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Additional Information

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

Topic
Pre-trade transparency waivers

Subject Matter
Waiver procedure for illiquid non-equity financial instruments

Question
Which procedure applies to granting a waiver from pre-trade transparency obligations for non-equity financial instruments for which there is not a liquid market under Article 9(1)(c) of MiFIR?

ESMA Answer

16-10-2024

Original language

All waivers from pre-trade transparency under Article 9(1) of MiFIR originate with an application for a waiver by a trading venue which may then be granted by the relevant NCA. Each waiver also has to go through an ESMA opinion process as described in Article 9(2) of MiFIR.

The waiver for illiquid instruments described in Article 9(1)(c) of MiFIR is special in that it does not apply to specific order types or sizes, but that it renders all non-equity instruments deemed illiquid under MiFIR and RTS 2 for non-equity transparency eligible for a waiver from pre-trade transparency. ESMA expects an extremely large number of instruments will be eligible for this waiver, and considers that it would not be possible operationally for this waiver to be granted on a per-instrument basis. Furthermore, ESMA does not understand the legal text to impose an obligation to grant the waiver on a per instrument basis.

Instead ESMA considers that the asset classes of instruments as categorised in Annex III of RTS 2 (examples for asset classes are bonds, interest rate derivatives, commodity derivatives, credit derivatives, etc.) should be the basis for applying for the “illiquid waiver”. This means that trading venues should apply for the waiver on an asset class basis and all illiquid instruments that fall within those asset classes which are already traded on the venue or in the process of being admitted to trading, or that will be traded on the venue at a later point in time would be eligible to benefit from the waiver, if granted. Also instruments within the specified asset classes which move from liquid to illiquid following the calculations as per RTS 2 would be eligible to benefit from the same waiver.

Each waiver application can comprise different asset classes. A new waiver application would only be necessary in case the trading venue intends to start trading a new asset class based on the categorisation in RTS 2.

18-11-2016

Original language

[ESMA 70-872942901-35 MiFIR transparency Q&A, Q&A 5.2]

All waivers from pre-trade transparency under Article 9(1) of MiFIR originate with an application for a waiver by a trading venue which may then be granted by the relevant NCA. Each waiver also has to go through an ESMA opinion process as described in Article 9(2) of MiFIR.

The waiver for illiquid instruments described in Article 9(1)(c) of MiFIR is special in that it does not apply to specific order types or sizes, but that it renders all non-equity instruments deemed illiquid under MiFIR and RTS 2 for non-equity transparency eligible for a waiver from pre-trade transparency. ESMA expects an extremely large number of instruments will be eligible for this waiver, and considers that it would not be possible operationally for this waiver to be granted on a per-instrument basis. Furthermore, ESMA does not understand the legal text to impose an obligation to grant the waiver on a per instrument basis.

Instead ESMA considers that the asset classes of instruments as categorised in Annex III of RTS 2 (examples for asset classes are bonds, interest rate derivatives, commodity derivatives, credit derivatives, etc.) should be the basis for applying for the “illiquid waiver”. This means that trading venues should apply for the waiver on an asset class basis and all illiquid instruments that fall within those asset classes which are already traded on the venue or in the process of being admitted to trading, or that will be traded on the venue at a later point in time would be eligible to benefit from the waiver, if granted. Also instruments within the specified asset classes which move from liquid to illiquid following the calculations as per RTS 2 would be eligible to benefit from the same waiver.

Each waiver application can comprise different asset classes ~~so that trading venues would only have to apply for the illiquid waiver once in the run-up to MiFID II application~~. A new waiver application would only be necessary in case the trading venue intends to start trading a new asset class based on the categorisation in RTS 2.