ESMA_QA_2062

Submission Date
03/01/2024

Status: Question Rejected

Additional Information

Level 1 Regulation
Transparency Directive (TD) Directive 2004/109/EC

Topic
Notifications of major shareholdings

Additional Legal Reference
ESMA Indicative list of financial instruments that are subject to notification requirements according to Article 13(1b) of the revised Transparency Directive

Subject Matter
Clarification on the application of the Transparency Directive, particularly Article 13, 1b, and its subsequent sub-points, in the context of synthetic shares

Question

Article 13 1. (b) states that Financial instruments with economic effect similar to that of the financial instruments referred to in that point, whether or not they confer a right to a physical settlement are subject to the notification requirement of Article 9 in the TD. The definition of "Financial Instrument" is further elaborated in Article 13, 1b, and its subsequent sub-points, and includeds the wording "any other contracts or agreements with similar economic effects which may be settled physically or in cash.". ESMA has also produced an Indicative List of

Given this context, my question is: Do synthetic shares, which are created through various derivatives and structured financial processes to mimic the performance of actual shares without conferring ownership, fall under the scope of "financial instruments" as defined in Article 13(1)(b) of the Transparency Directive? Specifically, do synthetic shares qualify as "contracts or agreements with similar economic effects" that are subject to notification requirements pursuant to this paragraph?