

DECISION OF THE BOARD OF SUPERVISORS

on delegation to the ESMA Chair of the adoption of non-controversial opinions on position limits

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/EC¹ (ESMA)

Having regard to 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/EU² (MIFID II), and in particular Article 57(5) thereof

Whereas:

- 1) Article 57(5) of MIFID II require a competent authority, as defined in Article 2(1)(26) of MIFID II, to notify ESMA of the exact position limits they intend to set in accordance with the methodology for calculation established in Commission Delegated Regulation (EU) 2017/591³.
- 2) The same provision requires ESMA to issue an opinion to the competent authority in question within two months of the notification, assessing the compatibility of position limits with the objectives of preventing market abuse and supporting orderly pricing and settlement conditions referred to in Article 57(1) of MIFID II, and with the methodology for calculation established in Commission Delegated Regulation (EU) 2017/591.
- 3) ESMA has already issued and published a significant number of opinions on position limits and more opinions are expected to be issued by ESMA in the future.

¹ OJ L 331, 15.12.2010, p. 84

² OJ L 173, 12.6.2014, p. 349

³ OJ L 87, 31.3.2017, p. 479–491



- 4) However, the current adoption procedure has created significant administrative burden, not only for ESMA staff but also for competent authorities and members of the Board of Supervisors reviewing the opinions.
- 5) Given those considerations, it is desirable that the power to adopt non-controversial opinions is delegated to the Chair of ESMA. The delegation should be exercised in accordance with the restrictions and conditions set out in this decision. The conditions should provide guidance for the exercise of the delegated powers and, therefore, should limit the discretion involved.

Has adopted this decision:

Article 1 – Delegation of powers

The Board of Supervisors of ESMA (the Board of Supervisors) delegates to the Chair of ESMA (the Chair) the task to:

- a) assess the compatibility of position limits with the objectives of Article 57(1) of MiFID II and with the methodology for calculation established in Commission Delegated Regulation (EU) 2017/591;2)
- b) issue on behalf of ESMA any non-controversial opinion regarding the intended position limits.

The Board of Supervisors retains the powers to adopt controversial opinions for the purposes of Article 57(5) of MIFID II.

For the purpose of this delegation, non-controversial opinions means those draft opinions prepared by ESMA staff with which none of the CDTF members disagrees.

Article 2 – Exercise of the delegation

The Chair shall consider the position limits proposed as compliant with the methodology for calculation established in Commission Delegated Regulation (EU) 2017/591 and as likely to meet the objectives established in Article 57(1) of MIFID II, where:

- a) the open interest is calculated according to Article 12 of Commission Delegated Regulation (EU) 2017/591 and is based on the position reporting data used for monitoring compliance with the position limit regime,
- b) the deliverable supply, where applicable, is calculated according to Article 10 of Commission Delegated Regulation (EU) 2017/591 and is consistent with the calculation made by other relevant authorities trading contracts with similar underlying, and
- c) the position limits are set within the ranges set out in Articles 14, 15 and 19 of Commission Delegated Regulation (EU) 2017/591 and taking into account the relevant



adjustment factors described in Articles 16 to 20 of Commission Delegated Regulation (EU) 2017/591.

Article 3 – Conditions for the delegation

- 1) The powers delegated under Article 1 are conferred on the Chair for an indeterminate period.
- 2) The Chair shall inform, at least annually, the Board of Supervisors of the opinions issued under this decision.
- 3) The Board of Supervisors may request information in respect of any opinion issued under this decision.
- 4) The Board of Supervisors can reconsider and revoke at any time the delegation of powers established under this decision. The decision of revocation shall put an end to the delegation of powers specified in this decision.

Article 4 – Entry into force

This decision enters into force immediately.

It shall be published on ESMA's website.

Done in Paris on 27 January 2021

Steven Maijoor
Chair
For the Board of Supervisors