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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

Organized Trading facilities OTFs

Question

When an OTF authorised to trade financial instruments also trades REMIT wholesale energy products, i.e. in non-financial instruments, what are the applicable MiFID II/MiFIR provisions?

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Original language

[ESMA 70-872942901-38 MiFID II MiFIR market structures Q&A, Q&A 5.23]

MiFID II/MiFIR provisions apply to the operation of an OTF trading financial instruments.

Where a person seeks authorisation as an OTF and intends to offer trading in REMIT carve-out contracts as well, a detailed description of the REMIT carve-out trading activity should be included in the authorisation file so that the competent authority can understand and assess the potential impact of REMIT carve-out trading on the investment firm or market operator operating the OTF and on trading in financial instruments. The information to be provided is set out in ITS 19^[1].

Where an investment firm or market operator operating an OTF has been authorised and intends to additionally offer trading in REMIT carve-out products, a detailed description of the REMIT carve-out trading activity should be provided to the competent authority in due course before the start of such trading activities.

The management body of the investment firm (or the market operator) operating the OTF is responsible for defining, approving and overseeing the organisation of the firm or market operator for the provision of investment services and activities, taking into account the nature, scale and complexity of its business and all the requirements the firm has to comply with. ESMA is of the view that the responsibilities of the management body extends to the non-financial instrument trading activity of the OTF as they may have an impact on the investment activities provided by the investment firm (or the market operator). This also applies to the management body's responsibilities governing the investment firm (or market operator)'s internal policy setting out, among other things, the activities, products and operations offered or provided in accordance with risk tolerance of the firm (or the market operator).

More generally, ESMA highlights that a market operator or an investment firm operating an OTF trading both financial instruments and REMIT carve-out products should identify, prevent or otherwise manage any potential adverse consequences that trading in REMIT

carve-out products may have on trading in financial instruments and on its ability to meet its MiFIDII/MiFIR obligations on an on-going basis. Upon request, the operator of the OTF should be able to explain to the competent authority the procedures and arrangements put in place to that effect.

[1] Commission Implementing Regulation (EU) 2016/824 of 25 May 2016 laying down implementing technical standards with regard to the content and format of the description of the functioning of multilateral trading facilities and organised trading facilities and the notification to the European Securities and Markets Authority according to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments (OJ L 137, 26.5.2016, p. 10–16)