

Submission Date

03/04/2017

ESMA_QA_1659

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

Systematic internaliser

Question

Recital (19) of the Commission Delegated Regulation (EU) 2017/565 foresees that a SI can undertake matched principal trading provided it does so on an occasional, and not a regular, basis. How is “occasional basis” expected to be assessed?

03-04-2017

Original language

[ESMA 70-872942901-38 MiFID II MiFIR market structures Q&A, Q&A 5.27]

As stated under Answer 15, ESMA is of the view that a SI activity is characterised by risk-facing transactions that impact the Profit and Loss account of the firm.

Where an SI would receive, and execute, two potentially matching buying and selling interests from clients as one matched principal trade or where it would try to find the buyer for a sell order (or the other way around) and execute the first leg contingent on the second leg, those transactions would not qualify as risk facing transactions. As such, they could only be executed by an SI on an occasional basis, as provided for by Recital (19) of the Commission Delegated Regulation (EU) 2017/565.

ESMA is of the view that an SI would not be undertaking matched principal trading on an occasional and non-regular basis if it meets any of the following criteria:

1. the investment firm operates one or more systems or arrangements, be they automated or not, intended to match opposite client orders. The investment firm may accidentally receive two opposite matching buying and selling interests and match them but it should not have systems in place aimed at increasing opportunities for client order matching;
2. when executing client orders, non-risk facing activities account for a recurrent or significant source of revenue for the investment firm's trading activity;
3. the investment firm markets, or otherwise promotes, its matched principal trading activities.