ESMA_QA_1587

Submission Date
03/06/2019

Status: Answer Published

Additional Information

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

Topic
Systematic internaliser regime

Additional Legal Reference
Markets in Financial Instruments Regulations (MiFIR) Regulation (EU) No 600/2014- Secondary Markets

Subject Matter
Voluntary SI regime

Question

Can an investment firm which decides to opt-in to the systematic internaliser regime determine the instruments on which it will be an SI?

ESMA Answer

03-06-2019

Original language

[ESMA 70-872942901-35 MiFIR transparency Q&A, Q&A 7.11a]

Article 4(1)(20) of MiFID II specifies that investment firms can voluntarily opt-in under the systematic internaliser regime (voluntary systematic internaliser regime). Such opt-in is not limited to instruments that are TOTV but includes all financial instruments, i.e. TOTV and non-TOTV instruments.

ESMA considers that an investment firm that voluntarily opts-in under the systematic internaliser regime can decide in which specific instruments (TOTV and non-TOTV instruments) it choose to be a systematic internaliser and to comply with the related obligations.

In case an investment firm opts-in under the systematic internaliser regime for equity instruments (shares, depositary receipts, ETFs, certificates, other similar financial instruments), the investment firm can choose for which instruments to be a systematic internaliser and to comply with the related obligations.

In case an investment firm opts-in under the systematic internaliser regime for derivatives, the investment firm can choose the individual derivatives for which it opts-in and for which it should comply with the related obligations. In other words, the investment firm is not bound to opt-in for the entire sub-class of derivatives to which the individual derivatives belong to.

In case an investment firm opts-in under the systematic internaliser regime for emission allowances, the investment firm can choose the individual emission allowances for which it

opts-in and for which it should comply with the related obligations. In other words, the investment firm is not bound to opt-in for the entire sub-asset class of emission allowances to which the individual emission allowances belong to.

In case an investment firm opts-in under the systematic internaliser regime for securitised derivatives, the investment firm can choose the individual securitised derivatives for which it opts-in and for which it should comply with the related obligations. In other words, the investment firm is not bound to opt-in for the entire asset class of securitised derivatives.

In case an investment firm opts-in under the systematic internaliser regime for bonds, the investment firm can choose the individual bonds for which it opts-in and for which it should comply with the related obligations. In other words, the investment firm is not bound to opt-in for all bonds issued by the same entity or by any entity within the same group for the same bond type.

In case an investment firm opts-in under the systematic internaliser regime for structured finance products (SFP), the investment firm can choose the individual SFPs for which it opts-in and for which it should comply with the related obligations. In other words, the investment firm is not bound to opt-in for all SFPs issued by the same entity or by any entity within the same group.

Investment firms that voluntarily opt-in under the systematic internaliser regime in specific instruments are nevertheless expected to perform the quarterly test for those instruments and, if the pre-set limits for a frequent and systematic basis and for a substantial basis are both crossed, they qualify as systematic internalisers under the mandatory regime.