

Submission Date

07/07/2017

ESMA_QA_1636

Status: Answer Published

Additional Information

Level 1 Regulation

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

Topic

Multilateral and bilateral systems

Subject Matter

Unauthorised person as an investment firm meeting the requirements of Article 53(3) of MiFID II being a member or participant of a regulated market or an MTF

Question

Can a person that is not authorised as an investment firm but meets the requirements of Article 53(3) of MiFID II be a member or participant of a regulated market or an MTF?

07-07-2017

Original language

[ESMA 70-872942901-38 MiFID II MiFIR market structures Q&A, Q&A 5.4]

Yes. Article 53(3) of MiFID II provides that an entity that is not an investment firm or a credit institution can be a member of a regulated market under certain conditions, this rule being extended to MTFs by Article 19(2) of MiFID II.

ESMA considers that this provision should be read in conjunction with the requirements of Article 2(1). Under this provision, a person falling under any of the categories listed in Article 2(1) would not have to be authorised as an investment firm.

However, pursuant to Article 2(1)(d) (ii) of MiFID II, when a person dealing on own account in financial instruments other than commodity derivatives or emission allowances or derivatives thereof and not providing any other investment services or performing any other investment activities in such instruments is also a member of or a participant in a regulated market or an MTF, it falls under the scope of MiFID II, and should accordingly be authorised as an investment firm unless:

- it is exempted under points (a), (i) and (j); or
- it is a non-financial entity which executes transactions on a trading venue which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of that non-financial entity or its group.

As a consequence, the reference in Article 53(3) to persons other than investment firms and credit institutions only relates to entities that are exempted from authorisation under Article 2(1), such as insurance companies or collective investment undertakings, as long as their own regulatory framework permits them to do so.

This Q&A does not address the issue of non-EEA firms being a member or participant of an EEA trading venue.