

Circular on Markets in Financial Instruments Directive ('MiFID II') and Markets in Financial Instruments Regulations ('MiFIR')

This Circular is being addressed to all market participants, particularly Market Operators, Trading Venues, Investment Firms, or any other related entities subject to MiFID II and MiFIR. Readers will find updates on the following: [i] Q&A on transparency, [ii] Q&A on market structure topics, [iii] Q&A on commodity derivatives topics, and [iv] Guidelines and Final Report on the Guidelines on the calibration of circuit breakers and the publication and reporting of trading halts under MiFID II.

1) Questions and Answers on MiFID II and MiFIR transparency topics

On the 3rd October 2016, the European Securities and Markets Authority ('ESMA') published a new set of Q&A on MiFID II/ MiFIR transparency topics, which was further updated on the 3rd November, 18th November 2016, 19th December 2016, 31st January 2017 and 5th April 2017.

The scope of the Q&A is to provide responses to questions raised by the general public, market participants and competent authorities in relation to the practical application of MiFID II/ MiFIR in this area.

More specifically, the Q&A currently provides explanations on

- a) general transparency topics, namely:
 - a. Obligation on trading venues to make available their arrangements for the publication of quotes and transactions;
 - b. Flags and details for the purpose of post-trade transparency;
 - c. Which investment firm reports;
 - d. Application of the transparency regime for primary transactions;
 - e. ISINs for pre-trade transparency; and
 - f. Use of 'PNDG', i.e. pending, as price when making transactions public.
- b) Trading obligation for shares.

A copy of this Q&A may be accessed through the following [link](#).

2) Questions and Answers on MiFID II and MiFIR market structures topics

On the 18th November 2016, ESMA issued an update on the Q&A on MiFID II/ MiFIR market structures topics, which was further updated on the 19th December 2016, 31st January 2017 and 5th April 2017. The Q&A provides responses to questions raised by the general public, market participants and competent authorities in relation to the practical application of MiFID II/ MiFIR in relation to market structure topics.

More specifically, the Q&A provides an explanation on Direct Electronic Access ('DEA') and algorithmic trading with respect to the reference to 'market makers' as per Article 2(1)(d)¹ and 2(1)(j)² of MiFID II. Furthermore, the Q&A also tackles the following topics relating to DEA:

- Identification and authorisation of high frequency trading ('HFT');
- DEA users and HFT.

A copy of this Q&A may be accessed through this [link](#).

3) Questions and Answers on MiFID and MiFIR commodity derivatives topics

On the 19th December, ESMA published a new set of Q&A on MiFID II/MiFIR commodity derivative topics, which was further updated on the 5th April 2017. The Q&A provides responses to questions raised by the general public, market participants and competent authorities in relation to the practical application of MiFID II/MiFIR on commodity derivatives topics.

More specifically, the Q&A provides explanations on additional questions relating to position limits. It seeks to clarify (i) how the position limits regime is applied to the various underlyings listed in Annex I, Section C(10) of MiFID II, (ii) whether a hedge exemption can be netted against positions in derivatives which are not objectively measurable as reducing risks directly related to a person's commercial activity, (iii) the meaning of 'single fungible pool of an open interest' in Article 5(1)(b) of Regulatory Technical Standard ('RTS') 21, and (iv) how the contracts that have a high variability of open interest during the year should be treated.

A copy of this Q&A may be accessed through this [link](#).

¹ MiFID II Article 2(1)(d)(i): 'This Directive shall not apply to persons dealing on own account in financial instruments other than commodity derivatives or emission allowances or derivatives thereof and not providing any other investment services or performing any other investment activities in financial instruments other than commodity derivatives or emission allowances thereof unless such persons are (i) market makers...'

² MiFID II Article 2(1)(j): 'This Directive shall not apply to persons dealing on own account, including market makers, in commodity derivatives or emission allowances or derivatives thereof, excluding persons who deal on own account when executing client order...'

4) Guidelines and Final report on the Guidelines on the calibration of circuit breakers and the publication and reporting of trading halts under MiFID II.

On the 6th October 2016, ESMA issued a Consultation Paper ('CP') on Guidelines on the calibration of circuit breakers and the publication and reporting of trading halts under MiFID II. Article 48(5) of MiFID II provides that, *'Member States shall require a regulated market to be able to temporarily halt or constrain trading if there is a significant price movement in a financial instrument on that market or a related market during a short period, and, in exceptional cases, to be able to cancel, vary or correct any transaction'*. The Guidelines seek to clarify this provision, where they illustrate how trading halts are to be communicated to market participants and other venues. Moreover, they seek to ensure consistency and comparability of reports to competent authorities relating to regulated markets and the parameters of trading, as well as any material changes to these parameters. The CP invited comments relating to this matter by 6th December 2016.

On the 6th April 2017, ESMA published the above-mentioned Guidelines, with an accompanying Final Report. The Guidelines are not restricted to a specific type of circuit breaker and apply indistinctly to all mechanisms that trading venues could potentially set in place in accordance with Article 48(5) of MiFID II. Whilst the Guidelines clarify the provisions under this Article and are applicable from 3rd January 2018, the Final Report provides feedback on the CP on the Guidelines and describes how the responses to the consultation were taken into consideration when drafting the final Guidelines. Material changes to the Guidelines are described in the Report, as well as the reasons for such changes in light of the received feedback.

It is to be highlighted that the requirements set out in the Guidelines are applicable only to trading venues' systems that enable or allow algorithmic trading.

A copy of the Guidelines may be accessed through this [link](#).

A copy of the Final Report may be accessed through this [link](#).

Contacts

Should you have any queries on the above, please do not hesitate to contact Mr Edward Grech, Senior Manager, Securities and Markets Supervision Unit (EGrech@mfsa.com.mt) Mr Nathan Fenech, Analyst, Securities and Markets Supervision Unit (NFenech@mfsa.com.mt), or Ms Elena Jetcheva, Analyst, Securities and Markets Supervision Unit (EJetcheva@mfsa.com.mt) for any further clarifications.

Communications Unit
Malta Financial Services Authority
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