European Securities and Markets Authority

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PUBLIC STATEMENT

Impact of Brexit on the trading obligation for shares (Article 23 of MiFIR)

The European Securities and Markets Authority (ESMA) has further considered the impact of the United Kingdom (UK) leaving the European Union (EU) without a withdrawal agreement (no-deal Brexit) on the trading obligation for shares (STO) under Article 23 of MiFIR[1] and in the absence of an equivalence decision in respect of the UK by the European Commission (EC).

ESMA has issued a public statement on 19 March 2019[2] which aimed at reducing the potential impact created by a no-deal Brexit while striking a balance with the need to find a way for a consistent application of EU law. The guidance provided by ESMA has significantly reduced the scope of the STO under no-deal Brexit circumstances: while there are currently around 23,000 shares that are admitted to trading or traded on a trading venue in the EU, ESMA's guidance limited the application of the STO to 6,243 shares, among them 14 shares with a GB ISIN.

ESMA is issuing this new statement to further mitigate potential adverse effects of the application of the STO, within the constraints of the extraordinary circumstances of a no-deal Brexit and taking into account the concerns expressed by some stakeholders about the guidance published on 19 March 2019. ESMA has also given additional attention to the risk of disruption that conflicting EU27 and UK STOs may potentially create, in particular for UK branches of EU27 investment firms and for EU27 branches of UK investment firms.

After careful consideration, and in coordination with the EC, ESMA has concluded that an approach to the STO based only on the ISIN of the share would be more likely to minimise any such risk of disruption in the interest of orderly markets. As a consequence, the EU27 STO would not be applied to the 14 GB ISINs included in its previous guidance.

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[1] Article 23 of MiFIR requires investment firms to conclude transactions in shares admitted to trading on a regulated market (RM) or traded on an EU trading venue on: (i) RMs, (ii) multilateral trading facilities, (iii) systematic internalisers or (iv) third-country trading venues assessed as equivalent by the EC.
[2] *Impact of Brexit on the trading obligation for shares (Article 23 of MiFIR)*, ref. ESMA70-155-7329.

Accordingly, under this revised approach, ESMA assumes that all EU27 shares, i.e. ISINs starting with a country code corresponding to an EU27 Member State and, in addition, shares with an ISIN from Iceland, Liechtenstein and Norway[3] (all together EEA ISINs) are within the scope of the EU27 STO. GB ISINs are outside the scope of the EU27 STO.

ESMA is doing the maximum possible to minimise disruption and to avoid overlaps, bearing in mind the legal requirements of Article 23 MiFIR. The approach put forward by ESMA based only on the ISIN of the share will effectively avoid such overlaps if the UK adopts an approach that does not include EEA ISINs under the UK STO. It would provide a balanced, objective and easily identifiable dividing line between EEA and UK shares. Should EEA ISINs be included in the scope of the UK STO, this would introduce overlapping obligations and the potentially damaging consequences for market participants that ESMA is seeking to address through its revised approach today.

ESMA has held regular discussions with the UK FCA to try to identify a way forward to avoid conflicting requirements, but at this stage it is unclear what would be the scope of the UK STO.

This statement is only meant to clarify the application of the EU27 STO to shares with an EEA ISIN. The application of the STO to shares with a different ISIN should continue to be determined taking into account the previous ESMA guidance, published on 13 November 2017.

ESMA no longer considers it necessary to publish a list of ISINs that, following the approach described above, would be subject to the EU27 STO.

ESMA remains mindful of the impact of a no-deal Brexit on EU market structures and will consider, in light of possible market developments, whether to review its approach at the latest 12 months after the no-deal Brexit date. There is still a high level of uncertainty as to the final timing and conditions of Brexit. Should these change or should there be developments on the application of the STO in the UK, ESMA will assess whether its approach needs to be adjusted and will inform the public accordingly.

[3] AT, BE, BG, CY, CZ, DE, DK, EE, ES, FI, FR, GR, HR, HU, IE, IS, IT, LI, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK.