to understand clients

Question

In order to comply with the duty to obtain the necessary information regarding the client's knowledge and experience, financial situation, and investment objectives, shall the Investment firms questionnaire/approach follow this exact sequence, i.e., shall the investment firm inquire the client, in a first moment, about its Knowledge and Experience on a specific instrument/ service, and then about the client's financial situation and his investment objectives ?

ESMA_QA_2609

Submission Date
15/07/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Undertakings for Collective Investment in Transferable Securities Directive (UCITS) Directive 2009/65/EC

Level 3 Regulation
Performance Fees - Guidelines on performance fees in UCITS and certain types of AIFs - ESMA34-39-968

Topic
Costs and fees

Subject Matter
Performance fees for feeder funds

Question

Can the manager of a feeder fund within the meaning of Article 58 of the UCITS Directive charge a performance fee?

ESMA Answer

15-07-2025

Original language

Under Article 58 of the UCITS Directive, a feeder fund is a fund which has been approved to invest at least 85 % of its assets in units of another fund (master funds). Paragraph 18 of the Guidelines states that a manager “should always be able to demonstrate how the performance fee model of a fund it manages constitutes a reasonable incentive for the manager and is aligned with investors’ interests”.

Against this background, the feeder manager does not exercise sufficient discretion over the asset allocation, selection and fund strategy to warrant the charging of a performance fee and as such, the charging of a performance fee to investors should not be considered as appropriate and justified in such cases. Therefore, performance fees, if any, should only be charged at the level of the master fund.

This is unless:

a) the master fund and the feeder fund are managed by the same manager or by managers belonging to the same group; and

b) the only investor(s) of the master fund is(are) feeder fund(s);

in which case performance fees could be paid at the level of the feeder fund(s), and not at the level of the master fund, provided that this approach applies consistently to all feeder funds, if more than one.

ESMA_QA_2604

Submission Date
08/07/2025

Status: Question Rejected

Additional Information

Level 1 Regulation
Directive 2014/65/EU - Markets in Financial Instruments Directive (MiFID II)

Level 2 Regulation
Regulation 2017/565 - MiFID II Delegated Regulation

Level 3 Regulation
ESMA/2012/188 - Guidelines - Compliance function (MiFID)

Topic
Product governance

Subject Matter

Clarification as regards to Perpetual features

Question

We are writing to request clarification regarding the regulatory treatment of perpetual futures. Specifically, we would like to confirm whether, in cases where a Cyprus Investment Firm (CIF) offers listed futures contracts through a Multilateral Trading Facility (MTF) operating in Europe, the perpetual futures offered by the CIF would fall within the scope of Category 10 – Other Derivatives, as defined in the First Appendix, Part III of Law 87(I)/2017, as amended from time to time.

In addition, we would appreciate your confirmation on whether any leverage restrictions apply to perpetual futures, either under CySEC's national rules or under EU-level requirements, particularly in the context of investor protection measures.

ESMA_QA_2601

Submission Date
04/07/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation 2020/1503 - European crowdfunding service providers for business

Topic
Underwriting and placing

Subject Matter
Use of fiduciary (nominee) structures in equity crowdfunding

Question
Can CSPs use nominee structures as part of their operations in relation to transferable securities or admitted instruments for crowdfunding purposes? (Edited)

ESMA Answer

04-07-2025

Original language

The terms “nominee structure”, “nominee service”, or “nominee” are used by market participants in the field of crowdfunding to refer to a wide range of practices often aiming at aggregating investors. ESMA notes that the concept of “nominee” is not defined in the ECSPR.

ESMA further notes that the ECSPR does not explicitly prohibit ‘nominee entities’ from offering ‘nominee services’ related to the operation of a crowdfunding platform, the ‘nominee’ entity being involved at the initiative of the crowdfunding service provider or of the project owner.

ESMA is nevertheless of the view that the provision of such ‘nominee’ services’, being part of the “*operation of the crowdfunding platform*” within the meaning of Article 1(1) of the ECSPR should (i) be described in the application submitted to the authorising competent authority under Article 12 of the ECSPR and (ii) comply with the provisions of the ECSPR.

ESMA underlines that CSPs shall inform the authorising competent authority – at the time of the authorisation or, if the authorisation has already been granted, prior to implementation of their intention use a nominee structure. Information should include a detailed description about the ‘nominee’ structure that they intend to use, as well as the div of the nominee agreement between the nominee structure and investors with specific consideration of the arrangements concerning ownership, voting and exit rights, costs and implications in terms of applicable national laws, as

requested by the authorising competent authority. The information provided shall enable the competent authority to perform a comprehensive assessment of the legal features of the nominee entity, the nominee agreement, and to determine whether the suggested ‘nominee structure’ is compliant with the ECSPR, notably, but not limited to, with the provisions listed below.

- Point (a)(ii) of Article 2(1):

Point (a)(ii) of Article 2(1) of the ECSPR and Recital 22 make clear that, pursuant to the ECSPR, the investment by an investor in a crowdfunding project shall be direct, in the sense that only transferable securities and admitted instruments for crowdfunding purposes issued by project owners or a special purpose vehicle can be purchased by crowdfunding investors on a crowdfunding platform authorised in accordance with the ECSPR. This means that the decision as to which crowdfunding project should be financed should aways be left to investors. ESMA therefore considers that nominee structures may provide their services in the context of crowdfunding services only once the relevant investor has taken an investment decision in respect of the specific project in which it intends to invest.

CSPs wishing to use a nominee structure should also carefully assess any structure in which investors’ funds are not used by the nominee structure to purchase the transferable securities or the admitted instruments for crowdfunding purposes issued by a project owner or an SPV as indicated by the relevant investor in their investment decision, as such arrangements are unlikely to comply with Point (a)(ii) of Article 2(1) of the ECSPR.

Likewise, CSPs wishing to approve a new crowdfunding project on its platform are expected to ensure that no such arrangements have been set up by said project owner.

- Article 10(3) of the ECSPR

When nominee services are performed in relation to transferable securities or admitted instruments for crowdfunding purposes offered on a crowdfunding platform in accordance with the ECSPR, and these services include the provision of custody services, the CSPs shall ensure that the 'nominee structure' complies with Article 10(3) of the ECSPR:

"*Transferable securities or admitted instruments for crowdfunding purposes offered on a crowdfunding platform, and which can be registered in a financial instruments account opened in the name of an investor or which can be physically delivered to a custodian, shall be held in custody by the crowdfunding service provider or by a third party. An entity providing custody services shall hold an authorisation in accordance with Directive 2013/36/EU or 2014/65/EU*".

CSPs are expected to provide the authorising competent authority with relevant information, as requested by the authorising competent authority, about the 'nominee structure' they wish to set up, be it at the time of the initial authorisation or after such authorisation is delivered. The information provided shall enable the competent authority to perform a case-by-case basis assessment aiming at determining whether the suggested 'nominee structure' involves the holding in custody, by the 'nominee entity', of transferable securities or admitted instruments for crowdfunding purposes. Indeed, while it is acknowledged that 'nominee' service and custody are usually considered as two distinct concepts, they may, in practice, overlap.

If the national competent authority concludes that the suggested nominee arrangement is structured in a way that the transferable securities or admitted instruments for crowdfunding purposes offered on the crowdfunding platform are

held in custody by the entity acting as ‘nominee’, then this entity will be required to be authorised in accordance with Directive 2013/36/EU or 2014/65/EU as per Article 10(3) of the ECSPR.

This assessment will be performed by competent authorities based on applicable European and national law. The following elements may, *inter alia*, be considered for the purpose of this assessment.

1. Holding of assets/Safekeeping: CSPs will be required to provide relevant information enabling competent authorities to assess whether or not the ‘nominee’ entity holds the client’s assets and whether or not the ‘nominee’ entity appears as the legal owner of the assets (with the investor being the beneficial owner).

2. Administration/Ownership record keeping: CSPs will be required to provide relevant information enabling competent authorities to assess whether or not the ‘nominee’ entity keeps accurate records of ownership and/or perform administrative tasks in relation to the ownership of the transferable securities or admitted instruments for crowdfunding purposes.

3. Asset-Segregation: CSPs will be required to provide relevant information enabling competent authorities to assess whether or not the ‘nominee’ keeps track of the respective ownership of investors into the various crowdfunding projects offered on the crowdfunding platform through segregated accounts.

ESMA Q&A_801 may also be taken into account for the purpose of understanding the mentioned requirements with regard to the custody services[1].

- Article 19(1) of the ECSPR

When investing in a crowdfunding project implies for investors the entry into a specific ‘nominee’ agreement, ESMA is of the view that investors should be duly informed of this feature. ESMA also believes that the information concerning the use of nominee structures in the provision of crowdfunding services are included in the information that CSPs provide to clients and shall thus be fair, clear and not misleading, as indicated in Article 19(1) of the ECSPR.

Article 19(1) of the ECSPR states that “*All information … from crowdfunding service providers to clients about themselves, about the costs, financial risks and charges related to crowdfunding services or investments, about the crowdfunding project selection criteria, and about the nature of, and risks associated with, their crowdfunding services shall be fair, clear and not misleading*.”.

- Article 23 of the ECSPR

When investing in a crowdfunding project implies for investors to enter into a specific ‘nominee’ agreement, ESMA is also of the view that this information should be clearly disclosed to investors in the KIIS.

ESMA believes that the information provided to investors should include, where applicable, (i) the key features of the nominee agreement (including its purpose, the div on the ownership of the instruments, the exercise of investor rights etc. and how they comply with national law requirements), (ii) the costs of entering into such agreement as well as the main risks (e.g., with regard to the possible consequences of the nominee’s bankruptcy) and (iii) information about the entity performing the

service.

In particular, and in line with Article 23 of the ECSPR and Delegated Regulation 2022/2119[2]:

- When the nominee structure is deemed by the competent authority to provide custody services as referred to in Article 10(3) of the ECSPR, the relevant information on the div of the authorised entity performing the custody services shall be provided in the section "*Custody and delivery of [transferable securities] or [admitted instruments for crowdfunding purposes] to investors*" of the KIIS as referred to in Annex 1 (point (e) of Part D) of the ECSPR and as further explained in point (e) of Part D of the Annex to Delegated Regulation 2022/2119.

- Part D of the KIIS on *Information related to the offer of transferable securities and admitted instruments for crowdfunding purposes* as well as Part F of the KIIS on *Investor rights* should be duly reviewed and adapted to the case in which the legal ownership of financial instruments and admitted instruments for crowdfunding purposes is assigned to a nominee structure (and investors remain beneficial owners). ESMA believes that at least the following information should be provided in the KIIS:

- Clear indication that the decision to subscribe transferable securities and admitted instruments for crowdfunding purposes encompasses the entry into a 'nominee' agreement.

1. Concise explanation of the purpose of the ‘nominee’ agreement and of its functioning during the subscription, holding and sale and re-sale (exit) phases.

- Explanation of how the rights (ownership and voting) attached to the transferable securities and admitted instruments for crowdfunding purposes offered by the project owner or the SPV will be exercised and protected where legal ownership of the securities rests with the nominee entity, including a clear outline of the procedures by which investors may assert their rights, participate in decision-making, receive distributions, and address potential disputes. This disclosure should clarify any limitations or special processes that apply in such structures, ensuring investors understand how their beneficial interests are represented and safeguarded when a nominee acts on their behalf as the legal holder of the securities.

2. If the entry into a nominee agreement is not mandatory (i.e. if investors are able to subscribe for shares of the crowdfunding project without entering into a nominee agreement) or not.

- Part H of the KIIS on *Fees, information and legal redress of the KIIS* should provide information on the costs for investors associated with the provision of the nominee services.

Endnotes

1. Please see ESMA_QA_801

2. Commission Delegated Regulation (EU) 2022/2119 of 13?July 2022 supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards for the key investment information sheet.

ESMA_QA_2579

Submission Date
20/06/2025

Status: Answer Published

Additional Information

Level 1 Regulation
MiCA

Topic
Crypto assets

Subject Matter
Shared order book model

Question
Under the Markets in Crypto-Assets Regulation (MiCA), is it permissible for an EU trading platform for crypto-assets that is operated by a crypto-asset service provider (CASP) authorised under MiCA to pool its order book with that of one or more non-

EU trading platforms operated by an entity or entities that are not authorised as CASPs under MiCA?

ESMA Answer

20-06-2025

Original language

No, this model would be in breach of the authorization requirements under Article 59 of MiCA and would constitute the unauthorized provision of the crypto-asset service of operation of a trading platform for crypto-assets in the Union by the unauthorized entities whose platform(s) share the order book with the EU-authorised CASP.

Reference is made to the model where two or more crypto-asset platforms merge their individual order books into a single, unified order book from which orders are matched. This model involves - as operators of said shared order book - one or more entities that are not authorised as CASPs under MiCA.

ESMA understand that this integrated model enables buy and sell orders from different platforms to be combined into one aggregated order book so that multiple trading platforms (including non-EU ones) can access the same liquidity pool, allowing orders from clients across different platforms to be matched.

According to Article 3(18) of MiCA, the service of operation of a trading platform for crypto-assets means '*the management of one or more multilateral systems, which*

bring together or facilitate the bringing together of multiple third-party purchasing and selling interests in crypto-assets, in the system and in accordance with its rules, in a way that results in a contract, either by exchanging crypto-assets for funds or by the exchange of crypto-assets for other crypto-assets'. In the view of ESMA, the management of an order book is one of the fundamental parts of the management of multilateral systems bringing together or facilitating the bringing together of multiple third-party purchasing or selling interests in crypto-assets.

On this basis, ESMA is of the view that it should be regarded as falling within the scope of the crypto-asset service defined in Article 3(1)(18) of MiCA. Hence, the service should be regarded as being carried out by each entity operating the different order books that are being shared.

It ensues that, in accordance with Article 59 of MiCA, any person managing said order book should be authorised to do so under Article 63 of MiCA (or should have notified its intention to operate a trading platform for crypto-assets in accordance with Article 60 of MiCA).

Thus, in ESMA's view, Articles 59, 60 and 63 of MiCA prohibit an order book managed with entities that are not authorised as crypto-asset service providers (CASPs) under MiCA.

This Q&A does not assess whether other types of shared order books would fully comply with all provisions of MiCA.

ESMA_QA_2576

Submission Date
19/06/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Prospectus Regulation 2017/1129

Topic
Publication of prospectus

Historic Question Reference
ESMA, Questions and Answers on the Prospectus Regulation, version 12 (the "ESMA Prospectus Q&A"), Qs 4.2 and 15.7.

Additional Legal Reference
The (Swedish) Act (2019:414) with supplementary provisions to the EU Prospectus Regulation (the "Swedish Supplementary Act"), Ch. 2, Sec. 1.; Regulation (EU) 2024/2809 (the "Listing Act")

Subject Matter

The calculation of offers of warrants and/or units consisting of warrants and shares in relation to exemptions from the prospectus obligation in the Prospectus Regulation.

Question

1. Member State incorporated exemptions in accordance with Article 3(2) item (b) of the Prospectus Regulation. Should a rule, incorporated by a Member State in accordance with Article 3(2) item (b) of the Prospectus Regulation, granting an exemption from the prospectus obligation be interpreted so that the “total consideration” of an offer of warrants only includes the consideration paid in conjunction with the initial offer, and not the strike price of the underlying securities?;

2. Offers of warrants as a part of units. How should the phrase “total consideration” be interpreted in relation to offers of units consisting of shares (offered against consideration) and warrants (offered free of charge)? Should the “total consideration” only include the consideration for the shares and thus exclude the strike price of the underlying securities?; and

3. The warrants’ exercise period. Does the date of the occurrence of the warrants’ exercise period, in relation to the date of the initial offer, affect this interpretation and how the calculation of the “total consideration” is to be conducted? Specifically, does it have an impact on how the calculation is to be conducted if the exercise period occurs within the 12-month period? Is there any difference in how you should perform the calculation if the exercise period occurs within either 3, 6, 9 or 12 months from the date of the initial offer? Does it make any difference whether the warrants are offered in the form of a unit?

ESMA_QA_2575

Submission Date
18/06/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Undertakings for Collective Investment in Transferable Securities Directive (UCITS) Directive 2009/65/EC

Topic
Disclosures

Subject Matter
Updates of notification letters for the cross-border marketing of UCITS

Question
When, pursuant to Article 93(8) of Directive 2009/65/EC, a UCITS gives written notice to the competent authorities of both the UCITS home Member State and the

UCITS host Member States, of a change to the information in the notification letter submitted in accordance with Article 93(1) of Directive 2009/65/EC, or a change regarding share classes to be marketed, should the documents referred to in Article 93(2) of Directive 2009/65/EC be included?

ESMA Answer

18-06-2025

Original language

No, the documents referred to in Article 93(2) of Directive 2009/65/EC, should not be included. The obligation of UCITS to give written notice of amendments to information already provided in a notification letter of cross-border marketing should be understood as covering only the updated information in Annex 1 of the Commission Implementing Regulation (EU) 2024/910 compared to the previous notification. Amendments to fund documents should not be covered by the obligation of written notice of Article 93(8) of Directive 2009/65/EC.

ESMA_QA_2570

Submission Date
16/06/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Regulation (EU) 2019/2088 - Sustainable Finance Disclosure Regulation (SFDR)

Topic
Leverage

Additional Legal Reference
Articles 2(4)(e), 2(13), 7(1) and 9(2)

Subject Matter
Article 9 financial products

Question

Further to joint SFDR Q&A V.1, can the European Commission specify for financial products disclosing under Article 9 SFDR what investments count as “investments for certain specific purposes such as hedging and liquidity”, including whether investments in Money Market Funds (MMFs) count as such investments?

ESMA_QA_2569

Submission Date
16/06/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Regulation (EU) 2019/2088 - Sustainable Finance Disclosure Regulation (SFDR)

Topic
Disclosures

Additional Legal Reference
Articles 2(4)(e), 2(13), 7(1) and 9(2)

Subject Matter
Status of PAI consideration under Article 7 SFDR as a promotion of an environmental/social characteristic under Article 8 SFDR

Question

Does the disclosure of the consideration of principal adverse impacts of investment decisions on sustainability factors under Article 7(1) SFDR automatically qualify as the promotion of an environmental or social characteristic under Article 8 SFDR?

ESMA_QA_2568

Submission Date
16/06/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Regulation (EU) 2019/2088 - Sustainable Finance Disclosure Regulation (SFDR)

Topic
AIFMD scope

Additional Legal Reference
Articles 2(4)(e), 2(13), 7(1) and 9(2)

Subject Matter
Financial products' PAI disclosures

Question

What financial product disclosures are required from a non-EU AIF where it is only marketed outside the EU by either (1) an EU AIFM or (2) non-EU AIFM? Would a non-EU or EU AIFM acting as a delegated portfolio manager for the non-EU AIF make any difference in either scenario?

ESMA_QA_2566

Submission Date
10/06/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Central Securities Depositories Regulation (CSDR) Regulation (EU) No 909/2014- PTR- CSDR

Topic
Settlement discipline - Cash penalties: process

Subject Matter
Passing on of cash penalties throughout the settlement chain

Question
Should cash penalties be passed on throughout the settlement chain?

ESMA_QA_2560

Submission Date
03/06/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Markets in Financial Instruments Regulation (MiFIR) Regulation (EU) No 600/2014 - Investor Protection and Intermediaries

Topic
Inducements

Additional Legal Reference
Article 39a, Paragraph 1

Subject Matter
Payment for order flow (PFOF) prohibition: scope for rebates or discounts on transaction fees or any other benefits for investment firms acting on behalf of retail

clients or opt-in professional clients

Question

Which type of rebates or discounts on transaction fees or any other benefits for investment firms acting on behalf of retail clients or opt-in professional clients are out of the scope of the prohibition to receive payment for order flow specified in Article 39a MiFIR?

ESMA Answer

03-03-2026

Original language

Answer provided by the European Commission

According to Article 39a (1), second subparagraph of MiFIR, rebates or discounts on the transaction fees of execution venues, which are permitted under the approved and public tariff structure of a trading venue in the Union or of a third-country trading venue, which exclusively benefit the client, and which do not result in a monetary benefit to the investment firm, are out-of-the scope of the prohibition to receive PFOF. Those tariff structures should however comply with Article 5 of Commission Delegated Regulation (EU) 2017/573, which sets out requirements to ensure fair and non-discriminatory fee structures[2].

(2) Trading venues shall not offer their members, participants or clients a fee structure whereby, once their trades exceed a given threshold, all of their trades benefit from a lower fee for a set period, including those trades that were executed prior to reaching that threshold.” Article 5 of Commission Delegated Regulation (EU) 2017/573 of 6 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on requirements to ensure fair and non-discriminatory co-location services and fee structure“.

Disclaimer:

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2559

Submission Date
03/06/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Markets in Financial Instruments Regulation (MiFIR) Regulation (EU) No 600/2014 - Investor Protection and Intermediaries

Topic
Inducements

Additional Legal Reference
Article 39a

Subject Matter
Payment for order flow (PFOF) prohibition and OTC execution of client orders

Question

Does the prohibition of receiving payment for order flow (PFOF) apply to situations where the order is not executed on a trading venue, for instance for products traded over the counter (OTC)?

ESMA Answer

03-03-2026

Original language

Answer provided by the European Commission

The scope of application of Article 39a of MiFIR should be considered taking into account the core policy objectives of MiFIR, including:
(a) investor protection;
(b) execution of orders in the best interest of clients.
Since those objectives support the broadest possible coverage of execution venues, the prohibition should be understood as applying not only to transactions executed on a trading venue, but also to transactions executed over the counter (OTC).

That interpretation would also be consistent with the definition of an “execution venue” set out in Article 64(1), second subparagraph, of Commission Delegated Regulation (EU) 2017/565.[1]

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(1) Execution venue’ includes a regulated market, an MTF, an OTF, a systematic internaliser, or a market maker or other liquidity provider or an entity that performs a

similar function in a third country to the functions performed by any of the foregoing." (Article 64(1) Commission Delegated Regulation (EU) 2017/565).

Disclaimer:

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2558

Submission Date
03/06/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Markets in Financial Instruments Regulation (MiFIR) Regulation (EU) No 600/2014 - Investor Protection and Intermediaries

Topic
Inducements

Additional Legal Reference
Article 39a

Subject Matter
Payment for order flow (PFOF) prohibition and client instructions for order executions

Question

Does the prohibition of receiving payment for order flow (PFOF) apply to situations where the client provided a specific instruction to the investment firm to execute the order on a particular execution venue?

ESMA Answer

03-03-2026

Original language

Answer provided by the European Commission

Yes, Article 39a of MiFIR does not make any distinction between orders executed with or without specific instructions from clients. Therefore, the prohibition of PFOF also applies where the client instructed the investment firm to execute the order on a specific execution venue.

Disclaimer:

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2557

Submission Date
03/06/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Markets in Financial Instruments Regulation (MiFIR) Regulation (EU) No 600/2014 - Investor Protection and Intermediaries

Topic
Inducements

Additional Legal Reference
Article 39a, Paragraph 1

Subject Matter
Investment firms' use of rebates and discounts to lower fees for clients under the payment for order flow (PFOF) prohibition

Question

Under Article 39a of Regulation (EU) 2014/600/EU (MIFIR), are investment firms allowed to use rebates and discounts on the transaction fees of execution venues to lower fees for clients?

ESMA Answer

03-03-2026

Original language

Answer provided by the European Commission

Yes, investment firms are allowed to use rebates and discounts to lower fees for clients but only where they comply and are able to demonstrate their compliance with all of the following conditions set out in Article 39a(1) of MiFIR:

(a) the rebate or discount on the transaction fees of execution venues is permitted under the approved and public tariff structure of the relevant trading venue in the Union or of the relevant third-country trading venue;
(b) the rebate or the discount exclusively benefits the client and not the firm;
(c) they do not result in a monetary benefit to the investment firm

Disclaimer:

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities.

The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2552

Submission Date
28/05/2025

Status: Published Answer Updated

Additional Information

Level 1 Regulation
MiCA

Topic
White paper

Additional Legal Reference
Article 5(2) of MiCA

Subject Matter
Application of Title II requirements to CASPs operating a trading platform for crypto-assets

Question

Article 5(2) of MiCA states that “when a crypto-asset is admitted to trading on the initiative of a trading platform and a crypto-asset white paper has not been published in accordance with Article 9 in the cases required by this Regulation [emphasis added], the operator of that trading platform for crypto-assets shall comply with the requirements set out in paragraph 1 of this Article”.

In turn, Article 9 requires offerors and persons seeking admission to trading of crypto-assets other than ARTs or EMTs to publish their crypto-asset white papers and any marketing materials.

However, recital 22 of MiCA states that “Where crypto-assets have no identifiable issuer, they should not fall within the scope of Title II, III or IV of this Regulation”.

Does the expression “in the cases required by this Regulation” mean that Article 5(2) exempts operators of trading platforms from the requirements of Article 5 for crypto-assets without an identifiable issuer?

ESMA Answer

18-02-2026

Original language

Answer provided by the European Commission

Yes. Article 5(2) MiCA is not conceptualized to cover cases where crypto-assets have no identifiable issuer and are therefore not subject to Title II of MiCA. The Article requires CASPs operating a trading platform to comply with the requirements set out in Article 5(1) MiCA, where they initiate the admission of crypto-assets to trading and no white paper has been published ‘in the cases required by this

Regulation'. Hence, this provision is 5 specifically and exclusively limited to cases, where a white paper is required by MiCA. However, as clarified by recital 22, crypto-assets without an identifiable issuer do not fall within the scope of Title II. It follows that no white paper is required for these crypto-assets under MiCA and that, consequently, Article 5(2) MiCA does not apply to them. Nevertheless, in accordance with the wording in recital 22 that CASPs 'providing services in respect of such crypto-assets should be covered by this Regulation', CASPs operating a trading platform are not relieved from obtaining authorisation and complying with their general obligations, including a suitability assessment of any admitted crypto-assets and determination of whether an identifiable issuer exists, i.e. whether a white paper is required. Similarly, and in line with the above, Articles 76(1)(2) and 143(2)(b) MiCA impose requirements on CASPs operating a trading platform and specifically reference to 'cases required by this Regulation'. Finally, Article 66(3) shall be interpreted as meaning that operators of trading platforms must provide clients with hyperlinks to any white papers for the crypto-assets in relation to which they are providing services, provided that a white paper is required under MiCA.

Disclaimer:

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2551

Submission Date
28/05/2025

Status: Published Answer Updated

Additional Information

Level 1 Regulation
MiCA

Topic
Crypto-Asset Service Provider (CASP)

Additional Legal Reference
Article 3(1)(22) of MiCA

Subject Matter
Overlap between offers of crypto-assets and placing

Question

Can persons who are authorized in writing by the issuer to offer crypto-assets to the public conduct this activity on a commercial basis, continuously, repeatedly, and possibly for different issuers (whether concurrently or consecutively) without having a MiCA CASP license for the crypto-asset service 'placing of crypto-assets'?

ESMA Answer

18-02-2026

Original language

Answer provided by the European Commission

Yes, where a person offers to the public crypto assets upon the written consent of the issuer, for instance, under the conditions set out in Article 16(1) MiCA, second sub paragraph, that person acts on behalf of the issuer and no CASP license is to be required, where that activity is not exercised in the context of the provision of the crypto-services. However, where the person offering crypto-assets to the public engages in the placing of crypto assets or in any other crypto-asset service covered by MiCA carried out on a 7 professional basis, it is to be considered as a crypto-service provider as defined under Article 3(22) MiCA, and that person must obtain a CASP license for the relevant services. In cases where a person is offering crypto-assets to the public on behalf of the issuer, that person must comply with provisions relating to the offer and marketing of the crypto-assets as specified under MiCA (for instance, for ARTs, the person is to comply with Articles 27, 29 and 40, - without prejudice to the provisions relating to CASPs if that person provides crypto-asset services on a professional basis).

Disclaimer:

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ESMA_QA_2550

Submission Date
28/05/2025

Status: Published Answer Updated

Additional Information

Level 1 Regulation
MiCA

Topic
Crypto-Asset Service Provider (CASP)

Additional Legal Reference
Article 75 of MiCA

Subject Matter
Payouts in fiat currency by CASPs in the context of exchange services

Question

Should the business model whereby a crypto-asset service provider (CASP) provides exchange services but only ever allows clients to collect their balance in fiat currency be allowed?

ESMA Answer

18-02-2026

Original language

Answer provided by the European Commission

No, business model whereby a crypto-asset service provider (CASP) provides exchange services where clients are only allowed to collect their balance in fiat currency, without having the possibility to have their crypto-asset transferred is not permitted under MiCA.

Under MiCA, "exchange services" refer to the professional activity of exchanging crypto-assets for fiat currency (which falls within the definition of ‘funds’) or for other crypto-assets. This service is one of several defined crypto-asset services that require a CASP, to obtain authorization.

It is possible for CASPs to propose to their clients that their balance is collected in fiat currencies instead of in crypto assets.

However, where a client purchases a crypto asset, it gives rise to an obligation on the CASP to transfer the purchased 4 crypto-asset to the client. In that respect, the white paper to be drawn under MiCA must indicate «information on the method and time schedule of transferring the purchased asset-referenced token to the holders».

A service whereby an entity offers clients to “buy” a crypto-asset that is never delivered, and the client can only and exclusively receive the fiat currency value of such crypto-asset, is not to be allowed as a crypto-asset exchange service.

Disclaimer:

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ESMA_QA_2547

Submission Date
27/05/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

Topic
Other DORA topics

Subject Matter
Does DORA also apply to non-EU AIFM?

Question
The regulation applies to managers of alternative investment funds according to Article 2, point (k) of DORA. According to Article 3, (point 44), of DORA a manager of alternative investment funds is defined as “a manager of alternative investment

funds as defined in Article 4(1), point (b), of Directive 2011/61/EU".
According to Article 4(1), point (b), of Directive 2011/61/EU (AIFM Directive) "AIFMs' means legal persons whose regular business is managing one or more AIFs". We are of the understanding that Article 4(1), point (b), does not exclude non-EU AIFM. EU AIFM and non-EU AIFM are defined in Article 4(1), point (L) and point (ab). Since DORA only refers to article 4(1), point (b), of the AIFM Directive and not to article 4(1), point (L), we are wondering if DORA applies to both EU and non-EU AIFM as the definition implies.

ESMA Answer

27-05-2025

Original language

DORA applies to managers of alternative investment funds according to Article 2, point (k) of DORA, except for those managers of alternative investment funds referred to in Article 3(2) of Directive 2011/61/EU. According to Article 3, (point 44), of DORA, a manager of alternative investment funds is defined as "a manager of alternative investment funds as defined in Article 4(1), point (b), of Directive 2011/61/EU".

However, the definition of the managers included in Article 4(1), point (b), of Directive 2011/61/EU should be read in conjunction with the scope of application of Directive 2011/61/EU, contained in Article 2 of that Directive.

Hence, in general terms - and provided that this answer is not carrying out a detailed recollection of all the criteria referred to in Article 2 of Directive 2011/61/EU - Article 4(1), point (b), in conjunction with Article 2 of Directive 2011/61/EU implies that DORA applies to EU AIFMs and also to non-EU AIFMs, which manage one or

more EU AIFs, and to non-EU AIFMs which market one or more AIFs in the Union irrespective of whether such AIFs are EU AIFs or non-EU AIFs, to the extent that they benefit from the management and marketing passport in accordance with Articles 39, 40 and 41 AIFMD. Non-EU AIFMs will only be subject to DORA obligations once the European Commission adopts Delegated Acts extending the marketing and management passport to them.

ESMA_QA_2671

Submission Date
09/05/2025

Status: Question Published

Additional Information

Level 1 Regulation
MiCA

Topic
White paper

Subject Matter
Exemption from white paper requirements when offering a crypto-asset other than an ART or EMT

Question
Is the preparation of a white paper under MiCA mandatory for crypto-asset offerings that fall under the exceptions in Article 4(2) and 4(3) of MiCA, where the offeror only

intends to have the token traded on DEX platforms or CEXs in other jurisdictions (i.e. outside the European Union)?

ESMA_QA_2533

Submission Date
24/04/2025

Status: Question Published

Additional Information

Level 1 Regulation
Markets in Financial Instruments Regulation (MiFIR) Regulation (EU) No 600/2014-Secondary Markets

Level 2 Regulation
Regulation 2017/583 - RTS on transparency requirements in respect of non-equity financial instruments (RTS 2)

Topic
Non-equity transparency

Additional Legal Reference
Draft RTS 2 as published by ESMA on 16 December 2024

Subject Matter

Post-trade deferral regime for bonds, ETCs, ETNs and SFPs under the draft RTS 2 published by ESMA on 16 December 2024

Question

a. Regarding the new post-trade deferral regime categories 3 and 4 for bonds: Which of the following publications (i.e., price-deferred trade, volume-deferred trade or both) will be required to contain the flags ‘LLF3’ and ‘LIF4’? (Please see Draft RTS 2, paragraph 78 on page 29 and Annex II, Table III on page 160).

b. Regarding the new post-trade deferral regime for ETCs, ETNs and SFPs: Which of the following publications (i.e., price-deferred trade, volume-deferred trade or both) will be required to contain the flag ‘DEFF’? (Please see Draft RTS 2, Annex II, Table III on page 161).

ESMA_QA_2711

Submission Date
15/04/2025

Status: Answer Published

Additional Information

Level 1 Regulation
MiCA

Topic
Crypto-Asset Service Provider (CASP)

Additional Legal Reference
Article 78(5)

Subject Matter
Scope of the term “trading platform for crypto-assets” in Article 78(5) of MiCA (executing client orders outside of a trading platform)

Question

Where a crypto-asset service provider (CASP) provides execution of orders for crypto-assets on behalf of clients (as defined in Article 3(1)(21) of MiCA), does the obligation under Article 78(5) of MiCA for the CASP to inform their clients about the possibility that their orders “might be executed outside a trading platform” and to obtain “the prior express consent of their clients before proceeding to execute their orders outside a trading platform” apply whenever a CASP’s order execution policy provides for the possibility that client orders might be executed outside of CASPs that are authorized in accordance with Article 59 of MiCA to provide the service of ‘operation of a trading platform for crypto-assets’ as defined in Article 3(1)(18) of MiCA?

ESMA Answer

08-12-2025

Original language

Yes. The term “trading platform” used in Article 78(5) of MiCA should be interpreted as exclusively referring to entities that are authorized in accordance with Article 59 of MiCA to provide the service of ‘operation of a trading platform for crypto-assets’ as defined in Article 3(1)(18) of MiCA. This interpretation is in line with the purpose of Article 78(5) of MiCA and aims to ensure that clients of CASPs are informed about, and provide their express consent to, the execution of their orders within arrangements that may be subject to lesser regulatory scrutiny or offer a lower level of protection compared to trading platforms authorised under MiCA.

Whenever the execution policy of an entity authorized in accordance with Article 59 of MiCA to provide the service of ‘execution of order for crypto-assets on behalf of clients’ as defined in Article 3(1)(21) of MiCA provides for the possibility that client

orders might be executed outside of CASPs authorized in accordance with Article 59 of MiCA to provide the service of ‘operation of a trading platform for crypto-assets’ as defined in Article 3(1)(18) of MiCA (e.g., OTC venues, third-country trading platforms, decentralized exchanges), such a CASP “*shall inform their clients about that possibility and shall obtain the prior express consent of their clients before proceeding to execute their orders outside a trading platform, either in the form of a general agreement or with respect to individual transactions*”.

ESMA_QA_2522

Submission Date
07/04/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Prospectus Regulation 2017/1129

Topic
Initial Public Offer/IPO

Subject Matter
New exemptions for fungible securities in Prospectus Regulation.

Question
In relation to the statement of continuous compliance with reporting and disclosure obligations as referred to in Annex IX, point IV, of Regulation (EU) 2017/1129, when is an issuer considered to have ‘continuous compliance’ and to which time period

should the statement pertain (i.e. does the statement need to cover the entire period that the issuer's securities have been admitted to trading)?

ESMA Answer

07-04-2025

Original language

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

Issuers are considered to be compliant with reporting and disclosure obligations as referred to in Annex IX, point IV, of Regulation (EU) 2017/1129 for the purpose of the statement of continuous compliance if they are compliant with those obligation at the moment when an offer of securities to the public in scope of the exemption under Article 1(4), point (da) or (db) is made, or when admission to trading on a regulated market in scope of the exemption under Article 1(5), point (ba), is sought.

Disclaimer:

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot

prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2521

Submission Date
07/04/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Prospectus Regulation 2017/1129

Topic
Initial Public Offer/IPO

Subject Matter
New exemptions for fungible securities in Prospectus Regulation.

Question
To qualify for the exemption set out in Article 1(5), point (ba), of Regulation (EU) 2017/1129, one condition is that the securities to be admitted to trading on a regulated market must not be issued in connection with a takeover by means of an

exchange offer, a merger, or a division. Does that exemption refer to a takeover by means of an exchange offer that falls within the scope of Directive 2004/25/EC?

ESMA Answer

07-04-2025

Original language

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

Yes, the exemption set out in Article 1(5), point (ba) of Regulation (EU) 2017/1129, specifically refers to a takeover by means of an exchange offer that falls within the scope of Directive 2004/25/EC.

Disclaimer:

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2520

Submission Date
07/04/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Prospectus Regulation 2017/1129

Topic
Public offer

Subject Matter
New exemptions for fungible securities in Prospectus Regulation.

Question
When applying the exemptions in Article 1(4)(da) and (db) as well as Article 1(5)(ba), when is an issuer considered to be subject to a restructuring or to insolvency proceedings?

ESMA_QA_2519

Submission Date
04/04/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic
EU-CCPs

Subject Matter
Active Account Requirement

Question
Could non-EU entities, which are subject to the clearing obligation, be subject to the active account requirement?

ESMA Answer

10-07-2025

Original language

No. Article 7a of EMIR only applies to financial counterparties and non-financial counterparties, which are clearly defined under Article 2, points (8) and (9), of EMIR, respectively.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2518

Submission Date
04/04/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic
EU-CCPs

Subject Matter
Active Account Requirement

Question
How should the calculation mentioned in the second sentence of Article 7a(4), fifth subparagraph, of EMIR, be done, in order for counterparties to establish whether

they can benefit from the derogation regarding the number of trades in each of the most relevant categories to fulfil the representativeness obligation?

ESMA Answer

10-07-2025

Original language

First, the counterparty shall determine the number of trades it should clear on an annual average basis in each of the most relevant subcategories per class of derivative contracts and per reference period defined in accordance with Article 7a(8) of EMIR.
Second, where, all subcategories taken together, the resulting number of trades to be cleared exceeds half of the total number of trades of that counterparty cleared over the preceding 12 months, the representativeness obligation referred to in Article 7a(3), point (d), of EMIR, shall be considered fulfilled where that counterparty clears at least one trade in each of the most relevant subcategories per class of derivative contracts per reference period.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the

Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2517

Submission Date
04/04/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic
EU-CCPs

Subject Matter
Active Account Requirement

Question
Should counterparties that clear more than 85% of the relevant derivatives contracts in the EU still comply with the representativeness obligation under Article

7a(3), point d, of EMIR and the related reporting obligation under Article 7b(1) of EMIR?

ESMA Answer

10-07-2025

Original language

Counterparties that already clear 85% of the relevant derivatives contracts in a CCP authorised under Article 14 of EMIR, are not exempted from the representativeness obligation under Article 7a(3), point (d), of EMIR.
In accordance with Article 7a(5) of EMIR, such counterparties are exempted from all of the following:
• the operational requirements referred to in Article 7a(3), points (a), (b) and (c), of EMIR;
• the stress-testing requirement referred to in Article 7a(4), fourth subparagraph, of EMIR;
• the reporting requirements referred to in Article 7b of EMIR.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in

clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2516

Submission Date
04/04/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic
EU-CCPs

Subject Matter
Active Account Requirement

Question
Could counterparties that are subject to the active account requirements (i.e. to hold an active account, clear at least a representative number of trades in this

active account and the subsequent reporting requirements) and that are part of a group subject to consolidated supervision in the Union, outsource these obligations to another entity of the group?

ESMA Answer

10-07-2025

Original language

Yes.
However, where an entity chooses to outsource the tasks related to the requirements to which it is subject to according to Article 7a of EMIR, that entity remains legally responsible for the performance of such tasks.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2515

Submission Date
04/04/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic
EU-CCPs

Subject Matter
Active Account Requirement

Question
Could counterparties that are subject to the active account requirements and that are part of a group, outsource the notification to the relevant competent authority

and ESMA, as mentioned in the second subparagraph of Article 7a(1) of EMIR, to another entity of the group subject to consolidated supervision in the Union that it belongs to ?

ESMA Answer

10-07-2025

Original language

Yes.
However, where an entity chooses to outsource the submission of the notification under Article 7a(1) of EMIR, that entity remains responsible for the timely submission as well as the accuracy of the information transmitted to the relevant competent authority and ESMA in such notification.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union

and national courts.

ESMA_QA_2514

Submission Date
04/04/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic
EU-CCPs

Subject Matter
Active Account Requirement

Question
Should the requirement to clear at least a?representative number of trades in an active account held at an EU CCP be performed at individual level or group level for

the counterparties belonging to a group?

ESMA Answer

10-07-2025

Original language

As clarified in Recital 12 of Regulation (EU) 2024/2987, the representativeness requirement referred to in Article 7a(3), point (d), of EMIR applies at entity level and should be fulfilled by the entity that has been determined to be subject to the active account requirements in accordance with Article 7a(1) of EMIR.
As such, should the entity have outstanding contracts only for a subset of categories of derivatives referred to in Article 7a(6) of EMIR, that entity would be required to meet the representativeness requirement only for those contracts regardless of the activity of the other entities in the group. Relatedly, should the entity not have any outstanding derivative contracts belonging to the categories referred to in Article 7a(6) of EMIR, that entity would not be required to conclude such contracts or to meet any of the related requirements under Article 7a of EMIR.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the

Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2513

Submission Date
04/04/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic
EU-CCPs

Subject Matter
Active Account Requirement

Question
Regarding the requirement to clear at least a representative number of trades, should the trades be representative of the activity of the group or of the activity of

the individual entities within the group?

ESMA Answer

10-07-2025

Original language

As clarified in Recital 12 of Regulation (EU) 2024/2987, he representativeness requirement referred to in Article 7a(3), point (d), of EMIR applies at entity level and should be fulfilled by the entity that has been determined to be subject to the active account requirements in accordance with Article 7a(1) of EMIR.
The overall activity of the group as referred to in Article 7a(2) should only be taken into account to determine whether the entity that is part of that group is subject to the obligations in relation to Article 7a(2) of EMIR. An entity subject to the representativeness requirement should determine the number of transactions it needs to clear – directly or indirectly, in an EU CCP on the basis of all its own activity in derivative contracts belonging to the categories referred to in Article 7a(6) of EMIR.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the

Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2512

Submission Date
04/04/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic
EU-CCPs

Subject Matter
Active Account Requirement

Question
Should the requirement to hold at least one active account at an EU CCP be performed at individual level or at group level?

ESMA Answer

10-07-2025

Original language

The requirement under Article 7a(1) of EMIR to establish clearing arrangements, whether directly or indirectly, at a CCP authorised under Article 14 of EMIR, should be performed at individual level, provided that such entity does have outstanding derivative contracts belonging to the categories referred to in Article 7a(6) of EMIR.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2511

Submission Date
04/04/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic
EU-CCPs

Subject Matter
Active Account Requirement

Question
Should the group level treatment mentioned in Article 7a(2) of EMIR apply to the calculation of the notional clearing volume outstanding mentioned in fourth

subparagraph of Article 7a(8) of EMIR?

ESMA Answer

10-07-2025

Original language

Yes. For the purpose of setting the duration of the reference period, which is also referred to in Article 7a(3), point (d), of EMIR, the calculation of the notional clearing volume outstanding mentioned in Article 7a(8), fourth subparagraph, of EMIR should apply the calculation method set out in Article 7a(2) of EMIR.
The representativeness obligation referred to in Article 7a(3), point (d), of EMIR nonetheless applies at entity level, as clarified in Recital 12 of Regulation (EU) 2024/2987.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2510

Submission Date
04/04/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic
EU-CCPs

Subject Matter
Active Account Requirement

Question
Should the group level treatment mentioned in Article 7a(2) of EMIR apply to the calculation of the notional clearing volume outstanding mentioned in the second

subparagraph of Article 7a(4) of EMIR ?

ESMA Answer

10-07-2025

Original language

Yes. The calculation of the notional clearing volume outstanding mentioned in the second subparagraph of Article 7a(4) of EMIR should apply the calculation method set out in Article 7a(2) of EMIR.
The representativeness obligation to which the second subparagraph of Article 7a(4) of EMIR refers to nonetheless applies at entity level, as clarified in Recital 12 of Regulation (EU) 2024/2987.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2509

Submission Date
04/04/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic
EU-CCPs

Subject Matter
Active Account Requirement

Question
Should the group level treatment mentioned in Article 7a(2) of EMIR apply to the calculation of both conditions mentioned in Article 7a(1)?

ESMA Answer

10-07-2025

Original language

The methodology to determine the fulfilment of the first condition of Article 7a(1) of EMIR, i.e. whether a counterparty is subject to the clearing obligation, is specified under Articles 4a and 10 of EMIR, respectively. There is therefore no need to perform a new calculation under Article 7a(2) of EMIR to establish whether that condition is met.
The group level calculation method set out in Article 7a(2) of EMIR shall apply to the second condition mentioned in Article 7a(1) of EMIR.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2508

Submission Date
04/04/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic
EU-CCPs

Subject Matter
Active Account Requirement

Question
Does the group level treatment mentioned in Article 7a(2) of EMIR apply only to groups included in a consolidation in accordance with Directive 2013/36/EU (CRD

IV) or should it also include other groups, e.g. entities included in a consolidation in accordance with Directive 2013/34/EU ?

ESMA Answer

10-07-2025

Original language

The group level treatment referred to in Article 7a(2) of EMIR applies to any EU entity that is part of a group subject to consolidated supervision in the Union. This means that the group level treatment cannot be limited to groups included in a consolidation in accordance with Directive 2013/36/EU.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2507

Submission Date
04/04/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic
EU-CCPs

Subject Matter
Active Account Requirement

Question
How should the percentage of derivative contracts belonging to the categories of derivatives subject to the active account requirement be calculated for the purpose

of the exemption mentioned in Article 7a(5) of EMIR?

ESMA Answer

10-07-2025

Original language

A counterparty can benefit from the exemption mentioned in Article 7a(5) of EMIR at any point in time by demonstrating that it clears at least 85 % of its derivative contracts belonging to the categories referred to in Article 7a(6) of EMIR at a CCP authorised under Article 14 of EMIR.
In order to determine whether it is above or below the 85% threshold, the counterparty shall divide the gross outstanding notional of derivative contracts belonging to the categories referred to in Article 7a(6) of EMIR cleared at CCPs authorised under Article 14 of EMIR (numerator) by the total gross outstanding notional of derivative contracts belonging to the categories referred to in Article 7a(6) of EMIR cleared at any CCP, authorised under Article 14 of EMIR, recognised under Article 25 of EMIR or otherwise (denominator).

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

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Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2506

Submission Date
04/04/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic
EU-CCPs

Subject Matter
Active Account Requirement

Question
To check whether counterparties are subject to the active account requirement, how should the positions to be compared to the clearing thresholds be calculated?

ESMA Answer

10-07-2025

Original language

In order to determine whether they are subject to the active account requirements in accordance with Article 7a(1) of EMIR, counterparties should check whether they meet the two cumulative conditions:
1. they are subject to the clearing obligation in accordance with Articles 4a and 10 of EMIR; and
2. they exceed the clearing threshold in any of the categories of derivative contracts referred to in Article 7a(6) of EMIR, in an individual category listed in that paragraph or on aggregate across all categories listed in that paragraph.
The methodology to determine the fulfilment of the first condition is specified under Articles 4a and 10 of EMIR, respectively.
For the second condition, counterparties should follow the same methodology as for the first condition, but not with the same frequency (i.e. on a continuous basis rather than every 12 months as mentioned in Articles 4a and 10 of EMIR): once a counterparty is subject to the clearing obligation, it shall determine whether it is above the clearing thresholds in any of the categories of derivative contracts referred to in Article 7a(6) of EMIR, in an individual category or on aggregate across all categories, as the case may be, using the same methodology as described in Articles 4a and 10 of EMIR, on a continuous basis.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

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competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2502

Submission Date
03/04/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation 2020/1503 - European crowdfunding service providers for business

Topic
Best Execution

Additional Legal Reference
Article 2(1)of the ECSPR

Subject Matter
Assessment of the entity to be considered as the project owner

Question

How should point (h) of Article 2(1) of the ECSPR be applied for the purpose of identifying the project owner?

ESMA Answer

03-04-2025

Original language

Several provisions of the ECSPR concern the project owner including Article 1(2)(c), points (i) and (ii) where a threshold of EUR 5 000 000 for a total consideration of crowdfunding offers made by a particular project owner is imposed (see also Recital 16 of the same Regulation).

Point (h) of Article 2(1) of the ECSPR defines the project owner as '*any natural or legal person who seeks funding through a crowdfunding platform*'.

In most cases, this definition is self-evident and the identification of the natural or legal person which will be considered as project owner for the purpose of the ECSPR is straightforward. However, the identification of the project owner sometimes proves to be more complicated, notably in those situations in which several entities or several layers of entities are involved.

ESMA acknowledges that the ECSPR does not contain provisions preventing a project owner from seeking funding for several crowdfunding projects either at the same time or successively.

At the same time, ESMA would like to clarify that the determination of the project owner shall be grounded on the economic and business reality of the crowdfunding project (in addition to the compliance with the rules set out in the ECSPR). CSPs should pay special attention to avoid practices consisting in designating as project owner an entity having insufficient or artificial link with the crowdfunding project.

When assessing whether a legal or natural person shall be considered as the project owner, CSPs may, *inter alia*, consider some or all of the following indicative elements:

- the entity launched and/or contributed to developing the crowdfunding project in its early stage,
- the entity has sufficient legal and economic ties to the crowdfunding project,
- *for investment-based crowdfunding*, the entity is issuing the transferable securities and the admitted instruments for crowdfunding purposes directly or through a SPV,
- *for loan-based crowdfunding,* the entity is the one to which investors make available the amount they lend, and it is the entity that assumes an unconditional obligation to repay that amount to investors, together with the accrued interest, in accordance with the instalment payment schedule.

Lastly, it should be reminded that ultimately, this determination made by the CSP may be challenged by the relevant Competent Authority as part of its supervision powers following a case-by-case assessment taking into account the specificities of the crowdfunding project and the designated project owner.

ESMA_QA_2501

Submission Date
03/04/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation 2020/1503 - European crowdfunding service providers for business

Topic
Best Execution

Additional Legal Reference
Article 25(3) of ECSPR

Subject Matter
Bulletin Board - Disclosure obligations (point (b) of Article 25(3) of the ECSPR)

Question

How should the disclosure obligation established in point (b) of Article 25(3) of the ECSPR be applied?

ESMA Answer

03-04-2025

Original language

According to Article 25(1) of the ECSPR, crowdfunding service providers may operate a bulletin board on which they allow their clients to advertise interest in buying and selling loans, transferable securities or admitted instruments for crowdfunding purposes that were originally offered on their crowdfunding platforms.

Article 25(2) and Recital (55) of the ECSPR help to understand what activity can be or cannot be included in the scope of a bulletin board operated by a crowdfunding service provider. In particular, according to the recalled provisions, the bulletin board cannot be used to bring together buying and selling interests by means of the crowdfunding service provider's protocols or internal operating procedures in a way that results in a contract. The bulletin board shall therefore not consist of an internal matching system that executes client orders on a multilateral basis.

However, - and only in relation to transferable securities -, a crowdfunding service provider that is also authorised as an investment firm in accordance with Article 5 of MiFID II, or as a regulated market in accordance with Article 44 of that Directive (*) may decide to operate a trading venue to bring together buying and selling interests concerning the transferable securities that were originally offered on its crowdfunding platform.

Article 25(3) of the ECSPR also provides some disclosure requirements concerning the users of the bulletin board. Among those, in particular, it is established that crowdfunding service providers (which operate a bulletin board) have to require their clients which advertise a sale of a loan, transferable security or admitted instrument for crowdfunding purposes “to make available the key investment information sheet” (point (b) of Article 25(3) of ECSPR). This document is prepared under the responsibility of the project owner when a crowdfunding offer is presented on a crowdfunding platform, and its contents are updated until the relevant crowdfunding offer is closed (**).

ESMA acknowledges that the information reported in the KIIS might become outdated by the time the advertisement is made on the bulletin board. Consequently, ESMA believes that, whenever a client of a crowdfunding service provider advertises the sale of a loan, security or instrument on the bulletin board of that provider after the closing of the offer, the relevant crowdfunding service provider should ensure that the selling client indicates the date (month and year only) on which the KIIS was provided to that client.

Endnotes

(*) Recital 55 of the ECSPR.

See also Recital 8 of MiFIR (Regulation 600/2014) according to which bulletin boards are facilities where there is no genuine trade execution or arranging taking place in the system and are used for advertising buying and selling interests. For a more exhaustive understanding of the scope of activity allowed to bulletin boards, please refer to the Final Report on ESMA Opinion on Trading Venue Perimeter (2 February 2023, ESMA70-156-6360), available on the ESMA website.

(**) According to Article 23(8) of the ECSPR, the crowdfunding service provider shall request the project owner to notify it of any change of information in order to keep the key investment information sheet updated at all times and for the duration of the crowdfunding offer. The crowdfunding service provider shall immediately inform investors who have made an offer to invest or expressed an interest in the crowdfunding offer about any material change to the information in the key investment information sheet that was notified to it.

ESMA_QA_2496

Submission Date
27/03/2025

Status: Question Rejected

Additional Information

Level 1 Regulation
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

Topic
ICT-related incident

Subject Matter
Incident report submission format

Question
What is the submission format for the incident reports (initial notification, intermediate and final) that CTPPs and Financial Entities need to submit to the CA?

ESMA_QA_2486

Submission Date
18/03/2025

Status: Published Answer Updated

Additional Information

Level 1 Regulation
MiCA

Topic
Crypto-Asset Service Provider (CASP)

Subject Matter
Interests earned from client funds deposited at credit institutions

Question
Does MiCA permit crypto-asset service providers (CASPs) to earn interest on client funds deposited in a savings account at a credit institution?

ESMA Answer

18-02-2026

Original language

Answer provided by the European Commission

No, MiCAR does not permit crypto-asset service providers (CASPs) to earn interest on client funds deposited in a savings account at a credit institution. Article 70(1) to (3) of MiCAR is interpreted to mean that CASPs are obligated to deposit client funds in risk-free savings accounts and are not allowed to earn interest on them. This obligation is intended 2 solely to benefit clients by securing their money. Any interest resulting from a CASPs procedures to comply with the requirement of Article 70(3) MiCAR must be transferred to the client, as this revenue stems from the client's funds.

Disclaimer:

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2482

Submission Date
14/03/2025

Status: Answer Published

Additional Information

Level 1 Regulation
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

Topic
ELTIF

Subject Matter
Redemption policy

Question
Can ELTIFs set a percentage of liquid assets referred to in Article 9(1)(b) of the ELTIF Regulation that is lower than the maximum percentage referred to in

Annexes I or II of Delegated Regulation 2024/2759?

ESMA Answer

14-03-2025

Original language

Answer provided by the European Commission

Yes, ELTIFs can set a lower percentage. Article 18(2)(d) of the ELTIF Regulation sets the maximum percentage of redemptions permitted at each redemption date. However, Article 18(2)(d) of the ELTIF Regulation does not prevent the ELTIF from applying a lower redemption limit (e.g. defined as a fixed percentage of the net assets, or a pre-defined absolute redemption, or with reference to a certain NAV percentage, or otherwise) than that stipulated in Article 18(2)(d) of the ELTIF Regulation.

Disclaimer

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the

Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2481

Submission Date
14/03/2025

Status: Answer Published

Additional Information

Level 1 Regulation
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

Topic
ELTIF

Subject Matter
Nationality-related eligibility restrictions on ELTIFs stemming from national law

Question
a) Shall Article 1(3) of the ELTIF Regulation be understood as not allowing a national law, regulation or administrative practice, either generally for all ELTIFs or

specifically for some ELTIFs/specific situations, to require the master ELTIF to be established in the same Member State as the feeder ELTIF?

b) and c) May an ELTIF be required by national law, regulation or administrative practice to be authorised or established in a particular Member State when packaged in insurance products or embedded in pension/savings plans in order to be eligible as target investment? May any other provision or option provided for in the ELTIF Regulation be restricted by a national law, regulation or administrative practice for ELTIFs packaged in insurance products or embedded in pension/savings plans?

ESMA Answer

14-03-2025

Original language

Answer provided by the European Commission

Question a) Shall Article 1(3) of the ELTIF Regulation be understood as not allowing a national law, regulation or administrative practice, either generally for all ELTIFs or specifically for some ELTIFs/specific situations, to require the master ELTIF to be established in the same Member State as the feeder ELTIF?

Yes, Article 1(3) of the ELTIF Regulation, which sets out that Member States shall not add any further requirements in the field covered by the ELTIF Regulation, should be understood as prohibiting Member States to introduce or impose upon

ELTIFs requirements, whether stemming from national law, regulations, guidance or administrative practices, pertaining to the domiciliation or the establishment of the master ELTIF or the feeder ELTIF. The ELTIF Regulation contains the definitions of “master ELTIFs” and “feeder ELTIFs”.
In addition, Article 5(1)(e)(iv) of the ELTIF Regulation, read in conjunction with Recital (25) of Regulation 2023/606, specifically recognises the possibility for feeder ELTIFs to be established in a Member State other than the home Member State of the master ELTIF. The ELTIF Regulation does not contain any requirements for the master ELTIF to be established in the same Member State as the feeder ELTIF.

Questions b) and c) May an ELTIF be required by national law, regulation or administrative practice to be authorised or established in a particular Member State when packaged in insurance products or embedded in pension/savings plans in order to be eligible as target investment? May any other provision or option provided for in the ELTIF Regulation be restricted by a national law, regulation or administrative practice for ELTIFs packaged in insurance products or embedded in pension/savings plans?

No, Article 1(3) of the ELTIF Regulation, which sets out that Member States shall not add any further requirements in the field covered by the ELTIF Regulation, should be understood as prohibiting Member States to introduce or impose upon ELTIFs requirements, whether stemming from national law, regulations, guidance or administrative practices, including those pertaining to the nationality, domiciliation or location of the ELTIF or its manager.

Article 3(1) of the ELTIF Regulation sets out that an authorisation as an ELTIF “shall be valid for all Member States”. This means that once an ELTIF is authorised, it enjoys cross-border recognition across the entire EU. Furthermore, Article 5 of the ELTIF Regulation (Application for authorisation as an ELTIF), read in conjunction with Article 2 (12), does not set out any nationality, domiciliation or location requirements with respect to the AIFM seeking the authorisation of an ELTIF and particularly those that have the intent or the effect of hindering the free cross-border

marketing of ELTIFs into such Member State or unduly favour ELTIFs in or from their Member State as opposed to ELTIFs passported from another Member State.

In this connection, Article 4(1) and Article 6(1) of Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast), as amended (OJ L 026 2.2.2016, p. 19) sets out that insurance, reinsurance and ancillary insurance intermediaries shall be allowed to pursue their activity under the freedom to provide services or the freedom or establishment, in accordance with the relevant provisions of the Treaty on the Functioning of the European Union, among others those that enshrine the EU principles of non-discrimination, market access and cross-border service provision.

Disclaimer

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ESMA_QA_2480

Submission Date
14/03/2025

Status: Answer Published

Additional Information

Level 1 Regulation
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

Topic
ELTIF

Subject Matter
Benefitting from the distributions of the ELTIF

Question
a) May an ELTIF define a minimum period before which the shares cannot benefit from distributions of the ELTIF?

b) May the setting of a minimum holding period during which investors cannot benefit from the distributions of the ELTIF be considered as a “fee" or a “cost”, as per the requirements of Article 25 of the ELTIF Regulation?

ESMA Answer

14-03-2025

Original language

Answer provided by the European Commission

Question a) May an ELTIF define a minimum period before which the shares cannot benefit from distributions of the ELTIF?

Yes, the ELTIF Regulation does not explicitly prohibit or restrict the ability of an ELTIF manager to set out a period of time within which the units or shares of the ELTIF cannot benefit from distributions. Notably, Article 22(4) of the ELTIF Regulation requires to specify the distribution policy that the ELTIF will apply during its life in the rules or instruments of incorporation. In this context, ELTIFs must comply with the requirements of the ELTIF Regulation, inter alia, with respect to the transparency as to the frequency and the timing of distributions of proceeds, if any, to investors during the life of the ELTIF in line with Article 23(4)(e) of the ELTIF Regulation.

Question b) May the setting of a minimum holding period during which investors cannot benefit from the distributions of the ELTIF be considered as

a “fee" or a “cost”, as per the requirements of Article 25 of the ELTIF Regulation?

No, setting out a minimum holding period during which holders of the units or shares of an ELTIF cannot benefit from the distributions of an ELTIF cannot be considered as a “fee” or a “cost” within the meaning of Article 25(1) and (2) of the ELTIF Regulation since different costs and fees, irrespective of whether they are borne directly or indirectly, are solely comprised of the categories set out in Article 25(1) of the ELTIF Regulation. In addition, in accordance with Article 25(1) of the ELTIF Regulation, setting of a holding minimum period is not listed in Article 12 of Commission Delegated Regulation (EU) 2024/2759, which specifies the common definitions, calculation methodologies and presentation formats of the costs referred to in Article 25(1) and the overall ratio referred to in Article 25(2) of the ELTIF Regulation.

Disclaimer

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2479

Submission Date
14/03/2025

Status: Answer Published

Additional Information

Level 1 Regulation
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

Topic
ELTIF

Subject Matter
Matching mechanism

Question
While anti-dilution levies are referred to in Article 5(9) of the ELTIF Delegated Regulation, can the matching price, as referred to in Article 19(2a) of the ELTIF

Regulation, of the secondary market include an anti-dilution levy?

ESMA Answer

14-03-2025

Original language

Answer provided by the European Commission

"*Full or partial matching of transfer requests of units or shares of the ELTIF by exiting investors with transfer requests by potential investors*" within the meaning of Article 19(2a) of the ELTIF Regulation solely involves the transfer of units or shares of an ELTIF by an exiting investor to a new investor. As a result of this transfer, and unlike in the case of redemptions where the units or shares of a redeeming investor are extinguished, no new units or shares are extinguished (or created) and the number of units or shares remains the same as prior to the transfer (matching). To the extent that the volume of possible matching is limited by the volume of subscriptions, there is no impact on the unit or share count or on the portfolio of the ELTIF. As a result, the transfer of requests (matching) under Article 19(2a) does not result in or have a dilution effect. Thus, there should be no need for anti-dilution levies.
However, to the extent that subscriptions/redemptions are processed on a matching date (whether separately or concurrently with/in addition to the matching process), in line with Article 5(9) of Commission Delegated Regulation (EU) 2024/2759, the manager of an ELTIF may, at its discretion, apply an anti-dilution levy to the

additional subscriptions/redemptions that may take place.
Moreover, irrespective of whether subscriptions/redemptions are being processed separately or concurrently with the matching of requests in accordance with Article 19(2a), an ELTIF should also be permitted to apply fees, costs and charges, if any, related to the transfer process (other than for anti-dilution purposes) as referred to in Article 19(2a)(a)(vii) of the ELTIF Regulation.

Disclaimer

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ESMA_QA_2478

Submission Date
14/03/2025

Status: Answer Published

Additional Information

Level 1 Regulation
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

Topic
ELTIF

Subject Matter
Redemption policy

Question
Given the requirements set out in Article 17(1)(a) and Article 18(2)(a) of the ELTIF Regulation, as well as in Article 3 of the ELTIF Delegated Regulation, is the

minimum holding period, referred to in Article 18(2)(a) of the ELTIF Regulation, (assessed in relation to the launch date of the ELTIF for all investors, or is it applied at each new subscription and on the basis of the date of each capital contribution if there is more than one investment by an individual investor?

ESMA Answer

14-03-2025

Original language

Answer provided by the European Commission

Both should be possible and remain at the discretion of the ELTIF manager, subject to relevant disclosure requirements and provided that the redemption policy of the ELTIF ensures that investors are treated fairly. Notably, an ELTIF manager may have the discretion to put in place the minimum holding period assessed in relation to the launch date of the ELTIF for all investors, as well as apply the minimum holding period at each new subscription and on the basis of the date of each capital contribution if there is more than one investment by an individual investor.

Neither Article 18(2)(a) of the ELTIF Regulation, nor other provisions in Commission Delegated Regulation (EU) 2024/2759 prevent the manager from applying minimum holding periods after the ramp-up period throughout the life cycle of the ELTIF. The ELTIF Regulation and Commission Delegated Regulation (EU) 2024/2759 do not define or impose operational requirements to the implementation of the minimum holding period and managers should have the discretion to determine which option

is the most appropriate, whether by reference to the initial deployment, or to the ongoing deployment of capital on a rolling basis or otherwise, for instance for open-ended/evergreen funds which do not have a fixed investment period, subject to the requirements set out in Article 3 of Commission Delegated Regulation (EU) 2024/2759 and the respective disclosure obligations set out in the ELTIF Regulation.

Disclaimer

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2477

Submission Date
14/03/2025

Status: Answer Published

Additional Information

Level 1 Regulation
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

Topic
ELTIF

Subject Matter
Redemption policy

Question
Is a daily redemption and daily valuation compatible with the requirements of the ELTIF Regulation and the Commission Delegated Regulation, as referred to, in

particular, in Article 5, Annex I and II of the ELTIF Delegated Regulation?

ESMA Answer

14-03-2025

Original language

Answer provided by the European Commission

Yes, in principle, the ELTIF Regulation and Commission Delegated Regulation (EU) 2024/2759 do not prevent an ELTIF manager from setting out a redemption frequency that is more frequent than a weekly redemption, for instance, bi-weekly or a daily redemption.

ELTIF managers have the discretion to calibrate the percentage referred to in Article 18(2), first subparagraph, point (d), of the ELTIF Regulation by selecting either Annex I or Annex II of Commission Delegated Regulation (EU) 2024/2759. Both Annexes refer to weekly/monthly “or more frequent” redemptions. This is also consistent with Recital (11) of Commission Delegated Regulation (EU) 2024/2759, which refers to the flexibility in calibrating the liquidity parameters (thus, allowing redemption frequency different from those laid down in Annex I and Annex II of Commission Delegated Regulation (EU) 2024/2759).

In this connection, when an ELTIF manager determines the redemption frequency, that manager must take into account, among others, the following obligations. Article 5(2)(d) of Commission Delegated Regulation (EU) 2024/2759 sets out that

when adopting the redemption policy of an ELTIF, in assessing the liquidity profile of the ELTIF, the manager of the ELTIF shall take into account the methods and documented process for the valuation of the assets of the ELTIF. Furthermore, ELTIFs must ensure the alignment and coherence of an ELTIF's investment strategy with its liquidity profile and redemption policy of the ELTIF. In addition, in the interest of transparency and investor protection, the manager of an ELTIF should provide the competent authority of the ELTIF with certain minimum information that demonstrate that the ELTIF has in place an appropriate redemption policy and liquidity management tools that are compatible with the long-term investment strategy of the ELTIF.

Disclaimer

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2476

Submission Date
14/03/2025

Status: Answer Published

Additional Information

Level 1 Regulation
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

Topic
ELTIF

Subject Matter
Redemption policy

Question
a) What are the criteria to assess the “prudent” nature of the expected cash flows forecasted […] over 12 months, as referred to in Article 5(6) of the ELTIF Delegated

Regulation that could be added to the maximum size of redemption at a given redemption date?

b) For private debt ELTIFs, what elements should be taken into account in the abovementioned "expected cash flows"?

ESMA Answer

14-03-2025

Original language

Answer provided by the European Commission

Question a) What are the criteria to assess the “prudent” nature of the expected cash flows forecasted […] over 12 months, as referred to in Article 5(6) of the ELTIF Delegated Regulation that could be added to the maximum size of redemption at a given redemption date?

According to Article 5(6), subparagraph 2 of Commission Delegated Regulation (EU) 2024/2759, read in conjunction with Recital (8), an ELTIF manager should be in the position to “demonstrate that there is a high degree of certainty that [cash flows] will materialise”. The determination of the degree of certainty could, among others, be supported by the contractual provisions regarding the timing and/or the frequency of expected payments, the absence of provisions allowing for deferrals or cancellations of such payments, market circumstances potentially impacting such payments, etc.

Question b) For private debt ELTIFs, what elements should be taken into account in the abovementioned "expected cash flows"?

All expected cash flows generated by the loans, such as interest payments during or at the term of the loan, as well as principal repayments of maturing loans from non-defaulting issuers, among others, could be taken into account. The determination should consider the specific terms and conditions of the loan. In any case, "expected cash flows" is subject to a case-by-case analysis, and it is not possible to establish a list which will cover every ELTIF and every ELTIF strategy as this depends on the individual features of the potential cash income from assets. According to Article 5(6), subparagraph 2 of Commission Delegated Regulation (EU) 2024/2759, read in conjunction with Recital (8) which stipulates that expected cash flows should not take into account ‘the possibility that the ELTIF can dispose of eligible long-term investment assets or the possibility that the ELTIF can raise capital through new subscriptions’, an ELTIF manager should be in the position to “demonstrate that there is a high degree of certainty that [cash flows] will materialise”.
Relevant data may include representative data on prior and ongoing portfolio performance, e,g. amortisations, repayments and interest income.

Disclaimer

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union

and national courts.

ESMA_QA_2475

Submission Date
14/03/2025

Status: Answer Published

Additional Information

Level 1 Regulation
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

Topic
ELTIF

Subject Matter
Redemption policy

Question
Should the ELTIF comply with the minimum liquid asset requirements referred to in Annex II of Commission Delegated Regulation (EU) 2024/2759 at all times, and if

not, which types of “necessary measures”, as referred to in Article 5(7) of the Commission Delegated Regulation, and within which time frame, are expected to be implemented by the ELTIF manager?
Is the manager prevented from accepting redemptions if the minimum liquid asset requirement has not yet been entirely met?

ESMA Answer

14-03-2025

Original language

Answer provided by the European Commission

Under strict conditions set out in the ELTIF Regulation, the minimum percentage of assets referred to in Article 9(1)(b) of the ELTIF Regulation can temporarily be crossed and fall below the threshold set out in Annex II to Commission Delegated Regulation (EU) 2024/2759.

Subject to this, ELTIFs that have selected Annex II of the Commission Delegated Regulation to calibrate the percentage referred to in Article 18(2)(d) of the ELTIF Regulation must comply at each redemption date with the minimum level of liquid assets.

However, if the amount of liquid assets falls below the respective thresholds set out in Annex II, in accordance with Article 5(7) of Commission Delegated Regulation (EU) 2024/2759, read in conjunction with Recital (10) citing the plausibility of

crossing the percentage due to market volatility and the impact of redemptions, the ELTIF manager shall “take the necessary measures to reconstitute the minimum percentage of the liquid assets, while maintaining the ability of investors to redeem their units or shares”.

These necessary measures to reconstitute or to replenish the liquid assets to the required minimum level should take place “within a period of time that is appropriate for that ELTIF” and “taking due account of the interests of the investors in the ELTIF”. Whilst the Commission Delegation Regulation does not impose a specific pre-determined “period of time”, it should be expected that the “necessary measures” to reconstitute the positions of ELTIFs should enable it to comply with the minimum percentage by the next redemption date. Such “necessary measures” within the meaning of Article 5(7) may include retaining income and other proceeds received or expected to be received by the ELTIF, retaining incoming cash from new subscriptions, drawing on unfunded commitments of investors (if the ELTIF operates on a commitment basis), disposing of a portion of the long-term assets of the ELTIF’s portfolio and other measures.

In this connection, the ELTIF Regulation or the Commission Delegated Regulation do not prevent an ELTIF from accepting redemptions if the minimum level of liquid assets has not yet been entirely reconstituted.

Disclaimer

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot

prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2474

Submission Date
14/03/2025

Status: Answer Published

Additional Information

Level 1 Regulation
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

Topic
ELTIF

Subject Matter
Redemption policy

Question
Should the calculation of liquid assets be performed before the start of the notice period, or at another point in time, and if so, which point of time?

ESMA Answer

14-03-2025

Original language

Answer provided by the European Commission

The determination of the maximum size of redemption should, in accordance with Article 5(6) of the Commission Delegated Regulation (EU) 2024/2759 be made at a “redemption date”. The redemption date within the meaning of Commission Delegated Regulation (EU) 2024/2759 means the actual dealing date (i.e. the date when a subscription or redemption order is processed) rather than the cut-off date by which subscription/redemption instructions ought to be submitted.

Disclaimer

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2473

Submission Date
14/03/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

Topic
ELTIF

Subject Matter
Redemption policy

Question
Should the minimum percentage of liquid assets referred to in Annex II of the ELTIF Delegated Regulation solely comprise, as per Article 5(5) point b) of the ELTIF

Delegated Regulation, the UCITS eligible assets, or should it also include, as it is the case for the purpose of the denominator of the percentage referred to in Article 18(2) point (d), the expected cash flow, forecasted on a prudent basis over 12 months?

ESMA_QA_2472

Submission Date
14/03/2025

Status: Answer Published

Additional Information

Level 1 Regulation
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

Topic
ELTIF

Subject Matter
Redemption policy

Question
Pursuant to Article 23(4) point (d) of the ELTIF Regulation, shall the ELTIF disclose in its rules or instruments of incorporation a minimum (and not only a maximum, as

per the requirements of Article 18(2) point d) of the ELTIF Regulation) percentage of liquid assets referred to in article 9(1) point (b) to be used for redemption requests?

ESMA Answer

14-03-2025

Original language

Answer provided by the European Commission

No, while not required by the ELTIF Regulation or Delegated Regulation (EU) 2024/2759, this would only be relevant in cases where the ELTIF manager has selected to calibrate the percentage set out in Article 18(2)(d) based on Annex II of Delegated Regulation (EU) 2024/2759. In such cases, a minimum percentage of liquid assets under Annex II could be considered as a key feature of the manager's redemption policy. That is because the minimum percentage of liquid assets set out in Annex II of Delegated Regulation (EU) 2024/2759 represents an essential feature of the ELTIF's redemption policy and determines the rights and obligations of the ELTIFs unit- or shareholders and of the ELTIF manager. As a consequence, a minimum percentage of liquid assets should be disclosed in the redemption policy of the ELTIF as per Article 5(1) of Delegated Regulation (EU) 2024/2759.

In other cases, notably when ELTIFs select Annex I of Delegated Regulation (EU) 2024/2759 or when ELTIFs are closed-ended, the ELTIF Regulation does not require the ELTIF or its manager, who may only decide to do so voluntarily, to

disclose a minimum percentage of liquid assets.

Disclaimer

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2471

Submission Date
14/03/2025

Status: Answer Published

Additional Information

Level 1 Regulation
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

Topic
ELTIF

Subject Matter
Investment strategy

Question
a) Do the requirements of Articles 16(4) and 17(1)(c) of the ELTIF Regulation only apply to closed-ended ELTIFs?

b) If not, how may an open-ended ELTIF reconcile its obligation to comply with the portfolio composition and diversification requirements with the borrowing limits of the ELTIF Regulation if the suspension referred to in Article 17(1)(c) is to apply at each subscription/redemption?

ESMA Answer

14-03-2025

Original language

Answer provided by the European Commission

Question (a) Do the requirements of Articles 16(4) and 17(1)(c) of the ELTIF Regulation only apply to closed-ended ELTIFs?

No, Article 16(4) and Article 17(1)(c) of the ELTIF Regulation apply to all ELTIFs, irrespective of whether they are closedended or open-ended. Neither Article 16 nor Article 17 exclude either closed-ended ELTIFs referred to in Article 18(1) or openended ELTIFs referred to in Article 18(2) of the ELTIF Regulation. Accordingly, the conditions set out in those two provisions should be interpreted in light of the type of ELTIF considered and calibrated as appropriate for the type of ELTIFs in question. Thus, where conditions are applicable only in respect of closed-ended ELTIFs, they shall be considered as moot as regards open-ended ELTIFs, and vice versa (e.g., Article 16(1)(d) which specifies that borrowing must have a maturity no longer than the life of the ELTIF is not applied to open-ended ELTIFs). This conclusion is also consistent with Recital (2) of Commission Delegated Regulation

(EU) 2024/2759, which sets out that the alignment and coherence of an ELTIF's investment strategy should be assessed through the prism of the life of an ELTIF and the life cycles of the assets, implying all ELTIFs irrespective of their nature.

Question (b). If not, how may an open-ended ELTIF reconcile its obligation to comply with the portfolio composition and diversification requirements with the borrowing limits of the ELTIF Regulation if the suspension referred to in Article 17(1)(c) is to apply at each subscription/redemption?

Article 17(1)(c) of the ELTIF Regulation sets out that the portfolio composition and diversification requirements laid down in Article 13 shall be temporarily suspended where the ELTIF raises additional capital or reduces its existing capital, so long as such a suspension lasts no longer than 12 months.

Further, Article 16(4) of the ELTIF Regulation sets out that the borrowing limits referred to in Article 16(1)(a) shall be temporarily suspended where the ELTIF raises additional capital or reduces its existing capital, and such suspension shall be limited in time to the period that is strictly necessary taking due account of the interests of the investors in the ELTIF and, in any case, shall last no longer than 12 months.

In the meantime, pending the temporary suspensions, where the ELTIF raises additional capital or reduces its existing capital in line with Articles 16(4) and/or Article 17(1)(c) of the ELTIF Regulation, ELTIF managers should take such measures as are necessary to comply with the composition and diversification requirements and/or the borrowing limits, taking due account of the interests of the investors, and not take any decisions or actions, outside of the ordinary course of business in line with the terms of the ELTIF, to further increase the level of borrowing or the concentration of exposures if the ELTIF exceeds the limits set out in Articles 16 and 17 of the ELTIF Regulation.

Disclaimer

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2470

Submission Date
14/03/2025

Status: Answer Published

Additional Information

Level 1 Regulation
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

Topic
ELTIF

Subject Matter
Investment strategy

Question
a) Can investments in non-EU AIFs be considered as eligible investments under Article 9 of the ELTIF Regulation, noting that Article 10(1)(d) limits eligible

investment assets to units or shares in EU funds?

b) Where an ELTIF, in line with Article 10(1)(d) of the ELTIF Regulation invests in ELTIFs, EuVECAs, EuSEFs, UCITS and/or EU AIFs managed by EU AIFMs should such funds, in turn, invest in “eligible investments” referred to in Article 9(1) and (2) of the ELTIF Regulation?

ESMA Answer

14-03-2025

Original language

Answer provided by the European Commission

Question a. Can investments in non-EU AIFs be considered as eligible investments under Article 9 of the ELTIF Regulation, noting that Article 10(1)(d) limits eligible investment assets to units or shares in EU funds?

Yes. Article 9(1) of the ELTIF Regulation provides that directly eligible investments may be either eligible investment assets (Article 9(1)(a) of the ELTIF Regulation), as specified in Article 10 of that Regulation, or assets referred to in Article 50(1) of the UCITS Directive (Article 9(1)(b) of the ELTIF Regulation). As regards assets referred to in Article 50(1) of the UCITS Directive, Article 50(1)(e) lists as eligible assets units of “other collective investment undertakings within the meaning of Article 1(2)(a) and (b) [of the UCITS Directive], whether or not established in a Member State”, provided that certain conditions referred to in Article 50(1) of the

UCITS Directive are fulfilled. Therefore, ELTIF may have direct exposure to non-EU AIF under the conditions set out under Article 50(1) of the UCITS Directive.
As regards eligible investment assets, as specified in Article 10 of the ELTIF Regulation, Article 10(1)(d) provides that units or shares of one or several other ELTIFs, EuVECAs, EuSEFs, UCITS and/or EU AIFs managed by EU AIFMs (collectively referred to the 'target funds') are to be considered as eligible investment assets provided that those target funds invest in eligible investments as referred to in Article 9(1) and (2) of the ELTIF Regulation and have not themselves invested more than 10 % of their assets in any other collective investment undertakings.
While Article 10(1)(d) of the ELTIF Regulation limits directly eligible investments to certain EU investment funds (i.e. ELTIFs, EuVECAs, EuSEFs, UCITS and EU AIFs managed by EU AIFMs), ELTIFs may have an indirect exposure to a non-EU AIF if an eligible investment under Article 9(1) of the ELTIF Regulation has an exposure to such a non-EU AIF. In any case, according to Article 13(1) of the ELTIF Regulation each ELTIF shall invest at least 55% of its capital into eligible investment assets.

Question b. Where an ELTIF, in line with Article 10(1)(d) of the ELTIF Regulation invests in ELTIFs, EuVECAs, EuSEFs, UCITS and/or EU AIFs managed by EU AIFMs should such funds, in turn, invest in "eligible investments" referred to in Article 9(1) and (2) of the ELTIF Regulation?

Yes. According to Article 10(1)(d), where an ELTIF invests in target funds, those target funds must invest in eligible investments as referred to in Article 9(1) and (2). In this connection, Article 10(2) sets out the combined assessment of the investments by ELTIFs in units or shares of ELTIFs, EuVECAs, EuSEFs, UCITS and EU AIFs managed by EU AIFMs. According to Article 10(2), subparagraph 2, of the ELTIF Regulation, the combined assessment should be applied solely with respect to the determination of compliance with the investment limit and the other limits laid down in Article 13 and Article 16(1) of the ELTIF Regulation. The look-through approach should thus not be understood to be extended or applied to the eligibility of assets defined in Article 9 and Article 10 of the ELTIF Regulation.

Thus, the target funds themselves can have exposure to assets that do not meet the eligibility criteria laid down in Article 9(1) of the ELTIF Regulation. Regardless, ELTIFs must comply with Article 13 of the ELTIF Regulation, on an aggregate portfolio basis with the portfolio composition and diversification, and with borrowing of cash requirements laid down in Article 16 of the ELTIF Regulation, as well as with the Article 10(1)(d) requirement that target funds should not themselves have invested more than 10% of their capital in other collective investment undertakings.

Disclaimer

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ESMA_QA_2469

Submission Date
14/03/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

Topic
ELTIF

Subject Matter
Indirect investment

Question
Are the assets and the cash borrowing position of the “intermediary entities”, as referred to in recital 12 of the ELTIF Regulation, included when calculating the

investment limit and the other limits laid down in Article 13 and Article 16(1) of the ELTIF Regulation?

ESMA_QA_2468

Submission Date
14/03/2025

Status: Answer Published

Additional Information

Level 1 Regulation
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

Topic
ELTIF

Subject Matter
Indirect investment

Question
a) Does Recital (12) of Regulation (EU) 2023/606, which refers to the investments made “through the participation of intermediary entities” correspond to Article

10(1)(a)(iii) of the ELTIF Regulation pertaining to the eligible investment categories of equity or quasi-equity instruments that are issued by an undertaking in which a qualifying portfolio undertaking holds a capital participation?

b) In view of Recital 12 of the ELTIF Regulation on investments via intermediary entities, how should ELTIF composition and risk-spreading requirements apply?

c) In view of Recital 12 of the ELTIF Regulation on investments via intermediary entities, where an ELTIF uses intermediary entities in executing its investment strategy, do such entities automatically qualify as AIFs?

d) Are intermediary entities, as referred to in Recital (12) of the ELTIF Regulation, required to meet the conditions laid down in Article 11 (Qualifying portfolio undertaking - “QPU”) of the ELTIF Regulation to qualify as “qualifying portfolio undertakings”?

e) Can an eligible asset qualify as both an eligible investment asset within the meaning of Article 9(1)(a) and as an asset referred to in Article 50(1) of Directive 2009/65/EC within the meaning of Article 9(1)(b) of the ELTIF Regulation?

ESMA Answer

14-03-2025

Original language

Answer provided by the European Commission

Question (a) Does Recital (12) of Regulation (EU) 2023/606, which refers to the investments made “through the participation of intermediary entities”

correspond to Article 3 10(1)(a)(iii) of the ELTIF Regulation pertaining to the eligible investment categories of equity or quasi-equity instruments that are issued by an undertaking in which a qualifying portfolio undertaking holds a capital participation?

No, Recital (12) does not correspond to Article 10(1)(a)(iii). Notably, Article 10(1)(a)(iii) of the ELTIF Regulation refers to undertakings in which a qualifying portfolio undertaking holds a capital participation (i.e. an ELTIF eligible target investment), as opposed to Recital (12), which refers to intermediary undertakings (i.e. pass-through vehicles) that hold on behalf of the ELTIF a capital participation in a qualifying portfolio undertaking.

Question (b) In view of Recital 12 of the ELTIF Regulation on investments via intermediary entities, how should ELTIF composition and risk-spreading requirements apply?

Investment decisions by ELTIF managers may be executed through intermediary entities, such as SPVs, securitisation or aggregator vehicles, or holding companies, as acknowledged in Recital (12) of Regulation (EU) 2023/606 and portfolio composition and diversification shall be assessed by looking through such intermediary vehicles.
Intermediary vehicles are not themselves investments. These are vehicles used to hold, facilitate or channel the ELTIF's actual investments into ELTIF eligible investment assets. As a result, ELTIF asset composition and risk-spreading requirements should not, as such, be applied or imposed upon such intermediary vehicles.

Question (c) In view of Recital 12 of the ELTIF Regulation on investments via intermediary entities, where an ELTIF uses intermediary entities in executing its investment strategy, do such entities automatically qualify as AIFs?

No, as per answers to Questions 1(a) and 1(b) above, intermediary vehicles (Recital 12) and target AIFs (Article 10(1)d)) are two different concepts. The qualification of

an entity as an ELTIF-eligible alternative investment fund (AIF) as per Article 10(1)(d) is made on a case-by-case basis by assessing whether the criteria laid down in Article 4(1)(a) of Directive 2011/61/EU (AIFMD), as further clarified by ESMA Guidelines on key concepts of the AIFMD (ESMA/2013/611), are cumulatively met. Therefore, intermediary entities should not automatically be considered as AIFs and AIFs should not automatically be considered as aggregators.

Question (d). Are intermediary entities, as referred to in Recital (12) of the ELTIF Regulation, required to meet the conditions laid down in Article 11 (Qualifying portfolio undertaking - "QPU") of the ELTIF Regulation to qualify as "qualifying portfolio undertakings"?

No, as explained in answers to Questions (a) and (b), intermediary entities can be used, as recognised by Recital (12), for instance, for the purposes of structuring, optimisation, cost-effectiveness and other legitimate operational purposes. As such, intermediary entities are not themselves the target investment and shall not be confounded with QPUs. Conversely, as set out in Article 11 of the ELTIF Regulation, the notion of QPU determines the parameters of the target or end-investment in an undertaking through a combination of cumulative conditions pertaining to, among others, the nature, size, location (establishment) and other conditions that determine the eligibility of the target allocation by an ELTIF.

Question (e) Can an eligible asset qualify as both an eligible investment asset within the meaning of Article 9(1)(a) and as an asset referred to in Article 50(1) of Directive 2009/65/EC within the meaning of Article 9(1)(b) of the ELTIF Regulation?

Yes, where an asset qualifies as both an eligible investment asset within the meaning of Article 9(1)(a) and Article 9(1)(b), such an asset could indeed be deemed as an eligible investment asset within the meaning of Article 9(1)(a) and, on an equal basis, as an eligible investment asset within the meaning of Article 9(1)(b). The ELTIF Regulation does not set out an obligation for an ELTIF or its manager to

categorise an asset as either an Article 9(1)(a) or Article 9(1)(b) asset. Furthermore, when an asset qualifies as both an eligible investment asset within the meaning of Article 9(1)(a) and Article 9(1)(b), such an asset can be considered when determining the compliance with the ELTIF Regulation, e.g. with Article 13(1) and (2) and with Article 18(2)(d).

Disclaimer

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2463

Submission Date
12/03/2025

Status: Answer Published

Additional Information

Level 1 Regulation
MiCA

Topic
Crypto-Asset Service Provider (CASP)

Subject Matter
Autotrading

Question
Do “copy trading services” (also referred as “auto trading services”) related to crypto-assets fall within the scope of portfolio management or any other crypto-asset services as listed in Article?3(1)(16) of MiCA?

ESMA Answer

07-04-2025

Original language

Since “auto trading services” or “copy trading services” are not defined by MiCA, it is important to determine and qualify the crypto-asset service(s) being provided by the crypto-asset service provider (CASP) in question. Such qualification is of importance to determine which authorisation the CASP should obtain as well as other relevant MiCA requirements that are applicable.

ESMA already considered the issue of “copy trading services” (and their variations) in an extensive manner in relation to financial instruments[1] under the MiFID II[2] framework. Extensive guidance is thus available in relation to copy trading services in relation to financial instruments here:

- MiFID Questions and Answers, Investor Protection & Intermediaries, 2012, Question?9: Article 4(1)(9) of MiFID - Automatic execution of trade signals: https://www.esma.europa.eu/sites/default/files/library/2015/11/2012-382.pdf (page 15)

- Supervisory Briefing on supervisory expectations in relation to firms offering copy trading services, 2023: https://www.esma.europa.eu/sites/default/files/2023-03/ESMA35-42-1428_Supervisory_Briefing_on_Copy_Trading.pdf

The definitions and scope of the investment services of “investment advice”[3] and “portfolio management”[4] under MiFID II and of the crypto-asset services of “providing advice on crypto-assets”[5] and “providing portfolio management of crypto-assets”[6] under MiCA are similar and should be interpreted in a consistent way.

ESMA considers that the guidance provided under MiFID II in the Q&A and the supervisory briefing referenced above applies, *mutatis mutandis*, to copy trading services under MiCA but regarding only the qualification of what type of crypto-asset service(s) are provided. Therefore, Q&A9 (in its entirety) and sub-sections 2.1 and 2.2 of the supervisory briefing would be relevant. Relying on this guidance, CASPs should assess, on a case-by-case basis, what type of crypto-asset service(s) is(are) triggered when providing copy trading services in relation to crypto-assets according to different models.

ESMA_QA_2461

Submission Date
11/03/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Regulation (EU) 2019/2088 - Sustainable Finance Disclosure Regulation (SFDR)

Topic
Disclosures

Additional Legal Reference
Point (c) of Article 2(7) of Commission Delegated Regulation (EU) 2017/565 and point (c) of Article 2(4) of the Commission Delegated Regulation (EU) 2017/2359

Subject Matter
PAI disclosure by financial products

Question

Can financial advisers or distributors determine that a financial product referred to in Article 2(12) SFDR can satisfy a client's sustainability preference referred to in point (c) of Article 2(7) of Commission Delegated Regulation (EU) 2017/565 or point (c) of Article 2(4) of the Commission Delegated Regulation EU) 2017/2359 based on information provided outside the SFDR financial product disclosures referred to in Chapter III-V (Articles 14-67) and Annexes II-V of the SFDR Delegated Regulation, such as the European ESG Templates (EET)?

ESMA_QA_2460

Submission Date
11/03/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Regulation (EU) 2019/2088 - Sustainable Finance Disclosure Regulation (SFDR)

Topic
Disclosures

Additional Legal Reference
Article 7.1

Subject Matter
Financial products' PAI disclosures

Question

a) Can a financial product referred to in Article 2(12) SFDR consider the principal adverse impacts of its investment decisions on sustainability factors according to Article 7(1) if the financial market participant manufacturing that product does not consider the principal adverse impacts of its investment decisions on sustainability factors under Article 4(1)(a) or 4(3)-(4) SFDR?
b) Can financial products referred to in Article 2(12) SFDR satisfy the client's sustainability preferences pursuant to point (c) of Article 2(7) of Commission Delegated Regulation (EU) 2017/565 or point (c) of Article 2(4) of the Commission Delegated Regulation (EU) 2017/2359 in any other way than by considering the principal adverse impacts of its investment decisions on sustainability factors referred to in Article 7(1) SFDR

ESMA_QA_2459

Submission Date
11/03/2025

Status: Question Rejected

Additional Information

Level 1 Regulation
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

Topic
Register of information

Subject Matter
Fintech company: DORA AND ROI

Question
Hi Team,

Hope you are well!

We are a Spanish Fintech company called Toqio, our company lets you create, customize, and scale unique financial products in our platform.Please find more information below:

https://toqio.co/platform

Could you please confirm that we have to comply with DORA and also we have to send the ROI to the authorities?

Thank you in advance,

Kindest regards,

Ester

ESMA_QA_2457

Submission Date
07/03/2025

Status: Question Rejected

Additional Information

Level 1 Regulation
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

Topic
Other DORA topics

Subject Matter
Clarification on DORA Audits for Non-European ICT Service Providers

Question
The DORA law states that ICT third-party service providers must fully cooperate during onsite inspections and audits conducted by competent authorities, the Lead Overseer, the financial entity, or an appointed third party.

Will these audits be conducted the same way if the provider is located outside Europe,

ESMA_QA_2456

Submission Date
07/03/2025

Status: Question Rejected

Additional Information

Level 1 Regulation
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

Topic
ICT third-party risk management

Subject Matter
Clarification on DORA Compliance for Intra-Group providers

Question
Can you confirm our understanding of the DORA law: an intra-group entity providing services to a financial entity is subject to the same obligations as a non-critical third-party provider. This includes requirements related to contractual

arrangements, provisions for critical functions, exit strategies and termination conditions, information registry, reporting to competent authorities, and pre-contractual assessments. Additionally, if the services involve critical or important functions, further requirements apply, such as TLPT tests and audits by competent authorities.

ESMA_QA_2454

Submission Date
05/03/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Prospectus Regulation 2017/1129

Topic
Content of prospectus

Additional Legal Reference
Annex I to the Prospectus Regulation and Commission Delegated Regulation (EU) 2019/980 of 14 March 2019

Subject Matter
Historical financial information - if we intend to prepare and file a Prospectus should we, acting as an issuer of equity securities (shares), prepare historical financial

information covering the last three or two financial years?

Question

Annex I to the Prospectus Regulation was amended by Regulation 2024/2809 and introduced reduced time periods for historical financial information. However, Commission Delegated Regulation 2019/980 remains in force and requires longer time periods for historical financial information. Do the time periods in Annex I now apply or do those in Commission Delegated Regulation 2019/980 continue to apply?

ESMA Answer

18-06-2025

Original language

The time periods for historical financial information in Commission Delegated Regulation 2019/980 continue to apply until appropriate changes are made to give full effect to amendments introduced by Regulation 2024/2809. Article 13(1) of the Prospectus Regulation as amended by Regulation 2024/2809 requires the Commission to adopt delegated acts defining the specific information to be included in a?prospectus[1]. The adoption of those delegated acts is necessary to give full effect to the reduced time periods as well as other changes based on Regulation 2024/2809.

[1] Article 1(10)(a)(i) (Amendments to Regulation (EU) 2017/1129) of REGULATION (EU) 2024/2809 states: "*By 5 June 2026, the Commission shall adopt delegated acts in accordance with Article 44 to supplement this Regulation regarding the*

standardised format and standardised sequence of the prospectus, the base prospectus and the final terms, and the schedules defining the specific information to be included in a prospectus, including LEIs and ISINs, avoiding duplication of information when a prospectus is composed of separate documents."

ESMA_QA_2447

Submission Date
26/02/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

Topic
ICT third-party risk management

Subject Matter
direct agreements between AIF and ICT service provider

Question
According to article 2 par 1 of DORA AIFM is in scope of DORA, AIF is not defined as financial entity. There are situations when agreement is concluded directly between AIF and ICT service provider. It is obvious that the agreement in such

situation should contain elements listed in article 30 of DORA and the risk assessment should be performed by AIFM. But shall such agreement also be:
- included in the register of information in relation to all contractual arrangements on the use of ICT services provided by ICT third-party service providers according to article 28 par 3 and
- notified to competent authority in a timely manner prior of the conclusion of the agreement if the agreement supports critical or important functions?

ESMA Answer

26-02-2025

Original language

DORA applies to managers of alternative investment funds according to Article 2, point (k) of DORA. Therefore, to the extent that ICT systems of an AIF are needed for the AIFM to comply with its obligations under AIFMD and DORA those systems should be covered. Hence, in general, contracts that are signed by the AIFM, no matter if for the AIFM or on behalf of the AIF, or are signed directly by the AIF should comply with DORA requirements and should be included in the register of information and be notified to competent authorities in a timely manner prior of the conclusion of the agreement, if the agreement supports critical or important functions.

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