

PRESS RELEASE

ESMA clarifies market structure issues under MiFID II

The European Securities and Markets Authority (ESMA) has issued today detailed guidance regarding the implementation of the Markets in Financial Instruments Directive (MiFID II) and Regulation (MiFIR). ESMA published 22 new Question and Answers ([Q&As](#)) which provide further detail on how to implement certain regulatory provisions on market structure topics.

The Q&As aim to promote common supervisory approaches and practices thus ensuring a harmonised implementation. Amongst other issues, the Q&As provide answers regarding Organised Trading Facilities (OTFs) and Systematic Internaliser (SI). Besides, ESMA also published Q&As on [commodity derivatives](#), [market data](#) and [transparency issues](#).

ESMA clarifies provisions for OTFs

MiFID II introduces OTFs as a new type of trading venue alongside regulated markets (RMs) and multilateral trading facilities (MTFs). However, unlike RMs and MTFs, OTFs will only relate to bonds, structured finance products, emission allowances or derivatives. In addition, orders on an OTF must be executed on a discretionary basis.

Under MiFID II, OTFs are systems that cross client orders and that arrange transactions and facilitate negotiations between clients. Operating an OTF is an investment activity with need for authorisation.

ESMA's Q&As provide clarity on the type of arrangements that qualify as an OTF. Therefore, any entity should seek authorisation to operate an OTF where the three following conditions are met:

- trading is conducted on a multilateral basis;
- the trading arrangements in place have the characteristics of a system; and
- the execution of orders takes place on a discretionary basis (through the system or under the rules of the system).

ESMA's Q&As also further clarify the steps to be taken by market operators or investment firms operating an OTF, including in relation to the execution of orders on a discretionary basis and to the provision of best execution to clients.

ESMA clarifies activities of Systematic Internalisers

Under MiFID II, an SI is a firm which deals on own account when executing client orders outside a trading venue on a substantial, organised, frequent and systematic basis.

ESMA's Q&As clarify that the key characteristic of an SI's activity is to provide liquidity bilaterally to clients by trading at risk. However, SIs which are functionally similar to a trading venue, would need to seek authorisation. This would be the case for SIs meeting the following criteria:

- Where arrangements between the SI and a client go beyond a bilateral interaction and where the SI does not, de facto, undertake risk facing activity;
- Where the arrangements in place are used on a regular basis and qualify as a system or facility, as opposed to ad-hoc transactions; and
- Where transactions arising from bringing together multiple third party buying and selling interests are executed OTC, outside the rules of a trading venue.

ESMA highlights that the above does not prevent SIs from hedging the positions arising from the execution of client orders as long as it does not lead to the SI de facto executing non risk-facing transactions and bringing together multiple third party buying and selling interests.

Background

ESMA's Q&As provide responses to questions posed by the general public, market participants and National Competent Authorities (NCAs) in relation to the practical application of MiFID II and MiFIR.



Notes for editors

1. [MiFID and MiFIR Q&As on market structure issues](#)
2. [MiFID and MiFIR Q&As on transparency issues](#)
3. [MiFID and MiFIR Q&As on commodity derivatives topics](#)
4. ESMA's mission is to enhance investor protection and promote stable and orderly financial markets.

It achieves these objectives through four activities:

- assessing risks to investors, markets and financial stability;
 - completing a single rulebook for EU financial markets;
 - promoting supervisory convergence; and
 - directly supervising specific financial entities.
5. ESMA achieves its mission within the European System of Financial Supervision (ESFS) through active cooperation with the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA), the European Systemic Risk Board (ESRB), and with national authorities with competencies in securities markets (NCAs).

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