

PUBLIC STATEMENT

Ensuring a common supervisory approach to secure compliance with the MiFIR pre-trade transparency requirements in commodity derivatives - state of play

The European Securities and Markets Authority (ESMA) on 3 June 2019 published a [Supervisory Briefing](#) to increase supervisory convergence among national competent authorities (NCAs) as regards the MiFIR pre-trade transparency regime in commodity derivatives and promote its consistent enforcement by NCAs also by means of a commonly agreed action plan, with the overarching objective of ensuring an effective level playing field across EU trading venues.

The supervisory briefing was developed after ESMA was made aware that the MiFIR provisions on pre-trade transparency for commodity derivatives were not implemented in a consistent manner in the Union.

This statement provides an update on the progress made under this workstream, based on information provided by NCAs.

Stage 1 – Preparation phase

Under Stage 1 of the action plan annexed to the supervisory briefing, NCAs committed to identify the trading venues operating non-compliant trading systems and required them to provide information on the measures they intended to undertake to comply with the MiFIR pre-trade transparency obligations.

This stage was successfully implemented by the deadline (April 2019) by all NCAs, except the Financial Conduct Authority (FCA) with respect to two UK venues as further explained below.

Stage 2 – Implementation phase

Under Stage 2 of the action plan, NCAs committed to supervise that all the trading venues identified in Stage 1 would either operate under a compliant pre-trade waiver or be fully pre-trade transparent by 31 December 2019.

NCAs liaised with the trading venues they supervise and, with the exception of the FCA, obtained confirmation that all venues, except ICE Futures Europe and LME, were expected to have implemented their plans by 31 December 2019. The actions taken by NCAs in accordance with the supervisory briefing therefore led to an increased level of pre-trade transparency in the Union from the beginning of 2020 for the vast majority of trading venues trading commodity derivatives. However, no appropriate action was taken by the FCA in

accordance with the supervisory briefing with regards to two trading venues under its supervision. In particular:

LME – In December 2019, the FCA communicated to ESMA the final proposal that LME made after considering various alternatives and consulting with its members, which was considered compliant. The FCA thus completed Stage 1 of the supervisory briefing with a significant delay compared to the other NCAs. Taking into account the time necessary for LME to implement its plan, it is ESMA's current understanding that Stage 2 of the supervisory briefing would be completed by June 2020.

ICE Futures Europe – In December 2019, the FCA communicated to ESMA the proposal that ICE Futures Europe made after considering and discarding various alternatives. ICE Futures Europe proposed to adjust the reporting of certain transparency data to its NCA which, in the venue's expectation, would partially address the issue. The FCA provided further details on ICE Futures Europe's proposal in January 2020 which, in the FCA's view, will lead to the completion of Stage 2 of the supervisory briefing by June 2020. As the concrete proposal was made very late in the process and includes several interim steps, its feasibility and impact are still being considered.

Stage 3 – Supervision phase

Under Stage 3 of the action plan, which commenced on 1 January 2020, NCAs committed to take supervisory measures which may include fines and sanctions, towards trading venues which have either not provided or not successfully implemented their plans as described in Stage 2 by 31 December 2019.

In light of the above, this stage is currently relevant only with respect to the FCA, the competent authority of ICE Futures Europe and LME.

ESMA's view

ESMA recalls that the objectives of the supervisory briefing is to provide guidance to NCAs for a common supervisory approach to ensure compliance with the MiFIR pre-trade transparency regime, notably by means of a commonly agreed timetable for supervisory actions for the enforcement of this regime in the Union. As enshrined in its founding Regulation, one of ESMA's overarching objectives is to prevent regulatory arbitrage and promote equal conditions of competition across the Union.

ESMA encourages the FCA to employ timely and proportionate supervisory measures to ensure compliance with the MiFIR transparency obligations.