Download date: Monday, November 2, 2026 - 14:28

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ESMA_QA_2576	19-06-2025
ESMA_QA_2575	18-06-2025

ESMA_QA_2952

Submission Date
20/10/2026

Status: Answer Published

Additional Information

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

Topic
Position reporting

Subject Matter
Position Reporting

Question

Where a position holder trades only or partly for hedging purposes, are there circumstances where all positions can be reported as being for non-hedging purposes?

ESMA Answer

08-10-2026

Original language

No. NFEs and financial entities should ensure that their position reports accurately describe the nature of their positions. This is necessary to ensure the reliability and accuracy of the position reports submitted to NCA and the published weekly position reports. Accordingly, position holders are expected to correctly flag positions as hedging (or other) in accordance with Article 7 of RTS 21 which sets out the conditions for determining whether a position qualifies as risk reducing in relation to an NFE's commercial activities.

This is the case even when no position limit has been set for the commodity derivative contract traded. This is also the case when a position limit has been set but where the position holder did not apply for a position limit exemption under Article 8 of RTS 21a because he does not expect its aggregated positions from hedging and non-hedging activities to exceed the limit set by the relevant NCA for that commodity derivative contract. In both cases, the determining factor for flagging a position as hedging is whether it objectively reduces risks related to an NFE's commercial activity, not the existence of a position limit or a position limit exemption.

If the position holder and the reporting entity (e.g. a broker) are not identical, the reporting entity should in turn accurately report the information provided by the position holder on the nature of its positions and whether they qualify as risk-reducing.

Where market participants rely on internal allocation methodologies, governance arrangements, or group hedging frameworks, they should ensure that these arrangements support accurate and consistent reporting outcomes.

ESMA_QA_2950

Submission Date
16/10/2026

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation 2020/1503 - European crowdfunding service providers for business

Topic
Information to clients on topics other than costs and charges

Subject Matter
Crowdfunding service providers that charge registration, membership, or other access fees ("investment club" crowdfunding platforms)

Question
How does the ECSPR apply to crowdfunding service providers that charge registration, membership, or other access fees?

ESMA Answer

16-10-2026

Original language

Regulation (EU) 2020/1503 (ECSPR) establishes a harmonised framework for the provision of crowdfunding services across the Union, whilst granting flexibility to CSPs in the design of their business models.

Article 2(1)(d) of the ECSPR requires that crowdfunding services be provided through a publicly accessible internet-based information system. ESMA notes that the existence of registration processes (1), as well as the application of membership or access fees, does not in itself prevent a platform from being considered publicly accessible. When operating such arrangements, CSPs should ensure that:

- the platform remains accessible via the public internet;
- the platform's access conditions are transparent, objective and applied without discrimination (2);
- investors and prospective investors are effectively granted access to crowdfunding offers and enabled to invest on the basis of transparent, objective and non-discriminatory criteria;
- prior to any payment, prospective investors have access to sufficiently clear and meaningful information. That information should enable them to understand the nature of the platform, its services, the fees applied, the types of projects offered, and the key characteristics and risks associated with those projects (3);
- investment decisions on crowdfunding projects remain individual to each investor. The CSP continues to match project owners and investors and does not act as fund operator (4). Nor does it provide discretionary management,

except where it provides individual portfolio management of loans in accordance with Article 3(5) of the ECSPR.

In this context, ESMA considers that the application of upfront membership or other access fees may raise investor protection concerns when, in particular:

- the fees are required before investors, or potential investors are allowed to access any key information about crowdfunding projects or CSP services;
- the fees' purpose, allocation, or beneficiary is not clearly disclosed;
- the fees may create conflicts of interest, including when finfluencers, third parties or related persons can benefit from them.

ESMA therefore would expect that when CSPs operate membership or other access fee-based models:

1. The application of relevant registration, membership or access fees is transparently disclosed in advance to potential investors in accordance with Articles 3(2) and 19(1) of the ECSPR;
2. CSPs comply with entry knowledge tests, loss-bearing simulations, investor categorisation procedures, conflict of interest requirements and all other requirements established under the ECSPR;
3. Prior to the payment of any registration, membership, or access fee, prospective investors satisfying the same objective criteria can access sufficient information relating to the crowdfunding offers available on the platform at that time, free of charge.

With regard to point (i) above, ESMA considers that, when fees are required to access a platform, investors and potential investors should receive clear, detailed and free-of-charge information on at least: (a) the nature of the fees; (b) the amount to be paid and the frequency of payment; (c) the investor's position once the fees have been paid. It should also be clear whether such fees: (a) only grant access to

the platform, (b) grant access to a specific section of the platform where projects are presented, or (c) constitute an advance on the investment and are deducted when an investment is made (5). Investors should also be provided with a clear and prominent warning that after paying the registration, membership or access fees they may not find projects in which they wish to invest.

With regard to point (ii), ESMA notes that whilst the ECSPR does not explicitly require that the assessment under Article 21(7) of the ECSPR (6) be performed prior to granting access to a platform, the design and sequencing of access conditions, including fees, should not impair the effectiveness of those safeguards or the ability of non-sophisticated investors to make informed and responsible investment decisions.

In this context, ESMA considers that when a CSP operates a membership-based or fee-based access model, the investor categorisation, entry knowledge test, loss-bearing capacity assessment, and related warnings under Article 21 of the ECSPR should be completed before a non-sophisticated investor is required to pay any registration, membership, or access fee. Such sequencing better supports the effectiveness of the application of investor-protection safeguards established under Article 21 of the ECSPR and reduces the risk that non-sophisticated investors incur costs before receiving the categorisation, the assessment and warnings which are intended to inform their participation in crowdfunding investments.

In addition, ESMA recalls that where a CSP uses finfluencers – such as, but not limited to, high profile public figures (e.g., well known sport personalities) – to encourage potential investors to pay upfront fees to access its platform, investors and prospective investors should be able to understand the nature of any commercial relationship, remuneration or other incentives that may influence such promotional communications (7).

Competent authorities should pay particular attention, in their supervisory activities, to business models involving upfront fees, in order to ensure that CSPs act honestly, fairly and professionally in accordance with the best interests of their clients. Competent authorities should assess such arrangements on a case-by-case basis taking into account the economic reality of the business model, the admission policy, the information regarding the level and timing of fees, as well as the available crowdfunding projects, and the overall application of the investor protection requirements laid down in the ECSPR [8].

Endnotes

1. As confirmed by Recital 12 of the ECSPR, according to which "*In order to deliver their services, crowdfunding service providers operate publicly accessible internet-based information systems, including those systems that require user registration*.".

2. As already noted in the ESMA Final Report on Draft technical standards under the ECSPR (ESMA35-42-1183): "*ESMA is of the opinion that if a CSP were to apply an operating scheme in which, under certain conditions, the CSP may prevent the investor or potential investor from making the investment, also such a scheme would need to comply with the principle of non-discrimination. This means that the conditions for the application of such an operating scheme should be objective and predetermined by the CSP, in the sense that the scheme applies to all investors or potential investors who meet the same conditions (without any discrimination among investors) and is clearly disclosed to the clients or potential clients of the CSP*" (point (e), page 16 of

the Final Report).

3. Based upon Article 3(2) of the ECSPR which requires CSPs to "*act honestly, fairly and professionally in accordance with the best interests of their clients*", read together with Article 19(1) ECSPR, which requires that all information from CSPs to clients "*about themselves, about the costs, financial risks and charges related to crowdfunding services or investments, about the crowdfunding project selection criteria, and about the nature of, and risks associated with, their crowdfunding services shall be fair, clear and not misleading*".

4. As underlined in Recital 22 of the ECSPR, the Regulation aims to facilitate direct investment and to avoid creating regulatory arbitrage opportunities for financial intermediaries regulated under other legal acts of the Union, in particular Union legal acts governing asset managers.

5. Where a registration, membership or access fee constitutes an advance on an investment, is allocated to a particular crowdfunding offer or is otherwise payable in connection with an offer to invest or expression of interest, ESMA considers that CSPs should ensure that the arrangements do not circumvent the rights granted to non-sophisticated investors under Article 22 of the ECSPR.

6. According to Article 21(7) of the ECSPR, before a non-sophisticated investor invests more than the higher of EUR 1,000 or 5% of their net worth, the CSP

must ensure that such investor receives a risk warning, gives explicit consent, and demonstrates understanding of the investment and its risks.

7. See the ESMA Factsheet on finfluencers, which highlights the importance of transparency regarding commercial relationships and incentives in financial promotions: https://www.esma.europa.eu/document/finfluencers-tips-responsible-promotion.

8. In accordance with Delegated Regulation 2112/2022 on the authorisation as CSP, applicants shall provide the authorising NCA with a description of the arrangements to make the crowdfunding platform an internet-based information system, publicly accessible and without discriminatory access.

ESMA_QA_2938

Submission Date
08/10/2026

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic
EU-CCPs

Subject Matter
AAR representativeness obligation

Question
For the purpose of the AAR representativeness obligation, how should the maturity of trades be calculated, and how should the instruments be assigned to the

individual maturity buckets?

ESMA Answer

08-10-2026

Original language

By default, the maturity of a trade should be computed as the difference between the expiration date and the effective date.

In cases where the effective date is prior to the clearing date (e.g. clearing of legacy trades), the (residual) maturity is computed as the difference between the expiration date and the clearing date.

Examples:

1. An OTC derivative transaction has an effective date on T1 and an expiration date of T2. The maturity is calculated as the period between the period between the effective date and the expiration date: T2-T1.
2. An OTC derivative transaction has an effective date on T1 and an expiration date of T3. The transaction is centrally cleared for the purposes of the AAR requirement on a later date T2, after the effective date and before the expiration date. The residual maturity is calculated as the period between clearing date and the expiration date: T3-T2.

ESMA_QA_2937

Submission Date
08/10/2026

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic
EU-CCPs

Subject Matter
AAR thresholds caclulation

Question
How should the “notional clearing volume outstanding”, as referred to in Article 7a, paragraph 4 and 8 of EMIR, be calculated?

ESMA Answer

08-10-2026

Original language

For consistency with the clearing threshold calculations of Article 4a and 10 of EMIR, the “notional clearing volume outstanding” as referred to in Article 7a, paragraph 4 and 8 of EMIR, should be calculated as the “aggregate month-end average position for the previous 12 months” of cleared trades.

Every month counterparties should compare their aggregate month-end average position for the previous 12 months, against the EUR 6bn and 100bn thresholds of in Article 7a, paragraph 4 and 8, to continuously monitor their obligations, in line with ESMA Q&A 2776 and 2777.

The calculation of the “aggregate month-end average position” should take into account the specificities of ESMA OTC Q&A 3 (b), (c) and (f).

ESMA_QA_2936

Submission Date
08/10/2026

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic
EU-CCPs

Subject Matter
AAR representativeness obligation

Question
Should the “one-half” rule set-out under Article 7a(4), subparagraph 5 of EMIR be applied at the level of the classes of derivatives, or across all classes of

derivatives?

ESMA Answer

08-10-2026

Original language

ESMA Q&A 2518, prepared by the European Commission, provides further div on how the calculation of the exemption under Article 7a(4) fifth subparagraph, should be assessed.

The Q&A does not explicitly provide for the calculation to be performed at class level. In particular, the reference in the Q&A to “all subcategories taken together”, without specifically mentioning that it would be at “class level”, should be read as indicating that the condition set out in the fifth subparagraph of Article 7a(4) of EMIR should be assessed on an aggregated basis, all classes combined.

ESMA_QA_2933

Submission Date
02/10/2026

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
MiCA

Topic
Crypto-Asset Service Provider (CASP)

Additional Legal Reference
Article 3(1), points (15) and (17); Articles 59, 70, 72 and 75 (9); ESMA Opinion on broker models

Subject Matter
Technical roles of non-EU group entities in transaction signing and signing policies

Question

1. Can a non-EU (group) entity co-sign transactions without being considered to exercise control over EU client assets or provide custody?

2. Can a non-EU (group) entity alter signing policies without being considered to exercise control over EU client assets or provide custody?

ESMA_QA_2932

Submission Date
01/10/2026

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
MiCA

Topic
Crypto-Asset Service Provider (CASP)

Additional Legal Reference
MiCA Article 3(1), points (15) and (17); Articls 59; Article 70(1); Article 75(9); Commission Delegated Regulation (EU) 2025/303; ESMA Opinion on broker models paragraph 8 and footnote 10; ESMA Q&A 2608

Subject Matter

Transient exposure of EU client crypto-assets in a non-EU hot wallet during deposits, withdrawals and settlement

Question

In the context of in/out transfers (deposits/withdrawals) from an EU authorised CASP, can assets from EU clients temporarily be held in a (hot) wallet at an entity not authorised as a CASP under MiCA? Under what conditions, if any, would the temporary presence of EU client crypto-assets in that wallet be considered a purely technical/transient transfer step rather than custody, administration or transfer services being provided by the non-authorised entity?

ESMA_QA_2926

Submission Date
21/09/2026

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Central Securities Depositories Regulation (CSDR) Regulation (EU) No 909/2014- PTR- CSDR

Topic
CSD questions - Requirements for CSD services (reconciliation measures, asset segregation, settlement finality, participant default rules and procedures)

Additional Legal Reference
Article 40

Subject Matter
CSDs settlement assets

Question

Under the current CSDR framework, are CSDs allowed to settle in: a) tokenised central bank money, b) tokenised commercial bank money, and c) e-money tokens?

ESMA_QA_2925

Submission Date
21/09/2026

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Central Securities Depositories Regulation (CSDR) Regulation (EU) No 909/2014- PTR- CSDR

Topic
CSD questions - Authorisation of CSDs

Additional Legal Reference
Article 19(1) (c) and Article 16 (4)

Subject Matter
Integration of DLT settlement solution in CSD security settlement system

Question

Does the integration of DLT components, or more specifically, of a DLT settlement solution, into a traditional securities settlement system operated by a CSD require the authorisation of a new securities settlement system in accordance with Article 19(1)(c) of CSDR?

ESMA_QA_2924

Submission Date
21/09/2026

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Central Securities Depositories Regulation (CSDR) Regulation (EU) No 909/2014- PTR- CSDR

Topic
General questions - Book-entry form

Additional Legal Reference
Article 3

Subject Matter
DLT and book-entry form definition

Question

Article 3 of CSDR refers to the requirement for transferable securities to be recorded in book-entry form. Does the use of distributed ledger technology (DLT) meet the definition of book-entry form? More broadly, can CSDs use DLT to provide CSD services under CSDR?

ESMA_QA_2919

Submission Date
15/09/2026

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU-Investor Protection and Intermediaries

Topic
Provision of investment services and activities by third country firms

Subject Matter
Extraterritorirality of investor protection rules under MiFID II

Question
Do rules on investor protection set out in Directive 2014/65/ EU on markets in financial instruments (MiFID II) apply to investment firms, based and authorised in

the EU, when they provide investment services to clients outside the EU?

ESMA_QA_2949

Submission Date
28/08/2026

Status: Answer Published

Additional Information

Level 1 Regulation
MiCA

Topic
Crypto-Asset Service Provider (CASP)

Subject Matter
Use by CASPs of payment accounts provided by non-bank payment service providers for holding clients' funds

Question
May an authorised CASP temporarily place clients' funds in an account held with a non-bank payment service provider, such as an electronic money institution or a

payment institution, while maintaining adequate arrangements to safeguard clients' ownership rights in accordance with Article 70(2) of MiCA, provided that those funds are subsequently placed in an account held with a credit institution or a central bank no later than the end of the business day following the day on which they were received, in accordance with Article 70(3) of MiCA?

Furthermore, may clients' funds remain beyond that deadline in an account held with a credit institution where that account has been opened in the name of, and is held by, a non-bank payment service provider specifically for the CASP and is technically segregated from all other accounts?

ESMA Answer

06-10-2026

Original language

When receiving funds belonging to clients, whether directly from clients or from third parties on their behalf, a CASP may temporarily hold those funds in a payment account held with a non-bank payment service provider, such as an electronic money institution or a payment institution. During that period, the CASP must continue to comply with the safeguarding requirements laid down in Article 70(2) of MiCA. However, no later than the end of the business day following the day on which the funds were received, the CASP must place those funds in an account held with a credit institution or a central bank, in accordance with Article 70(3) of MiCA.

The relevant account held with the credit institution or central bank must be opened and maintained directly in the name of the CASP or otherwise in accordance with the applicable legal asset segregation arrangement. An account held in the name of

a non-bank payment service provider does not satisfy Article 70(3) of MiCA, since the CASP would retain a claim against the payment service provider rather than being the account holder vis-à-vis the credit institution. Accordingly, an account held in the name of a non-bank payment service provider would not satisfy the requirements of Article 70(3) of MiCA, even where the account has been established specifically for the CASP and is technically segregated from other accounts.

ESMA_QA_2904

Submission Date
25/08/2026

Status: Question Rejected

Additional Information

Level 1 Regulation
Central Securities Depositories Regulation (CSDR) Regulation (EU) No 909/2014- PTR- CSDR

Topic
General questions - Book-entry form

Historic Question Reference
Fraud

Additional Legal Reference
I am trying to find out if a person by the name of gabriel keller works for you think he may be fake

Subject Matter
Possible fraud

Question
Can you tell me if there is a person Gabriel keller that works for you

ESMA_QA_2891

Submission Date
10/07/2026

Status: Answer Published

Additional Information

Level 1 Regulation
ESGR - Regulation (EU) 2024/3005

Topic
48-hour rule

Subject Matter
Access to dataset for factual error review

Question
When an ESG rating provider notifies an issuer or rated item for the purposes of a fact-checking review, is access to the respective dataset granted only upon request?

ESMA Answer

10-07-2026

Original language

ESG rating providers are required to grant access to the dataset upon request of the issuer or rated item, in which case it should be granted as soon as possible. Alternatively, access to the dataset can be provided automatically, in parallel with the notification.

ESMA_QA_2890

Submission Date
10/07/2026

Status: Answer Published

Additional Information

Level 1 Regulation
ESGR - Regulation (EU) 2024/3005

Topic
48-hour rule

Subject Matter
Scope of two working day notification period

Question
Do the two full working days encompass the notification to the rated item, the submission of a request for access to the information and the fact-checking review?

ESMA Answer

10-07-2026

Original language

No. The two full working days encompass the notification to the rated item and the submission of the request for access to the dataset for fact-checking purposes. Any extension of the time period beyond two working days for the purpose of the fact-checking review is at the discretion of the ESG rating provider. Once the minimum period of two full working days has elapsed, the provider may proceed with the issuance of the rating without being required to await comments or confirmation from the rated item or issuer.

ESMA_QA_2889

Submission Date
10/07/2026

Status: Answer Published

Additional Information

Level 1 Regulation
ESGR - Regulation (EU) 2024/3005

Topic
Separation of business and activities

Subject Matter
Consulting activities to investors or undertakings

Question
What type of consulting activities are relevant for the purposes of the separation of business set out in Article 16(1)(a)?

ESMA Answer

10-07-2026

Original language

The type of consulting activities that would require a separation of business vis-à-vis ESG rating activities encompass advisory services that may affect the independence and impartiality of ESG ratings issued and published or distributed by the ESG rating provider.

For example, helping clients improve their ESG rating by advising on sustainability disclosures, KPIs or sustainability strategies.

At the same time, advisory activities distant to ESG ratings should not be regarded as a service justifying a legal separation from ESG rating activities in the context of Article 16(1)(a). For instance, tax and accounting advisory, such as recommending tax-efficient structures.

ESMA_QA_2881

Submission Date
06/07/2026

Status: Answer Published

Additional Information

Level 1 Regulation
Markets in Financial Instruments Regulation (MiFIR) Regulation (EU) No 600/2014-Secondary Markets

Topic
Data reporting services providers

Additional Legal Reference
Commission Delegated Regulation (EU) 2025/1155 of 12 June 2025

Subject Matter
Consolidated Tape Provider (CTP)

Question

Does the timestamp of the order referred to in Article 3(2) of Commission Delegated Regulation (EU) 2025/1155 refer to the timestamp of the order reception in the system’s gateway or the timestamp that the matcher applies when the order is registered in the order book?

ESMA Answer

10-07-2026

Original language

For the purposes of Article 3(2) of Commission Delegated Regulation (EU) 2025/1155, the “timestamp of the order” should be understood as the timestamp corresponding to the moment the order is registered in the trading venue’s system in a manner that determines its sequencing and potential execution.

Consequently, under Article 3(2) of Commission Delegated Regulation (EU) 2025/1155, the relevant timestamp is the one applied at the moment of book registration, i.e. the timestamp generated by the venue’s matching engine.

ESMA_QA_2872

Submission Date
22/06/2026

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic
EU-CCPs

Additional Legal Reference
Article 7a(3), point (d)

Subject Matter
AAR representativeness and intragroup transactions

Question

Can an entity, which is part of a group subject to consolidated supervision, rely on intragroup transactions to fulfil the requirements of the representativeness obligation set out under Article 7a(3), point d, of EMIR?

ESMA_QA_2883

Submission Date
18/06/2026

Status: Answer Published

Additional Information

Level 1 Regulation
MiCA

Topic
Crypto-Asset Service Provider (CASP)

Subject Matter
Crypto-Asset lending services under MiCA

Question
Can CASPs offer crypto-asset lending services under MiCA, and if so, under which conditions, in particular with respect to the use of clients' crypto-assets?

ESMA Answer

18-06-2026

Original language

Yes.[1]

MiCA does not address the lending and borrowing of crypto-assets (Recital 94). However, CASPs offering such unregulated services should follow the ESMA Statement on avoiding misperceptions: Guidance for crypto-asset service providers offering unregulated services.

In addition, CASPs offering lending services remain subject to their general obligations under MiCA, including acting honestly, fairly and professionally in the best interests of clients,[2] and ensuring all communications – including marketing - are fair, clear and not misleading.[3] . In particular, they should avoid confusing clients when offering lending alongside regulated services.

Crypto-asset lending entails significant risks such as counterparty risk, collateral shortfall risk and the risk to lose access to lent crypto-assets if the CASP fails. Safeguarding arrangements under MiCA will also not apply to assets used in lending programmes. Such risks should thus be disclosed in a fair, clear and non-misleading way by CASPs offering crypto-asset lending services to their clients. CASPs should also ensure adequate collateral and assess the robustness of lending arrangements or protocols, including decentralised ones.

Where CASPs hold clients' crypto-assets or their means of access, they must safeguard ownership rights and not use those assets for their own account. [4]

This requires that the use of clients' crypto-assets for lending requires prior express and specific consent, limited to clearly defined terms. Consent embedded in general terms and conditions, without prominence, would not meet this standard.

This also means that revenues generated from lending should accrue to the client, as they bear the associated risks. Apart from a fair and proportionate fee reflecting operational costs, retaining additional revenues would not be consistent with acting in the client's best interests.

This Q&A is without prejudice to any case-by-case classification. Certain lending arrangements could fall within EU or national frameworks (e.g. AIFMD), depending on their features. For example, depending on their specific features and contractual terms, certain lending arrangements could meet the definition of an alternative investment fund under the AIFMD.[5]

1.This Q&A addresses solely the lending of crypto-assets and does not cover the lending of securities, which may be subject to separate authorisation requirements.

2.Article 66(1) of MiCA.

3.Article 66(2) of MiCA.

4.Article 70(1) of MiCA.

5.Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010.

ESMA_QA_2882

Submission Date
18/06/2026

Status: Answer Published

Additional Information

Level 1 Regulation
MiCA

Topic
Crypto-Asset Service Provider (CASP)

Subject Matter
Perimeter of advice under MiCA compared to MiFID II

Question
How should the perimeter of advice on crypto-assets under MiCA be understood, and to what extent is it comparable to the notion of investment advice under MiFID II?

In particular, do introductory services – where a person recommends a crypto-asset service provider and/or a crypto-asset service to a client, without recommending specific transactions on crypto-assets – fall within the scope of advice on crypto-assets under MiCA?

ESMA Answer

18-06-2026

Original language

The perimeter of advice on crypto-assets under MiCA should be regarded as broader than the perimeter of advice under MiFID II. This is because the definition of ‘providing advice on crypto-assets’ under MiCA refers to offering, giving or agreeing to give personalised recommendations in respect of i) one or more transactions relating to crypto-assets or ii) the use of crypto-asset services.

As such, the following tests should apply:

- Does the service that is being offered constitute a recommendation?
- Is the recommendation in relation to one or more transactions relating to crypto-assets OR the use of crypto-asset services? Is the recommendation presented as suitable or based on a consideration of the person’s circumstances? Is the recommendation issued otherwise than exclusively to the public?
- Is the recommendation made to a person in his capacity as an investor or potential investor or as an agent for an investor or potential investor?

On this basis, introductory services consisting of the recommendation of a crypto-asset service to a potential investor (with or without recommending a specific crypto-asset service provider), even if not made in relation to specific transactions in crypto-assets, may be regarded as advice on crypto-assets for the purpose of MiCA, depending on the circumstances surrounding the recommendation.

To the contrary, providing solely a reference to a CASP (without further indications) equally accessible to all potential investors should not constitute a recommendation and should therefore not be regarded as advice on crypto-assets for the purpose of MiCA.

ESMA_QA_2867

Submission Date
15/06/2026

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic
EU-CCPs

Subject Matter
Impact of the new clearing obligation thresholds on the AAR scope

Question
Under the new clearing threshold regime which distinguishes between financial and non-financial counterparties, and uncleared and cleared trades, how should the

second AAR condition referred to under Article 7a(1) of EMIR be assessed?

ESMA_QA_2857

Submission Date
22/05/2026

Status: Answer Published

Additional Information

Level 1 Regulation
EU Green Bond Regulation (EU) 2023/2361

Topic
External reviewers - Registration and material changes

Subject Matter
Material changes to registration information - external reviewers

Question
What is meant by “any material changes in the information provided in accordance with Article?23(1)” of the EuGB Regulation and “any material changes to the circumstances under which the initial authorisation was granted” under Article 6(5)

of the ESGR Regulation?

ESMA Answer

22-05-2026

Original language

In line with Item 35 of ESMA's Guidelines on Periodic Information for BMAs, CRAs and MTIs, ESMA considers a "material change" to be a change that may affect the reporting entities' initial conditions of registration, notably its compliance with the requirements of the sectoral Regulation.

This also applies to Article 24(1) of the EuGB Regulation and Article 6(5) of the ESGR Regulation, where "material changes" are considered to refer to significant updates or modifications to the information submitted by external reviewers or ESG rating providers as part of their application for registration or authorisation with ESMA, in accordance with the respective technical standards.

These changes are meaningful enough that they could affect ESMA's assessment of the supervised entity's compliance with the Regulation.

For example:

1. Change in legal status or ownership structure, such as:

- Merger, acquisition or spin-off involving the legal entity.

- Significant change in shareholding, especially if it reduces the entity’s independence from shareholder’s interests.

2. Change in key personnel or outsourcing arrangements, such as:

- Replacement of senior management responsible for analytical or assessment activities, methodologies, oversight function or internal control mechanisms.

- Change to existing or planned outsourcing arrangements.

3. Change in policies and procedures, such as:

- Material revisions to the methodologies, models or key rating assumptions used, including to the procedures for the review of ESG ratings and for the review of ESG rating methodologies.

- Material updates to policies and procedures to manage conflicts of interest, including to the measures and safeguards implemented pursuant to Article 16 of Regulation 2024/3005.

4. Geographic expansion or change in service offerings, such as:

- Opening new subsidiaries, branches or offices in other Member States or third countries.

- Offering new services, especially any potentially conflicting activities, such as the issuance and distribution of credit ratings as defined in Article 3(1), point (a), of Regulation (EC) No 1060/2009 or assurance engagements on sustainability reporting within the meaning of Directive 2013/34/EU.

5. Major institutional or legal developments, such as:

- Strenuous financial difficulties or significant changes in net turnover, balance sheet total employee numbers, for instance breaching the threshold for being categorised as a small undertaking or as a small group for the purposes of admission into the temporary regime under Article 5 of the ESGR Regulation.

- Sanctions or enforcement action by competent authorities.

ESMA_QA_2856

Submission Date
22/05/2026

Status: Answer Published

Additional Information

Level 1 Regulation
ESGR - Regulation (EU) 2024/3005

Topic
Application to operate in the Union

Subject Matter
Material changes to registration information - ESG rating providers

Question
What is meant by “any material changes in the information provided in accordance with Article?23(1)” of the EuGB Regulation and “any material changes to the circumstances under which the initial authorisation was granted” under Article 6(5)

of the ESGR Regulation?

ESMA Answer

22-05-2026

Original language

In line with Item 35 of ESMA's Guidelines on Periodic Information for BMAs, CRAs and MTIs, ESMA considers a "material change" to be a change that may affect the reporting entities' initial conditions of registration, notably its compliance with the requirements of the sectoral Regulation.

This also applies to Article 24(1) of the EuGB Regulation and Article 6(5) of the ESGR Regulation, where "material changes" are considered to refer to significant updates or modifications to the information submitted by external reviewers or ESG rating providers as part of their application for registration or authorisation with ESMA, in accordance with the respective technical standards.

These changes are meaningful enough that they could affect ESMA's assessment of the supervised entity's compliance with the Regulation.

For example:

1. Change in legal status or ownership structure, such as:

- Merger, acquisition or spin-off involving the legal entity.
- Significant change in shareholding, especially if it reduces the entity's independence from shareholder's interests.

2. Change in key personnel or outsourcing arrangements, such as:

- Replacement of senior management responsible for analytical or assessment activities, methodologies, oversight function or internal control mechanisms.
- Change to existing or planned outsourcing arrangements.

3. Change in policies and procedures, such as:

- Material revisions to the methodologies, models or key rating assumptions used, including to the procedures for the review of ESG ratings and for the review of ESG rating methodologies.
- Material updates to policies and procedures to manage conflicts of interest, including to the measures and safeguards implemented pursuant to Article 16 of Regulation 2024/3005.

4. Geographic expansion or change in service offerings, such as:

- Opening new subsidiaries, branches or offices in other Member States or third countries.
- Offering new services, especially any potentially conflicting activities, such as the issuance and distribution of credit ratings as defined in Article 3(1), point (a), of Regulation (EC) No 1060/2009 or assurance engagements on sustainability reporting within the meaning of Directive 2013/34/EU.

5. Major institutional or legal developments, such as:

- Strenuous financial difficulties or significant changes in net turnover, balance sheet total employee numbers, for instance breaching the threshold for being

categorised as a small undertaking or as a small group for the purposes of admission into the temporary regime under Article 5 of the ESGR Regulation.

- Sanctions or enforcement action by competent authorities.

ESMA_QA_2855

Submission Date
22/05/2026

Status: Answer Published

Additional Information

Level 1 Regulation
ESGR - Regulation (EU) 2024/3005

Topic
Application to operate in the Union

Subject Matter
ESG rating providers established after date of entry into force

Question
Which ESG rating providers established after the date of entry into force of Regulation (EU) 2024/3005 can benefit from the transitional regime under Article 51?

ESMA Answer

22-05-2026

Original language

An ESG rating provider established after 1 January 2025 can benefit from the transitional regime if it is a successor with structural links to an entity that had been operating in the Union at entry into force, whether or not that entity was established inside or outside the Union at that time. Examples of structural links include a subsidiary, affiliate, shared trading name, intellectual property, beneficial ownership or controlling interests.

If an ESG rating provider has no such structural links, it must apply to operate in the Union through one of the options set out in Article 4 (authorisation, equivalence, endorsement, recognition) or, if applicable, notify ESMA in order to be registered under the temporary regime for small ESG rating providers pursuant to Article 5(1).

ESMA_QA_2854

Submission Date
22/05/2026

Status: Answer Published

Additional Information

Level 1 Regulation
ESGR - Regulation (EU) 2024/3005

Topic
Application to operate in the Union

Subject Matter
Transitional provisions

Question
In advance of the date of application of the Regulation on 2 July 2026, what are the different registration pathways for ESG rating providers?

ESMA Answer

22-05-2026

Original language

The Regulation provides several different routes to registration for ESG rating providers intending to operate in the Union.

For small ESG rating providers within the meaning of Article 5(1):

- Those operating in the Union at the date of entry into force of the Regulation have until 2 November to notify ESMA to be included in the Article 14 register and should, ideally, notify ESMA by 2 September. If no notification takes place, they must cease their activities,
- Those who started their operations after the date of entry into force should notify ESMA from 2 July 2026 in order to be included in the Article 14 register. If no notification takes place, they must cease their activities.

For all other ESG rating providers:

- Those operating at the date of entry into force can apply for authorisation or recognition up to four months after 2 July 2026, after having first notified ESMA by 2 August 2026 that they wish to continue operating in the Union. Until ESMA decides whether to grant authorisation, they may continue their operations.

ESMA_QA_2853

Submission Date
22/05/2026

Status: Answer Published

Additional Information

Level 1 Regulation
ESGR - Regulation (EU) 2024/3005

Topic
Scope (including exemptions)

Subject Matter
Defined ranking system

Question
What practical components should an ESG rating feature to demonstrate the existence of a defined ranking system of rating categories, as required by Article 3 of Regulation (EU) 2024/3005?

ESMA Answer

22-05-2026

Original language

ESG ratings, either in the form of opinions, scores or a combination of both, express a rating provider’s value judgement of a rated item and are prepared based on an established methodology and a defined ranking system of rating categories.

The defined ranking system reflects the rating provider’s value judgement in an ordinal or hierarchical structure and comprises two or more pre-determined rating categories, including the minimum and maximum levels, enabling consistent comparison across rated items. The rating categories can be represented by numbers, letters, colours or other symbols.

ESMA_QA_2847

Submission Date
15/05/2026

Status: Question Rejected

Additional Information

Level 1 Regulation
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

Topic
Other DORA topics

Subject Matter
conclusion of ICT arrangement for the purpose of tests

Question
In certain scenarios, a financial entity may enter into an arrangement with an ICT third-party service provider solely for testing purposes. These tests typically span several weeks, during which digital service is delivered through ICT systems on an

ongoing basis, however to no internal or external users. Furthermore, digital service provided by the ICT third-party service provider is not supporting any function of financial entity, and the testing process itself has no operational impact on the entity's current standing or infrastructure.
Question:
1. Is the financial entity required to notify in a timely manner about any planned contractual arrangement the competent authorities of an arrangement concluded strictly for testing purposes, if it is anticipated that—upon successful completion—the digital service will eventually support a critical or important function?
2. What is the exact date which shall be used in the register of information if the tests will be succesfull and the digital service will be offered to one or more internal or external users? Should this date correspond to the initial commencement of the testing phase or the formal launch of the service in the production environment?

ESMA_QA_2845

Submission Date
12/05/2026

Status: Answer Published

Additional Information

Level 1 Regulation
MiCA

Topic
White paper

Subject Matter
Machine-readable (XBRL) format requirement for modified white papers

Question
When a reporting entity (e.g., an issuer, offeror, or person seeking admission to trading) notifies a modification of a white paper originally submitted before the entry into application of Commission Implementing Regulation (EU) 2024/2984 on 23

December 2025, is the reporting entity required to submit the modified white paper in the machine-readable format specified in the regulation?

ESMA Answer

12-05-2026

Original language

Yes. Since the entry into application of the formatting requirements on 23 December 2025, in the case(s) where a reporting entity notifies a modified white paper, and the original white paper was notified and published prior to the requirement, the reporting entity should prepare the modified white paper in the machine-readable format.

However, this does not mean that reporting entities who notified and published a white paper prior to the entry into application of the requirement on 23 December 2025 are automatically compelled to now submit a modified white paper. This guidance only applies when a ‘significant new factor’ triggers the white paper modification requirement. In other words, the entry into application of the ITS does not constitute a ‘significant new factor’.

ESMA_QA_2839

Submission Date
30/04/2026

Status: Answer Published

Additional Information

Level 1 Regulation
Market Abuse Regulation (MAR) Regulation (EU) No 596/2014 - Market Intergrity

Level 2 Regulation
Regulation 2016/957- RTS on arrangements, systems, procedures and notification templates for preventing, detecting and reporting abusive practices or reporting suspicious orders or transactions

Topic
Prevention and detection of market abuse, including STORs

Subject Matter
Annually conducted audit under Commission Delegated Regulation (EU) 2016/957

Question

Under Article 2(5)(b) of Commission Delegated Regulation (EU) 2016/957 (“RTS on STORs”), should the annually conducted audit of arrangements, systems and procedures be performed by an external auditor, or would an internal audit be sufficient? How should the “internal review” mentioned alongside the audit be understood?

ESMA Answer

08-05-2026

Original language

Commission Delegated Regulation (EU) 2016/957 does not explicitly specify whether the annual audit should be external or internal. Therefore, Persons Professionally Arranging or Executing Transactions (PPAETs) and trading venues may conduct the required annual audit either internally or externally. If it is carried out internally, the audit is expected to be performed by an independent function. It is also worth noting that the reference to an internal review should be understood as a complementary exercise to the audit.

ESMA_QA_2831

Submission Date
07/04/2026

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Level 2 Regulation
COMMISSION DELEGATED REGULATION (EU) No 153/2013 Regulatory technical standards on requirements for central counterparties

Topic
EU-CCPs

Subject Matter

Treatment of assets and positions of affiliates of a clearing member as proprietary assets and positions of that clearing member by CCPs

Question

May CCPs treat assets and positions of affiliates of clearing members as proprietary assets and positions of the clearing member as indicated in RTSs 153/2013 and 149/2013?

ESMA_QA_2830

Submission Date
06/04/2026

Status: Question Rejected

Additional Information

Level 1 Regulation
MiCA

Topic
Crypto-Asset Service Provider (CASP)

Additional Legal Reference
Third-party advice by independent contractors not authorised as CASPs under Article 62(2)(q) of the MiCA Regulation

Subject Matter
Third-party advice by independent contractors not authorised as CASPs under Article 62(2)(q) of the MiCA Regulation

Question

Under Article 62(2)(q) of the Markets in Crypto-Assets Regulation (MiCAR):

1. May independent contractors provide advice on crypto-assets on behalf of crypto-asset service providers (CASP) without being authorised as CASPs nor directly employed by said CASPs?
2. May independent contractors be hired by CASPs to provide crypto-assets advice on behalf of said CASPs?

ESMA_QA_2829

Submission Date
01/04/2026

Status: Answer Published

Additional Information

Level 1 Regulation
Markets in Financial Instruments Regulation (MiFIR) Regulation (EU) No 600/2014-Secondary Markets

Topic
Data reporting services providers

Subject Matter
Trading status for on halt/suspended instruments

Question
Are MTFs and OTFs required to generate instrument status messages even when the instrument is already on halt / suspended by a primary exchange?

ESMA Answer

01-04-2026

Original language

The instrument status message requires the information of the Market Identifier Code (MIC). Therefore, this information is to be provided per ISIN-MIC-Currency basis.

Hence, MTFs and OTFs should generate the instrument status message whenever they halt / suspend an instrument.

ESMA_QA_2828

Submission Date
01/04/2026

Status: Answer Published

Additional Information

Level 1 Regulation
Markets in Financial Instruments Regulation (MiFIR) Regulation (EU) No 600/2014-Secondary Markets

Topic
Data reporting services providers

Additional Legal Reference
Article 22 of MiFIR

Subject Matter
Consolidated Tape Provider (CTP)

Question
Are APAs expected to transmit regulatory data to the CTPs?

ESMA Answer

01-04-2026

Original language

Article 22a of MiFIR requires data contributors to transmit regulatory data (i.e. system?matching?order status and financial?instrument status, as defined in Article 2(1), point (36c) of MiFIR and further detailed in Commission Delegated Regulation (EU) 2025/1155) to the data centre of the CTP.
However, given that APAs do not operate any trading system and therefore cannot provide system?level or instrument?status information, the transmission of regulatory data is only anticipated to be relevant for trading venues.
Where an APA acts as a DRSP on behalf of a trading venue, the APA should transmit the regulatory data of that trading venue in its capacity as service provider. The data, however, continues to relate to, and originate from, the trading venue’s trading system, not the APA’s.

ESMA_QA_2827

Submission Date
01/04/2026

Status: Answer Published

Additional Information

Level 1 Regulation
Markets in Financial Instruments Regulation (MiFIR) Regulation (EU) No 600/2014-Secondary Markets

Topic
Data reporting services providers

Additional Legal Reference
Articles 5, 6 and 12(1) of Commission Delegated Regulation (EU) 2025/1155

Subject Matter
Consolidated Tape Provider (CTP)

Question

For trading venues subject to the obligations in Article 12 (1) of Commission Delegated Regulation (EU) 2025/1155, which requires business clocks capable of achieving a granularity of 0.1 microseconds, would the dissemination of timestamps at this level of granularity in their existing market data feeds be considered compliant with the requirements in Articles 5 and 6 of Delegated Regulation (EU) 2025/1155 to provide timestamps to the CTPs with a less granular precision of six decimal places?

ESMA Answer

01-04-2026

Original language

The RTS 2025/1155 specifies that the timestamp fields to be transmitted to the CTP must follow the ISO 8601 date?time format with six decimal places (i.e. ss.dddddd) representing fractions of a second in microseconds, as set out in Table 1 of Annex III, where timestamps must be provided in the format YYYY?MM?DDThh:mm:ss.ddddddZ.

ESMA confirms that a data contributor will be considered compliant with the timestamp requirements of Articles 5 and 6 of Commission Delegated Regulation (EU) 2025/1155 if it transmits timestamps with at least six decimal (microsecond) digits and follows the ISO 8601 format.

ESMA_QA_2826

Submission Date
01/04/2026

Status: Answer Published

Additional Information

Level 1 Regulation
Markets in Financial Instruments Regulation (MiFIR) Regulation (EU) No 600/2014-Secondary Markets

Topic
Data reporting services providers

Subject Matter
Consolidated Tape Provider (CTP)

Question
Do trading venues subject to an outage need to provide the consolidated tape provider with a health status message? Are they exempt from generating the input

order matching system status data?

ESMA Answer

01-04-2026

Original language

According to ESMA’s Opinion on outages, as per their outage plan, trading venues should clearly identify how information on outages is communicated (for example via the trading venue website) and what information is to be included in the communication. Furthermore, NCAs should ensure that trading venues provide all market participants (i.e. not only its members and participants but also the general public) with a notice of disruption as soon as possible. This notice of disruption should occur via any means which enables the trading venue to communicate simultaneously to market participants. In any case, the notice of disruption should also be published on the trading venue’s public website and include a dedicated contact line or person at the affected trading venue allowing market participants to ask questions and share information relating to the ongoing outage. As a result, when there is an outage, a trading venue should promptly communicate this information on its website and to the CTP and it would not need to separately generate the input order matching system status data.

ESMA_QA_2825

Submission Date
01/04/2026

Status: Answer Published

Additional Information

Level 1 Regulation
Markets in Financial Instruments Regulation (MiFIR) Regulation (EU) No 600/2014-Secondary Markets

Topic
Data reporting services providers

Additional Legal Reference
Article 22 of MiFIR

Subject Matter
Consolidated Tape Provider (CTP)

Question
Who may benefit from the opt-in regime outlined in Article 22a(2) and (3) of MiFIR?

ESMA Answer

10-07-2026

Original language

The opt-in regime is exclusively applicable to the consolidated tape (CT) for shares and ETFs (equities CT). For the bonds and OTC derivatives CTs, all relevant data contributors are required to transmit data.

Moreover, only (i) investment firms operating an SME growth market (as defined in Article 4(1)(12) of MiFID II) and (ii) market operators (as defined in Article 4(1)(18) of MiFID II), and meeting the conditions in Article 22a(2) of MiFIR, may make use of the opt-in regime for the equities CT. Investment firms operating an MTF that does not qualify as an SME growth market may not make use of the opt-in regime and are required to contribute data to the equities CT.

ESMA_QA_2824

Submission Date
01/04/2026

Status: Answer Published

Additional Information

Level 1 Regulation
Markets in Financial Instruments Regulation (MiFIR) Regulation (EU) No 600/2014-Secondary Markets

Topic
Data reporting services providers

Subject Matter
Consolidated Tape Provider (CTP)

Question
What status must be reported when an instrument is reported for the first time to the CTP?

ESMA Answer

01-04-2026

Original language

The initial status of individual financial instruments is reported for the first time from data contributors to the CTP in the following cases:

(i) when the activities of the CTP start (i.e. the status should be ACTV, unless the instrument is already suspended or halted); and

(ii) when an instrument is newly admitted to trading (i.e, the status should be ACTV);

In essence, the initial message establishes the baseline status that the CTP will disseminate until a subsequent change is reported. Please find below some examples:

Instrument	Publication venue	Status prior to go live T-1	CTP go live date: T	…/… other phase changes sent throughout T	T+1	T+N
ABC	MIC1	ACTV	MIC1 sends a message with Trading phase set to ‘SOAU’ and status set to ‘ACTV’	MIC1 sends a message with Trading phase set to new values	MIC1 sends a message with Trading phase set to ‘SOAU’	MIC1 sends a message with status set to ‘RMOV’
	CTP	N/A	CTP sends a message with Trading phase set to ‘SOAU’ and status set to ‘ACTV’	CTP sends a message with Trading phase set to those values and status set to ‘ACTV’	CTP sends a message with Trading phase set to ‘SOAU’ and status set to ‘ACTV’	CTP sends a message with status set to ‘RMOV’

DEF	MIC2	SUSP	MIC2 sends a message with status set to ‘SUSP’	No messages sent	MIC2 sends a message with Trading phase set to ‘SOAU’ and instrument status set to ‘ACTV’
	CTP	N/A	CTP sends a message with status set to ‘SUSP’	CTP sends a message with status set to ‘SUSP’	CTP sends a message with Trading phase set to ‘SOAU’ and status set to ‘ACTV’

ESMA_QA_2823

Submission Date
01/04/2026

Status: Answer Published

Additional Information

Level 1 Regulation
Markets in Financial Instruments Regulation (MiFIR) Regulation (EU) No 600/2014-Secondary Markets

Topic
Data reporting services providers

Subject Matter
Consolidated Tape Provider (CTP)

Question
At which point in time do data contributors have to submit regulatory data of individual financial instruments to the CTP, and how does the CTP handle and

publish this information?

ESMA Answer

01-04-2026

Original language

Data contributors must submit regulatory data of individual financial instruments only when there is a change in the trading status of an instrument, such as a suspension, halt, resumption or removal. Upon receiving a status update, the CTP should promptly update and disseminate the information as part of its real-time output. The CTP should continuously publish and maintain an up-to date list of all instruments admitted to trading, reflecting their most recent status.

ESMA_QA_2822

Submission Date
01/04/2026

Status: Published Answer Updated

Additional Information

Level 1 Regulation
Markets in Financial Instruments Regulation (MiFIR) Regulation (EU) No 600/2014-Secondary Markets

Topic
Data reporting services providers

Additional Legal Reference
Article 22 of MiFIR

Subject Matter
Consolidated Tape Provider (CTP)

Question

What types of transmission protocols may the CTP choose from, according to Article 22a(5) of MiFIR?

ESMA Answer

01-04-2026

Original language

The CTP may select any of the types of transmission protocols that a data contributor makes available to other data users for the dissemination of data as specified in Article 13(1) of MiFIR.

Where a data contributor has outsourced its reporting to the CTP to a third party, the CTP may likewise select from the types of transmission protocols that this third party offers to other data users for the dissemination of data as specified in Article 13(1) of MiFIR.

A data contributor should not outsource CTP reporting for the purpose of intentionally restricting the CTP’s choice of transmission protocols.

ESMA_QA_2821

Submission Date
01/04/2026

Status: Published Answer Updated

Additional Information

Level 1 Regulation
Markets in Financial Instruments Regulation (MiFIR) Regulation (EU) No 600/2014-Secondary Markets

Topic
Data reporting services providers

Additional Legal Reference
Article 22 of MiFIR

Subject Matter
Consolidated Tape Provider (CTP)

Question

Can a data contributor outsource data reporting to the CTP to a third party, such as another data contributor?

ESMA Answer

01-04-2026

Original language

The legal obligation to report data to the consolidated tape lies with the data contributors themselves (see Article 22a of MiFIR). While data reporting to the CTP may be outsourced – for example, from a trading venue to an APA, or from one trading venue to another – such outsourcing does not relieve the original data contributor of its legal obligations and accountabilities, including those relating to data quality.

In particular, in the light of such legal obligations, outsourcing of CTP reporting should not introduce artificial latency into the reported data, not be undertaken for the purpose of intentionally restricting the CTP's choice of transmission protocols or otherwise undermining the CTP's mission.

ESMA_QA_2811

Submission Date
23/03/2026

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
European Market Infrastructure Regulation (EMIR) Regulation (EU) No 648/2012-MDP

Topic
* EMIR Reporting

Subject Matter
EMIR Article 7d

Question
2. Scope of clients covered by Article 7d(1) EMIR
Article 7d(1) also introduces reporting obligations for clients that clear contracts

through a CCP recognised under Article 25, but does not further specify the level of the client relationship concerned.
In particular, it is unclear whether the term “clients” in Article 7d(1) should be understood as:
• only direct clients of clearing members; or
• both direct clients and indirect clients (i.e. clients accessing clearing services through intermediaries in a client clearing chain).

2. Which clients are covered by the reporting obligation in Article 7d of EMIR?

ESMA_QA_2810

Submission Date
23/03/2026

Status: Answer Published

Additional Information

Level 1 Regulation
European Market Infrastructure Regulation (EMIR) Regulation (EU) No 648/2012-MDP

Topic
* EMIR Reporting

Subject Matter
Scope of reporting under Article 7d of EMIR

Question
Which contracts are referred to in Article 7d(1) EMIR?

ESMA Answer

15-09-2026

Original language

In order to monitor the exposure of the EU financial system to recognised third-country CCPs, Regulation (EU) 2024/2987 (‘EMIR 3’) amends EMIR to ensure, inter alia, that competent authorities have the necessary information on the clearing activities undertaken by EU counterparties in recognised third-country CCPs. In this respect, in a new Article 7d, EMIR 3 introduces a reporting obligation to achieve this objective.

As per the definition of a CCP laid down in Article 2(1) of EMIR, a CCP is a legal person that interposes itself between the counterparties to contracts traded on one or more financial markets. Those contracts are varied in nature and may refer to both financial and non-financial instruments, in accordance with the asset classes for which the CCP has been authorised or recognised to provide clearing services to EU counterparties. The exposure of the EU financial system to recognised third-country CCPs cannot therefore be limited to one specific asset class.

The scope of Article 7d(1) of EMIR should be aligned with the scope of products for which third-country CCPs have been recognised by ESMA to provide clearing services to EU counterparties. As such it covers all contracts cleared in those CCPs, distinguishing on the one hand between financial and non-financial instruments and on the other hand, for financial instruments, as per Recital 17 of EMIR 3, at least between securities transactions, derivative transactions on regulated markets and OTC derivative transactions.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are 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.

ESMA_QA_2807

Submission Date
18/03/2026

Status: Answer Published

Additional Information

Level 1 Regulation
ESGR - Regulation (EU) 2024/3005

Topic
Scope (including exemptions)

Subject Matter
Exemption for SPO providers

Question
Can a second-party opinion provider?producing and using?an ESG rating?for its? second-party opinion, without publishing or distributing it?on a standalone basis,? benefit from the exemption set out in?Article 2(2)(i) of Regulation (EU) 2024/3005?

??

ESMA Answer

18-03-2026

Original language

Answer provided by the European Commission

Article 2(2), point (i) of the ESG Rating Regulation provides that external reviews or second-party opinions on bonds marketed as environmentally sustainable, sustainability-linked bonds, and bonds, loans and other types of debt instruments marketed as sustainable are exempted from the scope of that Regulation.

External reviews or second-party opinions fall in scope of the ESG Ratings Regulation only when they contain an ESG rating issued by the external reviewer or the second-party opinion provider.

External reviews of European Green Bonds, as provided for in Regulation (EU) 2023/26311, are always outside the scope of the ESG Ratings Regulation, in accordance with Article 2(2), point (h) of that Regulation.

These provisions reflect the co-legislators' policy objective to focus the ESG Ratings Regulation on ESG ratings, defined as opinions, scores, or a combination of both, according to, Article 3(1)(2) and (3) of that Regulation. This intention is also highlighted in recital 18 of that Regulation.

If an external review or a second-party opinion includes only elements of an ESG rating, such as a methodology or a rating scale, but there is no separate opinion or a separate score, or combination of both, that can be considered to constitute an ESG rating, this is to be interpreted as meaning that the external review or second-party opinion does not include an ESG rating.

Examples of where the provider of an external review or a second-party opinion would fall in scope of the ESG Ratings Regulation include:

(i) where an external review or second-party opinion includes an opinion or a score, or a combination of both, constituting an ESG rating, and the ESG rating can be distinguished from the external review or second-party opinion, although it may be included in that opinion;

(ii) where an external review or second-party opinion is marketed or offered to clients as an ESG rating within the meaning of Article 3(1) of the ESG Ratings Regulation and

(iii) where the provider of an external review or of a second-party opinion markets its product as an external review or a second-party opinion to circumvent obligations of the ESG Ratings Regulation, but the product meets the definition of ESG rating as defined in Article 3(1) of the ESG Ratings Regulation.

In these examples, providers of the external review or second-party opinion would carry out the activity of an ESG rating provider. They would have to apply to ESMA for authorisation to operate in the Union and be subject to the applicable requirements of the ESG Ratings Regulation. The product-related requirements of that Regulation would be applicable only to the part of the external review or second-party opinion that is considered to constitute an ESG rating.

Disclaimer

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are 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 2 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.

ESMA_QA_2806

Submission Date
18/03/2026

Status: Answer Published

Additional Information

Level 1 Regulation
ESGR - Regulation (EU) 2024/3005

Topic
Scope (including exemptions)

Subject Matter
ESG ratings used for internal purposes or in-house financial services

Question
What types of activities are considered “internal purposes” or “in-house” or “intragroup financial services or products” for the purposes of Article 2(2)(b)?

ESMA Answer

18-03-2026

Original language

Answer provided by the European Commission

The Article 2(2)(b) of the ESG Ratings Regulation foresees the exemption from the requirements of the regulation when ESG ratings issued by regulated financial undertakings are used exclusively for providing in-house or intragroup financial services or products.

An in-house activity refers to any internal use of an ESG rating by a regulated financial undertaking, provided that the rating is not published or distributed to a third party.

The ESG rating developed by a regulated financial institution and used in financial services provided intra-group is exempt from the scope of the Regulation provided it is not disclosed to any third party, either through publication or distribution. For the purposes of Article 2(2)(b), examples of “internal purposes” include the use of an ESG rating to facilitate treasury operations, risk management or internal lending processes.

Examples of “in-house or intragroup financial services or products” include where ESG ratings are issued and used for portfolio construction within the same corporate group, where one entity makes investments for the benefit of other entities in that group. A further example is the use of an ESG rating as an input to the decision to offer a financial service or product to a client or third party without the rating being disclosed.

Disclaimer

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are 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 2 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.

ESMA_QA_2800

Submission Date
10/03/2026

Status: Question Rejected

Additional Information

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

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

Topic
Suitability

Additional Legal Reference
MiFID II 2014/65/EU (Art. 16, 25); Deleg. Reg. (EU) 2017/565 (Art. 54; record-keeping).

Subject Matter

Personal recommendation and suitability statement: documentation nature and staff attribution in split/automated processes

Question

Under MiFID II, investment advice is defined as a personal recommendation to a client in relation to transactions in financial instruments. In practice, the personal recommendation, the suitability assessment, the documentation and the technical generation/transmission of the suitability statement may be performed by different persons and/or partly automated systems.

Could ESMA clarify the following points:

1. For determining whether and by whom investment advice was provided, is it primarily relevant who gave/communicated the personal recommendation to the client, rather than who merely prepared/generated/transmitted the suitability statement through IT systems?

2. Should the suitability statement under MiFID II / Delegated Regulation (EU) 2017/565 be understood as documentation and rationale of a recommendation that has already been made, rather than as a constitutive element of “investment advice”?

3. Is it necessary, for the attribution of investment advice to a specific staff member, that the same staff member is technically able to create/approve/transmit the suitability statement, or can these steps be separated without changing the attribution of who “advised”?

ESMA_QA_2799

Submission Date
10/03/2026

Status: Question Rejected

Additional Information

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

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

Topic
Suitability

Additional Legal Reference
MiFID II 2014/65/EU (Art. 16, 25); Reg. (EU) 2017/565 (Art. 54); ESMA/2015/1886 (rev.) (paras 4(j), 19, 20(d)-(g)).

Subject Matter

Attribution of investment advice in split or system-supported workflows (personal recommendation vs suitability statement)

Question

In practice, investment firms may apply “tandem” or split workflows where one staff member conducts the client meeting, gathers the client’s circumstances and communicates/explains a concrete course of action to the client, while another staff member and/or a partly automated system performs the suitability assessment, approval and/or generates/transmits the suitability statement.

Against this background, could ESMA clarify, under MiFID II and relevant Level-2 measures, the EU-law criteria for determining whether the staff member who leads the client interaction and explains the recommendation is already providing investment advice, or whether that activity can be regarded as acting under supervision?

In particular:

1. For the attribution of investment advice, is the decisive element who communicates the personal recommendation to the client, rather than who technically generates/approves/transmits the suitability statement?

2. In split workflows, what organisational minimum features are expected to evidence “under supervision” (e.g. explicit assignment of the supervisory role, timely intervention capability, documented review/approval/sign-off), where the supervised staff member communicates the personal recommendation?

ESMA_QA_2794

Submission Date
03/03/2026

Status: Answer Published

Additional Information

Level 1 Regulation
Securities Financing Transactions Regulation (SFTR) Regulation (EU) 2015/2365-MDP

Topic
* SFTR Art. 4

Subject Matter
Updating the Loan Value and Security Price Fields following lifecycle events

Question
For securities lending and borrowing transactions, should Field 2.49 – ‘Security or Commodity Price’ and Field 2.56 – ‘Loan Value’ be updated and reported whenever

mark-to-market adjustments are agreed between counterparties?

ESMA Answer

03-03-2026

Original language

Yes, Field 2.49 – ‘Security or Commodity Price’ and Field 2.56 – ‘Loan Value’ should be updated whenever a lifecycle event occurs, including mark-to-market adjustments agreed between counterparties.

Under SFTR, ‘Cash Marks’ and ‘Fee Marks’ are considered as lifecycle events and must be reported using action type ‘MODI’. When counterparties adjust the loan value to reflect market price movements, the corresponding reports should be amended to reflect the updated values.

This is consistent with ESMA’s guidance in Table 6 of Section 4.10 (*‘Mapping business events to action types and levels’*) of the Guidelines on reporting under SFTR, which identifies cash marks and fee marks (events #22 and #23) as business events which allow a MODI report.

ESMA_QA_2792

Submission Date
03/03/2026

Status: Question Rejected

Additional Information

Level 1 Regulation
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

Topic
ICT third-party risk management

Historic Question Reference
2024_7290 Definition and scope of ICT services

Subject Matter
is Mastercard Schemes Network ICT service?

Question

Is Mastercard Schemes Network ICT service?

ESMA_QA_2791

Submission Date
26/02/2026

Status: Question Rejected

Additional Information

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

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

Level 3 Regulation
ESMA/2015/1886 - Guidelines - Assessment of knowledge and competence (MiFID)

Topic
Suitability

Historic Question Reference

follow-up to ESMA email ref. 26-0343 + Submitted Question (ESMA_QA_2790)

Additional Legal Reference
ESMA Guidelines ESMA/2015/1886 (rev.), paras. 4(j), 19, 20(c)-(g); MiFID II (Directive 2014/65/EU), Art. 16(2) and 16(6), Art. 25(1), Art. 25(2), 25(6) and 25(9); Commission Delegated Regulation (EU) 2017/565, Art. 54 and Art. 72.

Subject Matter
Records / audit trail / digital workflows / use of user credentials / Record-keeping and audit trail for “under supervision” in digital/segregated advisory workflows

Question
I would like to request a general clarification on the interpretation of the ESMA Guidelines ESMA/2015/1886 (rev.) regarding record-keeping requirements for “under supervision” (in particular paragraphs 19, 20(c) and 20(g)).

In practice, client communication, suitability documentation and system completion are often performed in a segregated and digital manner (e.g. different staff members involved in the client interaction, documentation and approval). This raises, in particular, the following questions:

1. Minimum requirements for records / traceability
What minimum requirements arise from the Guidelines regarding records to enable the competent authority to verify that supervision actually takes place and is carried out to an appropriate extent?

2. Objective evidence of assumption of responsibility
Is the mere formal naming of a qualified person in the documentation (e.g. in the suitability statement) sufficient, or do the Guidelines expect objectively verifiable review/approval/sign-off evidence?

3. Digital processes / segregated documentation

What requirements apply in digital systems and segregated documentation workflows where client communication, suitability documentation and system completion are not carried out by the same person?

4. Use of user credentials / role awareness
How should “under supervision” be assessed under the Guidelines if user credentials of a qualified person are used for system documentation/system completion, but that person does not provide a conscious assumption of responsibility (review/approval/sign-off) or is not aware that they are intended to act as the supervisor?

ESMA_QA_2790

Submission Date
26/02/2026

Status: Question Rejected

Additional Information

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

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

Level 3 Regulation
ESMA/2015/1886 - Guidelines - Assessment of knowledge and competence (MiFID)

Topic
Suitability

Historic Question Reference

follow-up to ESMA email ref. 26-0343

Additional Legal Reference
ESMA Guidelines ESMA/2015/1886 (rev.), paras. 4(j), 19, 20(c)-(g); MiFID II (Directive 2014/65/EU), Art. 16(2) and 16(6), Art. 25(1), Art. 25(2), 25(6) and 25(9); Commission Delegated Regulation (EU) 2017/565, Art. 54 and Art. 72.

Subject Matter
“Under supervision” – responsibility, role awareness, real-time supervision, sign-off / “Under supervision” in investment advice: responsibility, role assignment and supervisory sign-off

Question
I would like to request a general clarification on the interpretation of the ESMA Guidelines ESMA/2015/1886 (rev.) regarding “under supervision” in the context of investment advice, in particular paragraphs 4(j), 19 and 20(d)–(g).

In practice, investment firms use supervision/tandem models in which a supervised staff member communicates the personal recommendation to the client, while a qualified/experienced person performs supervision and carries out documentation/approval steps.

Against this background, I kindly request clarification on the following points:

1. Real-time supervision vs. ex post review
Do the Guidelines typically require that, for “under supervision”, the supervisor is able to intervene in real time (e.g. by attending, listening-in/reading along, and having an immediate stop-go capability), or can an exclusively ex post review/approval be sufficient?

2. “Under the responsibility of” / “same responsibility”
How should the requirement be understood that the activity is performed “under the

responsibility of" a qualified/experienced person (para. 4(j)) and that the supervisor assumes "the same responsibility" (para. 20(g))?
Which organisational minimum features are typically expected where the supervised staff member communicates the personal recommendation to the client?

3. Explicit assignment and awareness of the supervisory role
Does "under supervision" require that the supervisory role is explicitly assigned and that both the supervised staff member and the supervisor are aware of their respective role, responsibilities and limits?

4. Conscious assumption of responsibility / sign-off
Is the signing of the suitability statement by the supervisor mentioned in para. 20(g) to be understood as a standard expectation (or, in digital processes, a functional equivalent such as a documented review/approval/sign-off)?
Is the mere presence of a qualified person without a conscious assumption of responsibility sufficient?

ESMA_QA_2785

Submission Date
23/02/2026

Status: Answer Published

Additional Information

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

Topic
Safeguarding of client assets

Subject Matter
Interests earned from client funds deposited at a credit institution

Question
Does MiFID II permit investment firms to earn interest on client funds deposited in a savings account at a credit institution?

ESMA Answer

21-09-2026

Original language

Answer provided by the European Commission

No. In order to protect an investor’s rights in respect of funds entrusted to a firm, Article 16 (9) of Directive 2014/65/EU of the European Parliament and of the Council (MiFID II) stipulates that an investment firm holding client funds shall make adequate arrangements to safeguard the rights of clients and prevent the investment firm’s use of client funds for its own account. The investment firms’ obligation under Article 16 (9) of MiFID II not to use clients’ funds for its own account includes the obligation for the investment firms not to retain any interest accrued from those funds (deposited in an account with a credit institution).

ESMA_QA_2784

Submission Date
23/02/2026

Status: Answer Published

Additional Information

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

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

Topic
Remuneration

Subject Matter
MiFID II remuneration rules applicable to tied agents

Question

1. Does a tied agent have to be remunerated with both a variable component of remuneration (based on the actual activities performed by the tied agent, i.e., dependent on performance) and a fixed component of remuneration, as stipulated in Article 27 of Regulation (EU) 2017/565?

2. Would the answer to the first question change if the tied agent is engaged by a person falling under Article 3 of the MiFID II Directive, i.e., assuming that a Member State adopts this optional exemption under Article 3 of the MiFID II Directive and incorporates it into its national legislation?

ESMA Answer

23-02-2026

Original language

1. Tied agents of investment firms are in scope of the definition of “relevant persons” of Article 2(1) of Delegated Regulation 2017/565 and, as such, the requirement in the second subparagraph of Article 27(4) of the same regulation to maintain for relevant persons a balance between fixed and variable remuneration also applies to them.?

Recital 41 of Delegated Regulation 2017/565 confirms that “*Relevant persons should also include tied agents.”* However, it introduces some flexibility in the application of the remuneration requirements applicable to “relevant persons” due to tied agents’ special status and national specificities applicable to it: “*When determining the remuneration for tied agents, firms should take the tied agents' special status and the respective national specificities into consideration. However, in such cases, firms' remuneration policies and practices should still define*

appropriate criteria to be used to assess the performance of relevant persons, including qualitative criteria encouraging the relevant persons to act in the best interests of the client."

This recital should be understood as permitting the variable remuneration of tied agents of investment firms to represent a larger part of the remuneration than other categories of relevant persons, while the fixed component, when compatible with national laws, remains sufficient to ensure that the interests of the investment firm or its relevant persons are not favoured to the detriment of the interests of clients.

2. While ESMA acknowledges that the implementation of the exemption under Article 3 of MiFID II is a national discretion, it notes that Member States making use of this exemption shall submit the "exempted" persons to requirements which are at least analogous with the requirement in paragraph 2 which includes the requirements on remuneration of tied agents under Article 27 of Regulation (EU) 2017/565.

ESMA_QA_2779

Submission Date
16/02/2026

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic
EU-CCPs

Additional Legal Reference
Article 7a

Subject Matter
AAR threshold calculation

Question

In calculating the second AAR condition under Article 7a(1) of EMIR, should only cleared interest rate derivatives be included, or both cleared and uncleared?

ESMA Answer

27-02-2026

Original language

In accordance with Article 7a(2) of EMIR, for the purpose of calculating the second condition under Article 7a(1), a counterparty belonging to a group subject to consolidated supervision in the Union shall only consider derivatives contracts cleared by that counterparty or by other entities within the group, with the exception of intragroup transactions.

ESMA_QA_2778

Submission Date
16/02/2026

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic
EU-CCPs

Additional Legal Reference
Article 7a(3)

Subject Matter
AAR stress testing

Question

In accordance with Article 7a(4) of EMIR, the AAR requirements set out under points (a), (b), and (c) of Article 7a(3) shall be “regularly stress-tested at least once a year”. In relation to the stress-testing referred to under Article 7a(4) of EMIR:
- Should the stress testing apply to three times the trade count or to the gross notional value cleared?
- Should the stress testing apply for each type of products under Article 6 of Commission Delegated Regulation (EU) 2026/305, or at subcategories or account level ?
- What is the timeline for the first annual stress test?

ESMA Answer

27-02-2026

Original language

In accordance with Article 7a(4) of EMIR, the AAR operational requirements should be "stress-tested at least once a year". Accordingly, Article 3(2) of Commission Delegated Regulation (EU) 2026/305 requires the tests to take place annually.

On this basis, it is understood that the active accounts should be stress tested for the first time no later than one year following the entry into application of the active account requirement, hence before 24 June 2026.

The first reporting including the results of these stress tests is expected in July 2026.

Furthermore, Article 2 of Commission Delegated Regulation (EU) 2026/305 clearly specifies that stress testing must consider a three-fold increase of the gross notional

value cleared respectively:

- By the CCP (point (c) of Article 2(1) of Commission Delegated Regulation (EU) 2026/305)
- In the active account by the counterparty (point (d) of Article 2(1) of Commission Delegated Regulation (EU) 2026/305)

Finally, Article 2(1)(d) of Commission Delegated Regulation (EU) 2026/305 further requires demonstrating that the counterparty or clearing service provider has the operational capacity to clear up to "*three times the gross notional value cleared in the account by the counterparty".*

It is therefore understood that where a counterparty has three different accounts (e.g. for EUR OTC IRD, PLN OTC IRD and EUR STIR), the three accounts should be stress tested separately.

ESMA_QA_2777

Submission Date
16/02/2026

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic
EU-CCPs

Additional Legal Reference
Article 7a

Subject Matter
AAR representativeness obligation

Question

When and how should a counterparty comply with the representativeness obligation and subsequent reporting when it reaches the EUR 6 billion threshold for the first time?

ESMA Answer

27-02-2026

Original language

Counterparties must monitor their positions on a continuous basis against the relevant thresholds. Therefore, a counterparty subject to the AAR becomes subject to the representativeness obligation as soon as it reaches the EUR 6 billion threshold in the relevant categories referred to in Article 7a(6) of EMIR.

As a result, the first reporting is expected to be submitted at the next reporting date (either January or July, whichever is sooner).

However, it is recognised that full compliance with the representativeness obligation (i.e. clearing 5 trades on a yearly average in the account) can only be demonstrated once a complete year has passed.

ESMA_QA_2776

Submission Date
16/02/2026

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic
EU-CCPs

Additional Legal Reference
Article 7a

Subject Matter
AAR representativeness obligation

Question

Are counterparties immediately relieved from the representativeness obligation, including reporting, when they no longer meet the EUR 6 billion threshold set out under Article 7a(4) of EMIR?

ESMA Answer

27-02-2026

Original language

The representativeness obligation, including reporting, ceases to apply as soon as a counterparty no longer meets the EUR 6 billion threshold set out under Article 7a(4) of EMIR.

However, to enable NCAs to verify compliance, a counterparty must still submit the reporting covering the last period during which it was subject to the representativeness obligation.

Counterparties must keep monitoring their positions on a continuous basis against the relevant thresholds.

ESMA_QA_2775

Submission Date
16/02/2026

Status: Answer Published

Additional Information

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

Level 3 Regulation
Guidelines on Alternative Performance Measures

Topic
Alternative Performance Measures (APM)

Subject Matter
Interaction of the APM Guidelines with IFRS 18 Presentation and Disclosure in Financial Statements; APM Guidelines and paragraphs 117 to 125 of IFRS 18

Question

How should an issuer present alternative performance measures in light of the IFRS 18 Presentation and Disclosures in Financial Statements? Which are the main differences between the scope and requirements of the APM Guidelines and IFRS 18?

ESMA Answer

16-02-2026

Original language

While it is expected that IFRS 18 impacts primarily the financial statements of issuers, this Q&A focuses solely on the interaction between the IFRS 18 requirements and the ESMA Guidelines on Alternative Performance Measures (APM Guidelines). In particular, it provides insights into the main differences in concepts, scope and principles between 'Management-defined Performance Measures (MPMs)' under IFRS 18 and alternative performance measures (APMs) as defined in the APM Guidelines. This Q&A also provides guidance on how issuers may ensure compliance with the APM Guidelines in light of the new requirements introduced by IFRS 18 **(effective on 1 January 2027)**.

ESMA notes that the APM Guidelines are still fit for purpose and will continue to fully apply after IFRS 18 enters into force. In the following sections, ESMA highlights the most relevant similarities and differences that issuers should take into account when complying with the APM Guidelines, considering the requirements arising from IFRS 18.

1.1. Measure location (where the measures are disclosed):

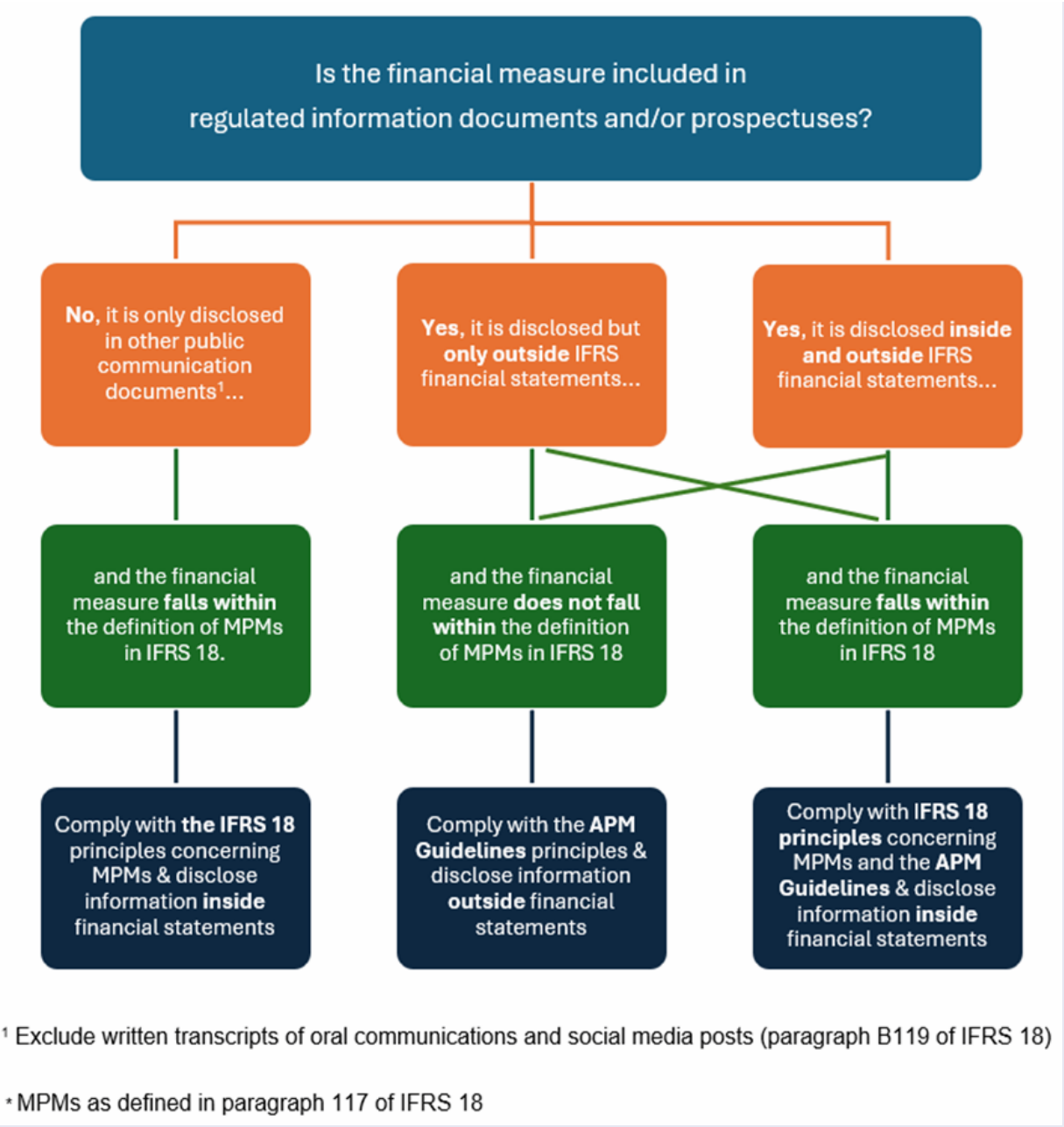
ESMA highlights that the application scope of the APM Guidelines and IFRS 18 requirements is different:

- **The APM Guidelines** apply to regulated information[1] (e.g. ad-hoc disclosures published under Article 17 of MAR[2] and management reports published pursuant to the Transparency Directive) and prospectuses drawn up in accordance with the Prospectus Regulation[3].

- **IFRS 18** requires issuers to disclose, inside the financial statements, subtotals of income and expenses that are, among other criteria[4], used in public communications.

The concept of public communications included in IFRS 18 is generally broader than the scope of application of the APM Guidelines, as it may also include measures contained in documents that are not covered by MAR, TD or PR[5] (e.g. websites of the issuer and other communication documents) [6]. Hence, when assessing the application of IFRS 18 and its interaction with the APM Guidelines, issuers may need to consider if all measures used in the different communication documents meet the definition of an MPM.

The following flow-chart illustrates the different compliance scenarios that apply based on the location[7] of the measure:



[1] Exclude written transcripts of oral communications and social media posts (paragraph B119 of IFRS 18)

* MPMs as defined in paragraph 117 of IFRS 18

1.2. Definition of APM vs MPM

Both IFRS 18 as well as the APM Guidelines include broad definitions of APMs and MPMs. These definitions are intended to capture a broad range of measures that are (i) in the case of IFRS 18, not specifically required to be presented or defined by

IFRS Accounting Standards; and (ii) in the case of the APM Guidelines, not defined or specified by the applicable financial reporting framework or by any other legislation. ESMA highlights, however, the following:

APMs under the APM Guidelines	MPMs under IFRS 18
The APM Guidelines apply to measures calculated based on figures determined by any financial reporting framework, including national GAAPs and IFRS. They cover performance, position, and cash-flow measures (e.g. ratios, net debt, segment data) that: - are not defined or specified in the applicable financial framework or other legislation, - are presented outside the financial statements, and - are disclosed within regulated information documents and/or prospectuses.	IFRS 18 defines MPMs as a subtotal of income and expenses that is used to communicate to investors management's view of an aspect of the financial performance of the company **as whole** and it is **not listed in IFRS 18** or **specifically required** by IFRSs. These may include measures that are presented on the face of the statement of the profit or loss.

Based on the above types of measures covered, generally MPMs represent a subset of APMs as defined by the APM Guidelines. When assessing which principles and requirements are applicable, issuers should verify where the performance measure is disclosed and whether it meets the definitions of MPMs and/or APMs. Depending on this assessment, issuers may need to assess where

the applicable disclosures should be included. Notably:

1. if measures are MPMs but are not disclosed within regulated information documents, all the applicable disclosures **should be included inside financial statements** as required by IFRS 18 (in a single note), or

2. if measures are MPMs, fall within the scope of the definition of an APM and are included in regulated information documents and/or prospectus, the principles of the APM Guidelines and IFRS 18 apply. **Please refer to section 1.3 of this Q&A and to Q&A #1868 on the APM Guidelines, regarding the location of the applicable disclosures and other principles, or**

3. if measures fall within the definition of an APM pursuant to the APM Guidelines, are disclosed in documents under the scope of the APM Guidelines and are not MPMs - the applicable disclosures should be provided **outside financial statements**.

Finally, ESMA notes that **IFRS 18 does not define 'earnings before interest, tax, depreciation and amortisation' (EBITDA)**. However, the Standard specifically lists 'operating profit or loss before depreciation, amortisation and impairments' within the scope of IAS 36' (OPDAI) which may provide similar information to many of the EBITDA measures currently used. Therefore, if EBITDA does not accurately describe the corresponding measure (e.g., an issuer, applying classification requirements of IFRS 18 correctly, has no income and expenses in the investing category and no interest income in the operating category)[8], this measure is both MPM and APM and issuers should comply with the relevant principles in IFRS 18 and the APM Guidelines.

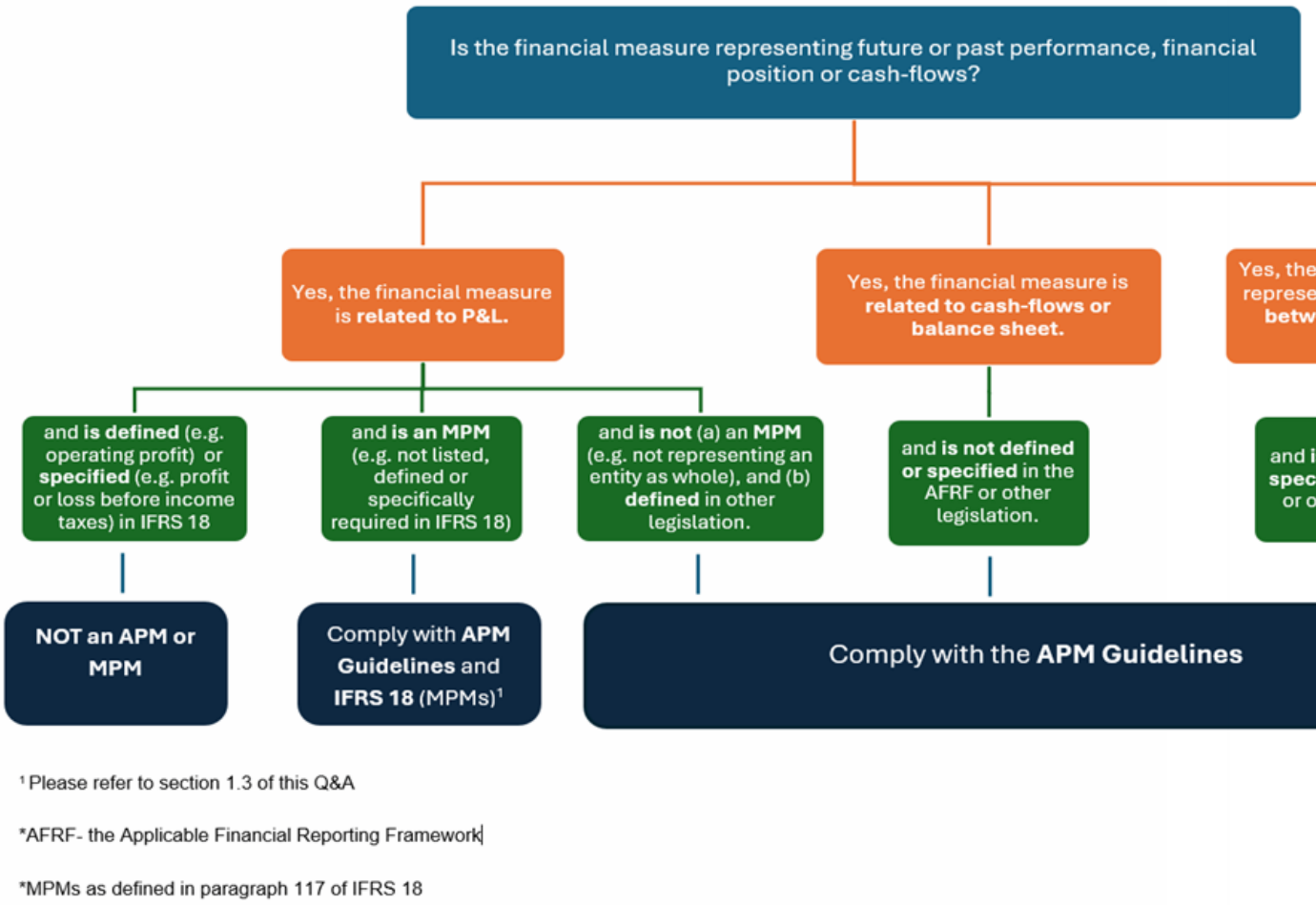
1.2.1 Measures specified (listed) in IFRS 18

Subtotals of income and expenses that are specifically required to be presented or disclosed by IFRS Accounting Standards as well as those listed in paragraph 118 or

B123 of IFRS 18 do not meet the definition of an MPM. Generally, these measures also do not fall within the scope of the APM Guidelines as they are defined or specified in the applicable financial reporting framework (i.e., IFRS Accounting Standards). Totals and subtotals specified by IFRS 18 (i.e. not meeting the definition of MPMs and APMs) include: operating profit, profit before financing and income taxes, operating profit or loss and all income and expenses classified in the investing category, profit or loss before income taxes, profit or loss from continuing operations.

Issuers should, however, be cautious as **any deviation from** the application of IFRS 18 requirements regarding the calculation of such measures (e.g. excluding or including any expenses or income items that are not in line with paragraphs 118 or B123 of IFRS 18) may lead to the application of the APM Guidelines (if these measures are presented outside financial statements and within regulated information documents or prospectuses).

The following flow-chart illustrates different scenarios where the financial measure may be in the scope (definitions) of the APM Guidelines only, IFRS 18 only or both:



[1] Please refer to section 1.3 of this Q&A

*AFRF- the Applicable Financial Reporting Framework

*MPMs as defined in paragraph 117 of IFRS 18

1.3. Application of the APM Guidelines to MPMs (What to disclose)

ESMA acknowledges that the principles included in IFRS 18 requiring additional disclosure of information in relation to MPMs are generally consistent with the principles included in the APM Guidelines requiring additional disclosure of information in the context of APMs. Therefore, it is not expected that the introduction of IFRS 18 will increase the reporting burden related to the measures that are currently in scope of the APM Guidelines. However, ESMA highlights key differences to consider:

1. **Timing:** IFRS 18 requires issuers to disclose information such as reconciliations, explanations, definitions concerning MPMs in IFRS financial statements when the financial statements are published. Conversely, the APM Guidelines require similar disclosures when these measures are disclosed to the public, i.e., the disclosures required by the APM Guidelines **should generally be provided at the same time and in the same document where the APM is disclosed** (regulated information documents and/or prospectuses). Please refer to **d)** below regarding compliance by reference principle.

2. **Reconciliations:** the principles included in the APM Guidelines **do not require** the disclosure of the income tax effect and the effect on non-controlling interests for each item included in the reconciliation between APMs and figures included inside financial statements. IFRS 18 requires such disclosure when a given measure meets the definition of an MPM. Furthermore, IFRS 18 requires a reconciliation between the MPM and the most directly comparable subtotal listed in paragraph 118 or total or subtotal specifically required to be presented or disclosed by IFRS. While this requirement is not fully aligned with the principle included in the APM Guidelines in paragraph 26, if issuers apply the reconciliation requirements in IFRS 18, they will also comply with the reconciliation requirements in the APM Guidelines.

3. **Prominence:** According to the APM Guidelines, APMs should not be displayed with more prominence, emphasis or authority than measures directly stemming from financial statements. Considering IFRS 18's entry into force and the new concept of MPMs (which requires certain information to be included in the notes to IFRS Financial Statements), ESMA highlights that issuers **should not display any APMs** (including measures that meet the definition of an MPM) with more prominence, emphasis or authority **than**

measures defined or specifically required by IFRS. I.e., if issuers disclose APMs (including MPMs) in regulated information documents and prospectuses, issuers should also include in these documents, measures defined by IFRS with, at least, equal prominence.

4. **Compliance by reference:** while IFRS 18 requires issuers to disclose all information on MPMs in one note to the financial statements, the APM Guidelines do not set specific requirements as to where and how such disclosures should be provided, allowing issuers to comply by reference[9] (i.e., issuers are not required to include all the information prescribed in the APM Guidelines in the same document where an APM is disclosed provided that the **issuer includes a direct reference to other documents previously published** which contain this information and are readily and easily accessible to users).

   Where APMs are simultaneously MPMs, issuers may use the compliance by reference principle to direct users to the information included in a specific note to the published IFRS financial statements (where these disclosures - e.g. reconciliations, explanations - are included). This procedure may avoid repetition of (some of) the information (i.e. issuers may not need to disclose twice the same information e.g. in the financial statements and in the regulated information documents). However, ESMA notes that there are limits for the compliance by reference, in this respect, please refer to **Q&A #1876 on the APM Guidelines.**

   Finally, ESMA notes that prospectuses are covered by a separate regime for incorporation by reference as provided under Article 19 of Regulation (EU) 2017/1129, which includes a specific list of the types of documents (which includes financial statements) from which information can be incorporated by reference into a prospectus.

To the extent that the relevant disclosures (e.g., reconciliations and explanations) are included in a document from which information can be incorporated by reference into a prospectus, ESMA considers that this information should be incorporated by reference into the issuer's prospectus in accordance with Article 19.

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[1] As defined in Article 2 (k) of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (Transparency Directive or TD).

[2] Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (Market Abuse Regulation or MAR).

[3] Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (Prospectus Regulation)

[4] See paragraph 117 of IFRS 18 for further div.

[5] See paragraphs B119 – B122 of IFRS 18 for further div.

[6] Please note that measures disclosed in social media posts are outside the scope of IFRS 18.

[7] This flow-chart does not address the differences in the definitions of APM & MPM (please refer section 1.2).

[8] See paragraphs BC363-365 of Basis for Conclusions on IFRS 18.

[9] Where compliance by reference is permitted or possible (Paragraph 45 of the APM Guidelines).

ESMA_QA_2770

Submission Date
12/02/2026

Status: Question Rejected

Additional Information

Level 1 Regulation
Undertakings for Collective Investment in Transferable Securities Directive (UCITS) Directive 2009/65/EC

Level 2 Regulation
UCITS - Directive 2010/43/EU on organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company

Level 3 Regulation
Performance Fees - Guidelines on performance fees in UCITS and certain types of AIFs - ESMA34-39-968

Topic
Costs and fees

Historic Question Reference
ESMA_QA_774

Additional Legal Reference
Guidelines on performance fees in UCITS and certain types of AIFs - 05/11/2020 | ESMA34- 39-992 EN - paragraph 29

Subject Matter
interpretation of the condition "... as long as this would be in the investor's best interest (i.e. it would result in the investor paying less fees)."

Question
May I ask you for further clarification of your answer to ESMA_QA_774.

Q1 :
The example in your answer shows the very specific example of deducting the performance fee from excess
performance before calculating the performance fee. The example is not the the normal calculation described
in the first bullet point where the performance fee is not deducted from excess performance for calculating
the performance fee. Correct?

Q2:
The normal calculation described in the first bullet point where the performance fee is not deducted from
excess performance for calculating the performance fee means that also a possible performance fee accrued
until the day before (D-1) is not deducted from excess performance because otherwise the mathematical
incorrectness which I described in my question still exists for the current performance fee calculation period

(usually the fiscal year of the fund) with the false result just not including the false effect for the day of
calculation (D). Correct?

Q3
In your answer you formulated the example where the performance fee is deducted from excess performance
for the calculation of the performance fee as follows:
EXAMPLE: According to the prospectus, the Management Company will receive a performance fee, equivalent
to 9% of the positive net earnings of the fund.
However, as you showed in your mathematical expression the actual, resulting performance fee is not 9% but
8,26%. As I mentioned in my question normal business as well as legal understanding of "x% of something"
always means that the result of x% is not deducted from the something before calculating the "final" x%.
Wouldn't the a.m. wording of the example be the right description for the performance fee calculation
without deducting the performance fee from the earnings before calculating it; and the correct wording for
the mathematical expression you showed rather be for example the Management Company will receive a
performance fee, equivalent to 9% of the positive net earnings of the fund after that performance fee is
deducted from the net earnings so that the actual performance fee is 8,26%?

ESMA_QA_2769

Submission Date
12/02/2026

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
MiCA

Topic
Market abuse in crypto-asset market

Subject Matter
Personal scope of persons professionally arranging or executing transactions under MiCA

Question
What entities should be considered as Persons Professionally Arranging or Executing Transactions (PPAETs) for the obligation to prevent, detect and report

market abuse or attempted market abuse under Article 92(1) of MiCA?

ESMA_QA_2754

Submission Date
22/01/2026

Status: Forwarded to EC/Public Consultation/Other

Additional Information

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

Topic
Notifications of major shareholdings

Historic Question Reference
Relates to Question 2684

Additional Legal Reference
Article 13, 13 (a) and Article 10

Subject Matter

Major holdings notification – definition of indirect holding

Question

The question refers to the interpretation of the meaning of indirect holdings of other financial instruments (Article 13) for the purpose of aggregated notification (Article 13a).

National Competent Authorities request that the European Commission clarify the meaning of ‘indirect holding’ in the context of financial instruments other than shares (i.e., securities providing voting rights).

The TD explicitly specifies, under Article 10, the different cases of indirect holdings of voting rights that are subject to notification.

In the case of financial instruments not granting voting rights (Article 13 and its reference in Article 13a) there is, however, no explicit definition of those cases of indirect holdings; and no explicit link to Article 10.

National Competent Authorities have raised questions about the precise definition of indirect holdings in this context—specifically, whether a full “look?through” approach must always be applied, or whether the limitation to the look?through approach set out in paragraph 10(e) also applies to financial instruments. In particular, it is unclear whether financial instruments held by a third party in its own name but on behalf of the person or entity concerned—such as those described in paragraph 10(g)—should be excluded.

ESMA_QA_2753

Submission Date
21/01/2026

Status: Answer Published

Additional Information

Level 1 Regulation
Prospectus Regulation 2017/1129

Topic
Public offer

Subject Matter
Prospectus exemption

Question
Is the exemption referred to in Article 1(5), point (ba), of Regulation (EU) 2017/1129 (the Prospectus Regulation) applicable in the case of a reverse acquisition within the meaning of paragraph B19 of IFRS 3, Business Combinations, adopted by

Commission Regulation (EC) No 1126/2008?

ESMA Answer

15-09-2026

Original language

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

No. Recital 13 of Regulation (EU) 2024/2809 clarifies that the intention of the exemption referred to in Article 1(5), point (ba), of the Prospectus Regulation is to allow companies already listed on a regulated market – and thus subject to disclosure requirements under Regulation (EU) No 596/2014 (Market Abuse Regulation (MAR)) and Directive 2004/109/EC (Transparency Directive (TD)) – to be exempt from the obligation to publish a prospectus for the admission to trading on a regulated market of securities fungible with securities already admitted to trading. This is justified because most of the content of such prospectus would already have been publicly available, enabling investors to trade on the basis of that information. Furthermore, the issuer of fungible securities falling under the exemption set out in Article 1(5), point (ba), is required to include a statement of compliance with reporting and disclosure obligations under MAR and TD in the document to be filed with the competent authority on the basis of Annex IX of the Prospectus Regulation. Should that exemption apply to issuers in the case of a reverse acquisition, those compliance statements would be irrelevant, as, after the reverse acquisition, the listed company would be materially different in economic terms, hence investors would not be able to rely on those disclosures. It then

follows that, to adhere to the legislative intent of the Prospectus Regulation and allow for informed decision making by investors, the exemption referred to in Article 1(5), point (ba) of the Prospectus Regulation should not apply in the case of a reverse acquisition within the meaning of paragraph B19 of IFRS 3, Business Combinations, as it would prevent the investor from accessing sufficient information.

Disclaimer:

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are 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.

ESMA_QA_2747

Submission Date
05/01/2026

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation 2020/1503 - European crowdfunding service providers for business

Topic
Control functions (Compliance, Risk and Audit)

Additional Legal Reference
Article 5

Subject Matter
Due diligence

Question

How should the due diligence requirements set out in Article 5(2) of the ESCPR be applied by CSPs?

ESMA Answer

05-01-2026

Original language

Article 5 of the ECSPR requires CSPs to undertake at least a minimum level of due diligence in respect of project owners proposing their projects to be funded through their crowdfunding platform.

Points (a) and (b) of Article 5(2) of the ECSPR provide a list of evidence that a CSP needs to obtain from project owners as part of its minimum due diligence requirements.

ESMA believes that CSPs should comply with the provisions set out in point (a) and point (b) mentioned above with regard to all project owners who propose their projects to be funded through their crowdfunding platform regardless of whether a project owner is in the form of natural or legal person.

For point (b)(*), the provisions of Directive 2015/849, and especially Recital 29, support an application of the provision to project owners both in the form of a legal person or a natural person.

In relation to point (a) of Article 5(2) of the ECSPR, the same approach shall be followed. CSPs are therefore expected to ensure that, if the project owner is a legal person, the evidence of the lack of criminal records is provided in relation to the legal person, as well as in relation to shareholders who directly or indirectly hold 20% or more of the legal person's share capital or voting rights, each member of the legal person's management body (**), including persons who effectively direct its business (***).

_____

Footnotes

(*) According to which CSPs shall obtain evidence that the project owner is not established in a non-cooperative jurisdiction, as recognised by the relevant Union policy, or in a high-risk third country pursuant to Article 9(2) of Directive (EU) 2015/849 (AML Directive).

(**) In line with what is established under other EU legislative acts (such as MiFID II (directive 2014/65/EU), and CRD (Directive 2013/36/EU)), 'management body' should be intended as the body or bodies of an entity, which are appointed in accordance with national law, which are empowered to set the entity's strategy, objectives and overall direction, and which oversee and monitor management decision-making and include persons who effectively direct the business of the entity.

(***) This reference should be intended as concerning those persons who effectively direct the business of a project owner, irrespective of whether or not they are members of the management or administrative organ appointed in accordance with national company law.

ESMA_QA_2746

Submission Date
05/01/2026

Status: Question Published

Additional Information

Level 1 Regulation
MiCA

Topic
Crypto-Asset Service Provider (CASP)

Subject Matter
CASP Group Structure under MiCA

Question
Under the MiCA framework, can a group structure be set up whereby a non-regulated holding acts as the principal commercial counterparty towards customers (including entering into customer contracts, maintaining customer relationships, and

issuing invoices), while a licensed Crypto-Asset Service Provider (CASP) within the same group (daughter company) performs and executes the regulated crypto-asset services?
In such a structure, would it be permissible for the CASP to provide the regulated services without directly contracting with, or invoicing, the end customers, provided that all MiCA requirements (including governance, outsourcing, conflict of interest, and conduct of business rules) are appropriately met?

ESMA_QA_2742

Submission Date
19/12/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Prospectus Regulation 2017/1129

Topic
Public offer

Subject Matter
Prospectus QA exemption

Question
Do subscription rights fall under the exemptions in Article 1(5)(a) and (ba) of the Prospectus Regulation?

ESMA Answer

19-12-2025

Original language

Yes, subscription rights fall under these exemptions provided they relate to shares which themselves qualify under these exemptions.

ESMA_QA_2741

Submission Date
19/12/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Prospectus Regulation 2017/1129

Topic
Public offer

Subject Matter
Prospectus Q&A exemption

Question
Is there an obligation to update a document drawn up in accordance with Annex IX of the Prospectus Regulation (PR) in relation to a significant new factor, material mistake or material inaccuracy relating to the information included in a document?

ESMA Answer

19-12-2025

Original language

No. Documents drawn up in accordance with Annex IX PR are not prospectuses. Therefore, Article 23 of the Prospectus Regulation on supplements does not apply.

ESMA_QA_2740

Submission Date
18/12/2025

Status: Answer Published

Additional Information

Level 1 Regulation
ESGR - Regulation (EU) 2024/3005

Topic
Temporary regime for small providers

Subject Matter
Small ESG rating provider no longer meeting temporary regime size requirements

Question
If an ESG rating provider established in the Union registered under the temporary regime ceases to meet the criteria in order to be categorised as a small undertaking, can it continue operating until it is authorised pursuant to Article 8?

ESMA Answer

18-12-2025

Original language

If a small ESG rating provider ceases to meet the criteria for the temporary regime, Article 5(3) of the Regulation applies, i.e. the ESG rating provider becomes subject to all provisions of the Regulation and must apply to ESMA for authorisation under Article 6 within six months.

The ESG rating provider remains listed in the register referred to in Article 14 and may continue providing services in the EU until its application has been examined by ESMA and a decision to grant authorisation adopted. In this instance, the register is updated to reflect that the ESG rating provider has become authorised in accordance with Article 8 and is no longer registered under the temporary regime for small ESG rating providers.

If it does not apply for authorisation within the six-month period or if ESMA decides to refuse authorisation, the ESG rating provider must immediately cease all activities and will be removed from the register of ESG rating providers.

ESMA_QA_2739

Submission Date
18/12/2025

Status: Answer Published

Additional Information

Level 1 Regulation
ESGR - Regulation (EU) 2024/3005

Topic
Temporary regime for small providers

Subject Matter
Content of temporary regime notification

Question
What information should a small ESG rating provider submit to ESMA for its assessment to determine whether to register a small ESG rating provider for the purposes of the temporary regime pursuant to Article 5(2)?

ESMA Answer

18-12-2025

Original language

ESMA will need to review, as a minimum, the annual audited financial statements and employment records of the notifying entity.

In the case of a newly established legal entity, projected figures may be used provisionally for ESMA's assessment. This may include founding accounts, business projections and “bona fide” estimates accompanied by managerial sign-off.

ESMA_QA_2738

Submission Date
18/12/2025

Status: Answer Published

Additional Information

Level 1 Regulation
ESGR - Regulation (EU) 2024/3005

Topic
Temporary regime for small providers

Subject Matter
ESMA assessment of temporary regime notification

Question
Does ESMA’s assessment to determine whether to register a small ESG rating provider for the purposes of the temporary regime pursuant to Article 5(2) of Regulation (EU) 2024/3005 include the assessment of the notifying entity’s

compliance with the requirements of Article 15(1), (5) and (7), Articles 23 and 24 and Articles 32 to 37 of the Regulation?

ESMA Answer

18-12-2025

Original language

No. ESMA’s assessment is limited to verifying whether the notifier qualifies as a small undertaking or as a small group through the fulfilment of the quantitative criteria listed in Article 3(2), first subparagraph, or Article 3(5), first subparagraph of Directive 2013/34/EU, notably balance sheet total, net turnover and number of employees during the financial year.

ESMA_QA_2737

Submission Date
18/12/2025

Status: Answer Published

Additional Information

Level 1 Regulation
ESGR - Regulation (EU) 2024/3005

Topic
Temporary regime for small providers

Subject Matter
Group-affiliated small ESG rating providers

Question
Is a small ESG rating provider that is part of a medium-sized or large group eligible for the temporary regime under Article 5 of Regulation (EU) 2024/3005 when it is operating independently of the group’s resources and consolidated capacity?

ESMA Answer

18-12-2025

Original language

No. Particular attention must be paid to Recital 48, according to which ESMA should ensure that risks of circumvention of the Regulation are avoided, “particularly by preventing small undertakings within medium-sized or large groups according to the criteria laid down in Directive 2013/34/EU from benefitting from the temporary regime”.

The temporary regime was introduced to facilitate the market entry of smaller ESG rating providers by allowing them to benefit from more proportionate requirements for a three-year period.

ESMA_QA_2736

Submission Date
18/12/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Alternative Investment Fund Managers Directive (AIFMD) Directive 2011/61/EU

Level 3 Regulation
Liquidity stress testing - Guidelines on liquidity stress testing in UCITS and AIFs - ESMA34-39-882

Topic
AIFMD scope

Additional Legal Reference
Directive [EU] 2024/927 amending UCITS Directive and AIFM Directive with regard to the new liquidity management tools (LMTs) requirements for UCITS and open-ended AIFs coming into effect on 16 April 2026

Subject Matter

NEW LIQUIDITY MANAGEMENT TOOLS REQUIREMENTS FOR UCITS AND OPEN ENDED AIFS COMING INTO EFFECT ON 16 APRIL 2026: DOES THE SCOPE OF LMTs EXTEND TO NON-EU OPEN ENDED AIFs?

Question

The AIFMD II (Directive (EU) 2024/927), which will enter into effect on 16 April 2026 imposes a requirement on EU open ended alternative investment funds (EU AIFs) and UCITS to specify/include in their rules or instruments of incorporation two (2) liquidity management tools (LMTs), which are defined in the Annex V of the AIMFD II.

The AIFMD II is silent when it comes of the requirement of LMTs for non-EU open-ended AIFs such as Cayman Islands domiciled open-ended unit trusts. Can the ESMA provide clarifications on whether the requirement to choose two (2) liquidity management tools (LMTs) for open-ended EU AIFs apply also to non-EU open ended AIFs managed by an EU AIFM, even if those non-EU AIFs are not marketed in the Union?

ESMA Answer

18-12-2025

Original language

Dear Mr Biguma,

According to Article 2 of the AIFMD, the AIFMD applies to:

(a) EU AIFMs which manage one or more AIFs irrespective of whether such AIFs are EU AIFs or non-EU AIFs;

(b) non-EU AIFMs which manage one or more EU AIFs; and

(c) non-EU AIFMs which market one or more AIFs in the Union irrespective of whether such AIFs are EU AIFs or non-EU AIFs.

Therefore, following letter a), the AIFMD applies also to EU AIFMs that manage non-EU AIFs. This means that the obligation to select at least two LMTs also applies to EU AIFMs that manage non-EU AIFs, as these AIFMs are subject to the AIFMD.

We draw your attention to the fact that Article 16(2b) refers to 'AIFs' and not to 'EU AIFs'.

Thank you,

ESMA

ESMA_QA_2734

Submission Date
17/12/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Alternative Investment Fund Managers Directive (AIFMD) Directive 2011/61/EU

Level 2 Regulation
AIFMD - Regulation 231/2013 with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision

Level 3 Regulation
ESMA Guidelines on funds' names using ESG or sustainability-related terms (ESMA34-1592494965-657)

Topic
Funds' names

Subject Matter

Exclusion related to UNGC/OECD Guidelines

Question

For the purposes of applying the exclusions in the Guidelines, how should fund managers apply the exclusion referred to in Article 12(1)(c) of Commission Delegated Regulation (EU) 2020/1818 (i.e. “companies that benchmark administrators find in violation of the United Nations Global Compact (UNGC) principles or the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises”)?

ESMA Answer

19-12-2025

Original language

For the purposes of applying the exclusions referred to in paragraphs 16-18 of the Guidelines, the exclusion referred to in Article 12(1)(c) of Commission Delegated Regulation (EU) 2020/1818 should be considered to be applied by the fund manager itself, not by a benchmark administrator. Therefore, for the purposes of applying the Guidelines, the exclusion should be understood as follows: “companies that fund managers finds in violation of the United Nations Global Compact (UNGC) principles or the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises”.

ESMA_QA_2733

Submission Date
17/12/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Undertakings for Collective Investment in Transferable Securities Directive (UCITS) Directive 2009/65/EC

Level 2 Regulation
UCITS - Directive 2010/43/EU on organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company

Level 3 Regulation
ESMA Guidelines on funds' names using ESG or sustainability-related terms (ESMA34-1592494965-657)

Topic
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For the purposes of applying the exclusions in the Guidelines, how should fund managers apply the exclusion referred to in Article 12(1)(c) of Commission Delegated Regulation (EU) 2020/1818 (i.e. “companies that benchmark administrators find in violation of the United Nations Global Compact (UNGC) principles or the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises”)?

ESMA Answer

19-12-2025

Original language

For the purposes of applying the exclusions referred to in paragraphs 16-18 of the Guidelines, the exclusion referred to in Article 12(1)(c) of Commission Delegated Regulation (EU) 2020/1818 should be considered to be applied by the fund manager itself, not by a benchmark administrator. Therefore, for the purposes of applying the Guidelines, the exclusion should be understood as follows: “companies that fund managers finds in violation of the United Nations Global Compact (UNGC) principles or the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises”.

ESMA_QA_2719

Submission Date
11/12/2025

Status: Answer Published

Additional Information

Level 1 Regulation
ESGR - Regulation (EU) 2024/3005

Topic
48-hour rule

Subject Matter
Application of two working day notification period

Question
For the purposes of Article 15(12), does the obligation to notify the rated item or the issuer “at least two full working days before the first issuance of the ESG rating” apply exclusively to ESG ratings issued on or after 2 July 2026?

ESMA Answer

11-12-2025

Original language

The obligation to notify at least two full working days before the first issuance of the ESG rating applies to ESG rating issued on or after 2 July 2026.

For ESG ratings issued prior to 2 July 2026:

- If an ESG rating is updated or revised after 2 July 2026, it should be notified to the rated item for a fact-check at least once.

- If an ESG rating is updated or revised following a material change to its methodology after 2 July 2026, it should be notified to the rated item for a fact-check at least once.

In cases where corporate events such as an acquisition or spin-off of a new legal entity within the same group result in the assumption of responsibility for the methodology and portfolio of ESG ratings previously issued by another group entity, if no material changes to methodologies occur, this should not be treated as a new “first issuance” of those ratings. As such, no notification obligation arises under Article 15(12).

ESMA_QA_2718

Submission Date
11/12/2025

Status: Question Rejected

Additional Information

Level 1 Regulation
ESGR - Regulation (EU) 2024/3005

Topic
Disclosures to users of ESG ratings, rated items and issuers of rated items

Subject Matter
Contacting EU and non-EU sovereign issuers

Question
Q5 – Contacting EU and non-EU sovereign issuers

ESMA_QA_2717

Submission Date
11/12/2025

Status: Answer Published

Additional Information

Level 1 Regulation
ESGR - Regulation (EU) 2024/3005

Topic
48-hour rule

Subject Matter
Notifications without a designated contact

Question
How should ESG rating providers contact rated items in accordance with Article 15(12), when it is not in possession of a designated contact point for a rated item?

ESMA Answer

11-12-2025

Original language

ESG rating providers should take all reasonable steps to ensure that the rated item is successfully notified in accordance with Article 15(12). Where a designated contact point is not available, providers should use alternative contact channels that are sufficiently likely to bring the notification to the rated item’s attention. For example, investor relations, press office or, for sovereign issuers, the debt management office.

Providers should resort to publicly available contact div or generic corporate mailboxes only after taking reasonable steps to identify a more appropriate point of contact. Where such information cannot be identified, clear records should be maintained of the efforts undertaken to obtain it.

ESMA_QA_2716

Submission Date
11/12/2025

Status: Answer Published

Additional Information

Level 1 Regulation
ESGR - Regulation (EU) 2024/3005

Topic
48-hour rule

Subject Matter
Obligation to consider issuer feedback

Question
Is an ESG rating provider obliged to take onboard comments provided pursuant to Article 15(12)?

ESMA Answer

11-12-2025

Original language

No. Article 15(12) grants the rated item or the issuer an opportunity to inform the provider of potential factual errors prior to issuance; it does not create an obligation to amend the rating. However, the provider should carefully consider any comments received prior to issuance and retains responsibility for ensuring the quality and reliability of the rating.

ESMA_QA_2708

Submission Date
03/12/2025

Status: Question Rejected

Additional Information

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

Level 2 Regulation
Directive 2017/593 - MiFID II Delegated Directive

Topic
Inducements

Additional Legal Reference
ESMA 35-43-349 Q&A

Subject Matter

Inducements

Question

When an investment firm pays a third party (e.g law firms, accounting firms) any commission in connection with the provision of an investment service or ancillary service to the client must ensure that all the conditions set out in Article 24(9) of Directive 2014/65/EU and requirements set out in paragraphs 2-5 are met at all times. One of the requirements is that the fee and commission shall be considered to be designed to enhance the quality of the relevant service to the client if it is justified by the provision of an additional or higher level service to the relevant client, proportional to the level of inducements received. Which is responsible to enhance the quality of the relevant service to the client? The investment firm or the third party (e.g the law firms, the accounting firms)

ESMA_QA_2689

Submission Date
14/11/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic
EU-CCPs

Subject Matter
CCP / clearing-like activities

Question
In EMIR, a CCP is defined as a legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming

the buyer to every seller and the seller to every buyer. EMIR defines clearing as the process of establishing positions, including the calculation of net obligations, and ensuring that financial instruments, cash, or both, are available to secure the exposures arising from those positions. The definition of a CCP, however, seems to be fulfilled also by entities that are not authorised as CCPs, e.g. by firms acting as prime brokers. Prime brokers typically interpose themselves between the counterparties on a matched principal trading (MPT) basis. When they do this for markets for which it is customary to margin positions, they determine a net position on the basis of which they ask margin from their counterparties. With these activities it could be argued that prime brokers fulfil the definition of a CCP under EMIR. Another example of this are investment firms that operate an OTF offering MPT for derivatives (explicitly allowed under Article 20(2) of MiFID II).

Questions:

1. Is an authorisation as a CCP pursuant to Article 14 of EMIR mandatory for any legal person established in the Union meeting the definition of a “CCP” and providing “clearing services” in respect of financial instruments, or is it limited to entities offering clearing in OTC derivatives subject to the EMIR clearing obligation and/or in exchange-traded financial instruments? In this regard, is the intent of the legal entity (to offer clearing services as a CCP) relevant?

2. Are there other constitutive elements (e.g. intent, type of clients (retail/wholesale), loss mutualisation, unilateral margin) of the definition of “CCP”, apart from the “interposition”, i.e. becoming the buyer to every seller and the seller to every buyer, element (Article 2, point (1) of EMIR)?

3. What constitutes a “clearing service” in this context; should it be understood as “clearing” just as defined in Article 2, point (3) of EMIR or are there additional constitutive elements to be taken into account?

4. As regards the “interposition” element, where an investment firm (e.g. an OTF operator) executes transactions via matched principal trading (e.g. in accordance with Article 4(1), point (38), of MiFID II), do such matched principal trading transactions qualify as “interposition” (by the investment firm) for the purpose of the definition of a “CCP” pursuant to Article 2, point (1), of EMIR? If so, how would an investment firm (e.g. an OTF operator) using matched principal trading for the execution of transactions differ from a CCP?

5. Do CCP clearing services need to be performed by a separate legal entity from

other regulated functions (e.g. the investment firm function), or can one legal entity perform CCP clearing services together with other activities (not linked to clearing) such as investment firm services?

ESMA_QA_2684

Submission Date
04/11/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

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

Level 2 Regulation
Regulation 2015/761 on major holdings

Level 3 Regulation
The Transparency Directive

Topic
Notifications of major shareholdings

Additional Legal Reference
Article 13a Transparency Directive

Subject Matter

Major holdings notification - aggregation

Question

It is not clear whether a parent undertaking is required to aggregate an Entitlement to Acquire and/or Financial Instrument with Similar Economic Effect (collectively the “Article 13 Financial Instruments”) which its subsidiary undertaking holds indirectly. For instance, where a subsidiary owns share options having voting rights (i.e. an Article 13 Financial Instrument - article 13(1)(a)) in an issuer, but holds those share options through a trustee (therefore falling under article 10(g)), would the subsidiary’s ‘indirect’ control over the voting rights pursuant to the share options (registered in the name of the trustee) need to be aggregated by the parent?

The doubt arises because article 10 of the Transparency Directive which creates a list of cases where an indirect holding is said to arise cross-refers only to article 9 (i.e. to holdings of voting rights), and not to Article 13 Financial Instruments. Accordingly, there is doubt, whether the reference to “indirect” holdings of Article 13 Financial Instruments in article 13a(1) (regarding aggregation) should be interpreted with the plain English meaning of “indirect” which refers to a parent-sub relationship, or whether it should be extended to include all the forms of indirect ownership under article 10 of the Transparency Directive.

ESMA_QA_2675

Submission Date
28/10/2025

Status: Question Rejected

Additional Information

Level 1 Regulation
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

Topic
ICT third-party risk management

Additional Legal Reference
Art. 30, DORA

Subject Matter
Contractual agreement with ICT service providers

Question

Art. 30 (1) & (2) of DORA demand that financial institutions have signed contractual agreements with all their ICT service providers, in particular in Art. 30(2) &(3) the elements that shall be included in the contractual arrangements are listed.

Are ICT service providers permitted under DORA to charge the financial institutions "merely for signing" a DORA addendum or updated contractual arrangements in the framework of Art. 30, DORA?

ESMA_QA_2665

Submission Date
15/10/2025

Status: Question Rejected

Additional Information

Level 1 Regulation
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

Topic
Other DORA topics

Subject Matter
Classification of an Aifm under DORA regulation

Question
An AIFM with 4 employees and Sales Turnover and Assets of €2.7m is is categorised as SMALL enterprise?

ESMA_QA_2663

Submission Date
10/10/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Regulation (EU) 2019/2088 - Sustainable Finance Disclosure Regulation (SFDR)

Topic
Disclosures

Additional Legal Reference
Article 9(3) - Joint SFDR Q&A II.1

Subject Matter
Disclosure obligations under Article 9(3)

Question

The European Commission clarified in Q&A II.1 that, pursuant to Article 9(3) of SFDR, financial products tracking a Paris-aligned Benchmark (PAB) or a Climate Transition Benchmark (CTB) are deemed to make sustainable investments. Based on this clarification, can such financial products hold investments eligible under PAB/CTB requirements, which may, however, not qualify as sustainable investments within the meaning of Article 2(17) of SFDR under the relevant financial market participant's own methodology?

Can the clarification provided by Q&A II.1 also be extended to:

- Financial products disclosing under Article 9(3) of SFDR that apply all requirements of Commission Delegated Regulation (EU) 2020/1818 for PABs/CTBs, but that do not passively track such indices?
- Other types of financial products that have a reduction in carbon emissions as their objective and disclose under Article 9(3) of SFDR (i.e. without tracking a PAB/CTB or applying the requirements applicable to these indices)?

ESMA_QA_2662

Submission Date
10/10/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Regulation (EU) 2019/2088 - Sustainable Finance Disclosure Regulation (SFDR)

Topic
Disclosures

Additional Legal Reference
Art 2.1(b)

Subject Matter
Investment firms’ SFDR disclosure obligations

Question

In the case where a financial market participant, such as a fund manager (delegator), delegates the portfolio management of a fund to an investment firm (delegatee), is the delegatee investment firm subject to the same SFDR disclosure obligations for the portfolio management it performs for that fund as when it deals with discretionary portfolio management mandates with end investors?

ESMA_QA_2660

Submission Date
08/10/2025

Status: Answer Published

Additional Information

Level 1 Regulation
European Market Infrastructure Regulation (EMIR) Regulation (EU) No 648/2012-MDP

Topic
* EMIR Art.9 reporting

Subject Matter
Notification of Errors and Omissions related to exchange-traded derivatives involving multiple Entities Responsible for Reporting (‘ERRs’) managed by the same Management Company/AIFM

Question

In the case of exchange-traded derivatives (‘ETDs’), can reporting counterparties (which are in this case, their own ERRs) submit a single consolidated Errors and Omissions Notification?

ESMA Answer

08-10-2025

Original language

Yes. Where multiple ERRs are affected and these ERRs correspond to sub-funds or entities managed by the same Management Company/AIFM, a single consolidated Errors and Omissions Notification may be submitted for ETDs.

The updated Errors and Omissions Notification includes a Boolean indicator allowing reporting counterparties to specify whether the issue relates to ETDs involving multiple ERRs. Where this field is marked as ‘yes’, the notification should include the relevant div of all affected ERRs.

ESMA_QA_2655

Submission Date
26/09/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU-Investor Protection and Intermediaries

Topic
Best Execution

Subject Matter
Derivatives settled in stablecoins

Question
Can derivatives settled in stablecoins—namely asset-referenced tokens or electronic money tokens as defined in Article 3(6) and (7) of Regulation (EU)

2023/1114 on markets in crypto-assets (MiCA) - be classified as financial instruments under Section C of Annex I to Directive 2014/65/EU? More specifically, can such instruments be deemed to meet the criterion of derivatives settled in cash?

In addition, does EU legislation permit the use of unauthorised stablecoins – namely asset-referenced tokens and electronic money tokens that do not comply with Titles III and IV of MiCA – for the settlement of derivatives?

ESMA_QA_2654

Submission Date
25/09/2025

Status: Answer Published

Additional Information

Level 1 Regulation
MiCA

Topic
White paper

Additional Legal Reference
143(2)

Subject Matter
Offerors and CASPs' responsibilities with regards to white papers for Title II tokens admitted to trading prior to 30 December 2024

Question

What are the respective responsibilities of offerors, persons seeking admission to trading, operators of trading platforms and other CASPs mentioned in Article 66(3) of MiCA with regard to white papers for crypto-assets other than ARTs and EMTs that were admitted to trading prior to 30 December 2024?

ESMA Answer

14-10-2025

Original language

Article 143(2) of MiCA provides that "*by way of derogation from Title II, only the following requirements shall apply in relation to crypto-assets other than asset-referenced tokens and e-money tokens that were admitted to trading before 30 December 2024:*

a. Articles 7 and 9 shall apply to marketing communications published after 30 December 2024;

b. Operators of trading platforms shall ensure by 31 December 2027 that a crypto-asset white paper, in the cases required by this Regulation, is drawn up, notified and published in accordance with Articles 6, 8 and 9 and updated in accordance with Article 12"

For Title II crypto-assets admitted to trading prior to 30 December 2024, offerors and persons seeking admission to trading must therefore only comply with marketing rules. There is no white paper requirement.

Operators of trading platforms must, by 31 December 2027, ensure there is a white paper. In line with Article 66(3) of MiCA, they must also publish hyperlinks to any existing (registered) white papers.

Finally, the other CASPs referenced in Article 66(3) must only publish hyperlinks to any existing (registered) white papers. Where there are no such white papers, they do not have the responsibility to ensure they are produced.

If the crypto-asset is not available on a trading platform, there might not be a white paper for it even after 31 December 2027.

ESMA_QA_2648

Submission Date
19/09/2025

Status: Question Rejected

Additional Information

Level 1 Regulation
Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU-Investor Protection and Intermediaries

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

Level 3 Regulation
ESMA/2012/188 - Guidelines - Compliance function (MiFID)

Topic
Outsourcing

Additional Legal Reference
EBA/GL/2019/02 (EBA Guidelines)

Subject Matter

Outsourcing; Critical and important functions; Principle of Proportionality

Question

In light of the first subparagraph of Article 16(5) of Directive 2014/65/EU (MiFID II), as well as Article 2(3) and Article 30(1) of Commission Delegated Regulation (EU) 2017/565, can it be affirmed that where a management company has delegated to an entity the performance of crucial elements of the marketing of UCITS funds, including their registration and listing for marketing purposes, the activity of that entity in entering into brokerage and distribution agreements with third-party intermediaries for the purpose of marketing such funds constitutes outsourcing of a critical and important function?

Furthermore, and in the light of the EBA Guidelines on Outsourcing Arrangements (EBA/GL/2019/02), to what extent does the principle of proportionality guide the assessment carried out during the risk evaluation of such outsourcing arrangements? In particular, do factors such as the continuity and duration of the agreement with third-party intermediaries, the scope and materiality of the delegated tasks, and the frequency and regularity of such delegation have an impact on whether the relationship should be qualified as the outsourcing of a critical or important function under the above-mentioned instruments?

ESMA_QA_2646

Submission Date
18/09/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

Topic
ICT third-party risk management

Additional Legal Reference
28(6), 30(3)(e)

Subject Matter
Audit frequency limitations

Question
As DORA requires financial entities to pre-determine the frequency of audits and inspections on the basis of a risk-based approach, are financial entities not permitted to agree on a maximum audit frequency (e.g. once per year) with their ICT third-party service providers?

ESMA Answer

18-09-2025

Original language

DORA does not limit the financial entities in the way to implement the relevant audit requirements, including regarding the audit frequency. In case the contracts between the financial entities and their ICT third-party service providers would refer to a (maximum) audit frequency, the frequency shall be agreed by the financial entities (i.e., not imposed by the ICT third-party service providers) and shall not prevent the financial entities to implement the DORA audit requirements on a risk-based approach.

Therefore, financial entities shall also ensure that the contractual arrangements grant them the ability to carry out an audit on an ad-hoc basis when they find it necessary to comply with the DORA requirements (for example, in the event of doubts regarding the proper performance of the contract), without the clause on the audit frequency preventing it. If such conditions are met, the financial entities and

their ICT third-party service providers may agree on an audit frequency in their contracts.

ESMA_QA_2645

Submission Date
17/09/2025

Status: Question Rejected

Additional Information

Level 1 Regulation
Packaged Retail and Insurance-based Investment Products Regulation (PRIIPS) Regulation (EU) No 1286/2014

Level 2 Regulation
PRIIPS - Regulation 2017/653 on the presentation, content, review and revision of key information documents and the conditions for fulfilling the requirement to provide such documents

Topic
Disclosures

Additional Legal Reference
Additionally MiFID 2 - article 44

Subject Matter

Intent to Present Future Performance in Percentage Terms in Robo-Advisory App – Compliance with MiFID II (incl. Article 44) and PRIIPs

Question

We are currently exploring the possibility of presenting future performance in percentage terms within our robo-advisory application. The app provides automated investment recommendations based on client profiling and risk tolerance, and may in the future include visual projections of potential returns.

These projections would be expressed as percentages, clearly labeled as hypothetical, and accompanied by appropriate disclaimers and risk warnings. The format would follow the structure and methodology of performance scenarios as outlined in Annex IV of the PRIIPs Regulation.

In this context, we would like to clarify:

Is it permissible to present future performance in percentage terms if the format aligns with the performance scenarios described in PRIIPs Annex IV?
Would such a presentation be compliant with Article 44 of MiFID II, particularly in digital interfaces?

ESMA_QA_2638

Submission Date
10/09/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Alternative Investment Fund Managers Directive (AIFMD) Directive 2011/61/EU

Topic
AIFMD scope

Subject Matter
Application of the delegation requirements foreseen under Article 1(9)(b) AIFMD II, respectively, Article 2(4)(b) AIFMD II

Question
It follows from Article 1(9)(b) and Article 2(4)(b) AIFMD II that the AIFM or UCITS management company shall ensure that the performance of the functions in Annex

I or II of the respective directives, as well as the provision of the services referred to in Articles 6(4) or 6(3), complies with the requirements of AIFMD II. Considering that portfolio management and risk management may be delegated to entities located in the EU or to regulated entities located in third countries, to which extent are delegates or subdelegates of AIFMs or UCITS management companies subject to the AIFMD and UCITS Directive?

ESMA_QA_2630

Submission Date
27/08/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic
EU-CCPs

Subject Matter
EMIR 3.0 Active Account Requirement and Reporting Obligation

Question
Should counterparties that clear 100% of their relevant derivatives contracts in the EU still be required to comply with the representativeness obligation under Article

7a(3)(d) of EMIR, the reporting obligation under Article 7b(1), and the representativeness reporting requirements outlined in the RTS?

ESMA Answer

13-10-2025

Original language

As clarified by ESMA_QA_2517, counterparties that clear 85% of the relevant derivatives contracts in a CCP authorised under Article 14 of EMIR are exempted from the operational, stress testing and reporting requirements referred under Article 7a and 7b of EMIR. They are not exempted from the representativeness obligation under Article 7a(3), point (d), of EMIR

However, the representativeness requirement requires counterparties to clear trades representative of the trades "that are cleared at a clearing service of substantial systemic importance". Therefore, where is no activity at a clearing service of substantial systemic importance, the representativeness requirement should not apply.

ESMA_QA_2626

Submission Date
07/08/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic
EU-CCPs

Subject Matter
Reporting of the representativeness obligation

Question
Does the 85% exemption from reporting for entities under Article 7b also apply to the reporting of the representativeness obligation, or does it only apply to the

reporting of activities, risk exposures, and operational conditions?

ESMA Answer

13-10-2025

Original language

A counterparty can benefit from the exemption mentioned in Article 7a(5) of EMIR at any point in time by demonstrating that it clears at least 85 % of its derivative contracts belonging to the categories referred to in Article 7a(6) of EMIR at a CCP authorised under Article 14 of EMIR.

As confirmed by Q&A 2517, entities that clear 85% or more of the relevant derivatives contracts in a CCP authorised under Article 14 of EMIR are exempted from:

• the operational requirements referred to in Article 7a(3), points (a), (b) and (c), of EMIR;
• the stress-testing requirement referred to in Article 7a(4), fourth subparagraph, of EMIR;
• the reporting requirements referred to in Article 7b of EMIR.

Article 7b(1) of EMIR 3 states: "*A financial counterparty or a non-financial counterparty that is subject to the obligation referred to in Article 7a shall (...) report every six months to its competent authority the information necessary to assess compliance with that obligation*."

Article 7b(1) refers broadly to “the obligation referred to in Article 7a”, which includes: operational conditions (legal, IT, and internal processes) and the representativeness obligation (Article 7a(3)(d)). Therefore, entities benefitting from the exemption mentioned in Article 7a(5) are exempted from reporting requirements necessary to demonstrate compliance with the representativeness obligation.

ESMA_QA_2624

Submission Date
01/08/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Market Abuse Regulation (MAR) Regulation (EU) No 596/2014 - Market Intergrity

Topic
Managers' transactions

Additional Legal Reference
Article 19 of MAR as amended and integrated by the Listing Act

Subject Matter
Scope of the exception in Article 19(12a) of MAR to PDMRs’ general prohibition to trade during the closed period

Question

Shall a PDMR be allowed to adhere to a takeover bid, a share capital increase, a subscription of shares arising from stock splits, a merger, a rights issue or a spin-off during a closed period pursuant to Article 19(12a) of MAR?

ESMA Answer

01-08-2025

Original language

Recital (76) of Regulation (EU) 2024/2809 amending MAR, provides examples of transactions and activities that might be covered by the exemption for PDMRs to trade during the closed period under Article 19(12a) of MAR. Among the examples provided, the text refers to the transactions and activities that might result from “duly authorised corporate actions not implying advantageous treatment for the [PDMR]”. Considering that a takeover bid, as well as the other mentioned transactions, should in principle grant PDMRs an equivalent treatment to that of any other shareholder, a PDMR should be allowed to adhere to these transactions during a closed period provided that the corporate action has been authorized or approved by the issuer’s governing body or the competent authority.

A case-by-case assessment remains necessary to verify that the relevant conditions are met. It should be recalled that the prohibition of insider dealing remains applicable during closed periods.

ESMA_QA_2618

Submission Date
25/07/2025

Status: Question Rejected

Additional Information

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

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

Level 3 Regulation
ESMA35-43-869 - Guidelines - Suitability (MiFID)

Topic
Suitability

Subject Matter

Arrangements necessary to understand clients

Question

In order to comply with the duty to obtain the necessary information regarding the client's knowledge and experience, financial situation, and investment objectives, shall the Investment firms questionnaire/approach follow this exact sequence, i.e., shall the investment firm inquire the client, in a first moment, about its Knowledge and Experience on a specific instrument/ service, and then about the client's financial situation and his investment objectives ?

ESMA_QA_2609

Submission Date
15/07/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Undertakings for Collective Investment in Transferable Securities Directive (UCITS) Directive 2009/65/EC

Level 3 Regulation
Performance Fees - Guidelines on performance fees in UCITS and certain types of AIFs - ESMA34-39-968

Topic
Costs and fees

Subject Matter
Performance fees for feeder funds

Question
Can the manager of a feeder fund within the meaning of Article 58 of the UCITS Directive charge a performance fee?

ESMA Answer

15-07-2025

Original language

Under Article 58 of the UCITS Directive, a feeder fund is a fund which has been approved to invest at least 85 % of its assets in units of another fund (master funds). Paragraph 18 of the Guidelines states that a manager “should always be able to demonstrate how the performance fee model of a fund it manages constitutes a reasonable incentive for the manager and is aligned with investors’ interests”.

Against this background, the feeder manager does not exercise sufficient discretion over the asset allocation, selection and fund strategy to warrant the charging of a performance fee and as such, the charging of a performance fee to investors should not be considered as appropriate and justified in such cases. Therefore, performance fees, if any, should only be charged at the level of the master fund.

This is unless:

a) the master fund and the feeder fund are managed by the same manager or by managers belonging to the same group; and

b) the only investor(s) of the master fund is(are) feeder fund(s);

in which case performance fees could be paid at the level of the feeder fund(s), and not at the level of the master fund, provided that this approach applies consistently to all feeder funds, if more than one.

ESMA_QA_2604

Submission Date
08/07/2025

Status: Question Rejected

Additional Information

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

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

Level 3 Regulation
ESMA/2012/188 - Guidelines - Compliance function (MiFID)

Topic
Product governance

Subject Matter

Clarification as regards to Perpetual features

Question

We are writing to request clarification regarding the regulatory treatment of perpetual futures. Specifically, we would like to confirm whether, in cases where a Cyprus Investment Firm (CIF) offers listed futures contracts through a Multilateral Trading Facility (MTF) operating in Europe, the perpetual futures offered by the CIF would fall within the scope of Category 10 – Other Derivatives, as defined in the First Appendix, Part III of Law 87(I)/2017, as amended from time to time.

In addition, we would appreciate your confirmation on whether any leverage restrictions apply to perpetual futures, either under CySEC's national rules or under EU-level requirements, particularly in the context of investor protection measures.

ESMA_QA_2601

Submission Date
04/07/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation 2020/1503 - European crowdfunding service providers for business

Topic
Underwriting and placing

Subject Matter
Use of fiduciary (nominee) structures in equity crowdfunding

Question
Can CSPs use nominee structures as part of their operations in relation to transferable securities or admitted instruments for crowdfunding purposes? (Edited)

ESMA Answer

04-07-2025

Original language

The terms “nominee structure”, “nominee service”, or “nominee” are used by market participants in the field of crowdfunding to refer to a wide range of practices often aiming at aggregating investors. ESMA notes that the concept of “nominee” is not defined in the ECSPR.

ESMA further notes that the ECSPR does not explicitly prohibit ‘nominee entities’ from offering ‘nominee services’ related to the operation of a crowdfunding platform, the ‘nominee’ entity being involved at the initiative of the crowdfunding service provider or of the project owner.

ESMA is nevertheless of the view that the provision of such ‘nominee’ services’, being part of the “*operation of the crowdfunding platform*” within the meaning of Article 1(1) of the ECSPR should (i) be described in the application submitted to the authorising competent authority under Article 12 of the ECSPR and (ii) comply with the provisions of the ECSPR.

ESMA underlines that CSPs shall inform the authorising competent authority – at the time of the authorisation or, if the authorisation has already been granted, prior to implementation of their intention use a nominee structure. Information should include a detailed description about the ‘nominee’ structure that they intend to use, as well as the div of the nominee agreement between the nominee structure and investors with specific consideration of the arrangements concerning ownership, voting and exit rights, costs and implications in terms of applicable national laws, as

requested by the authorising competent authority. The information provided shall enable the competent authority to perform a comprehensive assessment of the legal features of the nominee entity, the nominee agreement, and to determine whether the suggested ‘nominee structure’ is compliant with the ECSPR, notably, but not limited to, with the provisions listed below.

- Point (a)(ii) of Article 2(1):

Point (a)(ii) of Article 2(1) of the ECSPR and Recital 22 make clear that, pursuant to the ECSPR, the investment by an investor in a crowdfunding project shall be direct, in the sense that only transferable securities and admitted instruments for crowdfunding purposes issued by project owners or a special purpose vehicle can be purchased by crowdfunding investors on a crowdfunding platform authorised in accordance with the ECSPR. This means that the decision as to which crowdfunding project should be financed should aways be left to investors. ESMA therefore considers that nominee structures may provide their services in the context of crowdfunding services only once the relevant investor has taken an investment decision in respect of the specific project in which it intends to invest.

CSPs wishing to use a nominee structure should also carefully assess any structure in which investors’ funds are not used by the nominee structure to purchase the transferable securities or the admitted instruments for crowdfunding purposes issued by a project owner or an SPV as indicated by the relevant investor in their investment decision, as such arrangements are unlikely to comply with Point (a)(ii) of Article 2(1) of the ECSPR.

Likewise, CSPs wishing to approve a new crowdfunding project on its platform are expected to ensure that no such arrangements have been set up by said project owner.

- Article 10(3) of the ECSPR

When nominee services are performed in relation to transferable securities or admitted instruments for crowdfunding purposes offered on a crowdfunding platform in accordance with the ECSPR, and these services include the provision of custody services, the CSPs shall ensure that the 'nominee structure' complies with Article 10(3) of the ECSPR:

"*Transferable securities or admitted instruments for crowdfunding purposes offered on a crowdfunding platform, and which can be registered in a financial instruments account opened in the name of an investor or which can be physically delivered to a custodian, shall be held in custody by the crowdfunding service provider or by a third party. An entity providing custody services shall hold an authorisation in accordance with Directive 2013/36/EU or 2014/65/EU*".

CSPs are expected to provide the authorising competent authority with relevant information, as requested by the authorising competent authority, about the 'nominee structure' they wish to set up, be it at the time of the initial authorisation or after such authorisation is delivered. The information provided shall enable the competent authority to perform a case-by-case basis assessment aiming at determining whether the suggested 'nominee structure' involves the holding in custody, by the 'nominee entity', of transferable securities or admitted instruments for crowdfunding purposes. Indeed, while it is acknowledged that 'nominee' service and custody are usually considered as two distinct concepts, they may, in practice, overlap.

If the national competent authority concludes that the suggested nominee arrangement is structured in a way that the transferable securities or admitted instruments for crowdfunding purposes offered on the crowdfunding platform are

held in custody by the entity acting as ‘nominee’, then this entity will be required to be authorised in accordance with Directive 2013/36/EU or 2014/65/EU as per Article 10(3) of the ECSPR.

This assessment will be performed by competent authorities based on applicable European and national law. The following elements may, *inter alia*, be considered for the purpose of this assessment.

1. Holding of assets/Safekeeping: CSPs will be required to provide relevant information enabling competent authorities to assess whether or not the ‘nominee’ entity holds the client’s assets and whether or not the ‘nominee’ entity appears as the legal owner of the assets (with the investor being the beneficial owner).

2. Administration/Ownership record keeping: CSPs will be required to provide relevant information enabling competent authorities to assess whether or not the ‘nominee’ entity keeps accurate records of ownership and/or perform administrative tasks in relation to the ownership of the transferable securities or admitted instruments for crowdfunding purposes.

3. Asset-Segregation: CSPs will be required to provide relevant information enabling competent authorities to assess whether or not the ‘nominee’ keeps track of the respective ownership of investors into the various crowdfunding projects offered on the crowdfunding platform through segregated accounts.

ESMA Q&A_801 may also be taken into account for the purpose of understanding the mentioned requirements with regard to the custody services[1].

- Article 19(1) of the ECSPR

When investing in a crowdfunding project implies for investors the entry into a specific ‘nominee’ agreement, ESMA is of the view that investors should be duly informed of this feature. ESMA also believes that the information concerning the use of nominee structures in the provision of crowdfunding services are included in the information that CSPs provide to clients and shall thus be fair, clear and not misleading, as indicated in Article 19(1) of the ECSPR.

Article 19(1) of the ECSPR states that “*All information … from crowdfunding service providers to clients about themselves, about the costs, financial risks and charges related to crowdfunding services or investments, about the crowdfunding project selection criteria, and about the nature of, and risks associated with, their crowdfunding services shall be fair, clear and not misleading*.”.

- Article 23 of the ECSPR

When investing in a crowdfunding project implies for investors to enter into a specific ‘nominee’ agreement, ESMA is also of the view that this information should be clearly disclosed to investors in the KIIS.

ESMA believes that the information provided to investors should include, where applicable, (i) the key features of the nominee agreement (including its purpose, the div on the ownership of the instruments, the exercise of investor rights etc. and how they comply with national law requirements), (ii) the costs of entering into such agreement as well as the main risks (e.g., with regard to the possible consequences of the nominee’s bankruptcy) and (iii) information about the entity performing the

service.

In particular, and in line with Article 23 of the ECSPR and Delegated Regulation 2022/2119[2]:

- When the nominee structure is deemed by the competent authority to provide custody services as referred to in Article 10(3) of the ECSPR, the relevant information on the div of the authorised entity performing the custody services shall be provided in the section "*Custody and delivery of [transferable securities] or [admitted instruments for crowdfunding purposes] to investors*" of the KIIS as referred to in Annex 1 (point (e) of Part D) of the ECSPR and as further explained in point (e) of Part D of the Annex to Delegated Regulation 2022/2119.

- Part D of the KIIS on *Information related to the offer of transferable securities and admitted instruments for crowdfunding purposes* as well as Part F of the KIIS on *Investor rights* should be duly reviewed and adapted to the case in which the legal ownership of financial instruments and admitted instruments for crowdfunding purposes is assigned to a nominee structure (and investors remain beneficial owners). ESMA believes that at least the following information should be provided in the KIIS:

- Clear indication that the decision to subscribe transferable securities and admitted instruments for crowdfunding purposes encompasses the entry into a 'nominee' agreement.

1. Concise explanation of the purpose of the ‘nominee’ agreement and of its functioning during the subscription, holding and sale and re-sale (exit) phases.

- Explanation of how the rights (ownership and voting) attached to the transferable securities and admitted instruments for crowdfunding purposes offered by the project owner or the SPV will be exercised and protected where legal ownership of the securities rests with the nominee entity, including a clear outline of the procedures by which investors may assert their rights, participate in decision-making, receive distributions, and address potential disputes. This disclosure should clarify any limitations or special processes that apply in such structures, ensuring investors understand how their beneficial interests are represented and safeguarded when a nominee acts on their behalf as the legal holder of the securities.

2. If the entry into a nominee agreement is not mandatory (i.e. if investors are able to subscribe for shares of the crowdfunding project without entering into a nominee agreement) or not.

- Part H of the KIIS on *Fees, information and legal redress of the KIIS* should provide information on the costs for investors associated with the provision of the nominee services.

Endnotes

1. Please see ESMA_QA_801

2. Commission Delegated Regulation (EU) 2022/2119 of 13?July 2022 supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards for the key investment information sheet.

ESMA_QA_2579

Submission Date
20/06/2025

Status: Answer Published

Additional Information

Level 1 Regulation
MiCA

Topic
Crypto assets

Subject Matter
Shared order book model

Question
Under the Markets in Crypto-Assets Regulation (MiCA), is it permissible for an EU trading platform for crypto-assets that is operated by a crypto-asset service provider (CASP) authorised under MiCA to pool its order book with that of one or more non-

EU trading platforms operated by an entity or entities that are not authorised as CASPs under MiCA?

ESMA Answer

20-06-2025

Original language

No, this model would be in breach of the authorization requirements under Article 59 of MiCA and would constitute the unauthorized provision of the crypto-asset service of operation of a trading platform for crypto-assets in the Union by the unauthorized entities whose platform(s) share the order book with the EU-authorised CASP.

Reference is made to the model where two or more crypto-asset platforms merge their individual order books into a single, unified order book from which orders are matched. This model involves - as operators of said shared order book - one or more entities that are not authorised as CASPs under MiCA.

ESMA understand that this integrated model enables buy and sell orders from different platforms to be combined into one aggregated order book so that multiple trading platforms (including non-EU ones) can access the same liquidity pool, allowing orders from clients across different platforms to be matched.

According to Article 3(18) of MiCA, the service of operation of a trading platform for crypto-assets means '*the management of one or more multilateral systems, which*

bring together or facilitate the bringing together of multiple third-party purchasing and selling interests in crypto-assets, in the system and in accordance with its rules, in a way that results in a contract, either by exchanging crypto-assets for funds or by the exchange of crypto-assets for other crypto-assets'. In the view of ESMA, the management of an order book is one of the fundamental parts of the management of multilateral systems bringing together or facilitating the bringing together of multiple third-party purchasing or selling interests in crypto-assets.

On this basis, ESMA is of the view that it should be regarded as falling within the scope of the crypto-asset service defined in Article 3(1)(18) of MiCA. Hence, the service should be regarded as being carried out by each entity operating the different order books that are being shared.

It ensues that, in accordance with Article 59 of MiCA, any person managing said order book should be authorised to do so under Article 63 of MiCA (or should have notified its intention to operate a trading platform for crypto-assets in accordance with Article 60 of MiCA).

Thus, in ESMA's view, Articles 59, 60 and 63 of MiCA prohibit an order book managed with entities that are not authorised as crypto-asset service providers (CASPs) under MiCA.

This Q&A does not assess whether other types of shared order books would fully comply with all provisions of MiCA.

ESMA_QA_2576

Submission Date
19/06/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Prospectus Regulation 2017/1129

Topic
Publication of prospectus

Historic Question Reference
ESMA, Questions and Answers on the Prospectus Regulation, version 12 (the "ESMA Prospectus Q&A"), Qs 4.2 and 15.7.

Additional Legal Reference
The (Swedish) Act (2019:414) with supplementary provisions to the EU Prospectus Regulation (the "Swedish Supplementary Act"), Ch. 2, Sec. 1.; Regulation (EU) 2024/2809 (the "Listing Act")

Subject Matter

The calculation of offers of warrants and/or units consisting of warrants and shares in relation to exemptions from the prospectus obligation in the Prospectus Regulation.

Question

1. Member State incorporated exemptions in accordance with Article 3(2) item (b) of the Prospectus Regulation. Should a rule, incorporated by a Member State in accordance with Article 3(2) item (b) of the Prospectus Regulation, granting an exemption from the prospectus obligation be interpreted so that the “total consideration” of an offer of warrants only includes the consideration paid in conjunction with the initial offer, and not the strike price of the underlying securities?;

2. Offers of warrants as a part of units. How should the phrase “total consideration” be interpreted in relation to offers of units consisting of shares (offered against consideration) and warrants (offered free of charge)? Should the “total consideration” only include the consideration for the shares and thus exclude the strike price of the underlying securities?; and

3. The warrants’ exercise period. Does the date of the occurrence of the warrants’ exercise period, in relation to the date of the initial offer, affect this interpretation and how the calculation of the “total consideration” is to be conducted? Specifically, does it have an impact on how the calculation is to be conducted if the exercise period occurs within the 12-month period? Is there any difference in how you should perform the calculation if the exercise period occurs within either 3, 6, 9 or 12 months from the date of the initial offer? Does it make any difference whether the warrants are offered in the form of a unit?

ESMA_QA_2575

Submission Date
18/06/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Undertakings for Collective Investment in Transferable Securities Directive (UCITS) Directive 2009/65/EC

Topic
Disclosures

Subject Matter
Updates of notification letters for the cross-border marketing of UCITS

Question
When, pursuant to Article 93(8) of Directive 2009/65/EC, a UCITS gives written notice to the competent authorities of both the UCITS home Member State and the

UCITS host Member States, of a change to the information in the notification letter submitted in accordance with Article 93(1) of Directive 2009/65/EC, or a change regarding share classes to be marketed, should the documents referred to in Article 93(2) of Directive 2009/65/EC be included?

ESMA Answer

18-06-2025

Original language

No, the documents referred to in Article 93(2) of Directive 2009/65/EC, should not be included. The obligation of UCITS to give written notice of amendments to information already provided in a notification letter of cross-border marketing should be understood as covering only the updated information in Annex 1 of the Commission Implementing Regulation (EU) 2024/910 compared to the previous notification. Amendments to fund documents should not be covered by the obligation of written notice of Article 93(8) of Directive 2009/65/EC.

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