ESMA_QA_1556

Submission Date
03/04/2017

Status: Answer Published

Additional Information

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

Topic
Equity transparency

Subject Matter
Trading obligation for shares

Question
a) Are primary market transactions, block trades and share buy-backs subject to the trading obligation for shares?
b) Are accelerated book-building transactions subject to the trading obligation for shares?
c) Are an acquisition or disposal of shares made under employee share incentive plans

subject to trading obligation for shares?
d) Are share purchases/sales carried out exclusively to manage operational errors subject to the trading obligation for shares?
e) Are sales and purchases of “odd lot shares” (e.g. a quantity of shares which is not a multiple of the minimum lot) as a result of a corporate action subject to the trading obligation for shares?

ESMA Answer

19-12-2025

Original language

a. Primary market transactions (see Q&A 4 within the section on General Q&As on transparency topics) are not subject to the MiFIR transparency requirements and the trading obligation for shares. Block trades and share buy backs on the other hand are secondary market transactions and therefore subject to the trading obligation for shares.

b. Accelerated book-building-transactions can occur through:

1. new shares issued in connection with a share capital increase; or
2. a sale of shares owned by a significant shareholder.

In the first case, the ABB procedure is carried out in the context of a primary market transaction and in such respect should be considered out of the STO scope.

In the second case, the ABB procedure is carried out in the context of a secondary market transaction. Therefore, it should be considered subject to the STO. However, those transactions can benefit from a waiver under Article 4(b)(iii) of MiFIR (NT3) or under Article 4(c) of MiFIR (LIS).

c. Such an acquisition or disposal is not subject to the trading obligation for shares as long as it does not qualify as “transaction” under the definition of Article 2(5)(m) of RTS 22. Therefore, an acquisition or disposal under an employee share incentive plan where all the

criteria under points (i) to (iv) of Article2(5)(m) of RTS 22 are met, does not quality as a transaction. Therefore, it is not subject to the STO.

d. Yes. This is the case when there is the need to integrate a quantity of shares previously purchased/sold on the market because of an erroneous quantity of shares purchased/sold. This type of transaction might be executed in the CLOB or fall under the definition of negotiated transaction under Article 6 of RTS 1. In all cases, it is subject to the STO.

e. **No**. It is not viable to carry out such sales and purchases on a trading venue for quantities of shares that are not multiples of the minimum lot deriving from a corporate action such as a merger or a de-merger. The lots of derivatives pre-corporate actions are indeed adjusted by a factor to allow the purchase or sale of an equivalent amount post corporate actions. As a result, sales and purchases on a trading venue for quantity of shares that are not multiples of the minimum lot are not subject to the STO.

03-04-2017

Original language

[ESMA 70-872942901-35 MiFIR transparency Q&A, Q&A 3.1]

Primary market transactions (see Q&A on application of the transparency regime for primary transactions) are not subject to the MiFIR transparency requirements and the trading obligation for shares. Block trades (accelerated book-building) and share buy backs on the other hand are secondary market transactions and therefore subject to the trading obligation for shares.