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Additional Information

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

Level 2 Regulation
Regulation 2017/565 - MiFID II Delegated Regulation

Topic
Non-equity transparency

Subject Matter
Legal qualification of Financial Transmission Rights under MiFID II

Question

Do Financial Transmission Rights referred to in the Forward Capacity Allocation Regulation (Commission Regulation 2016/1719) qualify as financial instruments under Annex I, Section C of MiFID II (Directive 2014/65/EU)?

ESMA Answer

26-05-2026

Original language

Transmission System Operators (TSO) are persons responsible for operating energy transmission systems. To cover risks related to price fluctuations between different geographical areas, TSOs notably conclude Financial Transmission Rights (FTRs) that are contracts whose payoff, for the beneficiary, corresponds to the price difference between two price zones.

Article 2(1), point (n), of Directive (EU) 2014/65 ('MiFID') provides that MiFID does not apply to TSOs when they carry out tasks relating to the operation of energy transmission systems under Union legislation. However, according to that provision, MiFID applies with regards to the operation of a secondary market, including a platform for secondary trading in FTR.

MiFID applies to the provision of investment services and activities which are defined in Article 4(1)(2) of MiFID as any of the services and activities listed in Section A of Annex I relating to any of the instruments listed in Section C of Annex I. For MiFID to meaningfully apply to secondary trading in FTRs, as provided for in its Article 2(1), point (n) of the Directive, FTRs are therefore to be considered as financial instruments.

This is consistent with the conditions under Article 8 of Delegated Regulation (EU) 2017/565, read in conjunction with Article 7(3) of Delegated Regulation (EU) 2017/565, which makes a reference to the fact that FTRs are to be considered to be C(10) financial instruments in the secondary market, including when traded outside a trading venue. Conversely, Article 8(c) of Delegated Regulation (EU) 2017/565 excludes from the scope of C(10) financial instruments

FTRs in the primary market, when entered into with or by a TSO

The answer clarify provisions already contained in the applicable legislation. This do not extend in any way the rights and obligations deriving from such legislation nor does it introduce any additional requirements for the concerned operators and competent 2 authorities. The answer is merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.