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Additional Information

Level 1 Regulation

Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU- Secondary Markets

Topic

Third country issues

Subject Matter

Third country issues

Question

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

23-09-2022

Original language

[ESMA 70-872942901-36 Commodity derivatives Q&A, Q&A 6.1]

Whether or not positions held in commodity derivatives contracts traded on third-country venues that are economically equivalent (EE) to contracts traded on an EU trading venue, are to be considered as EETOC for position limit and position reporting purposes under Article 58(2) of MiFID II depends on the characteristics of that third-country trading venue, as set out in ESMA Opinion 70-154-466 of 15 December 2017^[1].

Market participants holding positions on third country venue contracts, that may be considered EEOTC under Article 58(2) of MiFID II and Article 6 of RTS 21 or considering trading such contracts, should contact their CA and make them aware of those contracts. The CA will then get in touch with the third-country venue with a request for further information. Based on the information provided, ESMA will determine whether the third-country trading venue meets the criteria set out in the ESMA Opinion. If so, the respective third-country venue will be listed in an Annex to the Opinion.

Where a third-country trading venue appears in the annex to the Opinion, EE contracts traded on that venue will not be considered EEOTC for position limit and position reporting purposes. EE contracts traded on any other third-country trading venue that does not appear in the Annex to the Opinion will be considered EEOTC.

ESMA is aware that it is important for market participants to have legal certainty as soon as possible on the treatment of their transactions in EE contracts on third-country trading venues for position limit and reporting purposes. Whilst ESMA cannot commit to any set timeline for the assessment of the information received through NCAs, all notifications will be processed as expeditiously as possible.

[1] https://www.esma.europa.eu/sites/default/files/library/esma70-156-112_cdtf_opinion_eotc_third_countries.pdf