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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_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

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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_2639

Submission Date
10/09/2025

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Additional Information

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

Topic
Disclosures

Subject Matter
Reporting obligation of auditors under Article 106 UCITS Directive

Question

It follows from the first subparagraph of Article 106(1) of the UCITS Directive that any person approved in accordance with Directive 2006/43/EC, performing in a UCITS, or in an undertaking contributing towards its business activity, the statutory audit referred to in Article 51 of Directive 78/660/EEC, Article 37 of Directive 83/349/EEC or Article 73 of this Directive or any other statutory task, shall have a duty to report promptly to the competent authorities any fact or decision concerning that undertaking of which he has become aware while carrying out that task and which is liable to bring about any of the following: (a) a material breach of the laws, regulations or administrative provisions which lay down the conditions governing authorisation or which specifically govern pursuit of the activities of UCITS or undertakings contributing towards their business activity; (b) the impairment of the continuous functioning of the UCITS or an undertaking contributing towards its business activity; or (c) a refusal to certify the accounts or the expression of reservations.

Further, it follows from the second subparagraph of that Article that that person shall have a duty to report any facts and decisions of which he becomes aware in the course of carrying out a task as described in point (a) in an undertaking having close links resulting from a control relationship with the UCITS or an undertaking contributing towards its business activity, within which he is carrying out that task.

Finally, the following is set out in Article 12(1) of the Audit Regulation (Regulation 537/2014): “Statutory auditors or audit firms shall also have a duty to report any information referred to in points (a) (b) or (c) of the first subparagraph of which they become aware in the course of carrying out the statutory audit of an undertaking having close links with the public-interest entity for which they are also carrying out the statutory audit. For the purposes of this Article, ‘close links’ shall have the meaning assigned to that term in point (38) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council.“

- In cases where a UCITS management company and its parent undertaking do not have the same auditor and are located in different Member States, what are the reporting obligations of the auditor of the parent undertaking towards national competent authorities (in both Member States) in terms of findings concerning the subsidiary that could meet the aforementioned conditions set out in points (a) to (c), e.g. bringing about a material breach of the laws, regulations or administrative provisions which lay down the conditions governing authorisation or which specifically govern pursuit of the activities of UCITS or undertakings contributing towards their business activity? More specifically:
- If ‘that person’ expands the reporting obligation in the first sub-paragraph, does

that also apply where a UCITS management company and its parent undertaking are located in different Member States?
- If “that person” expands the reporting obligation in the first subparagraph, is the parent company’s auditor required to report to the UCITS management company’s home NCA or to the NCA where the parent company is domiciled?
- How should the notion of ‘undertaking contributing towards its [a UCITS management company’s] business activity’ (as set out in the UCITS Directive) be understood? For instance, can a company, that is not an UCITS management company, under an agreement with an asset management company be considered to be as such a company, if it advises customers to invest in UCITS managed by the UCITS management company?
- How should the notion of ‘close links resulting from a control relationship’ (as set out in the UCITS Directive) between a management company on the one side, and its subsidiary or parent undertaking on the other side, be understood?
- How should the notion of ‘undertaking contributing towards its [a UCITS Management Company’s] business activity’ (as set out in the UCITS Directive) be understood?

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_2637

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
Impact of the new exemptions foreseen for distributors in Article 20 (6a) AIFMD and Article 13(3) UCITS Directive on Article 4 CBDF Regulation

Question
In cases where a distributor is acting on its own behalf, as referred to under Article 1(9)(d) and Article 2(4)(b) AIFMD II , is the AIFM or UCITS management company

exempted from the requirements regarding marketing communications in Article 4 Regulation (EU) 2019/1156 on facilitating cross-border distribution of collective investment undertakings (the “CBDF Regulation”)?

ESMA_QA_2636

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

Additional Legal Reference
New exemption foreseen for distributors under Article 20(6a) AIFMD and Article 13(3) UCITS Directive

Subject Matter
Questions on the new exemption foreseen for distributors under Article 20(6a) AIFMD and Article 13(3) UCITS Directive

Question

It follows from Article 1(9)(d) and Article 2(4)(b) AIFMD II that where the marketing function of an AIFM or UCITS management company is performed by one or several distributors, which are acting on their own behalf, such function shall not be considered to be a delegation subject to the requirements set out in those Articles. In which cases is a distributor considered to be acting on its own behalf?

In cases where a distributor of an investment fund manager is acting on its own behalf, as referred to under Article 1(9)(d) and Article 2(4)(b) AIFMD II, the AIFM or UCITS management company is exempted from applying the provisions set out in Article 20 AIFMD and Article 13 UCITS Directive. In such cases, is the AIFM or UCITS management company required to monitor the distributor? What is the approach for insurance-based investment products marketed in accordance with Directive (EU) 2016/97? What is the approach for distributors located in a third country marketing UCITS or AIFs in the EU?

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
Other issues (CCP)

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_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_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.

ESMA_QA_2570

Submission Date
16/06/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

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

Topic
Leverage

Additional Legal Reference
Articles 2(4)(e), 2(13), 7(1) and 9(2)

Subject Matter
Article 9 financial products

Question

Further to joint SFDR Q&A V.1, can the European Commission specify for financial products disclosing under Article 9 SFDR what investments count as “investments for certain specific purposes such as hedging and liquidity”, including whether investments in Money Market Funds (MMFs) count as such investments?

ESMA_QA_2569

Submission Date
16/06/2025

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
Articles 2(4)(e), 2(13), 7(1) and 9(2)

Subject Matter
Status of PAI consideration under Article 7 SFDR as a promotion of an environmental/social characteristic under Article 8 SFDR

Question

Does the disclosure of the consideration of principal adverse impacts of investment decisions on sustainability factors under Article 7(1) SFDR automatically qualify as the promotion of an environmental or social characteristic under Article 8 SFDR?

ESMA_QA_2568

Submission Date
16/06/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

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

Topic
AIFMD scope

Additional Legal Reference
Articles 2(4)(e), 2(13), 7(1) and 9(2)

Subject Matter
Financial products' PAI disclosures

Question

What financial product disclosures are required from a non-EU AIF where it is only marketed outside the EU by either (1) an EU AIFM or (2) non-EU AIFM? Would a non-EU or EU AIFM acting as a delegated portfolio manager for the non-EU AIF make any difference in either scenario?

ESMA_QA_2566

Submission Date
10/06/2025

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
Settlement discipline - Cash penalties: process

Subject Matter
Passing on of cash penalties throughout the settlement chain

Question
Should cash penalties be passed on throughout the settlement chain?

ESMA_QA_2560

Submission Date
03/06/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Markets in Financial Instruments Regulation (MiFIR) Regulation (EU) No 600/2014 - Investor Protection and Intermediaries

Topic
Inducements

Additional Legal Reference
Article 39a, Paragraph 1

Subject Matter
Payment for order flow (PFOF) prohibition: scope for rebates or discounts on transaction fees or any other benefits for investment firms acting on behalf of retail

clients or opt-in professional clients

Question

Which type of rebates or discounts on transaction fees or any other benefits for investment firms acting on behalf of retail clients or opt-in professional clients are out of the scope of the prohibition to receive payment for order flow specified in Article 39a MiFIR?

ESMA_QA_2559

Submission Date
03/06/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Markets in Financial Instruments Regulation (MiFIR) Regulation (EU) No 600/2014 - Investor Protection and Intermediaries

Topic
Inducements

Additional Legal Reference
Article 39a

Subject Matter
Payment for order flow (PFOF) prohibition and OTC execution of client orders

Question

Does the prohibition of receiving payment for order flow (PFOF) apply to situations where the order is not executed on a trading venue, for instance for products traded over the counter (OTC)?

ESMA_QA_2558

Submission Date
03/06/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Markets in Financial Instruments Regulation (MiFIR) Regulation (EU) No 600/2014 - Investor Protection and Intermediaries

Topic
Inducements

Additional Legal Reference
Article 39a

Subject Matter
Payment for order flow (PFOF) prohibition and client instructions for order executions

Question

Does the prohibition of receiving payment for order flow (PFOF) apply to situations where the client provided a specific instruction to the investment firm to execute the order on a particular execution venue?

ESMA_QA_2557

Submission Date
03/06/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Markets in Financial Instruments Regulation (MiFIR) Regulation (EU) No 600/2014 - Investor Protection and Intermediaries

Topic
Inducements

Additional Legal Reference
Article 39a, Paragraph 1

Subject Matter
Investment firms' use of rebates and discounts to lower fees for clients under the payment for order flow (PFOF) prohibition

Question

Are investment firms allowed to use rebates and discounts to lower fees for clients?

ESMA_QA_2552

Submission Date
28/05/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
MiCA

Topic
White paper

Additional Legal Reference
Article 5(2) of MiCA

Subject Matter
Application of Title II requirements to CASPs operating a trading platform for crypto-assets

Question

Article 5(2) of MiCA states that “when a crypto-asset is admitted to trading on the initiative of a trading platform and a crypto-asset white paper has not been published in accordance with Article 9 in the cases required by this Regulation [emphasis added], the operator of that trading platform for crypto-assets shall comply with the requirements set out in paragraph 1 of this Article”.

In turn, Article 9 requires offerors and persons seeking admission to trading of crypto-assets other than ARTs or EMTs to publish their crypto-asset white papers and any marketing materials.

However, recital 22 of MiCA states that “Where crypto-assets have no identifiable issuer, they should not fall within the scope of Title II, III or IV of this Regulation”.

Does the expression “in the cases required by this Regulation” mean that Article 5(2) exempts operators of trading platforms from the requirements of Article 5 for crypto-assets without an identifiable issuer?

ESMA_QA_2551

Submission Date
28/05/2025

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)(22) of MiCA

Subject Matter
Overlap between offers of crypto-assets and placing

Question

Can persons who are authorized in writing by the issuer to offer crypto-assets to the public conduct this activity on a commercial basis, continuously, repeatedly, and possibly for different issuers (whether concurrently or consecutively) without having a MiCA CASP license for the crypto-asset service 'placing of crypto-assets'?

ESMA_QA_2550

Submission Date
28/05/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
MiCA

Topic
Crypto-Asset Service Provider (CASP)

Additional Legal Reference
Article 75 of MiCA

Subject Matter
Payouts in fiat currency by CASPs in the context of exchange services

Question

Should the business model whereby a crypto-asset service provider (CASP) provides exchange services but only ever allows clients to collect their balance in fiat currency be allowed?

ESMA_QA_2547

Submission Date
27/05/2025

Status: Answer Published

Additional Information

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

Topic
Other DORA topics

Subject Matter
Does DORA also apply to non-EU AIFM?

Question
The regulation applies to managers of alternative investment funds according to Article 2, point (k) of DORA. According to Article 3, (point 44), of DORA a manager of alternative investment funds is defined as “a manager of alternative investment

funds as defined in Article 4(1), point (b), of Directive 2011/61/EU".
According to Article 4(1), point (b), of Directive 2011/61/EU (AIFM Directive) "AIFMs' means legal persons whose regular business is managing one or more AIFs". We are of the understanding that Article 4(1), point (b), does not exclude non-EU AIFM. EU AIFM and non-EU AIFM are defined in Article 4(1), point (L) and point (ab). Since DORA only refers to article 4(1), point (b), of the AIFM Directive and not to article 4(1), point (L), we are wondering if DORA applies to both EU and non-EU AIFM as the definition implies.

ESMA Answer

27-05-2025

Original language

DORA applies to managers of alternative investment funds according to Article 2, point (k) of DORA, except for those managers of alternative investment funds referred to in Article 3(2) of Directive 2011/61/EU. According to Article 3, (point 44), of DORA, a manager of alternative investment funds is defined as "a manager of alternative investment funds as defined in Article 4(1), point (b), of Directive 2011/61/EU".

However, the definition of the managers included in Article 4(1), point (b), of Directive 2011/61/EU should be read in conjunction with the scope of application of Directive 2011/61/EU, contained in Article 2 of that Directive.

Hence, in general terms - and provided that this answer is not carrying out a detailed recollection of all the criteria referred to in Article 2 of Directive 2011/61/EU - Article 4(1), point (b), in conjunction with Article 2 of Directive 2011/61/EU implies that DORA applies to EU AIFMs and also to non-EU AIFMs, which manage one or

more EU AIFs, and to non-EU AIFMs which market one or more AIFs in the Union irrespective of whether such AIFs are EU AIFs or non-EU AIFs, to the extent that they benefit from the management and marketing passport in accordance with Articles 39, 40 and 41 AIFMD. Non-EU AIFMs will only be subject to DORA obligations once the European Commission adopts Delegated Acts extending the marketing and management passport to them.

ESMA_QA_2671

Submission Date
09/05/2025

Status: Question Published

Additional Information

Level 1 Regulation
MiCA

Topic
White paper

Subject Matter
Exemption from white paper requirements when offering a crypto-asset other than an ART or EMT

Question
Is the preparation of a white paper under MiCA mandatory for crypto-asset offerings that fall under the exceptions in Article 4(2) and 4(3) of MiCA, where the offeror only

intends to have the token traded on DEX platforms or CEXs in other jurisdictions (i.e. outside the European Union)?

ESMA_QA_2533

Submission Date
24/04/2025

Status: Question Published

Additional Information

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

Level 2 Regulation
Regulation 2017/583 - RTS on transparency requirements in respect of non-equity financial instruments (RTS 2)

Topic
Non-equity transparency

Additional Legal Reference
Draft RTS 2 as published by ESMA on 16 December 2024

Subject Matter

Post-trade deferral regime for bonds, ETCs, ETNs and SFPs under the draft RTS 2 published by ESMA on 16 December 2024

Question

a. Regarding the new post-trade deferral regime categories 3 and 4 for bonds: Which of the following publications (i.e., price-deferred trade, volume-deferred trade or both) will be required to contain the flags ‘LLF3’ and ‘LIF4’? (Please see Draft RTS 2, paragraph 78 on page 29 and Annex II, Table III on page 160).

b. Regarding the new post-trade deferral regime for ETCs, ETNs and SFPs: Which of the following publications (i.e., price-deferred trade, volume-deferred trade or both) will be required to contain the flag ‘DEFF’? (Please see Draft RTS 2, Annex II, Table III on page 161).

ESMA_QA_2522

Submission Date
07/04/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Prospectus Regulation 2017/1129

Topic
Initial Public Offer/IPO

Subject Matter
New exemptions for fungible securities in Prospectus Regulation.

Question
What are the requirements for the statement of continuous compliance with reporting and disclosure obligations under IV. in Annex IX to the Prospectus Regulation? More specifically, (i) is it possible to add any disclaimers to this

statement, (ii) when is an issuer considered to have ‘continuous compliance’, (iii) to which time period should the statement pertain (i.e. does the statement need to cover the entire period that the issuer’s securities have been admitted to trading) and (iv) are issuers allowed to use an ‘exempted document’ drawn up using Annex IX if this statement is not ‘clean’?

ESMA_QA_2521

Submission Date
07/04/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Prospectus Regulation 2017/1129

Topic
Initial Public Offer/IPO

Subject Matter
New exemptions for fungible securities in Prospectus Regulation.

Question
Does the exemption in Article 1(5)(ba) PR concern all exchange offers or only exchange offers falling within the scope of the Takeover Directive?

ESMA_QA_2520

Submission Date
07/04/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Prospectus Regulation 2017/1129

Topic
Public offer

Subject Matter
New exemptions for fungible securities in Prospectus Regulation.

Question
When applying the exemptions in Article 1(4)(da) and (db) as well as Article 1(5)(ba), when is an issuer considered to be subject to a restructuring or to insolvency proceedings?

ESMA_QA_2519

Submission Date
04/04/2025

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
Active Account Requirement

Question
Could non-EU entities, which are subject to the clearing obligation, be subject to the active account requirement?

ESMA Answer

10-07-2025

Original language

No. Article 7a of EMIR only applies to financial counterparties and non-financial counterparties, which are clearly defined under Article 2, points (8) and (9), of EMIR, respectively.

ESMA_QA_2518

Submission Date
04/04/2025

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
Active Account Requirement

Question
How should the calculation mentioned in the second sentence of Article 7a(4), fifth subparagraph, of EMIR, be done, in order for counterparties to establish whether

they can benefit from the derogation regarding the number of trades in each of the most relevant categories to fulfil the representativeness obligation?

ESMA Answer

10-07-2025

Original language

First, the counterparty shall determine the number of trades it should clear on an annual average basis in each of the most relevant subcategories per class of derivative contracts and per reference period defined in accordance with Article 7a(8) of EMIR.
Second, where, all subcategories taken together, the resulting number of trades to be cleared exceeds half of the total number of trades of that counterparty cleared over the preceding 12 months, the representativeness obligation referred to in Article 7a(3), point (d), of EMIR, shall be considered fulfilled where that counterparty clears at least one trade in each of the most relevant subcategories per class of derivative contracts per reference period.

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_2517

Submission Date
04/04/2025

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
Active Account Requirement

Question
Should counterparties that clear more than 85% of the relevant derivatives contracts in the EU still comply with the representativeness obligation under Article

7a(3), point d, of EMIR and the related reporting obligation under Article 7b(1) of EMIR?

ESMA Answer

10-07-2025

Original language

Counterparties that already clear 85% of the relevant derivatives contracts in a CCP authorised under Article 14 of EMIR, are not exempted from the representativeness obligation under Article 7a(3), point (d), of EMIR.
In accordance with Article 7a(5) of EMIR, such counterparties are exempted from all of the following:
• 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.

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_2516

Submission Date
04/04/2025

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
Active Account Requirement

Question
Could counterparties that are subject to the active account requirements (i.e. to hold an active account, clear at least a representative number of trades in this

active account and the subsequent reporting requirements) and that are part of a group subject to consolidated supervision in the Union, outsource these obligations to another entity of the group?

ESMA Answer

10-07-2025

Original language

Yes.
However, where an entity chooses to outsource the tasks related to the requirements to which it is subject to according to Article 7a of EMIR, that entity remains legally responsible for the performance of such tasks.

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_2515

Submission Date
04/04/2025

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
Active Account Requirement

Question
Could counterparties that are subject to the active account requirements and that are part of a group, outsource the notification to the relevant competent authority

and ESMA, as mentioned in the second subparagraph of Article 7a(1) of EMIR, to another entity of the group subject to consolidated supervision in the Union that it belongs to ?

ESMA Answer

10-07-2025

Original language

Yes.
However, where an entity chooses to outsource the submission of the notification under Article 7a(1) of EMIR, that entity remains responsible for the timely submission as well as the accuracy of the information transmitted to the relevant competent authority and ESMA in such notification.

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_2514

Submission Date
04/04/2025

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
Active Account Requirement

Question
Should the requirement to clear at least a?representative number of trades in an active account held at an EU CCP be performed at individual level or group level for

the counterparties belonging to a group?

ESMA Answer

10-07-2025

Original language

As clarified in Recital 12 of Regulation (EU) 2024/2987, the representativeness requirement referred to in Article 7a(3), point (d), of EMIR applies at entity level and should be fulfilled by the entity that has been determined to be subject to the active account requirements in accordance with Article 7a(1) of EMIR.
As such, should the entity have outstanding contracts only for a subset of categories of derivatives referred to in Article 7a(6) of EMIR, that entity would be required to meet the representativeness requirement only for those contracts regardless of the activity of the other entities in the group. Relatedly, should the entity not have any outstanding derivative contracts belonging to the categories referred to in Article 7a(6) of EMIR, that entity would not be required to conclude such contracts or to meet any of the related requirements under Article 7a of EMIR.

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_2513

Submission Date
04/04/2025

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
Active Account Requirement

Question
Regarding the requirement to clear at least a representative number of trades, should the trades be representative of the activity of the group or of the activity of

the individual entities within the group?

ESMA Answer

10-07-2025

Original language

As clarified in Recital 12 of Regulation (EU) 2024/2987, he representativeness requirement referred to in Article 7a(3), point (d), of EMIR applies at entity level and should be fulfilled by the entity that has been determined to be subject to the active account requirements in accordance with Article 7a(1) of EMIR.
The overall activity of the group as referred to in Article 7a(2) should only be taken into account to determine whether the entity that is part of that group is subject to the obligations in relation to Article 7a(2) of EMIR. An entity subject to the representativeness requirement should determine the number of transactions it needs to clear – directly or indirectly, in an EU CCP on the basis of all its own activity in derivative contracts belonging to the categories referred to in Article 7a(6) of EMIR.

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_2512

Submission Date
04/04/2025

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
Active Account Requirement

Question
Should the requirement to hold at least one active account at an EU CCP be performed at individual level or at group level?

ESMA Answer

10-07-2025

Original language

The requirement under Article 7a(1) of EMIR to establish clearing arrangements, whether directly or indirectly, at a CCP authorised under Article 14 of EMIR, should be performed at individual level, provided that such entity does have outstanding derivative contracts belonging to the categories referred to in Article 7a(6) of EMIR.

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_2511

Submission Date
04/04/2025

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
Active Account Requirement

Question
Should the group level treatment mentioned in Article 7a(2) of EMIR apply to the calculation of the notional clearing volume outstanding mentioned in fourth

subparagraph of Article 7a(8) of EMIR?

ESMA Answer

10-07-2025

Original language

Yes. For the purpose of setting the duration of the reference period, which is also referred to in Article 7a(3), point (d), of EMIR, the calculation of the notional clearing volume outstanding mentioned in Article 7a(8), fourth subparagraph, of EMIR should apply the calculation method set out in Article 7a(2) of EMIR.
The representativeness obligation referred to in Article 7a(3), point (d), of EMIR nonetheless applies at entity level, as clarified in Recital 12 of Regulation (EU) 2024/2987.

ESMA_QA_2510

Submission Date
04/04/2025

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
Active Account Requirement

Question
Should the group level treatment mentioned in Article 7a(2) of EMIR apply to the calculation of the notional clearing volume outstanding mentioned in the second

subparagraph of Article 7a(4) of EMIR ?

ESMA Answer

10-07-2025

Original language

Yes. The calculation of the notional clearing volume outstanding mentioned in the second subparagraph of Article 7a(4) of EMIR should apply the calculation method set out in Article 7a(2) of EMIR.
The representativeness obligation to which the second subparagraph of Article 7a(4) of EMIR refers to nonetheless applies at entity level, as clarified in Recital 12 of Regulation (EU) 2024/2987.

ESMA_QA_2509

Submission Date
04/04/2025

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
Active Account Requirement

Question
Should the group level treatment mentioned in Article 7a(2) of EMIR apply to the calculation of both conditions mentioned in Article 7a(1)?

ESMA Answer

10-07-2025

Original language

The methodology to determine the fulfilment of the first condition of Article 7a(1) of EMIR, i.e. whether a counterparty is subject to the clearing obligation, is specified under Articles 4a and 10 of EMIR, respectively. There is therefore no need to perform a new calculation under Article 7a(2) of EMIR to establish whether that condition is met.
The group level calculation method set out in Article 7a(2) of EMIR shall apply to the second condition mentioned in Article 7a(1) of EMIR.

ESMA_QA_2508

Submission Date
04/04/2025

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
Active Account Requirement

Question
Does the group level treatment mentioned in Article 7a(2) of EMIR apply only to groups included in a consolidation in accordance with Directive 2013/36/EU (CRD

IV) or should it also include other groups, e.g. entities included in a consolidation in accordance with Directive 2013/34/EU ?

ESMA Answer

10-07-2025

Original language

The group level treatment referred to in Article 7a(2) of EMIR applies to any EU entity that is part of a group subject to consolidated supervision in the Union. This means that the group level treatment cannot be limited to groups included in a consolidation in accordance with Directive 2013/36/EU.

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_2507

Submission Date
04/04/2025

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
Active Account Requirement

Question
How should the percentage of derivative contracts belonging to the categories of derivatives subject to the active account requirement be calculated for the purpose

of the exemption mentioned in Article 7a(5) of EMIR?

ESMA Answer

10-07-2025

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.
In order to determine whether it is above or below the 85% threshold, the counterparty shall divide the gross outstanding notional of derivative contracts belonging to the categories referred to in Article 7a(6) of EMIR cleared at CCPs authorised under Article 14 of EMIR (numerator) by the total gross outstanding notional of derivative contracts belonging to the categories referred to in Article 7a(6) of EMIR cleared at any CCP, authorised under Article 14 of EMIR, recognised under Article 25 of EMIR or otherwise (denominator).

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_2506

Submission Date
04/04/2025

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
Active Account Requirement

Question
To check whether counterparties are subject to the active account requirement, how should the positions to be compared to the clearing thresholds be calculated?

ESMA Answer

10-07-2025

Original language

In order to determine whether they are subject to the active account requirements in accordance with Article 7a(1) of EMIR, counterparties should check whether they meet the two cumulative conditions:
1. they are subject to the clearing obligation in accordance with Articles 4a and 10 of EMIR; and
2. they exceed the clearing threshold in any of the categories of derivative contracts referred to in Article 7a(6) of EMIR, in an individual category listed in that paragraph or on aggregate across all categories listed in that paragraph.
The methodology to determine the fulfilment of the first condition is specified under Articles 4a and 10 of EMIR, respectively.
For the second condition, counterparties should follow the same methodology as for the first condition, but not with the same frequency (i.e. on a continuous basis rather than every 12 months as mentioned in Articles 4a and 10 of EMIR): once a counterparty is subject to the clearing obligation, it shall determine whether it is above the clearing thresholds in any of the categories of derivative contracts referred to in Article 7a(6) of EMIR, in an individual category or on aggregate across all categories, as the case may be, using the same methodology as described in Articles 4a and 10 of EMIR, on a continuous basis.

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_2502

Submission Date
03/04/2025

Status: Answer Published

Additional Information

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

Topic
Best Execution

Additional Legal Reference
Article 2(1)of the ECSPR

Subject Matter
Assessment of the entity to be considered as the project owner

Question

How should point (h) of Article 2(1) of the ECSPR be applied for the purpose of identifying the project owner?

ESMA Answer

03-04-2025

Original language

Several provisions of the ECSPR concern the project owner including Article 1(2)(c), points (i) and (ii) where a threshold of EUR 5 000 000 for a total consideration of crowdfunding offers made by a particular project owner is imposed (see also Recital 16 of the same Regulation).

Point (h) of Article 2(1) of the ECSPR defines the project owner as '*any natural or legal person who seeks funding through a crowdfunding platform*'.

In most cases, this definition is self-evident and the identification of the natural or legal person which will be considered as project owner for the purpose of the ECSPR is straightforward. However, the identification of the project owner sometimes proves to be more complicated, notably in those situations in which several entities or several layers of entities are involved.

ESMA acknowledges that the ECSPR does not contain provisions preventing a project owner from seeking funding for several crowdfunding projects either at the same time or successively.

At the same time, ESMA would like to clarify that the determination of the project owner shall be grounded on the economic and business reality of the crowdfunding project (in addition to the compliance with the rules set out in the ECSPR). CSPs should pay special attention to avoid practices consisting in designating as project owner an entity having insufficient or artificial link with the crowdfunding project.

When assessing whether a legal or natural person shall be considered as the project owner, CSPs may, *inter alia*, consider some or all of the following indicative elements:

- the entity launched and/or contributed to developing the crowdfunding project in its early stage,
- the entity has sufficient legal and economic ties to the crowdfunding project,
- *for investment-based crowdfunding*, the entity is issuing the transferable securities and the admitted instruments for crowdfunding purposes directly or through a SPV,
- *for loan-based crowdfunding,* the entity is the one to which investors make available the amount they lend, and it is the entity that assumes an unconditional obligation to repay that amount to investors, together with the accrued interest, in accordance with the instalment payment schedule.

Lastly, it should be reminded that ultimately, this determination made by the CSP may be challenged by the relevant Competent Authority as part of its supervision powers following a case-by-case assessment taking into account the specificities of the crowdfunding project and the designated project owner.

ESMA_QA_2501

Submission Date
03/04/2025

Status: Answer Published

Additional Information

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

Topic
Best Execution

Additional Legal Reference
Article 25(3) of ECSPR

Subject Matter
Bulletin Board - Disclosure obligations (point (b) of Article 25(3) of the ECSPR)

Question

How should the disclosure obligation established in point (b) of Article 25(3) of the ECSPR be applied?

ESMA Answer

03-04-2025

Original language

According to Article 25(1) of the ECSPR, crowdfunding service providers may operate a bulletin board on which they allow their clients to advertise interest in buying and selling loans, transferable securities or admitted instruments for crowdfunding purposes that were originally offered on their crowdfunding platforms.

Article 25(2) and Recital (55) of the ECSPR help to understand what activity can be or cannot be included in the scope of a bulletin board operated by a crowdfunding service provider. In particular, according to the recalled provisions, the bulletin board cannot be used to bring together buying and selling interests by means of the crowdfunding service provider's protocols or internal operating procedures in a way that results in a contract. The bulletin board shall therefore not consist of an internal matching system that executes client orders on a multilateral basis.

However, - and only in relation to transferable securities -, a crowdfunding service provider that is also authorised as an investment firm in accordance with Article 5 of MiFID II, or as a regulated market in accordance with Article 44 of that Directive (*) may decide to operate a trading venue to bring together buying and selling interests concerning the transferable securities that were originally offered on its crowdfunding platform.

Article 25(3) of the ECSPR also provides some disclosure requirements concerning the users of the bulletin board. Among those, in particular, it is established that crowdfunding service providers (which operate a bulletin board) have to require their clients which advertise a sale of a loan, transferable security or admitted instrument for crowdfunding purposes “to make available the key investment information sheet” (point (b) of Article 25(3) of ECSPR). This document is prepared under the responsibility of the project owner when a crowdfunding offer is presented on a crowdfunding platform, and its contents are updated until the relevant crowdfunding offer is closed (**).

ESMA acknowledges that the information reported in the KIIS might become outdated by the time the advertisement is made on the bulletin board. Consequently, ESMA believes that, whenever a client of a crowdfunding service provider advertises the sale of a loan, security or instrument on the bulletin board of that provider after the closing of the offer, the relevant crowdfunding service provider should ensure that the selling client indicates the date (month and year only) on which the KIIS was provided to that client.

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Endnotes

(*) Recital 55 of the ECSPR.

See also Recital 8 of MiFIR (Regulation 600/2014) according to which bulletin boards are facilities where there is no genuine trade execution or arranging taking place in the system and are used for advertising buying and selling interests. For a more exhaustive understanding of the scope of activity allowed to bulletin boards, please refer to the Final Report on ESMA Opinion on Trading Venue Perimeter (2 February 2023, ESMA70-156-6360), available on the ESMA website.

(**) According to Article 23(8) of the ECSPR, the crowdfunding service provider shall request the project owner to notify it of any change of information in order to keep the key investment information sheet updated at all times and for the duration of the crowdfunding offer. The crowdfunding service provider shall immediately inform investors who have made an offer to invest or expressed an interest in the crowdfunding offer about any material change to the information in the key investment information sheet that was notified to it.

ESMA_QA_2496

Submission Date
27/03/2025

Status: Question Rejected

Additional Information

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

Topic
ICT-related incident

Subject Matter
Incident report submission format

Question
What is the submission format for the incident reports (initial notification, intermediate and final) that CTPPs and Financial Entities need to submit to the CA?

ESMA_QA_2486

Submission Date
18/03/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
MiCA

Topic
Crypto-Asset Service Provider (CASP)

Subject Matter
Interests earned from client funds deposited at credit institutions

Question
Does MiCA permit crypto-asset service providers (CASPs) to earn interest on client funds deposited in a savings account at a credit institution?

ESMA_QA_2482

Submission Date
14/03/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

Topic
ELTIF

Subject Matter
Redemption policy

Question
Is the maximum percentage of liquid assets that can be used for redemption requests referred to in Article 18(2) point (d) of the ELTIF regulation a systematic

cap?

ESMA_QA_2481

Submission Date
14/03/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

Topic
ELTIF

Subject Matter
Nationality-related eligibility restrictions on ELTIFs stemming from national law

Question
Shall Article 1(3) of the ELTIF Regulation be understood as not allowing a national law, regulation or administrative practice, either generally for all ELTIFs or

specifically for some ELTIFs/specific situations, to require the master ELTIF to be established in the same Member State as the feeder ELTIF?

May an ELTIF be required by national law, regulation or administrative practice to be authorised or established in a particular Member State when packaged in insurance products or embedded in pension/savings plans in order to be eligible as target investment?

May any other provision or option provided for in the ELTIF Regulation be restricted by a national law, regulation or administrative practice for ELTIFs packaged in insurance products or embedded in pension/savings plans?

ESMA_QA_2480

Submission Date
14/03/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

Topic
ELTIF

Subject Matter
Dividend entitlement date

Question
May an ELTIF define a minimum period before which the shares cannot benefit from distributions of the ELTIF?

May the setting of a minimum holding period during which investors cannot benefit from the distributions of the ELTIF be considered as a “fee" or a “cost”, as per the requirements of Article 25 of the ELTIF Regulation?

ESMA_QA_2479

Submission Date
14/03/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

Topic
ELTIF

Subject Matter
Matching mechanism

Question
While anti-dilution levies are referred to in Article 5(9) of the ELTIF Delegated Regulation, can the matching price, as referred to in Article 19(2a) of the ELTIF

Regulation, of the secondary market include an anti-dilution levy?

ESMA_QA_2478

Submission Date
14/03/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

Topic
ELTIF

Subject Matter
Redemption policy

Question
Given the requirements set out in Article 17(1) point a) and 18(2) point a) of the ELTIF Regulation, as well as in Article 3 of the ELTIF Delegated Regulation, is the

minimum holding period, referred to in Article 18(2) point a) of the ELTIF Regulation, assessed in relation to the launch date of the ELTIF for all investors, or is it applied at each new subscription and on the basis of the date of each capital contribution if there is more than one investment by an individual investor?

ESMA_QA_2477

Submission Date
14/03/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

Topic
ELTIF

Subject Matter
Redemption policy

Question
Is a daily redemption and daily valuation compatible with the requirements of the ELTIF Regulation and Delegated Regulation, as referred to, in particular, in Article

5, Annex I and II of the ELTIF Delegated Regulation?

ESMA_QA_2476

Submission Date
14/03/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

Topic
ELTIF

Subject Matter
Redemption policy

Question
Can an ELTIF use borrowings, as referred to in Article 16(1) of the ELTIF Regulation, to meet redemptions?

Can confirmed but undrawn credit lines be considered as “expected cash flows”, as referred to in Article 5(6) of the ELTIF Delegated Regulation, and thus be taken into account in the maximum limit referred to in Article 18(2), point (d) of the ELTIF Regulation?

What are the criteria to assess the “prudent” nature of the expected cash flows forecasted […] over 12 months, as referred to in Article 5(6) of the ELTIF Delegated Regulation that could be added to the maximum size of redemption at a given redemption date?

For private debt ELTIFs, what elements should be taken into account in the abovementioned "expected cash flows"?

ESMA_QA_2475

Submission Date
14/03/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

Topic
ELTIF

Subject Matter
Redemption policy

Question
Should the ELTIF comply with the minimum liquid asset requirements referred to in Annex II of the Delegated Regulation at all times, and if not, which types of

“necessary measures”, as referred to in Article 5(7) of the ELTIF Delegated Regulation, and within which time frame, are expected to be implemented by the ELTIF manager?

ESMA_QA_2474

Submission Date
14/03/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

Topic
ELTIF

Subject Matter
Redemption policy

Question
When should the calculation of liquid assets be conducted?

ESMA_QA_2473

Submission Date
14/03/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

Topic
ELTIF

Subject Matter
Redemption policy

Question
Should the minimum percentage of liquid assets referred to in Annex II of the ELTIF Delegated Regulation solely comprise, as per Article 5(5) point b) of the ELTIF

Delegated Regulation, the UCITS eligible assets, or should it also include, as it is the case for the purpose of the denominator of the percentage referred to in Article 18(2) point (d), the expected cash flow, forecasted on a prudent basis over 12 months?

ESMA_QA_2472

Submission Date
14/03/2025

Status: Question Published

Additional Information

Level 1 Regulation
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

Topic
ELTIF

Subject Matter
Redemption policy

Question
Pursuant to Article 23(4) point (d) of the ELTIF Regulation, shall the ELTIF disclose in its rules or instruments of incorporation a minimum (and not only a maximum, as

per the requirements of Article 18(2) point d) of the ELTIF Regulation) percentage of liquid assets referred to in article 9(1) point (b) to be used for redemption requests?

ESMA_QA_2471

Submission Date
14/03/2025

Status: Question Published

Additional Information

Level 1 Regulation
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

Topic
ELTIF

Subject Matter
Investment strategy

Question
Do the requirements of Articles 16(4) and 17(1) of the ELTIF Regulation only apply to closed-ended ELTIFs?

If not, how may an open-ended ELTIF, as referred to in Article 18(2) of the ELTIF Regulation, reconcile its obligation to comply with the portfolio composition/diversification requirements, set out in Article 13 of the ELTIF Regulation, with the borrowing limits of the ELTIF Regulation, referred to in Article 16(1) of the ELTIF Regulation, if the suspension referred to in Article 17(1) point c) is to apply at each subscription/redemption?

ESMA_QA_2470

Submission Date
14/03/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

Topic
ELTIF

Subject Matter
Investment strategy

Question
Should it be understood from the requirements of Article 10(1) point (d) of the ELTIF Regulation that investing in non-EU AIFs is not compatible with the

requirements of the ELTIF regulation?

Do underlying investment funds referred to in Article 10(1) point (d) of the ELTIF Regulation (ELTIFs, EuVECAs, EuSEFs, UCITS and EU AIFs managed by EU AIFMs) have to be invested only in “in eligible investments as referred to in Article 9(1) and (2)”? If not, how to interpret the abovementioned requirement according to which the underlying funds in which the ELTIF has invested must be invested “in eligible investments as referred to in Article 9(1) and (2)”?

ESMA_QA_2469

Submission Date
14/03/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

Topic
ELTIF

Subject Matter
Indirect investment

Question
Are the assets and the cash borrowing position of the “intermediary entities”, as referred to in recital 12 of the ELTIF Regulation, included when calculating the

investment limit and the other limits laid down in Article 13 and Article 16(1) of the ELTIF Regulation?

ESMA_QA_2468

Submission Date
14/03/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
European Long-Term Investment Funds Regulation (ELTIF) Regulation (EU) 2015/760

Topic
ELTIF

Subject Matter
Indirect investment

Question
Certain industry practices often involve equity or quasi-equity instruments that are issued by an intermediate holding company or SPV of which the QPU is a majority

owned subsidiary, especially when multiple investors are involved in a single deal. Should the requirements of Article 10(1) point (a)(iii) of the ELTIF Regulation be understood as covering such investment?

Which other types of investments are the requirements of Article 10(1) point (a)(iii) referring to?

Do “intermediary entities”, as referred to in recital 12 of the ELTIF regulation, fall within the only scope of Article 10(1) point (a)(iii)?

Should “intermediary entities”, as referred to in recital 12 of the ELTIF Regulation, only invest in ‘eligible investment assets’ as referred to Article 9(1) point (a) of the ELTIF Regulation? If not, can investments in UCITS eligible assets via a SPV be accounted for as “eligible assets” as referred to in Article (9)(1)(b), and, in the case of an open-ended ELTIF, as also referred to in Article 18(2)(d) of the ELTIF Regulation?

Should “intermediary entities”, as referred to in recital 12 of the ELTIF Regulation, be considered as a qualifying portfolio undertaking if they fulfil the requirements of Article 11 of the ELTIF Regulation? In such a case, which requirements are applicable to the assets within these intermediary entities?

In relation to the “possibility of conducting minority co-investment” as referred to in recital 12 of the ELTIF Regulation, should these terms be understood as introducing a threshold for indirect investments?

ESMA_QA_2463

Submission Date
12/03/2025

Status: Answer Published

Additional Information

Level 1 Regulation
MiCA

Topic
Crypto-Asset Service Provider (CASP)

Subject Matter
Autotrading

Question
Do “copy trading services” (also referred as “auto trading services”) related to crypto-assets fall within the scope of portfolio management or any other crypto-asset services as listed in Article?3(1)(16) of MiCA?

ESMA Answer

07-04-2025

Original language

Since “auto trading services” or “copy trading services” are not defined by MiCA, it is important to determine and qualify the crypto-asset service(s) being provided by the crypto-asset service provider (CASP) in question. Such qualification is of importance to determine which authorisation the CASP should obtain as well as other relevant MiCA requirements that are applicable.

ESMA already considered the issue of “copy trading services” (and their variations) in an extensive manner in relation to financial instruments[1] under the MiFID II[2] framework. Extensive guidance is thus available in relation to copy trading services in relation to financial instruments here:

- MiFID Questions and Answers, Investor Protection & Intermediaries, 2012, Question?9: Article 4(1)(9) of MiFID - Automatic execution of trade signals: https://www.esma.europa.eu/sites/default/files/library/2015/11/2012-382.pdf (page 15)

- Supervisory Briefing on supervisory expectations in relation to firms offering copy trading services, 2023: https://www.esma.europa.eu/sites/default/files/2023-03/ESMA35-42-1428_Supervisory_Briefing_on_Copy_Trading.pdf

The definitions and scope of the investment services of “investment advice”[3] and “portfolio management”[4] under MiFID II and of the crypto-asset services of “providing advice on crypto-assets”[5] and “providing portfolio management of crypto-assets”[6] under MiCA are similar and should be interpreted in a consistent way.

ESMA considers that the guidance provided under MiFID II in the Q&A and the supervisory briefing referenced above applies, *mutatis mutandis*, to copy trading services under MiCA but regarding only the qualification of what type of crypto-asset service(s) are provided. Therefore, Q&A9 (in its entirety) and sub-sections 2.1 and 2.2 of the supervisory briefing would be relevant. Relying on this guidance, CASPs should assess, on a case-by-case basis, what type of crypto-asset service(s) is(are) triggered when providing copy trading services in relation to crypto-assets according to different models.

ESMA_QA_2461

Submission Date
11/03/2025

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
Point (c) of Article 2(7) of Commission Delegated Regulation (EU) 2017/565 and point (c) of Article 2(4) of the Commission Delegated Regulation (EU) 2017/2359

Subject Matter
PAI disclosure by financial products

Question

Can financial advisers or distributors determine that a financial product referred to in Article 2(12) SFDR can satisfy a client's sustainability preference referred to in point (c) of Article 2(7) of Commission Delegated Regulation (EU) 2017/565 or point (c) of Article 2(4) of the Commission Delegated Regulation EU) 2017/2359 based on information provided outside the SFDR financial product disclosures referred to in Chapter III-V (Articles 14-67) and Annexes II-V of the SFDR Delegated Regulation, such as the European ESG Templates (EET)?

ESMA_QA_2460

Submission Date
11/03/2025

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 7.1

Subject Matter
Financial products' PAI disclosures

Question

a) Can a financial product referred to in Article 2(12) SFDR consider the principal adverse impacts of its investment decisions on sustainability factors according to Article 7(1) if the financial market participant manufacturing that product does not consider the principal adverse impacts of its investment decisions on sustainability factors under Article 4(1)(a) or 4(3)-(4) SFDR?
b) Can financial products referred to in Article 2(12) SFDR satisfy the client's sustainability preferences pursuant to point (c) of Article 2(7) of Commission Delegated Regulation (EU) 2017/565 or point (c) of Article 2(4) of the Commission Delegated Regulation (EU) 2017/2359 in any other way than by considering the principal adverse impacts of its investment decisions on sustainability factors referred to in Article 7(1) SFDR

ESMA_QA_2459

Submission Date
11/03/2025

Status: Question Rejected

Additional Information

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

Topic
Register of information

Subject Matter
Fintech company: DORA AND ROI

Question
Hi Team,

Hope you are well!

We are a Spanish Fintech company called Toqio, our company lets you create, customize, and scale unique financial products in our platform.Please find more information below:

https://toqio.co/platform

Could you please confirm that we have to comply with DORA and also we have to send the ROI to the authorities?

Thank you in advance,

Kindest regards,

Ester

ESMA_QA_2457

Submission Date
07/03/2025

Status: Question Rejected

Additional Information

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

Topic
Other DORA topics

Subject Matter
Clarification on DORA Audits for Non-European ICT Service Providers

Question
The DORA law states that ICT third-party service providers must fully cooperate during onsite inspections and audits conducted by competent authorities, the Lead Overseer, the financial entity, or an appointed third party.

Will these audits be conducted the same way if the provider is located outside Europe,

ESMA_QA_2456

Submission Date
07/03/2025

Status: Question Rejected

Additional Information

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

Topic
ICT third-party risk management

Subject Matter
Clarification on DORA Compliance for Intra-Group providers

Question
Can you confirm our understanding of the DORA law: an intra-group entity providing services to a financial entity is subject to the same obligations as a non-critical third-party provider. This includes requirements related to contractual

arrangements, provisions for critical functions, exit strategies and termination conditions, information registry, reporting to competent authorities, and pre-contractual assessments. Additionally, if the services involve critical or important functions, further requirements apply, such as TLPT tests and audits by competent authorities.

ESMA_QA_2454

Submission Date
05/03/2025

Status: Answer Published

Additional Information

Level 1 Regulation
Prospectus Regulation 2017/1129

Topic
Content of prospectus

Additional Legal Reference
Annex I to the Prospectus Regulation and Commission Delegated Regulation (EU) 2019/980 of 14 March 2019

Subject Matter
Historical financial information - if we intend to prepare and file a Prospectus should we, acting as an issuer of equity securities (shares), prepare historical financial

information covering the last three or two financial years?

Question

Annex I to the Prospectus Regulation was amended by Regulation 2024/2809 and introduced reduced time periods for historical financial information. However, Commission Delegated Regulation 2019/980 remains in force and requires longer time periods for historical financial information. Do the time periods in Annex I now apply or do those in Commission Delegated Regulation 2019/980 continue to apply?

ESMA Answer

18-06-2025

Original language

The time periods for historical financial information in Commission Delegated Regulation 2019/980 continue to apply until appropriate changes are made to give full effect to amendments introduced by Regulation 2024/2809. Article 13(1) of the Prospectus Regulation as amended by Regulation 2024/2809 requires the Commission to adopt delegated acts defining the specific information to be included in a?prospectus[1]. The adoption of those delegated acts is necessary to give full effect to the reduced time periods as well as other changes based on Regulation 2024/2809.

[1] Article 1(10)(a)(i) (Amendments to Regulation (EU) 2017/1129) of REGULATION (EU) 2024/2809 states: "*By 5 June 2026, the Commission shall adopt delegated acts in accordance with Article 44 to supplement this Regulation regarding the*

standardised format and standardised sequence of the prospectus, the base prospectus and the final terms, and the schedules defining the specific information to be included in a prospectus, including LEIs and ISINs, avoiding duplication of information when a prospectus is composed of separate documents."

ESMA_QA_2447

Submission Date
26/02/2025

Status: Answer Published

Additional Information

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

Topic
ICT third-party risk management

Subject Matter
direct agreements between AIF and ICT service provider

Question
According to article 2 par 1 of DORA AIFM is in scope of DORA, AIF is not defined as financial entity. There are situations when agreement is concluded directly between AIF and ICT service provider. It is obvious that the agreement in such

situation should contain elements listed in article 30 of DORA and the risk assessment should be performed by AIFM. But shall such agreement also be:
- included in the register of information in relation to all contractual arrangements on the use of ICT services provided by ICT third-party service providers according to article 28 par 3 and
- notified to competent authority in a timely manner prior of the conclusion of the agreement if the agreement supports critical or important functions?

ESMA Answer

26-02-2025

Original language

DORA applies to managers of alternative investment funds according to Article 2, point (k) of DORA. Therefore, to the extent that ICT systems of an AIF are needed for the AIFM to comply with its obligations under AIFMD and DORA those systems should be covered. Hence, in general, contracts that are signed by the AIFM, no matter if for the AIFM or on behalf of the AIF, or are signed directly by the AIF should comply with DORA requirements and should be included in the register of information and be notified to competent authorities in a timely manner prior of the conclusion of the agreement, if the agreement supports critical or important functions.

ESMA_QA_2578

Submission Date
20/02/2025

Status: Answer Published

Additional Information

Level 1 Regulation
MiCA

Topic
Crypto-Asset Service Provider (CASP)

Additional Legal Reference
Article 75(7)

Subject Matter
Commingling clients' crypto-assets with crypto-assets from other entities of the group when acting as custodian

Question

Some crypto-asset service providers (CASPs) providing custody and administration of crypto-assets on behalf of clients (as defined in Article 3(1)(17) of MiCA) have sister companies that may provide certain services to the CASP's clients, for instance, liquidity or offer lending services. These sister companies may be using the CASP as their custodian and the CASP will hold their crypto-assets within the same wallet(s) to custody other clients' crypto-assets.

Under MiCA, is a CASP providing custody and administration of crypto-assets on behalf of clients allowed to hold clients' crypto-assets within the same wallets as crypto-assets belonging to entities of the same group?

ESMA Answer

17-06-2025

Original language

According to Article 75(7) of MiCA, CASPs are required to ensure that, on the distributed ledger, clients' crypto-assets are held separately from their own crypto-assets. In practice, this means that the wallet addresses used for holding clients' crypto-assets should be different from the wallet addresses used for holding proprietary crypto-assets.

Whilst crypto-assets belonging to other entities belonging to the same group should not be regarded as "own crypto-assets" of the CASP for the purpose of Article 75(7) of MiCA, the fact that a CASP-custodian commingles its clients' crypto-assets with crypto-assets belonging to entities of the same group introduces conflicts of interest and potential risks for clients.

For instance, due to information asymmetry, the sister company may gain an advantage over other clients by becoming aware of circumstances or incidents that would prompt it to withdraw its crypto-assets from the CASP's custody. Such circumstances may include, for example, a potential shortfall in crypto-assets or the imminent insolvency of the CASP. As many CASPs use omnibus wallets, a significant withdrawal by a sister company can negatively impact other clients.

In accordance with Article 72 of MiCA, CASPs shall implement and maintain effective policies and procedures, taking into account the scale, the nature and range of crypto-asset services provided, to identify, prevent, manage and disclose conflicts of interest. In addition, Article 4(1) of Commission Delegated Regulation (EU) …/… of 27 February 2025 supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council with regard to regulatory technical standards specifying the requirements for policies and procedures on conflicts of interest for crypto-asset service providers and the div and methodology for the content of disclosures on conflicts of interest provides that "the conflict of interest policies and procedures shall be set out in writing and shall take into account: (a) […]; (b) where the crypto-asset service provider is a member of a group, any circumstances which may give rise to a conflict of interest due to the structure and business activities of other entities within the group".

This obligation applies to cases described above where a CASP-custodian holds crypto-assets that belong to entities of the same group (as defined in Article 2, point (11), of Directive

2013/34/EU of the European Parliament and of the Council1). The CASP-custodian should, for instance, avoid commingling clients' crypto-assets with crypto-assets held on behalf of entities of the same group. However, this would not be in itself sufficient and the CASP-custodian should take all measures to ensure "that the risks of damage to the interests of the crypto-asset provider or its clients will be prevented or appropriately mitigated" (Article 4(7) of the Commission Delegated Regulation on conflicts of interest of CASPs). If the CASP-custodian is not able to do so, it should refrain from providing the service to its sister entities.

ESMA_QA_2608

Submission Date
20/02/2025

Status: Answer Published

Additional Information

Level 1 Regulation
MiCA

Topic
Crypto-Asset Service Provider (CASP)

Subject Matter
Pre-funding clients' orders with clients' crypto-assets

Question
Does the Markets in Crypto-Assets Regulation (MiCA) allows crypto-asset service providers (CASPs) to use clients' crypto-assets for pre-funding client orders?

ESMA Answer

09-07-2025

Original language

Pre-funding client transactions using clients' crypto-assets qualifies as the sub-custody of client's crypto-assets. As such, CASPs pre-funding clients' transactions with clients' crypto-assets must adhere to the requirements outlined in Articles 70 (Safekeeping of clients' crypto-assets and funds) and 75 (Providing custody and administration of crypto-assets on behalf of clients) of MiCA. In accordance with Article 75(9) of MiCA, the pre-funding of clients' transactions using clients' crypto-assets may thus only be done where the third party holding the clients' crypto-assets is a CASP authorised in accordance with Article 59 of MiCA and clients have been informed accordingly. Consequently, the pre-funding of client transactions using client's crypto-assets is only permissible under MiCA where the third-party holding the client's crypto-assets is authorised to provide the crypto-asset service of custody and administration of crypto-assets on behalf of clients in accordance with MiCA.

Where clients' crypto-assets are sent to a third party for the settlement of a transaction that has already been executed for the specific purpose of settling a specific order, this should not be seen as sub-custody.

ESMA_QA_2442

Submission Date
17/02/2025

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
Reporting of Settlement Rate Options

Question
How should the Settlement Rate Option be reported for FX products, such as FX non-deliverable forwards or FX non-deliverable options?

ESMA Answer

14-02-2025

Original language

When reporting currency derivatives based on an underlying benchmark, both sets of reporting fields are applicable, depending on the terms of the contract being reported. Therefore, both the ‘currency derivatives-related’ fields and ‘benchmark-related’ fields should be reported as appropriate.

In addition to the relevant currency and benchmark fields, the following fields should be populated as outlined below to accurately identify the derivative. For example, in the case of NDFs based on an underlying benchmark:

- Field 2.11 ‘Asset Class’ should be populated with the corresponding value for currency derivatives (‘CURR’).
- Field 2.13 ‘Underlying identification type’ should be populated with ‘X’, indicating that the derivative relates to an Index.
- Field 2.14 ‘Underlying identification’ should be populated with the ISIN of the underlying benchmark. If the benchmark does not have an associated ISIN, this field should be left blank.
- Field 2.16 ‘Name of underlying index’ should be populated with the full name of the underlying index as assigned by the index provider.

ESMA_QA_2441

Submission Date
14/02/2025

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
Assessment of significance for the purpose of the Error and Omission Notifications

Question
(a) How should counterparties conduct the significance assessment referred to in Articles 9(1)(a) and 9(1)(c) of Commission Delegation Regulation (EU) 2022/1860

(ITS on reporting under EMIR REFIT)?

More specifically, how should the “NumOfAffReports” and the “Average Monthly Number of Submissions” referred to in the formula for significance in Paragraph 392 of the Guidelines on reporting under EMIR REFIT be calculated?

(b) Paragraph 392 of the Guidelines for reporting under EMIR REFIT states that the actual number of reports should be based on the previous 12 months. In the context of EMIR REFIT being applicable as of 29 April 2024, should data from before 29 April 2024 be included in the 12-month calculation?

ESMA Answer

14-02-2025

Original language

(a) For the purpose of the significance assessment, counterparties should calculate the “NumOfAffReports” and the “AverageMonthNum” separately for each category. For example, in Category 1, the calculation should be as follows:

$$\frac{\text{Number of affected records in Category 1}}{\text{Average Aggregate Number of Reports submitted (and accepted) to the TR unde}}$$

i.e., with AT='New','Modify','Correct','Terminate','Error', 'Revive'or 'Position Component'

(b) The calculation for the ‘Average Monthly Number of Submissions’ should cover data from the 12 months immediately preceding the notification. Where feasible and not overly burdensome, this calculation should also include data from before EMIR REFIT’s applicability (i.e., prior to 29 April 2024).

ESMA_QA_2439

Submission Date
13/02/2025

Status: Answer Published

Additional Information

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

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

Topic
Position reporting

Additional Legal Reference
Article 83(1)(b) of CDR 2017/565; Article 57(1) of MiFID II

Subject Matter
Q&A on open interest thresholds in energy derivatives

Question
How do open interest thresholds that are denominated in lots such as in Article 83(1)(b) of CDR 2017/565 (10,000 lots) and in Article 57(1) of MiFID II (300,000 lots) translate into underlying units of energy derivatives such as Megawatt Hour (MWh), million British Thermal Units (MMBTU), or Therms (therm)?

ESMA Answer

13-02-2025

Original language

For the purpose of converting thresholds that are denominated in lots into underlying units of energy derivatives, ESMA considers the monthly contracts in which most trading activity is concentrated as a baseline, each representing 1 lot.

The conversion for the 10,000 lot threshold is exemplarily demonstrated below:

For gas and base load power, the monthly contracts representing 1 lot, are considered equivalent to 720MWh (1MW[1]*24h*30days). Given that 1 MWh = 3.41 [2] MMBTU and 1 MMBTU = 10 therm, the following thresholds apply:

10,000 lots = 10,000 * 720MWh **= 7,200,000 MWh**

10,000 lots = 10,000 * 720MWh * 3.41 MMBTU/MWh **= 24,548,477 MMBTU**

10,000 lots = 10,000 * 720MWh * 3.41 MMBTU/MWh * 10 therm/MMBTU **= 245,484,766 therm**

For peak load power, the monthly contract representing 1 lot is considered equivalent to 264MWh (1MW*12h*22days) and consequently, the following threshold applies:

10,000 lots = 10,000 * 264MWh **= 2,640,000 MWh**

This Q&A expands the scope of the existing Q&A on Position limits - the definition of "a lot" to also cover position reporting, without changing the approach.

Concerning gas derivatives denominated in units different from MWh, please also refer to the Q&A on lot sizes and position limits.

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[1] Sometimes the physical power of energy contracts is stated in daily terms, e.g. 1 MWh/d = 1/24 MW instead of 1 MW, however, this is less common.

[2] The calculations were performed using a conversion factor of 3.4095106405145.

ESMA_QA_2438

Submission Date
12/02/2025

Status: Answer Published

Additional Information

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

Topic
Best Execution

Subject Matter
Multiple offers

Question
Can a project owner seek funding for its project through both a crowdfunding offer and an offer to the public of transferable securities which is not a crowdfunding offer?

ESMA Answer

12-02-2025

Original language

The ECSPR does not prevent a project owner from seeking funds for a project through different means of financing, including a public offer of transferable securities. However, restrictions apply in case where such public offer of transferable securities falls in the scope of point (ii) of point (c) of Article 1(2) of the ECSPR for the purpose of the calculation of the threshold referred to in point (c) of Article 1(2) of the ECSPR (EUR 5 000 000 over a period of 12 months).

In this context, ESMA would like to clarify that offers of transferable securities to the public made by a project owner shall not be taken in consideration for the purpose of the calculation of the threshold referred to in point (c) of Article 1(2) of the ECSPR, when they have the following features:

- any offer to the public of transferable securities that is not made pursuant to the exemption in Article 1(3) or the one in Article 3(2) of Regulation (EU) 2017/1129;

- any offer to the public of transferable securities closed more than 12 months prior to the launch of the crowdfunding offer;

- any offers to the public of transferable securities conducted after the launch of the crowdfunding offer.

ESMA_QA_2437

Submission Date
12/02/2025

Status: Answer Published

Additional Information

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

Topic
Suitability

Additional Legal Reference
Article 1(2) of ECSPR

Subject Matter
Scope of the ECSPR - Calculation of threshold in point (c) of Article 1(2) of ECSPR

Question

How should the threshold laid down in point (c) of Article 1(2) of ECSPR be calculated?

ESMA Answer

12-02-2025

Original language

The ECSPR enables project owners to make use of crowdfunding platforms to raise funds up to an aggregated maximum amount of EUR 5 000 000 euros in a 12-month period.

The EUR 5 000 000 aggregated amount includes (i) the offers (of transferable securities and admitted instruments (*), and loans) conducted through crowdfunding platforms as well as (ii) the other offers to the public (of transferable securities) conducted in exemption of the obligation to publish a prospectus (i.e. so called “small offers” (**)) by a specific project owner over a period of 12 months.

More in div, point (c) of Article 1(2) of the ECSPR states that the ECSPR does not apply to crowdfunding offers with an aggregated consideration of more than EUR 5 000 000, which are to be calculated over a period of 12 months as the sum of:

- the total consideration of offers of transferable securities and admitted instruments for crowdfunding purposes and amounts raised by means of loans through a crowdfunding platform by a particular project owner; and

- the total consideration of offers to the public of transferable securities made by that project owner through other offers covered by the so-called “small offer” exemptions

of the prospectus regulation.

With regard to the calculation of the 5-million threshold for the application of the ECSPR, ESMA is of the view that the reference to the “total consideration” of offers made in both point (i) and (ii) of point (c) of Article 1(2) of the ECSPR, should be read consistently with the reference to the “total consideration” of offers made in Article 1(3) and in Article 3(2) of Prospectus Regulation (Regulation (EU) 2017/1129) with regard to offers to the public which are exempted from the obligation to publish a prospectus.

In light of the above, ESMA believes that, in order to assess if a crowdfunding offer is covered under the ECSPR, the following amounts should be aggregated and summed up:

(a) the amount in transferable securities and admitted instruments that the project owner offered in offers conducted through crowdfunding platforms across the Union over the previous 12 months,

(b) the amount raised by that project owner in offers of loans conducted through crowdfunding platforms across the Union over the previous 12 months,

(c) the amount in transferable securities that the same project owner offered in other offers to the public, when exempted from the obligation to publish a prospectus in accordance with Article 1(3) or Article 3(2) of the Prospectus Regulation.

If the sum of the items a) to c) above exceeds EUR 5 000 000, the offer shall be considered as not covered by the ECSPR (i.e. such an offer is not included in the authorisation to operate as CSP).

This implies that surpassing the threshold established under point (c) of Article 1(2) of the ECSPR is not only relevant for the project owner, but also for the CSP which should assess whether the project owner remains below the threshold, taking into account the restrictions of its authorisation under the ECSPR (i.e., to provide crowdfunding services as defined under the ECSPR across the Union), and the risk

of providing investment services exceeding this authorisation.

Endnotes

(*) As defined, respectively, in points (m) and (n) of Article 2(1) of the ECSPR.

(**) Point (ii) of Article 1(2)(c) of the ECSPR notably refers to the exemption from the obligation to publish a prospectus under Article 1(3), or Article 3(2), of Regulation (EU) 2017/1129 (Prospectus Regulation).

ESMA_QA_2436

Submission Date
12/02/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

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

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

Topic
Non-equity transparency

Subject Matter
Legal qualification of Financial Transmission Rights under MiFID II

Question

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

ESMA_QA_2435

Submission Date
10/02/2025

Status: Question Rejected

Additional Information

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

Topic
Register of information

Subject Matter
Register of Information at consolidated level

Question
A Group contains within it both insurance entities and banking entities; for the purposes of preparing the Register at a consolidated level, must it consider both types of Entity? To which Authority is the Register sent at a consolidated level?

ESMA_QA_2431

Submission Date
04/02/2025

Status: Question Rejected

Additional Information

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

Topic
Register of information

Subject Matter
Non-EU ICT service providers without a LEI - conflicting validation rules

Question
When an ICT service provider reported under schedule 05.01 is a legal person outside of the EU, the absence of a EUID and LEI will result in a report validation error rendering the submission of the ROI impossible. Should such service provider

be left out of the register or should a dummy EUID be used (preferably issued by ESA to adequately consolidate missing positions)

ESMA_QA_2607

Submission Date
04/02/2025

Status: Answer Published

Additional Information

Level 1 Regulation
MiCA

Topic
Mining

Subject Matter
Staking on own account

Question
Does the Markets in Crypto-Assets Regulation (MiCA) permit the staking of clients' crypto-assets by crypto-asset service providers (CASPs) for their own account?

ESMA Answer

09-07-2025

Original language

Article 70(1) of MiCA provides that CASPs that “hold crypto-assets belonging to clients or the means of access to such crypto-assets shall make adequate arrangements to (…) prevent the use of clients’ crypto-assets for their own account”.

CASPs are thus expected to refrain from using clients’ crypto-assets for their own account. Consequently, MiCA does not allow the staking of clients’ crypto-assets by CASPs for their own account, even in cases where the client has explicitly provided consent. In line with the European Commission Q&A 2067 available on ESMA’s website, CASPs and clients may mutually agree on the terms under which staking-as-a-service is provided by the CASP, provided that the profits from staking do not solely benefit the $CASP_1$.

In addition, and by virtue of their regulated status, CASPs providing staking-as-a-service to their clients should act in the best interests of their clients. When providing crypto-asset services, CASPs must act in accordance with the requirements of Article 66(1) of MiCA and ensure that they are acting honestly, fairly and professionally in accordance with the best interests of their clients and prospective clients. In addition, they must comply with their obligations under Article 66(2) of MiCA and ensure that all information, including marketing communications, addressed to clients or prospective clients is fair, clear and not misleading. Therefore, ESMA recommends that CASP clearly communicate about the costs ultimately borne by clients using the CASP as intermediary to stake their crypto-assets. Accordingly, CASPs should be transparent about any fees or commissions

taken by the CASP itself as well as those charged by third parties involved in the provision of the service.

1 As clarified in European Commission Q&A 2067, staking-as-a-service is when the benefits of staking are shared between the CASP and the client: “staking services (also referred to as staking-as-a-service) are provided to clients for a consideration by intermediaries that undertake to stake the clients’ crypto assets on their behalf. The staking service provider will collect the yield or obtain the validator privileges allowing them to earn block rewards. This yield or these block rewards are then distributed between the service provider as consideration for their service (staking the assets on the client’s behalf, exercising validator obligations and collecting the block rewards, etc.), and the staking service provider’s clients, who are the ultimate owners of the crypto assets that are staked”.

ESMA_QA_2429

Submission Date
04/02/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

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

Topic
Cross-border distribution of funds

Subject Matter
Premarketing of units or shares of AIFs

Question
Article 32a, paragraph 3, third sub-paragraph of Directive (EU) 2011/61/EU (as modified by CBDF Directive) states the following: "(…) For a period of 36 months

from the date referred to in point (c) of the first subparagraph of paragraph 1, the AIFM shall not engage in pre-marketing of units or shares of the EU AIFs referred to in the notification, or in respect of similar investment strategies or investment ideas, in the Member State identified in the notification referred to in paragraph 2." How should "similar investment strategies or investment ideas" be interpreted?

ESMA_QA_2428

Submission Date
03/02/2025

Status: Question Rejected

Additional Information

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

Topic
Register of information

Subject Matter
Register of Information at sub-consolidated Level

Question
For the purpose of preparing the Register of ICT Supplier Information (RoI) on a sub-consolidated basis, is it necessary to include within the different templates (ref. “B_XX.XX.XXX”) the information pertaining to both the Contractual Agreements that

the Entity signs and those that it uses?
Specifically then, the “financial entity maintaining the register of information” is to be considered corresponding to the "entity signing the contractual arrangement" and the "financial entity making use of the ICT service(s)"?

ESMA_QA_2416

Submission Date
27/01/2025

Status: Answer Published

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

Topic
Recording of telephone conversations and electronic communications

Subject Matter
Scope of the record keeping obligation of telephone conversations and electronic communications

Question

Are electronic communications or telephone conversations limited to the provision of information about different investment alternatives subject to the record keeping obligation under article 16(7) of MiFID II when there is no possibility to enter into a trade during that interaction?

ESMA Answer

18-06-2025

Original language

Yes, when the conversations and communications are intended to result in a transaction. Subparagraph 2 of Article 16(7) of MiFID II stipulates that telephone conversations or electronic communications that are intended to result in the conclusion of transactions must be recorded, even if those conversations or communications do not result in the conclusion of transactions.

Subparagraph 2 should be understood as applying to all telephone conversations and electronic communications that are intended to and may ultimately result in a transaction, even if the order itself may only be formally placed through a different channel, as such communications may still be relevant to the transaction and the client order. Therefore, if the discussion is expected to refer to investment options that in essence may lead to a transaction, although the order is not formally placed during such telephone conversation or electronic communications, investment firms should record them.

For guidance on the type of communications that are relevant for Article 16(7), please refer to ESMA Q&A 3.11 and 3.13 available here.

ESMA_QA_2415

Submission Date
27/01/2025

Status: Answer Published

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

Topic
Recording of telephone conversations and electronic communications

Subject Matter
Scope of the obligation to document face-to-face conversations with clients

Question

Should face-to-face conversations with clients be recorded if the client order is placed in a written form or contract signed during the meeting??

ESMA Answer

18-06-2025

Original language

Subparagraph 7 of Article 16(7) of MiFID II stipulates that when client orders are placed through channels other than telephone, they must be documented in a durable medium[1]. Subparagraph 7 mentions as examples of acceptable formats: mail, fax, email, or documentation of clients orders made at meetings and that, in particular, the content of face-to-face interactions may be recorded through written minutes or notes.

In addition, Article 76(9) of the MiFID Delegated Regulation[2] require that such records include some minimum information listed in such article.

Therefore, if a client order is placed during a face-to-face meeting and documented with a written form or contract signed during that meeting, the investment firm shall comply with Article 76(9) of the MiFID II Delegated Regulation and ensure that such written form or contract includes at least all the information listed in Article 76(9) of the MiFID II Delegated Regulation. If the written form or contract does not contain all the information specified in Article 76(9), the firm must ensure that the missing div are documented in additional records.[3]

[1] As defined in Article 4(62) of MiFID II.

[2] Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

[3] Firms are reminded that Article 74 of MiFID II Delegated Regulation concerning record keeping requirements of client orders and decisions to deal also applies.

ESMA_QA_2414

Submission Date
25/01/2025

Status: Question Published

Additional Information

Level 1 Regulation
MiCA

Topic
Crypto-Asset Service Provider (CASP)

Additional Legal Reference
Art.78

Subject Matter
MiCAR CASP - Best Possible Outcome for the Client

Question

There is a practice in the crypto-asset industry when dealing with client orders which involves the following scenario:
i) a crypto-asset service provider (CASP) providing the service of execution of orders (CASP-broker) receives client orders;
ii) this CASP-broker systematically executes the orders received on behalf of the clients with another entity of the group as counterparty (the “group entity B”) instead of executing such orders on the group’s trading platform for crypto-assets;
iii) group entity B then immediately places an offsetting order to hedge its exposure on the group’s trading platform for crypto-assets.
In this scenario, the price offered to the client by group entity B (through the CASP-broker) is in excess of the top of book price achievable on the order book of the trading platform for crypto-assets to reflect a "guaranteed price" offered to the customer for a limited period, for example 30 - 60 seconds. Group entity B then enters an order on the group’s trading platform on the same side as the customer order would have been had it been executed directly on the group’s trading platform.
However, the price is not really guaranteed: if during the execution of group entity B’s order on the group’s trading platform, the price moves in favour of the client order, group entity B trades at that more favourable price but fills the client’s order at the agreed “guaranteed price”. But, if during the execution of group entity B’s order, the price moves against the client order, the client’s order will be filled by group entity B only if the price movement doesn't exceed the spread applied by group entity B when quoting the “guaranteed price”. Otherwise the order of the client will be cancelled.
In such scenarios, the client pays:
(i) to the CASP-broker: a fully disclosed commission for the “execution of their order”, and
(ii) to group entity B: a spread which is priced in to the “guaranteed price” quoted by group entity B.
Is this scenario compliant with MiCA?

ESMA_QA_2404

Submission Date
17/01/2025

Status: Answer Published

Additional Information

Level 1 Regulation
MiCA

Topic
Stablecoin

Subject Matter
Scope of public offering

Question
Regarding ARTs or EMTs under MiCAR, what services provided in or into the EU constitute an offering to the public, a seeking admission to trading or a placing of an ART or EMT?

ESMA Answer

17-01-2025

Original language

Answer provided by the European Commission

Since the application of Titles III and IV of MiCA on 30 June 2024, any issuer of an asset-referenced token (ART) or e-money token (EMT) offered to public or admitted to trading in the Union will have to be authorised in the EU in accordance with Article 16(1) and Article 48(1), subject to the transitional provisions relating to ARTs referred to in Article 143(4) and (5) of MiCA.

While the first sub-paragraph of Article 16(1) and Article 48(1) prohibits offering to public or seeking admission to trading unless the offeror or person seeking admission to trading is an authorised issuer complying with MiCA, the same applies to offering to public or seeking admission to trading by persons other than the issuer under the second subparagraphs of Article 16(1) and Article 48(1). Other persons than the issuer may offer to public or seek admission to trading of an ART or EMT, if the following conditions are met:

- the issuer of the ART or EMT is authorised in the EU in accordance with Article 16(1) or Article 48(1), respectively;

- the person must obtain a written consent from the issuer.

It follows from both first and second sub-paragraphs of Article 16(1) and 48(1) that offering to public or seeking admission to trading of ARTs or EMTs is only possible if the issuer of such tokens is authorised under MiCA.

Providing certain crypto-asset services amounts to an offering to public or seeking admission to trading. In particular, operators of trading platforms for crypto-assets that list ARTs or EMTs for which the issuer has not been authorised under MiCA are to be considered as persons seeking admission to trading on the own initiative of the operator under Articles 16(1) or Article 48(1).

Other crypto-asset services could also constitute an offering to the public, which requires a case-by-case assessment. For instance, providers of crypto-asset services engaged in exchange services, reception and transmission of orders or execution services could be regarded as making an offer where they promote or advertise, as part of these services, an ART or EMT.

Provision of crypto-asset services with respect to ARTs and EMTs that amounts to offering to public or admission to trading in non-compliance with Titles III and IV has been prohibited since 30 June 2024. This is the case also if the ARTs or EMTs had been first offered to public or admitted to trading before the application of Titles III and IV and continue to be offered to public or admitted to trading.

Disclaimer: The answer clarifies 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_2399

Submission Date
14/01/2025

Status: Question Rejected

Additional Information

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

Topic
Digital operational resilience testing

Subject Matter
Finalised Comprehensive List of DORA questions

Question
Is there a finalised comprehensive list of all questions that the firms involved in the financial markets should answer? For each question is it clear to which type of firm it applies?

ESMA_QA_2397

Submission Date
10/01/2025

Status: Answer Published

Additional Information

Level 1 Regulation
MiCA

Topic
Crypto-Asset Service Provider (CASP)

Additional Legal Reference
article 60 paragraph 5 MICA

Subject Matter
Registered AIFM and MICA

Question

Does article 60 paragraph 5 MICA apply to registered (sometimes referred to as sub-threshold) Alternative Investment Fund Managers referred to in Article 3(2) AIFMD (Directive 2011/61/EU) ?

ESMA Answer

07-04-2025

Original language

Article 60(5) provides that "*A UCITS management company or an alternative investment fund manager may provide crypto-asset services equivalent to the management of portfolios of investment and non-core services for which it is* ***authorised*** *[emphasis added] under Directive 2009/65/EC or Directive 2011/61/EU if it notifies the competent authority of the home Member State of the information referred to in paragraph 7 of this Article at least 40 working days before providing those services for the first time.*"

Alternative investment fund managers referred to in Article 3(2) of the AIFMD are exempt from authorisation under the AIFMD – they are instead simply registered. As such they may not provide crypto-asset services on the basis of a notification under Article 60(5) of MiCA.

ESMA_QA_2396

Submission Date
10/01/2025

Status: Question Rejected

Additional Information

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

Topic
ICT risk management

Additional Legal Reference
Article 3 (21)

Subject Matter
Definition on ICT services

Question

Article 3 (21) of DORA defines that 'ICT services’ means digital and data services provided through ICT systems to one or more internal or external users on an ongoing basis.

It is not clear whether "digital and data services" should be interpreted as:
Version one: either digital or data services (so two different of sets of activities or
Version two: services which need to be both: digital service and parallel/in the same time data service.

ESMA_QA_2386

Submission Date
20/12/2024

Status: Question Rejected

Additional Information

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

Topic
Digital operational resilience testing

Additional Legal Reference
article 2(1)(e) DORA

Subject Matter
Applicability of DORA to third country investment firms

Question

DORA also applies to the "financial entities" listed in Article 2 DORA. This includes investment firms as defined in Article 4 point (1) of Directive 2014/65/EU. Reference is made to Article 2 subsection 1 under e. in conjunction with Article 3 point (33) of DORA. Does this mean that DORA also applies to investment firms with their seats outside the EU which provide investment services in the EU?

ESMA_QA_2382

Submission Date
18/12/2024

Status: Question Rejected

Additional Information

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

Topic
Digital operational resilience testing

Subject Matter
Applicable accounting standard for calculation of turnover

Question
Our understanding is that a business can rely on the exemption under either Article 3(60) micro enterprise, (63) small enterprise or (64) medium-sized enterprise categories under DORA. We have however not been able to find clear information

on which accounting standard that should be used when calculating annual turnover under DORA. In addition, our analysis has not shown that the Commission Recommendation 2003/361/EC on small and medium-sized enterprises provides any guidance on the question of which accounting standard can be used.
In a recent informal call with the Swedish FSA, we were informed that, when calculating the turnover of an entity to determine whether it falls under the SME exemption under DORA, the entity should use the same accounting standards that were used to draw up the relevant audited accounts. Thus, if IFRS is applied by the national entities, the relevant entity shall use the same basis (IFRS) to calculate the relevant national turnover. Is this also ESMA's view?

ESMA_QA_2381

Submission Date
17/12/2024

Status: Question Rejected

Additional Information

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

Topic
Other DORA topics

Subject Matter
art. 3 ust. 21

Question
Are service providers that are financial entities, in particular GPW, KDPW, IRGiT Banks, foreign entities that are financial institutions ICT service providers? The service does not concern the provision of ICT services, but e.g. maintaining a bank

account.

ESMA_QA_2379

Submission Date
17/12/2024

Status: Question Rejected

Additional Information

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

Topic
Other DORA topics

Subject Matter
Art. 1 ust. 1 DORA - systems supporting the business processes of financial entities

Question
Financial entities select ICT service providers based on risk assessment, taking into account the business continuity plan and a number of national and sectoral regulations regarding cybersecurity. In addition to standard contractual relationships

with entrepreneurs, there are also solutions that financial entities use:
a) on the basis of a license, e.g. open source. The license provisions are not negotiated, and the service is not individually parameterized for the investment company. The investment company has no influence on the shape of the service and the license provisions. The licenses contain provisions regarding automatic update of the tool, but do not contain provisions regarding, e.g. support or SLA, e.g. Adobe Acrobat Reader;
b) web applications, e.g. Lex/Legalis systems (review of legal acts), which employees access via a browser, the agreement does not involve installing the application on the employee's computer, but only providing a specified number of licenses for use by the company, or a web system for registering correspondence in the case of ordering a courier;
c) providers of employee benefits, e.g. medical care. They are not directly related to the company's business, employees use the application on private devices and log in with a private email address, while registration is necessary for the medical company to create an account for the employee;

Is it possible to apply the principle of proportionality, provided for in the DORA regulations, which will allow for proper identification of risks and the application of proportionate mitigants in the case of the above-mentioned services? In the opinion of the financial entity, the application of all the obligations indicated in the DORA regulations, in particular those concerning contractual provisions and reporting obligations, is disproportionate to the risk generated by the above solutions. The financial entity does not deny the need for each case of evaluation of the solution and review of its correct functioning, the number of entities in relation to which these obligations would have to be performed may affect the quality of the duties performed.

Are the services supporting a critical or important function all the services used as part of performing this function, including those that are quickly and relatively cheaply replaceable (e.g. Adobe Acrobat Reader, 7ZIP, e-mail encryption program)?

ESMA_QA_2378

Submission Date
17/12/2024

Status: Answer Published

Additional Information

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

Topic
Digital operational resilience testing

Subject Matter
Article 3(28) and EU Subcontractors

Question
DORA Article 3(28) excludes natural persons from the definition of 3rd country subcontractors, does the same apply to EU Subcontractors?

ESMA Answer

17-12-2024

Original language

Article 3(28) clearly carves out natural persons from the definition of 3rd country subcontractors. This does however not infer that natural persons are not included in the scope of EU subcontractors.

The ITS on the Register of Information clearly indicates that (i) subcontractors may be individuals acting in business capacity (Article 3(6)) and (ii) in Part 2, tables on instructions, line B_05.01.0070). It is clarified that ICT third party service providers may be either legal persons or individuals acting on business capacity.

When we look at Article 29(2) of DORA, we can infer that the relevant subcontractors are anyway ICT third party service providers. Hence, other than in the case of the third-country subcontractors, the ITS on registers has clarified that EU ICT subcontractors may be individuals.