

**Maria Luís Albuquerque**  
**Commissioner for Financial Services**  
**and the Savings and Investments**  
**Union**  
**Directorate-General Financial Stability,**  
**Financial Services and Capital Markets**  
**Union**  
**European Commission**  
**B-1049 Brussels**  
**Belgium**

## **Ref: Qualification of fractional shares under MiFID II**

Dear Ms Albuquerque,

I am writing to you regarding the evolution of trading in fractional shares, and their classification as financial instruments under MiFID II. I would like to bring to your attention that fractional shares are currently not regulated in a coherent manner across the EU. This fragmented approach creates uncertainty notably concerning investor protection and transparency requirements.

Fractional shares look like parts of a share and are created to allow retail investors with smaller investment budgets to participate in the trading of shares with higher stock prices. Over the past few years, ESMA has observed the growing significance of fractional shares that accounted for more than 10% of the total number of transactions reported in 2023-2024. This is a positive development, as fractional shares enable more retail participation in capital markets, for instance, via the use of monthly savings plans and allow for a better diversification of investments.

However, ESMA would like to underline that neither MiFID II nor MiFIR provides for a definition of shares or fractional shares<sup>1</sup> and in consequence such instruments are defined and governed by national or case law. For instance, an instrument might be classified as a derivative in one Member State and as a share in another, undermining regulatory consistency and investor confidence. We have also observed that fractional shares are traded OTC through bilateral contracts between brokers and investors based on varying underlying business models. These different models, combined with different national legal frameworks result in an inconsistent classification of those instruments across the EU.

ESMA has already taken action to protect retail investors investing in fractional shares, as in 2023 we issued a public statement<sup>2</sup> covering those instances in which fractional shares are structured as derivatives. The statement clarified that “instruments that enable investors to

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<sup>1</sup> Shares are referred to in Article 4(44)(a) of MiFID II as “transferable securities”, i.e. “those classes of securities which are negotiable on the capital market, with the exception of instruments of payment, such as: (a) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares”.

<sup>2</sup> [ESMA35-43-3547 Public Statement on fractional shares \(europa.eu\)](#)

access fractions of shares through derivatives deriving their value from the price of an underlying corporate share” — should not be marketed as fractional shares.

However, uncertainty persists in relation to transparency requirements for fractional shares under MiFID II/MiFIR (see more details in the Annex to this letter).

As indicated earlier, the growth of this market segment offers opportunities for strengthening retail participation in capital markets and a consistent classification would help firms that want to offer fractional shares across the Union by eliminating barriers arising from national law and fostering a level playing field. Moreover, such an approach would also strengthen the integration of markets and support the objectives of increased retail participation. To support this, ESMA believes it would be helpful to clarify that fractional shares replicating the key characteristics and trading environment of shares should remain subject to the rules applicable to shares under MiFIR.

We are therefore bringing this to your attention for the Commission to consider how to best provide clarity on the qualification of fractional shares.

Should you have any questions, please do not hesitate to contact me or Carsten Ostermann, Head of the Markets and Digital Innovation Department.

Yours sincerely,

Verena Ross

CC:

Mr John Berrigan, Director General, DG Financial Stability, Financial Services and Capital Markets Union

Ms Aurore Lalucq, Chair of the Committee on Economic and Monetary Affairs, European Parliament

Ms Claudia Lindemann, Head of the Secretariat of the Committee on Economic and Monetary Affairs, European Parliament

Mr Andrzej Domański, President of the ECOFIN Council, Council of the European Union

Ms Thérèse Blanchet, Secretary-General of the Council of the European Union

## Annex – Issues raised by fractional shares trading

- (i) Transparency and reporting requirements: the transparency regime for fractional shares differs based on their classification as either shares or derivatives or another category. When classified as shares, fractional shares follow the same transparency and reporting rules as full shares. However, if classified as derivatives, they would not be subject to the same requirements, creating a potential loophole that could be exploited to circumvent transparency obligations.
- (ii) Systematic Internaliser (SI) regime and Share Trading Obligation (STO): legal uncertainty regarding the classification of fractional shares affects the compliance with the SI regime and the STO. An assessment by ESMA revealed that certain firms were not classified as SIs due to ambiguities in the classification of the instruments they offer.
- (iii) Calculation of thresholds for data reporting services providers (DRSP)s derogation criteria: the classification of fractional shares also affects the calculation of thresholds for the DRSP derogation criteria, i.e. whether a DRSP is subject to supervision by ESMA or national competent authorities<sup>3</sup>.

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<sup>3</sup> Approved Publication Arrangements (APAs) and Approved Reporting Mechanisms (ARMs) are supervised by ESMA unless they fall below certain derogation thresholds, based on the relevance of their activity for the internal market.