

Olivier Guersent
Director General, DG Financial
Stability, Financial Services and
Capital Markets Union
European Commission
1049 Brussels
Belgium

Your letter dated 14 March 2016 – Non-equity transparency

Dear Mr. Guersent,

Dear Olivier,

Thank you for your letter dated 14 March 2016, informing ESMA that DG FISMA is supportive of the general approach that we have taken regarding the draft Regulatory Technical Standard (RTS) on non-equity transparency and that you will recommend to the Commission to endorse the RTS once the amendments described in your letter are introduced.

As you are aware, the ESMA Regulation foresees a certain process in case the Commission wants to endorse a draft RTS in part or with amendments. We note that, having submitted the draft RTS to the Commission on 28 September 2015, the formal deadline stipulated in the ESMA Regulation for the Commission to decide whether to endorse the draft RTS ended already at the end of December 2015. In addition, and contrary to recent previous notifications, we observe that the notification received in this case does not refer to this process foreseen in the ESMA Regulation under Article 10(1), nor does it provide the text of the proposed changes to the RTS. ESMA understands that MiFID II is a complex and extraordinary project and being conscious of the considerations around creating legal certainty as soon as possible and achieving a clear basis for the implementation work of MIFID II to start, ESMA takes this as an exceptional case.

Considering the above elements, and to ensure the application of the requirements in the ESMA Regulation regarding the drafting of RTS, ESMA intends to move forward on the basis of the following two important assumptions:

1. The abovementioned letter is a formal notification, as per Article 10 (1) subparagraph 6 of Regulation (EU) 1095/2010, of the intention of the European Commission to endorse the abovementioned draft RTS with amendments; and
2. The letter contains all the changes that the Commission intends to adopt in the draft RTS and there are no other elements in the content of the draft RTS that the Commission intends to amend.

Therefore, we will immediately start our work on an ESMA Opinion on your proposed amendments, unless we receive a written reply by 29 March 2016 stating that one or both assumptions above are not correct. We will keep you informed of the exact expected time of issuance of such Opinion.

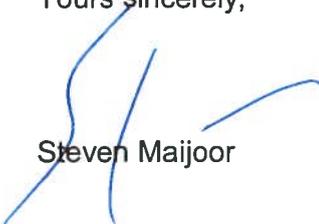
As for the content of the changes explained in the letter, we would like to verify with your Services the meaning of the section referring to the liquidity assessments to be performed by ESMA that according to your letter would be linked to moving to a subsequent daily trading threshold. If our understanding is correct, you are suggesting that the conclusion of the ESMA report on the evolution of liquidity (and in particular whether trading volumes have declined or not in the preceding year) would result in a move (or not) to the next level of the legally applicable threshold that National Competent Authorities would need to use for the subsequent period to identify which specific bonds are subject to the transparency regime and which ones can use the waivers for instruments not having a liquid market.

In respect of the size specific to the instrument pre-trade thresholds for bonds and derivatives, we understand that the Commission envisages that an ESMA report based on whether undue risks are imposed on liquidity providers would determine whether an increase in the percentile to be applied is warranted. If those assumptions are correct I would like to ask for the confirmation from your Services that, from a legal perspective, the future applicability of the thresholds can be made subject to the conclusion of an analysis performed by ESMA.

I would like to ensure you that ESMA intends to proceed swiftly with producing its Opinion on this RTS, also in order to limit any further delay in terms of clarity for the necessary IT infrastructure development.

In the interest of a timely implementation of MiFID II as a whole, ESMA also wishes to express its hope that all other pending draft RTS submitted by ESMA on 28 September 2015 in respect of which ESMA has not received any notification thus far can be endorsed by the Commission without undue delay.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "S. Maijoor", is written over the typed name. The signature is fluid and cursive.

Steven Maijoor

CC:

- Jonathan Hill, Commissioner for Financial Stability, Financial Services and Capital Markets Union, European Commission
- Roberto Gualtieri MEP, Chair of the Committee on Economic and Monetary Affairs, European Parliament
- Markus Ferber MEP, European Parliament Rapporteur MiFID II
- Jeroen Dijsselbloem, President of the Economic and Financial Affairs Council, Council of the European Union
- Jeppe Tranholm-Mikkelsen, Secretary-General of the Council of the European Union