

# Decision of the Board of Supervisors

amending Decision ESMA41-137-1092 on delegation to the ESMA Chair of the adoption of opinions on pre-trade transparency waivers

## The Board of Supervisors

**Having regard** to Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC<sup>1</sup> (the “Regulation” and “ESMA”), and in particular Article 43(2) and Article 44(1) thereof

**Having regard** to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012<sup>2</sup> (MiFIR), and in particular Article 4(4) and Article 9(2) thereof

## Whereas:

- (1) Article 4(4) and Article 9(2) of MiFIR require a competent authority, as defined in Article 2(1)(26) of Directive 2014/65/EU<sup>3</sup>, to notify ESMA of its intention to grant a waiver from the pre-trade transparency obligations pursuant to Article 3 and Article 8 of MiFIR.
- (2) The same provisions require ESMA to issue a non-binding opinion to the competent authority in question within two months of the notification, assessing the compatibility of each intended waiver with the requirements established, respectively, in Article 4(1) of MiFIR and in Commission Delegated Regulation (EU) 217/587<sup>4</sup> and in Article 9(1) of MiFIR and in Commission Delegated Regulation (EU) 217/583<sup>5</sup>.
- (3) In order to ensure the efficient processing of waiver notifications, the Board of Supervisors adopted on 29 March 2018 a decision on the delegation to the ESMA Chair of the adoption of certain opinions on pre-trade transparency waivers (ESMA41-137-1092). The decision was also driven by the number of other new tasks for ESMA envisaged in MiFIR/MiFID II, often linked to

---

<sup>1</sup> OJ L 331, 15.12.2010, p. 84.

<sup>2</sup> OJ L 173, 12.6.2014, p. 84.

<sup>3</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

<sup>4</sup> Commission Delegated Regulation (EU) 217/587 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser (OJ L 87, 31.3.2017, p. 387).

tight deadlines. As a result, the Board of Supervisors of ESMA allocated more resources to the execution of some of these tasks.

- (4) While no major changes have occurred in the pre-trade transparency waivers framework, it is appropriate to reflect the latest amendments in the ESMA governance structure, whereby the secondary markets standing committee (SMSC) ceases to exist, and a new secondary markets working group (SMWG) is established which reports directly to the newly established markets standing committee (MSC).
- (5) To take into account the amendments in the ESMA governance, it is desirable that Decision ESMA41-137-1092 is amended accordingly.

**Has adopted this decision:**

#### **Article 1**

In Article 1 of Decision of the Board of Supervisors ESMA41-137-1092, the third paragraph is replaced by the following:

“For the purpose of this decision, non-controversial opinion shall mean an opinion confirming the compatibility of an intended waiver with the relevant requirements and in respect of which neither members of the secondary market working group (SMWG), nor ESMA staff raise objections. In case one or more members of the SMWG, or ESMA staff, raise objections, the opinion shall still be considered uncontroversial provided that all members of the markets standing committee (MSC) reach an agreement which confirms the compatibility of an intended waiver with the relevant requirements.”

#### **Article 2 – Entry into force**

- (1) This decision enters into force on the day of its adoption.
- (2) It shall be published on ESMA’s website.

Done at Paris, 23 March 2023

Verena Ross  
Chair  
For the Board of Supervisors