

Spotlight on Markets – March 2023

ESMA AND ITS INVESTOR PROTECTION MANDATE

- Guidance for supervision of copy trading services
- Market Correction Mechanism: no measurable impact on financial markets under current market conditions



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Guidance for supervision of copy trading services

The European Securities and Markets Authority (ESMA) published a supervisory briefing on firms offering copy trading services, in accordance with its objective of fostering investor protection and actively promoting supervisory convergence across the Union.



This briefing includes guidance on the qualification of copy trading services as an investment service and it sets out supervisory expectations with regard to MiFID II requirements on:

-  Information requirements (including on marketing communications and costs and charges)
-  Product governance
-  Suitability and appropriateness assessment
-  Remuneration and inducement
-  Qualifications of traders whose trades are being copied

The supervisory briefing sets out the supervisory expectations of both ESMA and National Competent Authorities (NCAs) and also includes indicative questions that supervisors could ask themselves, or firms, when assessing firms' approaches to the application of the relevant MiFID II rules.

Next steps

ESMA and NCAs will continue monitoring the development on this topic and may therefore undertake other steps in the future to assure that copy trading is provided in a manner that is consistent with the applicable MiFID II requirements and that investment services continue being provided in the best interest of the client.

Market Correction Mechanism: no measurable impact on financial markets under current market conditions

The European Securities and Markets Authority (ESMA) published its Effects Assessment of the introduction of the market correction mechanism (MCM) on gas derivative markets. The results confirm the findings of the preliminary data report that, to date, no measurable impact of the MCM can be identified.



In the report, ESMA explores whether some shift of trading has unfolded as a consequence of the MCM. Based on this analysis, ESMA notes that no changes in the EU gas derivatives trading could be identified so far that could be unequivocally and directly attributed to the MCM.

In addition, the report describes the impact of the MCM on the CCPs' capacity to conduct their risk management activities, in particular to calculate their exposures and to manage potential clearing member defaults. The analysis performed did not result at this stage in the identification of noticeable changes in CCP risk management or in margin requirements that could be attributed to the MCM.

The absence of a significant impact of the MCM on the trading and clearing environment should not be understood as the MCM not having any impact and reflects the current market environment characterised by low gas prices and high storage levels. The impact of the MCM could be different as the market environment changes and the activation of the MCM is anticipated by market participants

Last, the recent announcements by ICE Endex and EEX to offer respectively the trading of TTF contracts in the UK and on an EU OTF – both outside the scope of the MCM Regulation – confirm that market participants are preparing for a scenario where the MCM could be activated in the future.

The Effects Assessment is covering the time horizon since the adoption of the MCM in December 2022, and granular market indicators regarding trading activity, liquidity and execution.

ACER also published its Effects Assessment . See [here](#).

Next steps

ESMA will continue monitoring developments in the trading and clearing of EU gas derivatives and is ready to provide further technical advice, including where the activation of the MCM is imminent and in case of the activation of the MCM.

ESMA and ACER update Memorandum of Understanding to strengthen cooperation

The European Securities and Markets Authority (ESMA) and the EU Agency for the Cooperation of Energy Regulators (ACER) signed an updated Memorandum of Understanding (MoU) which strengthens collaboration between the two institutions. The MoU notably incorporates new cooperation areas under the MCM Regulation and benchmarks related to the energy sector. It also details the role of the recently established ACER–ESMA Task Force.



ESMA and ACER will continue to cooperate in relation to regulation of wholesale energy markets, which encompass both energy derivatives and spot markets. The cooperation will primarily be achieved through on-going consultations, exchange of information and cross-participation in joint meetings of working groups and task forces.

Main areas covered by the MoU



Coordinated and consistent approach to market abuse framework under the Regulation on wholesale energy market integrity and transparency and the Market Abuse Regulation to further enhance market integrity in energy and energy derivative markets;



Technical cooperation on data and knowledge with respect to the functioning of energy and energy derivative markets; and



LNG price assessments and benchmarks administered by ACER and other energy-related benchmarks relevant for ESMA's or ACER's mandates.

Background

ESMA and ACER have a long-established cooperative relationship. The first MoU was signed in July 2013.

In October 2022, in the context of the energy crisis, ESMA and ACER enhanced their efforts to strengthen oversight of energy and energy derivative markets. They launched the idea of a joint ACER-ESMA Task Force and highlighted possible areas of cooperation. [More here.](#)

ESMA and ACER published preliminary data reports concerning the adoption of the EU Regulation establishing an MCM to protect Union citizens and the economy against excessively high prices in January 2023. See [ESMA report here](#) and [ACER report here](#). The provisions governing the MCM started applying on 15 February 2023.

Both institutions released on 1 March, their respective Effects Assessments. See [ESMA report here](#) and [ACER report here](#).

ESMA fines S&P €1.11 million for failures related to the premature release of credit ratings to the public

The European Securities and Markets Authority (ESMA) fined S&P Global Ratings Europe Limited (S&P) a total of EUR 1,110,000, and issued a public notice for breaches of the Credit Rating Agencies Regulation (CRA Regulation).

ESMA found that S&P published credit ratings before the concerned securities were issued by the rated entities and announced to the market. This was due to internal control failures and led to breaches by S&P of its transparency obligations.

“Today’s action against S&P emphasises the importance ESMA places on CRAs complying with their obligations of timely disclosure of information regarding ratings to the market. Publishing a credit rating before the issuance of the rated securities may result in harm to the issuer, to investors and more generally to the orderly functioning of the financial markets.”

Verena Ross, ESMA Chair



The breaches covered by the fine specifically relate to:

-  deficiencies in S&P's internal control mechanisms, which did not ensure compliance with its obligations regarding the timely disclosure of credit ratings;
-  the failure by S&P to disclose on a non-selective basis and in a timely manner decisions to discontinue credit ratings;
-  the failure by S&P to submit up-to-date rating information to ESMA.

All breaches were found to have resulted from negligence on the part of S&P. In calculating the fine, ESMA considered both aggravating and mitigating factors provided for in the CRA Regulation.

S&P's Breaches of the Credit Rating Agencies Regulation

Internal controls infringement

ESMA found that the flaws in the internal control procedures and the way in which those procedures were implemented led S&P to release credit ratings prematurely. In particular, ESMA found that between 5 June 2019 and 8 September 2021, S&P released solicited credit ratings regarding six issuers prematurely, i.e. the credit ratings were published by S&P before the issuance of the securities by the rated entities and announcement to the market. Consequently, ESMA fined S&P EUR 825,000 for not having internal control mechanisms to ensure compliance with its obligations regarding the timely disclosure of credit ratings.



Infringements related to transparency obligations

ESMA found that, between 2019 and 2021, in six instances, S&P removed, without providing explanations, credit ratings from its public platforms. Consequently, ESMA fined S&P EUR 210,000 for failing to disclose on a non-selective basis and in a timely manner decisions to discontinue credit ratings.

ESMA also found that in relation to one rated entity, S&P did not ensure that the information it submitted to ESMA for publication on the European Rating Platform (ERP) was correct and up to date. Consequently, ESMA fined S&P EUR 75,000.

Right to appeal

S&P may appeal against this decision to the Board of Appeal of the European Supervisory Authorities. Such an appeal does not have suspensive effect, although it is possible for the Board of Appeal to suspend the application of the decision in accordance with Article 60(3) ESMA Regulation.

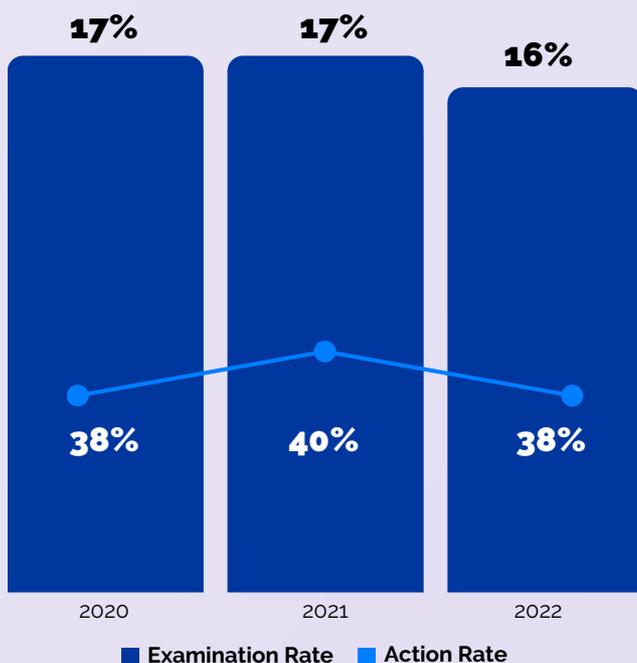
2022 Corporate Reporting Enforcement and Regulatory Activities Report

The European Securities and Markets Authority (ESMA) published its 2022 Corporate Reporting Enforcement and Regulatory Activities Report, providing an overview of activities carried out by ESMA and enforcers on financial and non-financial information and European Single Electronic Format (ESEF) reporting.

ESMA assessed how issuers comply with International Financial Reporting Standards (IFRS), ESMA's Guidelines on Alternative Performance Measures (APMs), non-financial reporting obligations and ESEF reporting requirements and adhere to ESMA's recommendations.

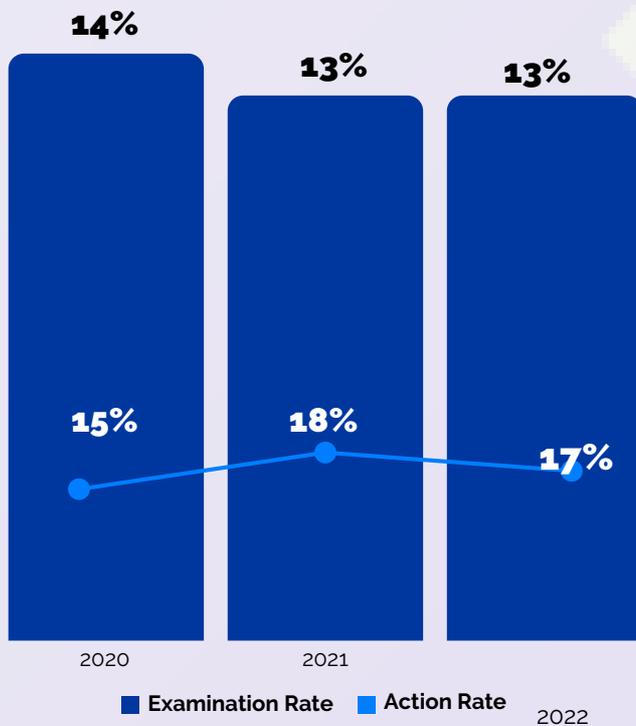
Key-figures

Enforcement of IFRS reporting



16% examination rate of financial statements drawn up under IFRS (640 issuers out of 4,090 issuers), with a 38% action rate to address material departures from IFRS (225 issuers), of which 25% related to disclosures and 13% to measurement and/or recognition;

Enforcement of Alternative Performance Measures reporting



13% examination rate of management reports for compliance with ESMA's Guidelines on APMs (521 issuers), with a 17% action rate (89 issuers);

Enforcement of non-financial reporting

18% examination rate of non-financial statements (403 issuers), with a 25% action rate (100 issuers)

Enforcement of European Single Electronic Format (ESEF) reporting

56% ESEF Transparency Directive high level requirements examination rate (2,423 issuers), with a 10% action rate (252 issuers), and a 25% ESEF RTS granular requirements examination rate (1,077 issuers), with a 4% action rate (39 issuers);

The majority of the enforcement actions for financial and non-financial information concerned corrections in the future statements, while for ESEF reporting, most actions concerned the resubmission or re-dissemination of the ESEF annual financial reports.

Guidance on product governance

The European Securities and Markets Authority (ESMA) published its **Final Report on Guidelines on MiFID II product governance guidelines.**

The main amendments introduced to the guidelines concern:

the specification of any sustainability-related objectives a product is compatible with

the determination of a compatible distribution strategy where a distributor considers that a more complex product can be distributed under non-advised sales

the practice of identifying a target market per cluster of products instead of per individual product ("clustering approach")

the periodic review of products, including the application of the proportionality principle

The product governance requirements introduced by MiFID II have proven to be one key element of the MiFID II investor protection framework, aiming at ensuring that financial instruments and structured deposits ("products") are manufactured and/or distributed when this is in the best interest of clients.

By pursuing the objective of ensuring a consistent and harmonised application of the product governance requirements, the guidelines will make sure that the objectives of MiFID II can be efficiently achieved.

ESMA conducted a public consultation on these Guidelines to gather the views of relevant stakeholders. The report published today contains a feedback statement summarising the responses received and highlighting the amendments and clarifications introduced in the final guidelines to consider the feedback received during this consultation.

Guidance on fractional shares

The European Securities and Markets Authority (ESMA) issued a Public Statement addressing investor protection concerns raised by derivatives on fractions of shares.

The statement highlights that derivatives on fractions of shares are not corporate shares, and therefore firms should not use the term fractional shares when referring to these instruments. Additionally, in line with the obligation to make clients reasonably able to understand the nature and risks of the specific type of financial instrument, firms should make clear to the investor that they are buying a derivative instrument.

The statement also reminds firms that:

-  All information provided to clients on these instruments shall be fair, clear, and not misleading and that firms must clearly disclose all direct and indirect costs and charges relating to them;
-  As derivatives, these instruments are complex products, and this is expected to result in a narrow target market of clients; and
-  As derivatives are complex financial instruments, an appropriateness assessment needs to be carried out where non-advised services are provided.

Publications

Click to read the news items

Date

- 1 Mar** [ESMA finds that MCM had no measurable impact on financial markets under current market conditions](#)
- 1 Mar** [ESMA publishes the results of the annual transparency calculations for equity and equity-like instruments](#)
- 6 Mar** [ESMA and ACER update Memorandum of Understanding to strengthen cooperation](#)
- 13 Mar** [ECB and the ESAs call for enhanced climate-related disclosure for structured finance products](#)
- 20 Mar** [ESMA raises concerns with the proposed changes to the insider list regime](#)
- 24 Mar** [ESMA fines S&P €1.11 million for failures related to the premature release of credit ratings to the public](#)
- 27 Mar** [ESMA updates its guidance on product governance](#)
- 28 Mar** [ESMA publishes guidance on fractional shares](#)
- 28 Mar** [ESMA consults on position calculations for Trade Repositories](#)
- 29 Mar** [ESMA issues its 2022 Corporate Reporting Enforcement and Regulatory Activities Report](#)
- 29 Mar** [ESMA withdraws the CRA registration of Scope Hamburg GmbH](#)
- 30 Mar** [ESMA provides guidance for supervision of copy trading services](#)
- 30 Mar** [ESMA issues Statement on the Derivatives Trading Obligation](#)
- 31 Mar** [New Q&As available](#)

Speaking appearances

by ESMA Staff in April

Date

- 13 Apr** EACT Summit
- Natasha Cazenave, ESMA ED
- 18 Apr** 21st annual TradeTech Europe conference
- Natasha Cazenave, ESMA ED
- 20 Apr** ERA Conference "Payment Systems and Payment Services"
- ESMA Staff, to speak
- 26 - 27 -28 Apr** Eurofi Seminars
- Verena Ross, ESMA Chair
- Natasha Cazenave, ESMA ED
- Klaus Löber, ESMA CCP Chair

Consultations

Click on the consultation

Closing date

- 28 Apr** Consultation Paper on the review of the methodology included in the Guidelines on stress test scenarios under the MMF Regulation
- 2 May** Consultation on JC Guidelines on the system for the exchange of information relevant to fit and proper assessments
- 9 May** Consultation on the amendments to Guidelines on position calculation under EMIR

Open vacancies

All open vacancies can be found on [ESMA's recruitment portal](#)

Deadline

- | | |
|---------------|---|
| 13 Apr | Supervision Officer |
| 2 May | Finance and Procurement Officer |
| 31 Dec | Seconded National Experts (multiple profiles) |
| 31 Dec | Traineeship Notice (multiple profiles) |

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ESMAComms



European Securities and Markets Authority (ESMA)