

Regulatory News Alert

MiFID / MiFIR

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ESMA Q&A on MiFID and MiFIR transparency topics – The systematic internaliser (SI) regime

On 31 January 2017, the European Securities and Market Authority (ESMA) updated its Q&A on MiFID and MiFIR transparency topics. This update includes four new questions and answers that provide additional clarifications on the systematic internaliser (SI) regime that should become effective on 1 September 2018.

The main impacts of these Q&A for firms engaging in back-to-back transactions, which is very common in Luxembourg, lies in questions three and four. Those questions aim at determining trades that shall be counted when evaluating thresholds for the SI regime applicable to investment firms.

Which transactions are excluded from the SI regime calculation?

i) *Transactions that are **not contributing to the price formation process***

The ESMA has confirmed that transactions that are exempt from reporting for post-trade transparency purposes can be excluded from the SI threshold calculation. The latter includes securities financing transactions such as repurchase agreements (repos), securities lending activities, and sell/buy-back transactions.

ii) *Transactions that are not reportable and **primary market transactions***

The supervisory authority acknowledged that primary market transactions are excluded from the SI threshold calculation. This new ESMA position will affect investment firms that perform a market-making strategy on their own funds, which is predominantly a primary market activity.

iii) *Specific process regarding **back-to-back transactions***

ESMA has confirmed that trades executed by investment firms on their own account on a trading venue but on the back of a client order can be excluded from the SI threshold calculation if the following conditions are fulfilled:

- The market leg is executed on a trading venue
- The trade is immediately backed to the original client
- The trade is backed at the same price to the original client

However, if these conditions are not satisfied, the investment firm is considered to execute the trade outside of a regulated market, an MTF, or an OTF. Therefore, these transactions (back-to-back trade) will be counted in the SI calculation.

iv) ***Off-order book transactions** reported to a regulated market, MTF, or OTF*

ESMA considered that only off-order book transactions benefiting from a pre-trade transparency waiver should be exempt from the thresholds for determining whether a firm is an SI.

At which level of asset class should the calculation be performed for derivatives, bonds, and structured finance products?

Derivatives: According to ESMA, the calculation of SI thresholds for derivatives must be performed at the most granular level.

Bonds: According to ESMA, the calculation of SI thresholds for bonds shall refer to a class of bonds issued by the same entity (or an entity within the same group). Corporate and convertible bonds issued by the same entity (or the same group) will be considered as a different class of bonds.

Structured finance products (SFP): According to ESMA, the calculation of SI thresholds for SFP should be performed at the ISIN level.

Next steps:

Although the SI regime enforcement has been delayed until September 2018, firms need to continue to prepare to handle all the complexities of calculating the applicability and consequences of the SI regime. These consequences in terms of transparency (pre- and post-trade), execution quality, and static data remain heavy from a technical point of view and should not be underestimated.

Deloitte can help you to determine your strategic approach regarding the systematic internaliser regime and map out a full implementation roadmap to meet all the challenges of this highly complex piece of regulation.

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