

Exemption of MiFIR access provisions for trading venues as regards exchange-traded derivatives

Procedure / Policy



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Document information and approval

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Introduction

Regulation (EU) No 600/2014 of 15 May 2014 on markets in financial instruments (MiFIR) establishes non-discriminatory and open access provisions for trading venues and central counterparties (CCPs). In particular, trading venues are obliged to provide access including data feeds on a non-discriminatory and transparent basis to CCPs that wish to clear transactions executed on those trading venues.

However, when trading in exchange-traded derivatives (ETDs) if one trading venue falls below a certain threshold, the trading venue may notify ESMA and its competent authority (CA) of its intention to temporarily opt-out from the access provisions with respect to those instruments.

The recipients of this document are NCAs and trading venues that can benefit from the exemption foreseen in Article 36(5) of MiFIR and CAs.

Purpose and scope

This document sets out the procedure to be followed by ESMA for verifying and approving notifications for the temporary exemption of the access provisions under MiFIR for trading venues that fall below the threshold of EUR 1 000 000 million of annual notional amount traded in ETDs.

Legal basis

Article 36(1) of MiFIR establishes that “a trading venue shall provide trade feeds on a non-discriminatory and transparent basis, including as regards fees related to access, upon request to any CCP authorised or recognised by Regulation (EU) No 648/2012 that wishes to clear transactions in financial instruments that are concluded on that trading venue. That requirement does not apply to any derivative contract that is already subject to the access obligations under Article 8 of Regulation (EU) No 648/2012.”

However, under Article 36(5) of MiFIR as regards ETDs, a trading venue which falls below the threshold of annual notional amount traded of EUR 1 000 000 million in the calendar year preceding the date of application of MiFIR, may, before 3 January 2018, notify ESMA and its CA that it does not wish to be bound by this Article for a period of thirty months from the application of this Regulation. A trading venue which remains below the relevant threshold in every year of that, or any further, thirty-month period may, at the end of the period, notify ESMA

and its CA that it wishes to continue to not be bound by this Article for an additional thirty months.

Where the trading venue notifying the temporary opt-out is connected to one or more CCPs by close links, those CCPs cannot benefit from the access rights under Articles 35 and 36 for ETDs included within the relevant threshold for the duration of the opt-out.

ESMA is required to publish a list of all notifications that it receives.

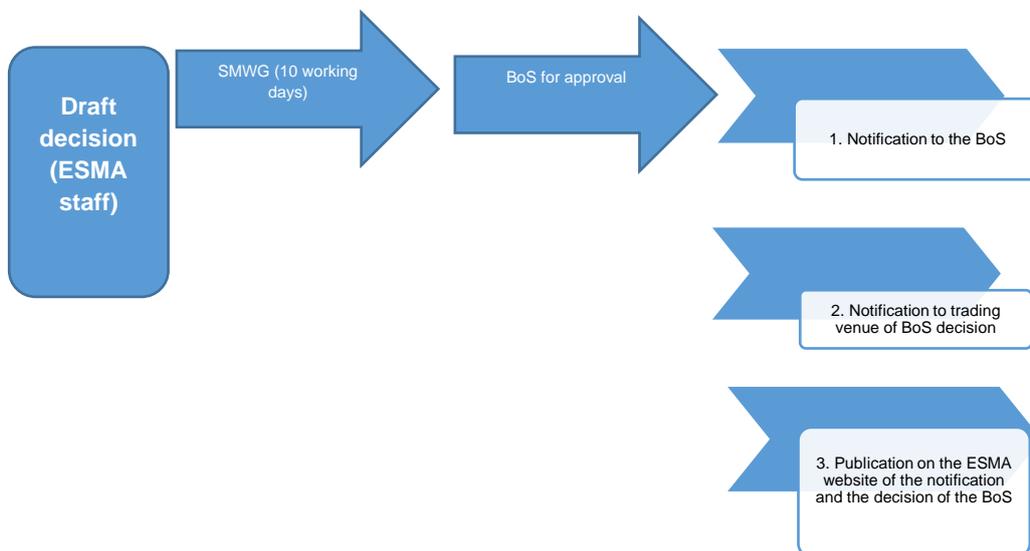
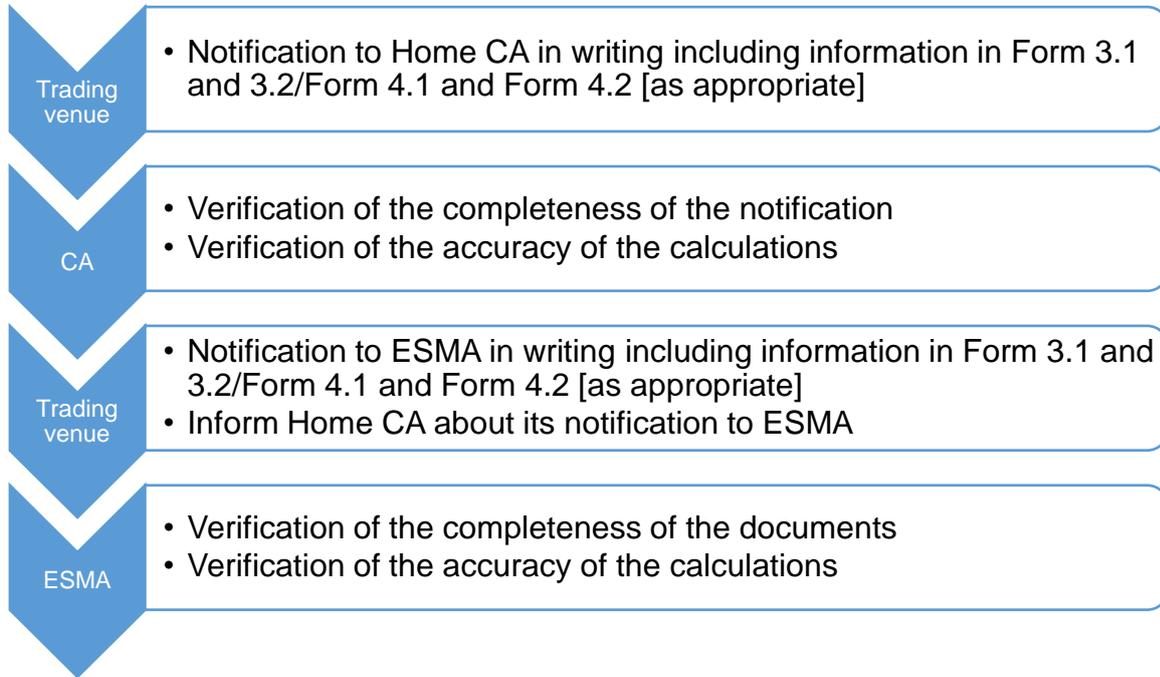
The provisions in Article 36(5) have been further specified in Articles 17 to 20 of Commission Delegated Regulation (EU) 2017/581 of 24 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on clearing access in respect of central counterparties and trading venues¹ (RTS 15) with respect to the notification procedure to ESMA and the forms to be used for that purpose.

Definitions

ETD	Exchange Traded Derivative
MiFIR	Regulation 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments
CA	Competent Authority
RTS	Regulatory Technical Standard
SMWG	Secondary Markets Working Group
BoS	Board of Supervisors
ESMA Regulation	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)

¹ OJ L87, 31.3.2017, p. 212

Process map / flow chart



Procedure steps²

Step	Action	Responsibility
1	Trading venues shall notify their CA in writing. The CA shall verify that the notification contains all relevant information specified in Form 3.1 and 3.2. or, in case of a notification for an extension of the transitional period, in form 4.1 and 4.2 of the Annex of RTS 15 and the accuracy of the calculations to determine the annual notional amount traded. Where the NCA considers that information is missing, it shall request the trading venue to add that information to its notification.	Trading venue, home NCA of the trading venue
2	Once the CA verified the completeness of the notification and the calculations supporting the request for the opt-out, the trading venue shall notify ESMA in written form, informing its CA of the notification. Upon receipt of a notification in writing, ESMA staff should acknowledge the receipt of the notification to the applicant within 5 working days.	Trading venue, ESMA staff
3	Where ESMA considers it necessary to receive more information on the facts and figures on which the calculation is based (Article 20(1) of RTS 15), ESMA staff shall request this data from the trading venue within 10 working days of receipt of the original notification. The Home NCA of the trading venue shall be informed.	ESMA staff
4	The trading venue shall provide the requested data within 5 working days following the notification by ESMA staff.	Trading venue
5	<p>If ESMA staff considers that the application contains all necessary information for the approval and verification of the opt-out it shall notify the applicant thereof and inform the Home NCA of the trading venue within 5 working days, either following the initial notification or following the receipt of the additional documents where requested.</p> <p>If ESMA staff considers that the application is not complete and did not receive the requested additional documents within the deadline, ESMA staff shall undertake no further assessment pending the submission of a new and complete notification. The trading venue and the home NCA shall be informed thereof.</p>	ESMA staff
6	On the basis of the information provided by the trading venue and, where necessary, the consideration of external sources, ESMA staff	ESMA staff

² All the deadlines in the Procedure Steps are indicative.

shall analyse the notification and the data provided within 15 working days.

ESMA staff shall prepare a draft decision presenting

- The successive steps taken along the process
- The arguments identified in favour and against the request for authorisation
- A decision of whether the transitional opt-out is approved or not.

7	Draft ESMA decision to be circulated to SMWG for comments in written procedure for 10 working days	<i>ESMA staff, SMWG</i>
8	Draft ESMA decision to be submitted to BoS for approval.	<i>ESMA staff</i>
9	Communication of the outcome of the vote to BoS members	<i>ESMA staff</i>
10	Notification of the decision of the BoS to the trading venue	<i>ESMA staff</i>
11	Publication of the notification and the decision of the BoS on the ESMA website	<i>ESMA staff</i>

Awareness campaign

Process to be published on the ESMA website.

Data protection

Any personal data identified in the information affected by this policy/procedure shall be handled in compliance with the requirements laid down in Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.

Records

Electronic and physical copies of the documents provided and the emails exchanged to be saved in the ESMA storage services.

Final provisions

This document shall enter into force on the day following that of its publication on the ESMA website. This document will be reviewed should there be any significant developments in the relevant areas, in particular in the case of changes of the legislative provisions governing the access provisions under MiFIR.