ESMA
European Securities and Markets Authority

Title	Submission Date
ESMA_QA_2181	14-05-2024
ESMA_QA_2148	03-04-2024
ESMA_QA_2143	22-03-2024
ESMA_QA_2137	19-03-2024
ESMA_QA_2136	18-03-2024
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ESMA_QA_2048	18-12-2023
ESMA_QA_2047	18-12-2023
ESMA_QA_2046	18-12-2023
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ESMA_QA_1240	02-06-2023
ESMA_QA_1272	02-06-2023
ESMA_QA_1271	02-06-2023

ESMA_QA_2181

Submission Date
14/05/2024

Status: Response Published

Additional Information

Level 1 Regulation
MiCA

Topic
Crypto-Asset Service Provider (CASP)

Additional Legal Reference
Article 77

Subject Matter
Publication of information by CASPs providing the service of exchange of crypto-assets for funds or other crypto-assets

Question
Where should a CASP exchanging crypto-assets for funds or other crypto-assets publish the “firm price or method of determining the price of the crypto-assets" as required by Article 77(2) of MiCA?

Where should they publish the “information about the transactions concluded by them, such as transaction volumes and prices”, as required by Article 77(4) of MiCA?

ESMA Responses

17-05-2024

Original language

CASPs providing the service of exchange of crypto-assets for funds or other crypto-assets should publish the information required under paragraphs 2 and 4 of Article 77 in a publicly available location (e.g. on their website) that is accessible to all without registration.

The quotations published under Article 77(2) of MiCA should include all elements allowing a party to anticipate with certainty the price at which an exchange would be made.

The information published under Article 77(4) on executed transactions should remain available for a sufficient period of time. The information would typically be expected to be available until midnight of the following business day.

CASPs are strongly encouraged to align as much as possible with the format prescribed in the Commission Delegated Regulations on pre-trade and post-trade transparency and record keeping once these Regulations are finalised and made available.

Submission Date

03/04/2024

Status: Question Published

Additional Information

Level 1 Regulation
Directive 2014/65/EU - Markets in Financial Instruments Directive (MiFID II)

Level 2 Regulation
Regulation 2017/565 - MiFID II Delegated Regulation

Topic
Reporting to clients

Additional Legal Reference
Article 63, Paragraph 1 of Delegated Regulation EU 2017/565

Subject Matter
Deadline for providing clients with statement on owned financial instruments

Question
What is the latest date on which the statement, under Article 63, Paragraph 1 of the Delegated Regulation EU 2017/565, for the respective quarter should be sent by the investment firm and how to determine this date?

Submission Date

ESMA_QA_2143

22/03/2024

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
MiCA

Topic
Crypto-Asset Service Provider (CASP)

Subject Matter
Tied agents under MiCA

Question
May crypto-asset service providers (CASPs) designate persons or entities to provide crypto-asset services on their behalf as agents (similarly to the tied agent regime under MiFID II), where such person or entity is not an authorised CASP?

Submission Date

ESMA_QA_2137

Status: Question Rejected

Additional Information

Level 1 Regulation
Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU- Investor Protection and Intermediaries

Level 2 Regulation
Regulation 2017/565 - MiFID II Delegated Regulation

Level 3 Regulation
ESMA/2015/1783 - Guidelines - Complex debt instruments and structured deposits (MiFID)

Topic
Appropriateness

Subject Matter
Non-complex structured deposits

Question
If a structured deposit has only one variable affecting the return received on maturity (the agreed term), and has an exit fee that is either a fixed sum, a fixed sum for each month remaining until maturity (the agreed term) or a percentage of the original sum invested, would it still be considered a non-complex financial instrument, in accordance with point (v) of Article 25(4)(a) of MiFID II, if the client is entitled to receive the positive market value of the

underlying option, if any, if the client exits prematurely, e.g. in the event of unforeseen liquidity requirement? If the structured deposit is exited prematurely, and not on the agreed upon maturity date, the market value of the underlying option will depend on more than one variable, i.e. the underlying index, the volatility of the index, time to maturity.

ESMA_QA_2136

Submission Date
18/03/2024

Status: Response Published

Additional Information

Level 1 Regulation
Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU- Investor Protection and Intermediaries

Topic
Information to clients on costs and charges

Subject Matter
disclosure of cost on return

Question

The cumulative effect of the costs on the return shall show “anticipated spikes and fluctuations of the costs”; does that also apply to the ex-post disclosure of the cumulative effect of the costs on the return?

ESMA Responses

16-12-2016

Original language

[Published as Q&A 9.3 in ESMA 35-43-349 Q&As on Investor protection]

Based on Article 24(4) MiFID II and Article 50(10) of the MiFID II Delegated Regulation, firms have to provide clients with an illustration to show the cumulative effect of the costs on the return.

When providing the client ex-post with information on total costs and charges, a firm can for instance decide to show the historical costs, and simultaneously provide the client with a forward looking illustration with regard to expected costs. In this case, the firm can show the historical costs that show a spike, for instance because of entry costs, and future expected costs based on the firm’s expectations (including anticipated spikes and fluctuations).

If the ex-post illustration takes into account only historical data, the firm has to account for realised spikes and fluctuations in costs. However, since these data are historical, there are no ‘anticipated’ spikes.

ESMA_QA_2134

Submission Date
15/03/2024

Status: Response Published

Additional Information

Level 1 Regulation
Regulation 2020/1503 - European crowdfunding service providers for business

Topic
Safeguarding of client assets

Subject Matter
Authorisation and supervision of CSPs

Question
When applying for the authorisation as a CSP, what are the proofs of own funds that existing undertakings can provide to the relevant authorising authority for the purpose of point (i) of Article 12(2) of the ECSPR and Field 10 of the Annex to the Delegated Regulation 2022/2112?

ESMA Responses

26-03-2023

Original language

[Published as Q&A 6.3 in ESMA35-42-1088]

Article 12(2)(i) of ECSOPR establishes that the application for the authorisation as a CSP shall contain, inter alia, the proof that the prospective CSP meets the prudential safeguards in accordance with Article 11 of the same regulation.

Field 10, point 1, letter (a) of the Annex to the Delegated Regulation 2022/2122 complementing the ECSPR with regard to the authorisation requirements, requires applicants to provide the relevant authorising authority with the documentation of how the applicant calculated the amount of the prudential safeguards in accordance with Article 11 of the ECSPR. In addition, Field 10, point 1 establishes the proof of own funds that existing undertakings or newly incorporated entities shall provide to the authorising authority (respectively in letter (b) and (c)).

In accordance with Field 10, point 1, letter (b) of the Annex to the Delegated Regulation 2022/2122, existing undertakings shall provide the authorising authority with “an audited account statement or public register certifying the amount of own funds of the applicant”.

ESMA is of the view that, for the purpose of the authorisation as CSP of an existing entity, when a public register is not available and when full annual financial statements of the existing entity are not audited, the relevant authorising authority may accept a certification made by an independent auditor, of the existence and full availability of the own funds based on the accounts provided by the applicant.

For the purpose of Field 10, point 1 of the Annex to the Delegated Regulation 2022/2122, ESMA is also of the view that undertakings which have been incorporated after 10 November 2021 but have not yet been authorised by the relevant authorising authority and therefore have not provided any activity should not be considered existing undertakings.

ESMA_QA_2133

Submission Date
15/03/2024

Status: Response Published

Additional Information

Level 1 Regulation
Regulation 2020/1503 - European crowdfunding service providers for business

Topic
Control functions (Compliance, Risk and Audit)

Subject Matter
Use of Special Purpose Vehicles

Question
Can a CSP hold a participation in a SPV?

ESMA Responses

26-05-2023

Original language

[Published as Q&A 1.7 in ESMA35-42-1088]

Article 8(1) provides that CSPs shall not have any participation in any crowdfunding offer on their platform. This requirement derives from the rationale included in recital (26) of the

ESCPR whereby CSPs should operate as neutral intermediaries between clients on their crowdfunding platforms (i.e. projects owners and investors).

This means that the holding by a CSP of a participation in a SPV or any other entity interposed between the crowdfunding project and investors is not possible under the ECSPR unless it is 13 demonstrated by the CSP to the national competent authority that such participation does not equal a participation in the underlying crowdfunding offer and, as such, does not impair its neutrality vis-à-vis its clients.

A national competent authority may consider that a participation taken or held by the CSP does not equal a participation in the underlying crowdfunding offer and that the neutrality of the CSP is not impaired when it receives evidence that the taking or holding of a participation in a SPV does not create, for the CSP, a distinct economic incentive (i.e. an incentive other than the one linked to the receipt of service fees charged by the CSP) to the success of the crowdfunding offer or the performance of the underlying crowdfunding project and that, consequently, such participation does not have the potential to trigger a conflicts of interests for the CSP.

In practice, the nature of the participation of the CSP in a SPV and its potential impact on the neutrality of the CSP shall be assessed on a case-by-case basis by the competent authority. The following indicative characteristics may, among others, be considered when performing this assessment:

- nature and characteristic of the CSP's participation: (Is the participation by the CSP made in equity or through debt instruments? For an equity investment, what is the nature of the voting rights awarded to the CSP in the SPV? What is the nature of the economic rights awarded to the CSP in relation to its participation in the SPV? How correlated are these economic rights to the success of the crowdfunding offer and of the performance of the crowdfunding project?)

- size/relative value of the CSP's participation. What is the value of the CSP's participation? What is its relative value compared to the overall participation reserved for investors

- Permanent or temporary nature of the participation (How long the participation is supposed to be held by the CSP? Is it supposed to be kept once the crowdfunding offer is completed?)

In agreement with its competent authority, a CSP may replicate, in the context of one or several other crowdfunding offers, a SPV set-up on which the competent authority has

opined, without needing to seek the view of the competent authority every time.

ESMA_QA_2132

Submission Date
15/03/2024

Status: Response Published

Additional Information

Level 1 Regulation
Regulation 2020/1503 - European crowdfunding service providers for business

Topic
Safeguarding of client assets

Subject Matter
Use of Special Purpose Vehicles

Question
When should an entity be considered as an SPV within the meaning of point (q) of Article 2(1)
of the ECSPR ?

ESMA Responses

26-05-2023

Original language

[Published as Q&A 1.6 in ESMA 35-42-1088]

Point (q) of Article 2(1) of the ECSPR defines SPV as “an entity created solely for, or which solely serves the purpose of, a securitisation within the meaning of point (2) of Article 1 of Regulation (EU) No 1075/2013 of the European Central Bank”.

Point (2) of Article 1 of Regulation (EU) No 1075/2013 of the European Central Bank defines securitisation as:

“a transaction or scheme whereby an entity that is separate from the originator or insurance or reinsurance undertaking and is created for or serves the purpose of the transaction or scheme issues financing instruments to investors, and one or more of the following takes place:

(a) an asset or pool of assets, or part thereof, is transferred to an entity that is separate from the originator and is created for or serves the purpose of the transaction or scheme, either by the transfer of legal title or beneficial interest of those assets from the originator or through sub-participation; (…)”

On this basis, and keeping in mind the content of recital (22) of the ECSPR, when an entity (i) created for the purpose or used for the purpose of the transaction (i.e. financing of the project) and (ii) separated from the project owner, is (iii) interposed between the crowdfunding project and investors and (iv) this entity receives, directly or indirectly, from the project owner a transfer of legal title or beneficial interest over the crowdfunding project, this entity should be regarded as a SPV within the meaning of point (q) of Article 2(1).

Should the competent authority reach this conclusion, on the basis of the information provided by the CSP, the SPV set-up would need to comply with the requirements of the ECSPR, notably Article 3(6).

Submission Date

11/03/2024

Status: Question Published

Additional Information

Level 1 Regulation
Markets in Financial Instruments Regulation (MiFIR) Regulation (EU) No 600/2014 - Investor Protection and Intermediaries

Level 2 Regulation
Directive 2017/593 - MiFID II Delegated Directive

Topic
Product governance

Additional Legal Reference
Articles 9(9) and 10(2)

Subject Matter
Integration of sustainability within the MiFID II product governance requirements

Question
When conducting the negative target market assessment for a product that does not consider sustainability factors, should a firm also consider any clients' sustainability-related objectives the product is not compatible with?

Submission Date

08/03/2024

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic
DLT financial instruments

Subject Matter
Scope of Article 3(1)(b) of DLTR

Question
How should the following provision in Art. 3(1)(b) of DLTR (on the admissibility of bonds and other forms of securitised debt) be understood: “[…] excluding those that embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved […]”?

Submission Date

ESMA_QA_2126

08/03/2024

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic
Exemptions for DLT market infrastructures

Additional Legal Reference
Article 5(8) of DLTR

Subject Matter
Exemptions for DLT SS/TSS operators on cash settlement

Question
For a DLT SS/TSS operator benefitting from the exemption in Art. 5(8) of DLTR, is it possible for them to settle payments using e-money tokens (EMTs) issued by the DLT SS/TSS operator itself or by an e-money institution (as opposed to only settling payments with EMTs issued by a credit institution)?

Submission Date

ESMA_QA_2125

08/03/2024

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
MiCA

Topic
Crypto-Asset Service Provider (CASP)

Additional Legal Reference
Article 60

Subject Matter
CASPs providing services based on an Article 60 notification

Question
Should the financial entities covered by Article 60(2) to (6) of MiCA be entitled to apply for an authorisation to provide the crypto-asset services that are not regarded as equivalent for that type of financial entity in accordance with Article 60(2) to (6)?

Submission Date

ESMA_QA_2104

12/02/2024

Status: Question Published

Additional Information

Level 1 Regulation
Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU- Secondary Markets

Level 2 Regulation
Regulation 2017/578 - RTS on market making agreements and market making schemes (RTS 8)

Topic
Direct Electronic Access and algorithmic trading

Additional Legal Reference
Article 2(1)(b)

Subject Matter
Market making in securitised derivatives

Question
Are there technical circumstances related to securitised derivatives under which it can be considered that a market maker posting one-way quotes is considered to meet the obligations on market making agreements set out in Article 2 of RTS 8?

Submission Date

05/02/2024

Status: Question Rejected

Additional Information

Level 1 Regulation
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

Topic
Digital operational resilience

Subject Matter
Cross-border Market Jurisdiction

Question
Would an EU-based Firm providing ICT Services wholly to non-EU-based Firms be deemed in or out of scope for DORA?

ESMA_QA_2099

Submission Date
05/02/2024

Status: Question Rejected

Additional Information

Level 1 Regulation
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

Topic
ICT services

Additional Legal Reference
Article 3 (21)

Subject Matter
The activities of credit bureaus (credit reporting agencies)

Question
The activities of credit bureaus (credit reporting agencies) are not directly referenced within the scope of DORA. These services may not traditionally seen as "ICT Services", but they could be interpreted as "data services provided through ICT systems". Are these intended to be within scope for ICT services?

ESMA_QA_2096

Submission Date
02/02/2024

Status: Question Published

Additional Information

Level 1 Regulation
European Market Infrastructure Regulation (EMIR) Regulation (EU) No 648/2012- MDP

Topic
* EMIR Reporting

Subject Matter
Subsidiaries

Question
Table 102 of the Guidelines specifies that GLEIF database should be used to determine the access rights of the relevant members of the ESCB, including the ECB in carrying out its tasks within a single supervisory mechanism, when applying the filtering for the fields 2.144 ‘Reference entity’, 1.4 ‘Counterparty 1 (Reporting counterparty’, 1.9 ‘Counterparty 2’, 1.15 ‘Broker ID’ and 1.16 ‘Clearing member’. Should the authorities in question have also access to the derivatives involving subsidiaries of the relevant entities and, if so, how the access rights should be determined?

ESMA_QA_2095

Submission Date
02/02/2024

Status: Question Published

Additional Information

Level 1 Regulation
European Market Infrastructure Regulation (EMIR) Regulation (EU) No 648/2012- MDP

Topic
* EMIR Reporting

Subject Matter
Portability of Schedules

Question
As clarified in the Guidelines on transfer of data between Trade Repositories under EMIR and SFTR , in the case of transfer of data requested by a TR participant the TRs should transfer only the latest state of the outstanding derivatives (‘Trade State Report’, TSR). Are the TRs expected to follow this guideline with regards to the notional schedules, given that the TSR will not contain the full schedules (for the notional quantity, amount etc.) but only the currently applicable value?

ESMA_QA_2094

Submission Date
02/02/2024

Status: Question Published

Additional Information

Level 1 Regulation
European Market Infrastructure Regulation (EMIR) Regulation (EU) No 648/2012- MDP

Topic
* EMIR Reporting

Subject Matter
Reporting of a Counterparty falling within scope of Article 1(4)(a) and (b) of EMIR

Question
How should a counterparty falling within scope of Article 1(4)(a) and (b) of Regulation (EU) No 648/2012 be reported under Field 11 of Table 1 of the RTS on reporting under EMIR REFIT, ‘Nature of Counterparty 2’?

ESMA_QA_2093

Submission Date
02/02/2024

Status: Question Published

Additional Information

Level 1 Regulation
European Market Infrastructure Regulation (EMIR) Regulation (EU) No 648/2012- MDP

Topic
* EMIR Reporting

Subject Matter
Update of the client codes

Question
Are the reporting counterparties and entities responsible for reporting expected to update during the transition period any client codes not compliant with the requirements set out under EMIR REFIT?

ESMA_QA_2092

Submission Date
02/02/2024

Status: Question Published

Additional Information

Level 1 Regulation
European Market Infrastructure Regulation (EMIR) Regulation (EU) No 648/2012- MDP

Topic
* EMIR Reporting

Subject Matter
Reporting under STM/CTM model

Question
Guidelines on reporting under EMIR REFIT clarify that under Collateralise-to-Market model (CTM) the counterparties should report total variation margin and total collateral, whereas under the Settle-to-Market model the counterparties should report the daily change in the variation margin and the collateral. In which field counterparties should report whether the portfolio of cleared derivatives is collateralised under CTM or STM model?

ESMA_QA_2091

Submission Date
02/02/2024

Status: Question Rejected

Additional Information

Level 1 Regulation
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

Topic
ICT risk management

Additional Legal Reference
„4. Data reporting service providers shall, in addition, have in place systems that can effectively check trade reports for completeness, identify omissions and obvious errors, and request re-transmission of those reports.”

Subject Matter
impelemtation of Article 10 (4)

Question
Can you elaborate the requirement above? What an effective check should contain and how should be implemented practically?

ESMA_QA_2089

Submission Date
29/01/2024

Status: Response Published

Additional Information

Level 1 Regulation
MiCA

Topic
Crypto-Asset Service Provider (CASP)

Additional Legal Reference
Article 60

Subject Matter
Notifications under Article 60 MiCA

Question
To which NCA should the notification foreseen under Article 60 of MiCA be submitted?

ESMA Responses

29-01-2024

Original language

Article 60 notifications should be provided to the MiCA competent authority, namely the competent authority in charge of authorising crypto-asset service providers under Article 62.

The notification may in addition be provided to the authority that authorised them under the relevant other EU financial legislation.

ESMA_QA_2088

Submission Date
29/01/2024

Status: Response Published

Additional Information

Level 1 Regulation
MiCA

Topic
Crypto-Asset Service Provider (CASP)

Additional Legal Reference
Article 60

Subject Matter
Provision of crypto-asset services by credit institutions

Question

What crypto-asset services can a credit institution provide under the notification procedure set out in Article 60 of MiCA?

ESMA Responses

29-01-2024

Original language

A credit institution can provide any crypto-asset services on the basis of an Article 60 notification.

A credit institution however needs to submit a notification to its competent authority, including all the information listed in Article 60(7) (e.g. a program of operations, internal control mechanisms, procedures for segregation, custody, AML and ICT). In practice, if a credit institution holds no license for a type of service (e.g. custody), it may have difficulties to provide the information required in relation to this service.

Also note that recital 78 states that “the notification procedure for credit institutions intending to provide crypto-asset services under MiCA should be without prejudice to the provisions of national law transposing Directive 2013/36/EU (CRD) that set out procedures for the authorisation of credit institutions to provide the services listed in Annex I to that Directive.”

National implementation of CRD differs across Member States, with some banking licenses granted being more general and others more narrow – any notification under Article 60 will have to be in line with national rules transposing CRD.

Submission Date

ESMA_QA_2087

29/01/2024

Status: Response Published

Additional Information

Level 1 Regulation
MiCA

Topic
Crypto-Asset Service Provider (CASP)

Additional Legal Reference
Article 80

Subject Matter
Prohibition of monetary and non-monetary benefits under MiCA

Question
Does the prohibition set out under Article 80(2) to receive "remuneration, discount or non-monetary benefit in return for routing orders received from clients" apply to the crypto-asset services of receiving and transmitting orders on behalf of clients as well as the execution of orders on behalf of clients?

ESMA Responses

29-01-2024

Original language

Yes.

Article 80(2) provides that “crypto-asset service providers receiving and transmitting orders for crypto-assets on behalf of clients shall not receive any remuneration, discount or non-monetary benefit in return for routing orders received from clients […] to another crypto-asset service provider”, meaning that it is prohibited to receive payments or benefits when providing the service of receiving and transmitting orders for crypto-assets on behalf of clients.

In addition, Article 80(2) provides that “crypto-asset service providers receiving and transmitting orders for crypto-assets on behalf of clients shall not receive any remuneration, discount or non-monetary benefit in return for routing orders received from clients to a particular trading platform for crypto-assets…” meaning that it is prohibited to receive payments or benefits when providing the service of executing orders for crypto-assets on behalf of clients.

ESMA_QA_2086

Submission Date
29/01/2024

Status: Response Published

Additional Information

Level 1 Regulation
MiCA

Topic
Crypto-Asset Service Provider (CASP)

Additional Legal Reference
Article 143

Subject Matter
Passporting rights for entities benefiting from grandfathering

Question
1) Are entities benefiting from grandfathering eligible to passport their crypto services to other Member States?

2) Can an entity grandfathered to provide crypto services in one Member State provide cross-border activities in another Member State that has elected not to allow grandfathering (i.e., shortened or opted out of the transitional period)?

ESMA Responses

29-01-2024

Original language

1) No. Grandfathered entities do not benefit from an EU passport (unless they were to acquire a MiCA license starting from 2025 and therefore cease being a ‘grandfathered’

entity). Cross-border activities by an entity benefiting from grandfathering may occur only if the entity complies with relevant legislation applicable in both the home and host Member States. The provision of crypto-asset services during the transitional period should in any case always comply with the applicable national laws in the Member State where the services are provided.

Indeed, the Anti-Money Laundering framework (AMLD5) does not offer a harmonised passporting regime, but certain Member States might allow in their national law the provision of crypto services from an entity established in another Member State.

Therefore, during the transitional period of MiCA, the only possibility to offer cross-border services (beyond MiCA authorisation of course) would be in the scenario in which the national regimes of the home and host Member States (i.e., the Member State where the service is provided) allows.

2) No. Entities benefiting from grand-fathering will be forbidden from conducting cross-border activities in Member States where the grandfathering clause is not (or no longer) applicable.

For those entities offering crypto services who did not provide such services (or exist as a legal entity) under any applicable laws before 30 December 2024, they will not benefit from grandfathering. To provide services in the transitional period (and after), they must acquire a MiCA authorisation.

ESMA_QA_2085

Submission Date
29/01/2024

Status: Response Published

Additional Information

Level 1 Regulation
MiCA

Topic
Crypto-Asset Service Provider (CASP)

Additional Legal Reference
Article 143

Subject Matter
New CASPs established before (and after) 30 December 2024

Question
Does Article 143 allow for new CASPs established between MiCA's entry into force (June 2022) and 30 December 2024 to continue providing crypto-asset services (under national applicable law) until 1 July 2026 (assuming the MS allows the full duration of the grandfathering period)?

ESMA Responses

29-01-2024

Original language

Yes. Article 143(3) of MiCA allows entities providing crypto services to benefit from grandfathering if they provided their services in accordance with applicable national law before 30 December 2024. There is no effective ‘date of initiation’ related to entry into force or other temporal constraint (i.e., if the entity providing crypto services began offering services in 2014, it would still be eligible for grandfathering).

For those entities offering crypto services who did not provide such services (or exist as a legal entity) under any applicable laws before 30 December 2024, they will not benefit from grandfathering. To provide services in the transitional period (and after), they must acquire a MiCA authorisation.

ESMA_QA_2082

Submission Date
26/01/2024

Status: Question Published

Additional Information

Level 1 Regulation
Credit Rating Agencies Regulation (CRAR) Regulation (EC) No 1060/2009

Topic
CRA Regulation

Subject Matter
Discontinuation of credit ratings

Question
Question: How should a CRA ensure a sufficient level of transparency when a credit rating is discontinued in accordance with Article 10(1)?

Question: Is a different level of transparency expected when a credit rating is withdrawn?

ESMA_QA_2071

Submission Date
09/01/2024

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
MiCA

Topic
Crypto-Asset Service Provider (CASP)

Additional Legal Reference
Recital 93 and Articles 3(1)(26) and 82

Subject Matter

Crypto-asset transfers as component of another crypto-asset service or as a separate crypto-asset transfer service

Question

According to Recital 93 MiCA “(…) Many crypto-asset service providers also offer some kind of transfer service for crypto-assets as part of, for example, the service of providing custody and administration of crypto-assets on behalf of clients, exchange of crypto-assets for funds or other crypto-assets, or execution of orders for crypto- assets on behalf of clients (…).”

Should Recital 93 MiCA be read as meaning that a crypto-asset transfer offered as part of a crypto-asset service (such as custody and administration or execution of orders on behalf of clients) is to be regarded as a component of such a crypto-asset service and should therefore not be subject to the authorisation requirements under Article 62 MiCA? Or would such a transfer of crypto-asset still qualify as the separate service of crypto-asset transfer, as defined under Article 3(1)(26) MiCA, and subject to authorisation requirements?

What criteria should be taken into account to determine whether the crypto-asset transfer is a separate service or not?

Please confirm that, if a transfer of crypto-asset is part of a crypto-asset service such as custody and administration or execution of orders on behalf of clients and thus does not constitute the separate service of transfer of crypto-assets, the requirements in Article 82 MiCA apply anyway (including the ESMA guidelines issued according to the mandate in Article 82(2).

ESMA_QA_2070

Submission Date

09/01/2024

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
MiCA

Topic
Crypto-Asset Service Provider (CASP)

Additional Legal Reference
Article 143(6)

Subject Matter
Simplified authorisation procedures

Question
Can entities registered under the EU AML/CFT framework benefit from the simplified authorisation procedures set out under Article 143(6) of MiCA?

ESMA_QA_2068

Submission Date
09/01/2024

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
MiCA

Topic
Crypto-Asset Service Provider (CASP)

Additional Legal Reference
Article 143(3)

Subject Matter
Grandfathering clause and applicable AML laws

Question
Can entities registered under the EU AML/CFT framework benefit from the grandfathering clause set out under Article 143(3) of MiCA?

ESMA_QA_2069

Submission Date
09/01/2024

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
MiCA

Topic
Crypto-Asset Service Provider (CASP)

Additional Legal Reference
Articles 60 and 143

Subject Matter
Interaction between Article 60 notifications and the CASP transitional phase

Question
1) Does grandfathering offered in the transitional phase under Article 143(3) apply to Article 60-related entities providing crypto-asset services under the applicable law before MiCA date of application?

2) Does the application of the transitional measures affect the right of entities to start providing crypto-asset services via the notification procedure of Article 60 of MiCA?

Submission Date

ESMA_QA_2067

09/01/2024

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
MiCA

Topic
Mining

Subject Matter
Treatment of staking services in MiCA

Question
Does MiCA prohibit staking-related services? Are staking activities exempt from the application of MiCA?

ESMA_QA_2062

Submission Date
03/01/2024

Status: Question Published

Additional Information

Level 1 Regulation
Transparency Directive (TD) Directive 2004/109/EC

Topic
Notifications of major shareholdings

Additional Legal Reference
ESMA Indicative list of financial instruments that are subject to notification requirements according to Article 13(1b) of the revised Transparency Directive

Subject Matter
Clarification on the application of the Transparency Directive, particularly Article 13, 1b, and its subsequent sub-points, in the context of synthetic shares

Question
Article 13 1. (b) states that Financial instruments with economic effect similar to that of the financial instruments referred to in that point, whether or not they confer a right to a physical settlement are subject to the notification requirement of Article 9 in the TD. The definition of "Financial Instrument" is further elaborated in Article 13, 1b, and its subsequent sub-points, and includeds the wording "any other contracts or agreements with similar economic effects which may be settled physically or in cash.". ESMA has also produced an Indicative List of

Given this context, my question is: Do synthetic shares, which are created through various derivatives and structured financial processes to mimic the performance of actual shares without conferring ownership, fall under the scope of "financial instruments" as defined in Article 13(1)(b) of the Transparency Directive? Specifically, do synthetic shares qualify as "contracts or agreements with similar economic effects" that are subject to notification requirements pursuant to this paragraph?

Submission Date

20/12/2023

Status: Question Rejected

Additional Information

Level 1 Regulation
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

Topic
ICT third-party service provider (CTPP)

Additional Legal Reference
On Draft Implementing Technical Standards to establish the templates composing the register of information in relation to all contractual arrangements on the use of ICT services provided by ICT third-party service providers as mandated by Regulation (EU)

Subject Matter
Software companies

Question
How can DORA Article 28 be applied on software companies when the financial entity purchases off-the-shelf software licenses? If the off-the-shelf software supports critical or important function, should the DORA Article 28 (8) be applied?

Submission Date

ESMA_QA_2056

20/12/2023

Status: Question Rejected

Additional Information

Level 1 Regulation
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

Topic
ICT third-party service provider (CTPP)

Additional Legal Reference
On Draft Implementing Technical Standards to establish the templates composing the register of information in relation to all contractual arrangements on the use of ICT services provided by ICT third-party service providers as mandated by Regulation (EU)

Subject Matter
Software distributors

Question
When an off-the-shelf software license (e.g. operating systems, database) is purchased through a distributor, is the distributor qualifying as “ICT third-party service provider” in case if the distributor itself is not providing any additional services in addition to the distribution, and its contractual tasks are completed with the successful intermediation of the license agreement? Is the software company qualifying as a direct “ICT third-party service provider” based on the end-user license agreement (EULA) accepted by the financial entity?

Submission Date

19/12/2023

Status: Response Published

Additional Information

Level 1 Regulation
Regulation 2020/1503 - European crowdfunding service providers for business

Topic
Appropriateness

Subject Matter
Legal person appointed as responsible of the management of a CSP

Question
Can a legal person be appointed to be responsible of the management of a CSP within the meaning of Article 12(2) of the ECSPR?

ESMA Responses

19-12-2023

Original language

No. The ECSPR refers to persons in charge of the management of CSPs in various recitals and articles where this function is limited to natural persons.

Notably, for the purpose of the authorisation as CSP, Article 12(2) establishes that applicants shall provide the authorising NCA with:

• the identity of the natural persons responsible for the management of the prospective crowdfunding service provider (point (k) of Article 12(2)), and

• proof that the natural persons referred to in point (k) are of good repute and possess sufficient knowledge, skills and experience to manage the prospective crowdfunding service provider (point (l) of Article 12(2)).

The requirements are further detailed in Article 12(3) of the ECSPR and in Field 13 of the Annex to the Commission Delegated Regulation 2022/2112 on the requirements for authorisation as CSPs where the relevant provisions refer to the “natural persons” responsible for the management of the (prospective) CSP.

ESMA_QA_2054

Submission Date
19/12/2023

Status: Response Published

Additional Information

Level 1 Regulation
Regulation 2020/1503 - European crowdfunding service providers for business

Topic
Appropriateness

Subject Matter
Material changes to content of application

Question
What type of changes to the information provided in the application for authorisation needs to be notified without undue delay to the authorising competent authority?

ESMA Responses

19-12-2023

Original language

Article 15(3) of the ECSPR provides that any material changes to the information provided in the application for authorisation must be notified to the competent authority without undue delay.

Article 12(11) of the ECSPR provides that a CSP must meet at all times the conditions for its authorisation.

On this basis, CSPs are expected to notify, without undue delay, to their competent authority material changes to the information provided in the context of the authorisation process. This

includes, but is not limited to, the information listed in points (a) to (r) of Article 12(2) of the ECSPR as well as any change in the shareholding of the CSP (i.e. in order to enable the competent authority to reconsider, if applicable, the assessment referred to in point (a) of Article 12(3) and 12(7) of the ECSPR).

CSPs are invited, as part of good supervisory practice, to discuss with their competent authority any material changes of key importance, such as, but not limited to, changes of the shareholding or changes of the persons in charge of management, prior to implementing such changes.

ESMA_QA_2053

Submission Date
19/12/2023

Status: Response Published

Additional Information

Level 1 Regulation
Regulation 2020/1503 - European crowdfunding service providers for business

Topic
Appropriateness

Subject Matter
Sophisticated investors

Question
Can a crowdfunding service provider only accept sophisticated investors?

ESMA Responses

19-12-2023

Original language

There is no provision in the ECSPR preventing a CSP from only accepting sophisticated investors. However, such a practice shall not prevent a CSP from complying with all relevant provisions of the ECSPR and shall not be used as a way to circumvent the application of the consumer protection provisions of the ECSPR.

In this context, it is reminded that point (d) of Article 2(1) provides that a crowdfunding platform shall be accessible to the public for it to be in the scope of the ECSPR. As a consequence, access to the website of a crowdfunding platform cannot be reserved or restricted to a preselected group of investors.

A CSP may however decide to only accept subscriptions from investors or potential investors accessing the website of the platform that qualify as sophisticated within the meaning of point (j) of Article 2(1) of the ECSPR. The website of the crowdfunding platform shall, in such case, be very clear on this policy and, at the same time, avoid encouraging investors that would otherwise benefit of the protections awarded to non-sophisticated investors to apply to be treated as a sophisticated investor.

Likewise, CSP shall only deliver the approval referred to in point (j) of Article 2(1) of the ECSPR to investors meeting very strictly the conditions set out in Annex II of the ECSPR.

ESMA_QA_2052

Submission Date
19/12/2023

Status: Response Published

Additional Information

Level 1 Regulation
Regulation 2020/1503 - European crowdfunding service providers for business

Topic
Appropriateness

Subject Matter
crowdfunding services

Question
How should placement without a firm commitment and reception and transmission of orders as referred to in point (ii) of point (a) of Article 2(1) of the ECSPR be understood in the context of the ECSPR?

ESMA Responses

19-12-2023

Original language

Article 2(1) of the ECSPR refers to placement without a firm commitment and reception and transmission of orders by explicit reference to Directive 2014/65 (MiFID II). Consequently, the interpretation of these services/activities shall be made in accordance with the legal framework and the supervisory practice issued in the context of MiFID II. However, placement without a firm commitment and reception and transmission of orders in the context of the ECSPR shall take into account that Article 2(1) is clear that both services/activities shall be considered “in relation to (…) transferable securities and admitted instruments for crowdfunding purposes” and this scope (i.e. transferable securities and admitted instruments for crowdfunding purposes) is slightly wider than the one of MiFID (i.e. MiFID typically does not cover admitted instruments for crowdfunding purposes as defined in the ECSPR). Furthermore, it can be noted that, according to the wording of point (ii)(a) of Article 2(1) of the ECSPR, in conjunction with Recital 10 of the ECSPR, the reception and transmission of client orders has to be provided jointly with the placement of transferable securities or admitted instruments for crowdfunding purposes without a firm commitment

ESMA_QA_2051

Submission Date
19/12/2023

Status: Response Published

Additional Information

Level 1 Regulation
Regulation 2020/1503 - European crowdfunding service providers for business

Topic
Appropriateness

Subject Matter
Provision of other services by a CSP

Question
Can a CSP provide services other than crowdfunding services (as defined in point (a) of Article 2(1) of the ECSPR)?

ESMA Responses

19-12-2023

Original language

Yes. Pursuant to Article 12(13) of the ECSPR, a CSP “may also engage in activities other than those covered by the authorisation referred to in [Article 12] in accordance with the relevant applicable Union or national law”. Consequently, the ECSPR does not restrict the possibility for a CSP to engage in other regulated activities requiring an authorisation under Union or national law, or unregulated activities complementary to the crowdfunding services. National or Union law may however restrict this possibility. If these activities are covered by

Union or national law, the CSP would need to comply, at all times, with those rules and, if applicable, seek the relevant authorisation(s) under Union or national law.

Engaging in those activities, covered by Union or national law, shall not impair CSP's ability to operate as a neutral intermediary and to comply with the requirements set out in the ECSPR and notably Articles 3(2) and 8. The distinction between crowdfunding services and other services/activities shall always be very clear to the client, including with regard to the regulatory framework applicable to such services or activities (or the lack of any such framework). Notably, in cases where those other activities are carried out by means of the same internet-based information system used to provide crowdfunding services, separate areas shall be clearly established on the website.

ESMA_QA_2050

Submission Date
19/12/2023

Status: Question Published

Additional Information

Level 1 Regulation
European Market Infrastructure Regulation (EMIR) Regulation (EU) No 648/2012- PTR-Derivatives

Level 2 Regulation

Regulation 149/2013 on indirect clearing arrangements, the clearing obligation, the public register, access to a TV, non-financial ctps, and risk mitigation for OTC derivatives not CCP cleared

Topic
OTC Derivatives questions - Other

Additional Legal Reference
Article 10(3)(1) of EMIR and Article 10 of Commission Delegated Regulation (EU) No 149/2013

Subject Matter
Hedging definition and virtual power purchase agreements

Question
Can virtual power purchase agreements be considered as “risk reducing transactions” under EMIR?

ESMA_QA_2049

Submission Date
18/12/2023

Status: Response Published

Additional Information

Level 1 Regulation
Regulation 2020/1503 - European crowdfunding service providers for business

Topic
Appropriateness

Subject Matter
Prudential requirements

Question
How should NCAs apply Article 11(2)(c) of the ESCPR at the point of authorisation? How and to what extent can an insurance policy be combined with own funds?

ESMA Responses

18-12-2023

Original language

Article 11 of the ECSPR requires CSPs to have – at all time - prudential safeguards and establishes the form and the amount that such prudential safeguards2 shall comply with. The ECSPR provides for requirements regarding the calculation of the amount of the prudential safeguards (paragraphs 8 and 9 of Article 11 of ECSPR, as well as paragraph 5).

Article 11(2) of the ECSPR provides that the prudential safeguards shall take the form of:

(i) own funds,

(ii) an insurance policy covering the territories of the Union where crowdfunding offers are

actively marketed or a comparable guarantee, or

(iii) a combination of both.

The ECSPR also provides for requirements concerning the characteristics of the own funds as well as of the insurance policy4 (paragraphs 6 and 7 of Article 11 of the ECSPR). Commission Delegated Regulation 2022/2112, on requirements and arrangements for the application for authorisation as a CSP, provides div on the information that applicants shall provide to the authorising NCA with regard to the description of the prudential safeguards (Point 9 of the Annex to Regulation 2022/2122) and the relevant proof that the applicant meets the prudential safeguards (Point 10 of the mentioned Annex).

The ECSPR and the delegated Regulation 2022/2112 on the authorisation as CSP do not contain provision regarding the choice of prospective CSPs opting for prudential safeguards taking the form of a combination of own funds and an insurance policy or a preferred suggested the balance between the two. As a consequence, it is up to the approving NCAs, after assessing that the suggested calculation of the prudential safeguards needed is correct and comply with Article 11 of the ECSPR and point 9 of the Annex to the Delegated Regulation 2022/2112, to determine whether the sums covered by the own funds and the insurance policy amount to the sum calculated in accordance with Article 11(1) of the ECSPR. For this purpose, the NCA shall ensure that:

(a) the own funds correspond to the items referred to in point (a) of Article 11(2) of the ECSPR (see footnote 3 above) and comply with point 10(1) of the Annex to the Delegated Regulation 2022/2112),

(b) the insurance policy incorporates all the characteristics listed in paragraph 6 and 7 of Article 11 of the ECSPR and complies with point 10(2) of the Annex to the Delegated Regulation 2022/2112.

18/12/2023

Status: Response Published

Additional Information

Level 1 Regulation
Regulation 2020/1503 - European crowdfunding service providers for business

Topic
Appropriateness

Subject Matter
Scope of exemption in Article 1(2)

Question
Should the threshold referred to in point (c) of Article 1(2) of the ECSPR apply when a crowdfunding offer is made on several crowdfunding platforms?

ESMA Responses

18-12-2023

Original language

Yes. The provision of point (c) of Article 1(2) applies irrespective of the fact that the crowdfunding offer is made on a single or several crowdfunding platforms.

ESMA_QA_2047

Submission Date
18/12/2023

Status: Response Published

Additional Information

Level 1 Regulation
Regulation 2020/1503 - European crowdfunding service providers for business

Topic
Appropriateness

Subject Matter
Scope of exemption in Article 1(2)

Question

What should the starting day of the 12-month period referred to in point (c) of Article 1(2) of the ECSPR be?

ESMA Responses

18-12-2023

Original language

The total consideration of offers by the same project owner referred to in point (i) and (ii) of point (c) of Article 1(2) of the ECSPR shall be calculated taking into account the total consideration of offers that have been made in the 12 months preceding the date of launch of the crowdfunding offer.

ESMA_QA_2046

Submission Date
18/12/2023

Status: Question Published

Additional Information

Level 1 Regulation
Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic
DLT market infrastructure

Subject Matter
Eligibility for operating a DLT SS under the DLT Pilot Regime

Question
Who can be the operator of a DLT SS under the DLT Pilot Regime?

ESMA_QA_2045

Submission Date
18/12/2023

Status: Question Published

Additional Information

Level 1 Regulation

Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic
Requirements for DLT market infrastructures

Additional Legal Reference
Articles 9(6)(b) and Article 10(7)(b) of Regulation (EU) 2022/858 (DLTR) and article 12(1)(b) of Regulation (EU) 909/2014

Subject Matter
Involvement of the authorities in Article 12(1)(b) of CSDR in the authorisation of a DLT SS/ DLT TSS using e-money tokens

Question
Should relevant authorities mentioned in Article 12(1)(b) of Regulation (EU) 909/2014 be involved in the authorisation process of a DLT SS or DLT TSS that aims to settle the cash leg of transactions using e-money tokens under the DLTR?

ESMA_QA_2025

Submission Date
13/12/2023

Status: Response Published

Additional Information

Level 1 Regulation
Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU- Investor Protection and Intermediaries

Level 2 Regulation
Regulation 2017/565 - MiFID II Delegated Regulation

Topic
Information to clients on costs and charges

Historic Question Reference
The second paragraph of this Q&A includes a reference to the Q&A 9.13 of the ESMA Q&As on MiFID II and MiFIR Investor protection and intermediary topics (Ref: ESMA35-43-349) which can also be found in the ESMA Q&A tool as Q&A 1825.

Additional Legal Reference
Art. 24(4) of MiFID II, Article 1(4)(a) of Directive 2021/338/EU, Art. 50(2) and (9) of the MiFID II Delegated Regulation, Article 59(4) MiFID II Delegated Regulation

Subject Matter
Disclosure of costs and charges paid in or represented in an amount of foreign currency

Question
How should investment firms indicate the parts of the total costs and charges paid in or represented in an amount of foreign currency in their ex-ante and ex-post costs and charges disclosure?

ESMA Responses

13-12-2023

Original language

Article 50(3) MiFID II Delegated Regulation stipulates inter alia that where any part of the total costs and charges is to be paid in or represents an amount of foreign currency, investment firms must provide an indication of the currency involved and the applicable currency conversion rates and costs. However, Article 50(3) does not specify how firms should disclose such costs, neither for ex-ante nor for ex-post disclosures.

Firms are required to provide aggregated ex-ante information on all costs and charges. [1] This includes costs to be paid in or representing an amount of foreign currency[2] and costs of currency conversion, where applicable. Firms should include these costs and charges in the ex-ante costs and charges disclosure in accordance with Q&A 9.13.[3] Additionally, in accordance with Article 50(3) MiFID II Delegated Regulation, firms should indicate the currencies involved, the applicable currency conversion rates and currency conversion costs, irrespective of whether the client has requested an itemised breakdown.

For the ex-post disclosure of costs and charges, firms are required to provide to clients' aggregated information at least on an annual basis about all costs and charges related to both the financial instrument(s) and investment and ancillary service(s).[4] Thus, the costs paid in or representing an amount of foreign currencies, and the currency conversion costs incurred, shall be included by firms in the aggregated amounts of their ex-post cost and charges disclosure. In contrast to the ex-ante information, in ESMA's view, in the ex-post cost disclosure, firms would neither be expected to indicate the foreign currencies involved, nor to specify the applied currency conversion rates and costs. Only if clients request an itemised breakdown, firms should disclose the relevant foreign currencies, conversion rates and related costs. ESMA notes that further information for each individual transaction is required by Article 59(4) MiFID II Delegated Regulation. This includes information on foreign currencies involved and the applicable currency conversion rates.

[1] According to Article 24(4) of MiFID II and Article 50(2) of the MiFID II Delegated Regulation.

[2] For the purpose of this Q&A, the notion of “foreign currency” depends on the currency of the account and/or the reference currency of the costs and charges disclosure.

[3] Also according to Article 1(4)(a) of Directive 2021/338/EU relating to the disclosure of ex-ante cost information where the agreement to buy or sell a financial instrument is concluded using a means of distance communication.

[4] According to Article 50(9) of the MiFID II Delegated Regulation.

ESMA_QA_2024

Submission Date
13/12/2023

Status: Response Published

Additional Information

Level 1 Regulation

Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU- Investor Protection and Intermediaries

Level 2 Regulation
Regulation 2017/565 - MiFID II Delegated Regulation

Topic
Information to clients on costs and charges

Historic Question Reference
This Q&A updates the ESMA Q&A 1825. The updated wording of the answer is set out in bold and underlined.

Additional Legal Reference
Art. 24 of MiFID II, Art. 50(2) of the MiFID II Delegated Regulation

Subject Matter
Aggregation of costs and charges

Question
When providing information of costs and charges to clients, on which basis should costs be aggregated? What is the level of aggregation that firms need to apply?

ESMA Responses

13-12-2023

Original language

In accordance with Article 24(4) MiFID II and Article 50(2) of the MiFID II Delegated Regulation, firms shall aggregate costs and charges in connection with the investment service and costs and charges associated with the financial instruments. Third party payments received by investment firms in connection with the investment service provided to a client shall be itemised separately[1]. The aggregated costs and charges shall be totalled and expressed both as a cash amount and as a percentage. The following example shows the cost figures that are to be disclosed[2]:

Investment services and/or ancillary services	€ 1.500	1.5%
Third party payments received by the investment firm	€ 500	0.5%
Financial instruments	€ 1.500	1.5%
Total costs and charges	**€ 3.500**	**3.5%**

In addition, the investment firm shall provide an itemised breakdown at the request of the client. ESMA would expect that an investment firm take reasonable steps to minimise the effort for the client to submit such requests. When disclosing costs and charges in an online environment for instance, a best practice would be to enable the client to access such information through the use of hyperlinks. ESMA also considers it a best practice when an investment firm actively informs its clients of their right of submitting such a request when providing the aggregated information.

When an itemised breakdown is requested by the client, an investment firm should provide such breakdown (in a consistent way such that cost items may be aggregated) at least at the level of the cost items that are depicted in the tables included in Annex II MiFID II Delegated Regulation:

- One-off charges
- Ongoing charges
- All costs related to transactions
- Any charges that are related to ancillary services (not applicable to financial instruments)
- Incidental costs

Where firms use an all-in fee, the all in-fee should be disclosed under the relevant cost item (for example “ongoing charges”). For all other cost items covered by the all in-fee (or not charged at all), the firm should indicate a ‘zero’. For costs not covered by the all-in fee (for example, stamp duties, or exit or entry fees paid to the fund manager), the costs incurred shall be disclosed in the relevant category.

Moreover, for the avoidance of doubt, ESMA notes that also in case of all-in fees, in accordance with Article 50(2) of the MiFID II Delegated Regulation firms must disclose separately any third-party payments received in their aggregated disclosure of costs and charges.

The obligation to aggregate costs and charges is without prejudice to any other obligations to provide clients with cost information. For instance, for financial instruments that are within the scope of PRIIPs Regulation, a KID will be distributed to retail investors by investment firms that advise or sell a PRIP, thus providing information on ex-ante costs and charges per individual PRIIP.

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[1] ESMA notes that in the case of independent advice and portfolio management, the investment firm must transfer all fees, commissions or monetary benefits received from third parties in full to the client (Article 12(1) of the Delegated Directive) and clients shall be informed about the fees, commissions or monetary benefits transferred to them.

[2] The table is included for illustrational purposes only and ESMA does not intend to suggest a prescriptive format (i.e format, colour, font size etc).

Status: Response Published

Additional Information

Level 1 Regulation
Transparency Directive (TD) Directive 2004/109/EC

Topic
Notifications of major shareholdings

Historic Question Reference
[ESMA31-67-127 TD Q27]

Subject Matter
Notification of Major Holdings; TD Art. 9(1)

Question
Does the major shareholder obligation in Article 9(1) of Transparency Directive 2004/109/EC apply to holdings in issuers whose shares are not admitted to trading on an EU regulated market if depository receipts (DRs) in respect of that issuer's shares are admitted to trading on an EU regulated market?

- Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation -

ESMA Responses

30-11-2023

Original language

[ESMA31-67-127 TD Q27]

Article 9(1) of the Transparency Directive 2004/109/EC[1] (TD) requires Member States to ensure that all shareholders, following the acquisition or disposal of shares of an issuer of shares admitted to trading on an EU regulated market, in the sense of Article 4(1), point 21, of Directive 2014/65/EU, and to which voting rights are attached, inform the issuer of the resulting proportion of voting rights they hold where that proportion reaches certain thresholds.

Considering that:

1. pursuant to Article 2(1)(e) TD[2], persons that hold depository receipts are considered as "shareholders" of an issuer when they hold underlying shares represented by the depository receipts; and that
2. pursuant to Article 2(1)(d) TD[3], "issuers" encompass issuers of the securities represented by the depository receipts, whether or not these securities are admitted to trading on an EU regulated market,

the holders of a depository receipt listed on an EU regulated market are subject to the provisions set out in Article 9(1) TD, including when the underlying shares of an issuer are not admitted to trading on an EU regulated market.

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[1] Article 9(1) TD - Notification of the acquisition or disposal of major holdings - 1. *The home Member State shall ensure that, where a shareholder acquires or disposes of shares of an issuer whose shares are admitted to trading on a regulated market and to which voting rights are attached, such shareholder notifies the issuer of the proportion of voting rights of the issuer held by the shareholder as a result of the acquisition or disposal where that proportion reaches, exceeds or falls below the thresholds of 5 %, 10 %, 15 %, 20 %, 25 %, 30 %, 50 % and 75 %.* […].

[2] Article 2(1)(e) TD: "*shareholder means any natural person or legal entity governed by private or public law, who holds, directly or indirectly: (i) shares of the issuer in its own name*

and on its own account; (ii) shares of the issuer in its own name, but on behalf of another natural person or legal entity; (iii) depository receipts, in which case the holder of the depository receipt shall be considered as the shareholder of the underlying shares represented by the depository receipts".

[3] Article 2(1)(d) TD: "'*issuer' means a natural person, or a legal entity governed by private or public law, including a State, whose securities are admitted to trading on a regulated market. In the case of depository receipts admitted to trading on a regulated market, the issuer means the issuer of the securities represented, whether or not those securities are admitted to trading on a regulated market*".

ESMA_QA_2005

Submission Date
07/11/2023

Status: Response Published

Additional Information

Level 1 Regulation
MiCA

Topic
Crypto assets

Additional Legal Reference
Articles 2 and 143 of MICA

Subject Matter
Crypto-asset services of a DLT MI

Question
Is a DLT MI (digital ledger technology market infrastructure) operator allowed to provide MiCA crypto-asset services such as operating a trading platform and custody services for emoney tokens without an additional MiCA licence?

ESMA Responses

07-11-2023

Original language

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

Following entry into application of Regulation (EU) 2023/1114, persons wishing to provide crypto-assets services will have to obtain an authorsation under that regulation. However, as a derogation to that general rule, certain financial entities referred to in Article 60 of Regulation (EU) 2023/1114 may provide specified crypto-asset services without an additional MICA licence where they notify their intention to do so to their home NCA and follow the procedure set out in Article 60 of Regulation (EU) 2023/1114. This includes investment firms and central securities depositaries, which are eligible participants in the DLTPR. In the period until the entry into application of Regulation (EU) 2023/1114, a DLT MI will have to comply with national rules on the provision of crypto-asset services, where such services are regulated at national level. Furthermore, in accordance with Article 143(3) of that regulation, a DLT MI may be able to continue to provide crypto-asset services in accordance with national rules until 18 months after the date of application of the regulation or until it is granted or refused an authorisation pursuant to Article 63 of the regulation, whichever is sooner. However, Member States may also decide not to apply this transitional regime for

crypto-asset service providers, or reduce its duration, in accordance with the second subparagraph of Article 143(3) referred above, in which case MICA shall start applying in accordance with that decision.

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2004

Submission Date
07/11/2023

Status: Response Published

Additional Information

Level 1 Regulation
Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic
Requirements for DLT market infrastructures

Subject Matter
Capital requirements for a DLT TSS

Question
What are the capital requirements for a DLT TSS (digital ledger technology trading and settlement system) operated by: a) an investment firm; b) a credit institution; c) a CSD (central securities depository)?

ESMA Responses

07-11-2023

Original language

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

Capital requirements for DLT market infrastructures can be determined according to the underlying licence that the Pilot applicant will 5 rely on to obtain a special licence under the DLTPR. Where a Pilot applicant relies on an investment firm licence to apply for a DLT TSS licence, it must comply with capital requirements applicable to investment firms in accordance with Article 15 of Directive 2014/65/EU and Article 11 of Regulation (EU) 2019/2033. An investment firm operating a DLT TSS is explicitly exempted from capital requirements set out in Article 47 of Regulation (EU) 909/2014 by virtue of Article 6(1)(b) DLTPR. Where a Pilot applicant relies on a CSD licence to apply for a DLT TSS licence, it must comply with capital requirements applicable to CSDs in accordance with Article 47 of Regulation (EU) 909/2014, as well as any other provisions relating to capital requirements set out in that regulation. A credit institution applying for a DLT TSS and leveraging on its authorisation under Directive 2013/36/EU to provide investment services, including that of operating an MTF, should apply capital requirements laid down in Directive 2013/36/EU and Regulation (EU) No 575/2013. A credit institution authorized to provide investment services

and applying for a DLT TSS licence is exempted from capital requirements set out in Article 47 of Regulation (EU) 909/2014 by virtue of Article 6(1)(b) DLTPR. Finally, in accordance with the third paragraph of Article 7(6) DLTPR, national competent authorities may require additional prudential safeguards from the operator of a DLT market infrastructure, which includes the DLT TSS.

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2003

Submission Date
07/11/2023

Status: Response Published

Additional Information

Level 1 Regulation

Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic
DLT financial instruments

Additional Legal Reference
Article 3 of DLTR

Subject Matter
Admission of subscription rights to trading or recording on a DLT market infrastructure

Question
Can subscription rights be covered under the DLTR?

ESMA Responses

07-11-2023

Original language

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

Article 3(1) restricts the types of DLT financial instruments that are eligible to be traded or recorded on a DLT market infrastructure. Subscription rights are usually defined as the right of existing shareholders to participate in the acquisition of newly issued shares in a company. Subscription rights are not mentioned as one of the categories of financial instruments

eligible to be handled by DLT market infrastructure. Subscription rights should be considered as falling within the third category of transferable securities defined under Article 4(1) point (44) of Directive 2014/65/EU, which covers ‘any other securities giving the right to acquire or sell any such transferable securities’. That category of transferable security is not covered by Article 3(1) DLTPR.

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2002

Submission Date
07/11/2023

Status: Response Published

Additional Information

Level 1 Regulation

Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic
DLT multilateral trading facility (DLT MTF)

Additional Legal Reference
Article 8 of DLTR

Subject Matter
Authorisation for credit institutions to operate a DLT MTF

Question
Should a credit institution authorised in accordance with CRD IV/CRR and providing investment services or performing investment
activities in accordance with MiFID II/MiFIR be required to apply for an authorisation as an investment firm in order to operate a DLT MTF (distributed ledger technology multilateral trading facility)?

ESMA Responses

07-11-2023

Original language

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

Recital 38 of Directive 2014/65/EU states that credit institutions authorized under Directive 2013/36/EU should not need a separate authorization under Directive 2014/65/EU to provide investment services or perform investment activities. It also notes that the national competent authority should verify compliance with Directive 2014/65/EU before granting an authorization to the credit institution to provide investment services or perform investment activities. This means that a credit institution does not need a separate license as an investment firm under Directive 2014/65/EU in order to apply for a DLT MTF license under the DLTPR but can rather leverage its existing licence under Directive 2013/36/EU. In that sense, recital 13 of the DLTPR, which notes that a credit institution should only be allowed to operate a DLT MTF when it is authorised as an investment firm under Directive 2014/65/EU, should be interpreted such that the competent authority should ensure that the credit institution complies with the provisions of Directive 2014/65/EU applicable to the service of operating an MTF as well as other relevant provisions of that directive when considering the need for an application for a DLT MTF licence under the DLTPR.

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_1997

Submission Date
26/10/2023

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU- Investor Protection and Intermediaries

Level 2 Regulation
Directive 2017/593 - MiFID II Delegated Directive

Level 3 Regulation
ESMA/2013/606 - Guidelines - Remuneration (MiFID)

Topic
Remuneration

Subject Matter
Payments to be considered as remuneration

Question
When calculating remuneration for small closely held company where the majority owner is also an employee, a member of management and the board, should the dividends he/she earns from his/her shares in the company be added to remuneration?

Submission Date

ESMA_QA_1977

13/10/2023

Status: Question Published

Additional Information

Level 1 Regulation
Markets in Financial Instruments Regulation (MiFIR) Regulation (EU) No 600/2014- Secondary Markets

Level 2 Regulation
Regulation 2017/581 - RTS on access in respect of central counterparties and trading venues (RTS 15)

Topic
Access to CCPs and trading venues

Historic Question Reference
ESMA_QA_985

Subject Matter
Fees charged to CCPs in relation to access to trading venues

Question
To what extent can a trading venue apply different fee schedules to CCPs under Article 36 of MiFIR? Is it possible for a trading venue to apply different fee schedules depending on whether a CCP has close links to the trading venue?

Submission Date

03/10/2023

Status: Question Published

Additional Information

Level 1 Regulation
Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic
EU-CCPs

Subject Matter
Sanctions regime of International Investment Bank

Question
Is there a legal basis for the measures taken by capital market participants (including Clearstream and Euroclear) to restrict any trading of International Investment Bank - IIB issued bonds?

Submission Date

ESMA_QA_1966

02/10/2023

Status: Response Published

Additional Information

Level 1 Regulation
Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU- Investor Protection and Intermediaries

Level 2 Regulation
Directive 2017/593 - MiFID II Delegated Directive

Level 3 Regulation
ESMA35-43-620 - Guidelines - Product governance (MiFID)

Topic
Product governance

Additional Legal Reference
Commission Delegated Directive (EU) 2017/593, Articles 9(9) and 10(2)

Subject Matter
Integration of sustainability within the MiFID II product governance requirements

Question
When conducting the negative target market assessment for a product that does not consider sustainability factors, should a firm also consider any clients' sustainability-related

objectives the product is not compatible with?

ESMA Responses

02-10-2023

Original language

Response provided by the European Commission:

Yes. According to Article 9(9) and 10(2) of Commission Delegated Directive 2017/593, any clients' sustainability-related objectives shall be considered when specifying the type(s) of clients whose needs, characteristics and objectives the product is compatible with ('positive target market assessment'). This also applies to the identification of any group(s) of clients whose needs, characteristics and objectives the product is not compatible with ('negative target market assessment'). In practical terms, whether, and if so, which sustainability-related objectives may be relevant for the identification of the negative target market for a particular product that does not consider sustainability factors, will depend on the characteristics of the product. Indeed, firms are required to consider whether the product would be incompatible with some sustainable related objectives but this evaluation might conclude, in some specific situations, that there is no incompatibility with those objectives, so no negative target market would be determined in those specific situations for the criterion "sustainability related objective". Reversely, in other situations the consideration should lead to the identification of a negative target market in relation to the product's sustainability-related objectives.

Status of the answers provided by the European Commission: *The answers provided by the European Commission are provided pursuant to Article 16b(5) of Regulation 2010/1095 to clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and*

Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_1901

Submission Date
21/09/2023

Status: Response Published

Additional Information

Level 1 Regulation
Short Selling Regulation (SSR) Regulation (EU) No 236/2012

Topic
Transparency of net short positions

Subject Matter
Notifications of net short positions existing prior to the application of the Regulation

Question

In Member States where a national transparency regime was already in place before the Regulation applies, do holders of existing short positions already notified to the concerned competent authority and/or publicly disclosed under that regime have to make new notifications and (if applicable) disclosures according to European regime?

If so, how should the “position date” field in the form be filled in if the threshold has been crossed before the entry into application of the Regulation?

ESMA Responses

13-09-2012

Original language

[ESMA70-145-408 SSR Q&A, Q&A 5.3]

Yes they do. Notifications, and where relevant, disclosures of net short positions need to comply with the format specified in the Regulatory and Implementing Technical Standards adopted under the new European regime. This applies to existing notifiable or disclosable positions obtained before 1 November 2012 as well as those created on or after that date.

The “position date” field in the form to use for notification or for disclosure should be filled in with either 1st November 2012 0r 2nd November 2012, depending on the trading calendar of the Member State for the concerned financial instrument. (See Q&A 1900).

ESMA_QA_1985

Submission Date
19/09/2023

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Prospectus Regulation 2017/1129

Topic
Public offer

Subject Matter
Combining exemptions

Question
Can the exemption in Article 3(2) of the PR be combined with the exemptions in Article 1(4) PR?

ESMA_QA_1718

Submission Date
01/09/2023

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Prospectus Regulation 2017/1129

Topic
Publication of prospectus

Historic Question Reference
N/A

Additional Legal Reference
Articles 1(4), 1(5) and 1(6) of the Prospectus Regulation

Subject Matter
Scope of the word "shares" in certain exemptions from the obligation to publish a prospectus in Articles 1(4), 1(5) and 1(6) of the Prospectus Regulation.

Question
What is the meaning of the term "shares" in Articles 1(4), 1(5) and 1(6) of the Prospectus Regulation? More specifically, does this term include depository receipts for shares issued with the cooperation of the issuer of the underlying shares?

Submission Date

ESMA_QA_1716

29/08/2023

Status: Response Published

Additional Information

Level 1 Regulation
Prospectus Regulation 2017/1129

Topic
Public offer

Subject Matter
Application of Level 3 guidance to EU Recovery Prospectuses

Question
Does the Level 3 guidance published by ESMA apply to the EU Recovery Prospectus?

ESMA Responses

16-07-2021

Original language

[ESMA 31-62-1258 Prospectuses Q&A 18.1]

Yes.

As is the case for other prospectuses referred to in the PR[1], the Level 3 guidance published by ESMA[2] generally applies to EU Recovery Prospectuses[2]. However, where a requirement in the PR is not applicable to the EU Recovery Prospectus, the related Level 3 guidance published by ESMA would not be relevant.

For example, the Guidelines on working capital statements or pro forma financial information [4] should apply to the EU Recovery Prospectus in a similar fashion to how they apply in the context of a standard prospectus. This is because there is also a requirement to include a working capital statement in an EU Recovery prospectus[5] and pro forma financial information where relevant. Similarly, the risk factor Guidelines[6] would apply as risk factor disclosure is required in the EU Recovery Prospectus[7].

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1. For example, standard, EU Growth or secondary issuance prospectuses.

2. ESMA's Level 3 guidance on prospectuses is generally available on the following webpage. For example, Q&As and Guideline.

3. The EU Recovery Prospectus as referred to in Regulation (EU) 2021/337 of the European Parliament and of the Council of February 2021 amending Regulation (EU) 2017/1129 as regards the EU Recovery prospectus and targeted adjustments for financial intermediaries and Directive 2004/109/EC as regards the use of the single electronic reporting format for annual financial reports, to support the recovery from the COVID-19 crisis.

4. See the Guidelines on disclosure requirements under the Prospectus Regulation.

5. See Annex Va (Minimum information to be included in the EU Recovery Prospectus) item XII.

6. See the Guidelines on Risk Factors under the Prospectus Regulation.

7. See Annex Va (Minimum information to be included in the EU Recovery Prospectus) item IV.

ESMA_QA_1715

Submission Date
29/08/2023

Status: Response Published

Additional Information

Level 1 Regulation
Prospectus Regulation 2017/1129

Topic
Public offer

Subject Matter
Advertisements

Question
How should the requirement to disseminate an amended advertisement through at least the same means as the previous advertisement (cf. Article 15(3) of Commission Delegated Regulation 2019/979) be applied when the advertisement in question is a roadshow?

ESMA Responses

31-03-2021

Original language

[ESMA 31-62-1258 Prospectuses Q&A nr 17.1]

If the advertisement was orally delivered as part of a roadshow there is no obligation to hold a new roadshow to disseminate an amended advertisement. The exemption for orally disseminated advertisements should also apply to roadshows in which visual or printed elements (e.g. slides, handouts) are used, as the overall nature of the advertisement is that it is delivered in an oral context.

However, ESMA emphasises that the general requirement to amend the roadshow advertisement still applies. Therefore, the issuer, offeror or person asking for admission to trading on a regulated market should disseminate an amended version of the information provided in the roadshow through the means which it considers most suitable to reach the participants of the roadshow. Depending on the type of roadshow conducted and the nature of the participants, this might for example be by way of a press release, publication on the website of the issuer, offeror or person asking for admission to trading or by direct correspondence with the roadshow participants.

Submission Date

10/08/2023

Status: Response Published

Additional Information

Level 1 Regulation
Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU- Secondary Markets

Topic
Non-equity transparency

Subject Matter
Geographical scope of the temporary suspension of transparency

Question
Would the temporary suspension of transparency requirements apply to all the venues on which the class of instruments is traded or rather on venue-by-venue basis?

ESMA Responses

15-11-2017

Original language

[ESMA 70-872942901-35 MiFIR transparency Q&A, Q&A 4.9]

While the calculations to identify whether liquidity has fallen below the thresholds specified under Article 16 of RTS 2 have to be performed at EU level, the actual suspension of the transparency obligations remains under the competences of each competent authority (CA) and therefore has to be activated on a jurisdiction-by-jurisdiction basis.

As a consequence, for classes of financial instruments where trading takes place on venues located in different Member States, the CA of each of those Member States will have the possibility, where the conditions set out in Article 16 of RTS 2 are met, to activate the temporary suspension mechanism independently of the decision to be taken by others.

ESMA_QA_1527

Submission Date
09/08/2023

Status: Response Published

Additional Information

Level 1 Regulation
Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU- Secondary Markets

Topic
Position reporting

Subject Matter
Position reporting

Question
Who should submit position reports under Article 58(2) of MiFID II?

ESMA Responses

07-07-2017

Original language

[ESMA 70-872942901-36 Commodity derivatives Q&A, Q&A 4.3]

Only investment firms trading in commodity derivatives or emission allowances or derivatives thereof outside a trading venue (economically equivalent OTC contracts) should submit position reports under Article 58(2) of MiFID II.

ESMA_QA_1477

Submission Date
17/07/2023

Status: Response Published

Additional Information

Level 1 Regulation
Credit Rating Agencies Regulation (CRAR) Regulation (EC) No 1060/2009

Topic
CRA Regulation

Subject Matter
Article 7 MAR and Article 10(2a) CRAR – Distribution of subscription ratings and disclosure of inside information (ESMA33-5-87 Q&A 15)

Question
Where a CRA distributes its credit ratings by subscription, would disclosure of credit ratings only to its subscribers constitute “disclosure to the public” within the meaning of Article 10(2a) and would subscribers be permitted to trade on the basis of these credit ratings?

ESMA Responses

17-07-2023

Original language

Yes.

Further to their disclosure to a distribution list of subscribers, credit ratings are no longer to be considered inside information.

Article 2 of Regulation No 1060/2009 (Credit Rating Agencies Regulation or “CRAR”) “applies to credit ratings issued by credit rating agencies registered in the Union and which are disclosed publicly or distributed by subscription” and explicitly excludes from its scope those “not intended for public disclosure or distribution by subscription”.

Article 10(2a) of CRAR provides a presumption that credit ratings and rating outlooks are to be deemed inside information until their “disclosure to the public” without further specifying in which cases such public disclosure occurs.

Depending on the business model of the CRA, certain credit ratings could be disclosed exclusively to subscribers of distribution lists subject to the payment of a license fee and, therefore, they should no longer be deemed as inside information pursuant to Article 10(2a) of CRAR.

Article 7(1)(a) of MAR defines inside information as an information “that has not been made public” regardless of whom has published the information or by which means.

Disclaimer:

Answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation.

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

Submission Date

ESMA_QA_1476

17/07/2023

Status: Response Published

Additional Information

Level 1 Regulation
Credit Rating Agencies Regulation (CRAR) Regulation (EC) No 1060/2009

Topic
CRA Regulation

Subject Matter
Article 7 MAR and Article 10(2a) CRAR – Disclosure to the public of credit ratings and inside information (ESMA33-5-87 Q&A 14)

Question
Where a credit rating agency discloses credit ratings, rating outlooks and information relating thereto on its public website, does such disclosure suffice to consider them no longer inside information under Regulation (EU) No 596/2014?

ESMA Responses

17-07-2023

Original language

Yes.

Further to their disclosure on the public website of the credit rating agency, credit ratings, rating outlooks and information relating thereto are no longer to be considered inside information.

Article 10(2a) of Regulation No 1060/2009 (Credit Rating Agencies Regulation or “CRAR”) provides a presumption that credit ratings and rating outlooks are to be deemed inside information until their “disclosure to the public” without further specifying the formalities of such public disclosure[1].

Article 7(1)(a) of MAR defines inside information as an information “that has not been made public” regardless of whom has published the information or by which means.

Disclaimer:

Answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation.

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

Submission Date

ESMA_QA_1475

17/07/2023

Status: Response Published

Additional Information

Level 1 Regulation
Credit Rating Agencies Regulation (CRAR) Regulation (EC) No 1060/2009

Topic
CRA Regulation

Subject Matter
Article 7 MAR and Article 10(2a) CRAR – Interactions between MAR and CRAR (ESMA33-5-87 Q&A 13)

Question
Are credit ratings, rating outlooks and information relating thereto, pursuant to article 10(2a) of Regulation No 1060/2009, presumed to be inside information until disclosure to the public, or should a case-by-case assessment of the conditions in Article 7 of Regulation (EU) No 596/2014 be anyhow carried out?

ESMA Responses

17-07-2023

Original language

Credit ratings, rating outlooks and information relating thereto are presumed to be inside information until disclosure to the public.

Article 10(2a) of Regulation No. 1060/2009 (Credit Rating Agencies Regulation or “CRAR”) provides that “Until disclosure to the public of credit ratings, rating outlooks and information relating thereto, they shall be deemed to be inside information, as defined in and in accordance with Directive 2003/6/EC”[1]. As a consequence of the presumption set out in article 10(2a) of CRAR, for “credit ratings, rating outlooks and information relating thereto”, the assessment of the conditions laid down in Article 7(1)(a) of MAR is not required and those ratings should always be treated as inside information.

[1] Directive 2003/6/EC was repealed by Regulation (EU) No 596/2014 (Market Abuse Regulation or “MAR”), and references to the provisions contained therein are to be read as references to MAR according to the correlation table provided in Annex II of MAR.

Disclaimer:

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation.

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

Submission Date

ESMA_QA_1474

17/07/2023

Status: Response Published

Additional Information

Level 1 Regulation
Credit Rating Agencies Regulation (CRAR) Regulation (EC) No 1060/2009

Topic
CRA Regulation

Subject Matter
Article 7(4) and Annex I Section C – Rules on Rating Analysts and Other Persons Directly Involved in Credit Rating Activities (ESMA33-5-87 Q&A 12)

Question
a) What are the rotation periods for “lead analysts”?

b) What are the rotation periods for “rating analysts”?

c) What are the rotation periods for “persons approving credit ratings”?

d) Are there any exceptions to the requirement to rotate lead analysts?

e) Are there any exceptions to the requirements to rotate rating analysts and persons approving credit ratings?

f) How are the rotation periods calculated?

ESMA Responses

17-07-2023

Original language

a) Lead analysts are required to be rotated every four years, with a cooling off period of 2 years in between assignments involving the same rated entity or related third party.

b) Rating analysts are required to be rotated every five years, with a cooling off period of 2 years in between assignments involving the same rated entity or related third party.

c) Persons approving credit ratings are required to be rotated every 7 years, with a cooling off period of 2 years in between assignments involving the same rated entity or related third party.

d) Lead analysts can only be exempted from the rotation requirements where the CRA has been granted an exemption by ESMA in accordance with Article 6(3) of the Regulation.

e) Rating analysts and persons approving credit ratings may only be exempted from the rotation requirements, where:

i. The CRA has been granted an exemption by ESMA in accordance with Article 6(3); or,

ii. The CRA issues only solicited non-sovereign credit ratings.

f) Rotation periods should be calculated from the date of appointment. In the case where an exemption from rotation requirements is lifted (in accordance with Article 6(3)) the rotation period for lead analysts, ratings analysts and persons approving credit ratings should be calculated from the date of the lifting of the exemption.

In the case where the CRAs credit rating activities no longer enable it to benefit from an exemption, the rotation periods for ratings analysts and persons approving credit ratings should be calculated from the date of the lifting or non-applicability of the exemption.

17/07/2023

Status: Response Published

Additional Information

Level 1 Regulation
Credit Rating Agencies Regulation (CRAR) Regulation (EC) No 1060/2009

Topic
Credit rating disclosures

Subject Matter
Disclosure and Presentation of Credit Ratings (ESMA33-5-87 Q&A 11)

Question
(a) When should a CRA notify a rated entity about the publication of a credit rating or rating outlook to which the rated entity is subject?

(b) How much time is required to elapse before a CRA can publish a credit rating or rating outlook after it has been notified to the rated entity?

ESMA Responses

17-07-2023

Original language

(a) A CRA should inform the rated entity during the working hours of the rated entity, and at least 24 hours before the publication of the credit rating or rating outlook. Should the CRA transmit a notification to the rated entity outside of the rated entities' working hours, the notification is considered as only becoming valid at the opening of the rated entities' working hours.

(b) A minimum of 24 hours should be provided to a rated entity to notify any factual errors with the credit rating or rating outlook. However, in the event that the rated entity reverts to the CRA before the expiry of the minimum 24 hours, confirming that it has not identified any factual errors in the credit rating or rating outlook, then the CRA may publish the credit rating or rating outlook without further delay.

ESMA_QA_1472

Submission Date
17/07/2023

Status: Response Published

Additional Information

Level 1 Regulation
Credit Rating Agencies Regulation (CRAR) Regulation (EC) No 1060/2009

Topic
Credit rating disclosures

Subject Matter
Article 10(5) – Disclosure and presentation of unsolicited credit ratings (ESMA33-5-87 Q&A 10)

Question
How should CRAs disclose and present unsolicited credit ratings according to the new requirements in Article 10(5) of the CRA Regulation?

ESMA Responses

17-07-2023

Original language

The CRA Regulation requires CRAs to identify unsolicited credit ratings as such. Moreover, CRAs shall also state prominently in the unsolicited credit rating (using a clearly distinguishable different colour code for the rating category):

i) whether or not the rated entity or a related third party participated in the credit rating process; and

ii) whether the credit rating agency had access to the accounts, management and other relevant internal documents for the rated entity or a related third party.

The combination of both requirements means that unsolicited credit ratings should firstly be identified with a specific identifier and, secondly, it should be highlighted in case there was participation of the rated entity in the rating process or the CRA had access to relevant internal documents for the rated entity by way of disclosing the rating symbols[1] in a distinguishable colour.

The identification of unsolicited credit ratings as such and the use of a distinguishable colour for rating categories in order to identify the participation of the rated entity should be included

in the press release of the rating action and in the CRA' websites. The meaning of the coloured rating categories should also be included in the policies and procedures regarding unsolicited credit ratings that CRAs must disclose according to Article 10(4) of the Regulation.

[1] Article 3(1)(h) of the CRA Regulation defines "rating category" as a rating symbol, such as a letter or numerical symbol which might be accompanied by appending identifying characters, used in a credit rating to provide a relative measure of risk to distinguish the different risk characteristics of the types of rated entities, issuers and financial instruments or other assets.

ESMA_QA_1471

Submission Date
17/07/2023

Status: Question Published

Additional Information

Level 1 Regulation
Credit Rating Agencies Regulation (CRAR) Regulation (EC) No 1060/2009

Topic
CRA Regulation

Subject Matter
Article 3(1)(x) – Definition of unsolicited credit ratings (ESMA33-5-87 Q&A 9)

Question
(a) Does any participation of the issuer in the credit rating process define a credit rating as a solicited credit rating?

(b) Is a credit rating issued upon the request of a person different from both the rated entity/issuer and a related third party a solicited credit rating?

ESMA_QA_1469

Submission Date
17/07/2023

Status: Response Published

Additional Information

Level 1 Regulation
Credit Rating Agencies Regulation (CRAR) Regulation (EC) No 1060/2009

Topic
CRA Regulation

Subject Matter
Article 8(5a) and Article 14(3) – Notification of material changes to methodologies (ESMA33-5-87 Q&A 7)

Question
When is a change to methodologies, models or key rating assumptions considered as a “material change”?

ESMA Responses

17-07-2023

Original language

CRAs that intend to make a material change to methodologies, models, or key rating assumptions which could have an impact on a credit rating need to disclose the reasons for such changes. Material changes to methodologies, models, or key rating assumptions might include among others:

i) a change in the key criteria used;

ii) a change in the key rating assumptions and key variables used in the rating methodology;
iii) a change in the respective weight of the qualitative and quantitative factors;

iv) a change in the way driving factors are assessed; or

v) a change that has a direct or indirect impact on a significant number of credit ratings.

CRAs should explain in a comprehensive manner which of the above mentioned elements has significantly contributed to a change to methodologies, models, or key rating assumptions. The elements which have been changed should also be clearly disclosed.

Submission Date

17/07/2023

Status: Response Published

Additional Information

Level 1 Regulation
Credit Rating Agencies Regulation (CRAR) Regulation (EC) No 1060/2009

Topic
CRA Regulation

Subject Matter
Article 6a(1)(a) – Entry into force of the prohibition of holding 5% or more of the capital or the voting right of any other agency (ESMA33-5-87 Q&A 6)

Question
What is the entry into force of Article 6a(1)(a)?

ESMA Responses

17-07-2023

Original language

The obligation for CRAs to identify those shareholders holding at least 5% of either the capital or the voting rights entered into force on 20 June 2013.

However, as provided for Article 2 of CRA3 Regulation, Article 6a(1)(a) shall apply from 21 June 2014 as regards any shareholder or member of a CRA which on 15 November 2011 held 5 % or more of the capital of more than one credit rating agency.

Consequently, those shareholders or members of a CRA holding 5% or more of the capital or the voting rights of more than one CRA after 15 November 2011 should immediately proceed to reduce (divest) their holding rights in one of the two CRAs under 5% of the capital or voting rights. Therefore, by 21 June 2014, there should not be any shareholder or member of a EU registered CRA holding 5% or more of the capital or the voting rights of more than one CRA “acquired” on or before 15 November 2011.

This requirement does not apply to investments in other CRAs belonging to the same group of CRAs.

ESMA_QA_1467

Submission Date
17/07/2023

Status: Response Published

Additional Information

Level 1 Regulation
Credit Rating Agencies Regulation (CRAR) Regulation (EC) No 1060/2009

Topic
CRA Regulation

Subject Matter
Annex I, Section B – Operational requirements: Identification of relevant shareholders (ESMA33-5-87 Q&A 5)

Question
How are CRAs supposed to identify relevant (more than 5%) shareholders in order to be compliant with the provisions concerning conflicts presented by shareholders established in Sections B(3), B(3a) and B(4) of Annex I of the CRA Regulation?

ESMA Responses

17-07-2023

Original language

Section B(4) of Annex I of the CRA Regulation applies to shareholders as defined in Article 3(3). In addition, the relevant paragraphs of Section B(3) and B(3a) also apply to indirect shareholders covered by Article 10 of the TD and companies that control or exercise dominant influence, directly or indirectly on the CRA, and which are covered by Article 10 of the TD, provided that the information is known or should be known by the CRA (Section B(3b) of annex I of the Regulation).

Thus, CRAs are required to make all their best efforts to identify their relevant shareholders and frequently monitor the activities, stake, rights, interests and affiliations of its shareholders in rated entities so as to make sure that it does not breach the new regulatory issuance prohibitions and disclosure requirements. The frequency of monitoring should depend on different factors. For instance, the closer the stake of a shareholder is to any regulatory limitation, the more frequently a CRA should engage with this shareholder.

Regarding the identification of indirect shareholders, ESMA is aware that, where information is not public or only disclosed periodically, CRAs may not be able to identify indirect shareholders. CRAs should keep records of the steps undertaken and evidence of their best efforts to identify their shareholders (for instance, written refusal of a shareholder to provide the CRA with information or regulatory provisions in legal texts) and should consider – when allowed by national company law - limiting the corporate rights of shareholders in the most serious cases of non-cooperation.

ESMA_QA_1466

Submission Date
17/07/2023

Status: Response Published

Additional Information

Level 1 Regulation
Credit Rating Agencies Regulation (CRAR) Regulation (EC) No 1060/2009

Topic
CRA Regulation

Subject Matter

Article 6a – Investments in credit rating agencies (ESMA33-5-87 Q&A 4)

Question

(a) Could a non-EU CRA have a stake higher than 5% in a CRA registered in the EU and vice versa?

(b) Could an EU registered CRA acquire another EU registered CRA?

(c) For the purposes of Article 6a of the CRA Regulation, the term “shareholder” includes beneficial
owners as defined in Article 3(6) of Directive 2005/60/EC (Money Laundering and Terrorist Financing Directive). Are collective portfolio managers considered as shareholders for the purpose of Article 6a of the Regulation?

(d) Should portfolio managers be considered as shareholders under the last paragraph of Article
6a(1) as subjects in a position to exercise significant influence on the business activities of collective investment schemes?

ESMA Responses

17-07-2023

Original language

(a) Article 6a of the CRA Regulation does not differentiate between EU and non-EU CRAs shareholders or members of a credit rating agency. Consequently, Article 6a of the CRA Regulation applies to any CRA shareholder or member of a credit rating agency registered in the EU holding 5% or more of the capital or the voting rights of another CRA registered in the EU regardless of where the shareholder is located. As a result, a non EU CRA or a shareholder can hold 5% or more of the capital or the voting rights in a CRA registered in the EU provided that they do not hold 5% or more of the capital or the voting rights in any other

CRA registered in the EU. This rule also applies in case of indirect shareholding, where an EU or non-EU person or entity holds 5% or more of the capital or the voting rights of a company which has the power to exercise control or a dominant influence over a credit rating agency registered in the EU.

(b) Article 6a(2) of the CRA Regulation excludes from the prohibition of holding 5% or more of the capital or the voting right of any other credit rating agency those investments in other credit rating agencies belonging to the same group of credit rating agencies. Consequently, a take-over of an EU registered CRA should be allowed when, as a consequence of the corporate action, the targeted EU-registered CRA will belong to the same group of the acquiring EU registered CRA.

(c) ESMA considers that a collective portfolio manager should be considered a shareholder when according to the applicable national legislation (based on the relevant EU legislation) the portfolio manager is considered as a shareholder.

(d) The last paragraph of Article 6a(1) allows shareholders with 5% or more capital or voting rights in one CRA registered in the EU to have at the same time holdings in collective investment schemes which invest 5% or more in any other CRA. However, an exception to such rule is provided at the end of the last paragraph of Article 6a(1) when a shareholder with 5% or more capital or voting rights in one CRA registered in the EU has also holdings in a collective investment scheme that puts him or her in a position to exercise significant influence on the business activities of such a scheme. The last paragraph of Article 6a(1) does not refer to portfolio managers of such schemes provided that they are not considered shareholders as explained in sub question (c) of question 4.

ESMA_QA_1465

Submission Date
17/07/2023

Status: Response Published

Additional Information

Level 1 Regulation
Credit Rating Agencies Regulation (CRAR) Regulation (EC) No 1060/2009

Topic
Sovereign Ratings

Subject Matter
Article 8a(4) – Deviations from the sovereign ratings calendar (ESMA33-5-87 Q&A 3)

Question
(a) Does ESMA need to previously authorise a deviation from the announced calendar of sovereign ratings and outlooks?

(b) In which cases would a CRA be able to deviate from the announced calendar of sovereign ratings and outlooks?

(c) Where the reason for a deviation from the announced sovereign ratings and outlooks calendar
is that an issuer appealed the CRA's decision, shall the CRA specify that an appeal is the cause
of the deviation?

(d) How should CRAs disclose the reasons for a deviation from the announced calendar of sovereign ratings and outlooks?

(e) Are CRAs obliged to publish a rating action or a related rating outlook on the date announced in
their announced calendar of sovereign ratings and outlooks? In case of non-publication on the
announced date, are CRAs obliged to provide an explanation of the reasons for non-

publication?

(f) In case of a deviation from the announced calendar of sovereign ratings and outlooks, what rules are applied to the publication of sovereign ratings and related rating outlooks?

ESMA Responses

17-07-2023

Original language

(a) The CRA Regulation does not request CRAs to seek prior authorisation from ESMA before deviating from the announced calendar of sovereign ratings and outlooks. ESMA will supervise whether deviations are based on the obligation for CRAs to comply with Article 8(2), Article 10(1) and Article 11(1) of the CRA Regulation and in particular, whether a detailed explanation of the reasons for such a deviation accompanies the credit rating or outlook.

(b) CRAs have to follow the announced calendar of sovereign ratings and outlooks as a general rule. However, CRAs have also to comply with the overarching principle of timely issuing credit rating of adequate quality. In order to combine both principles, the Regulation allows CRAs to deviate from the announced calendar where necessary to comply with the obligation to disclose credit ratings based on all available and relevant information in a timely manner (Article 8(2)[1], Article 10(1)[2] and Article 11(1)[3]). Deviations from the announced calendar should not happen routinely.

(c) Following an appeal made by rating committee members or CRA’s staff members (internal appeal) or the issuer (external appeal), a delay in the adoption of the sovereign rating or related rating outlook may occur. Therefore, as the CRA Regulation requires CRAs to provide a detailed explanation of the reasons for the deviation from the announced calendar, CRAs should explain in a clear manner that the reason for the deviation was an appeal.

(d) CRAs should be transparent and disclose the reasons for a deviation from the announced calendar in a clear and non-misleading way. CRAs should also communicate to ESMA deviations from the announced calendar with a detailed explanation of the reason for such a deviation. The rules on the presentation of credit ratings and rating outlooks should be taken into account when making public the reasons for the deviation (Article 10(2) and Part I of Section D of Annex I of the CRA Regulation i.e. in credit reports or press releases). In view of transparency, CRAs should also consider to provide the reasons for the deviation on their website, in particular in the section where the sovereign calendar is available to investors. In that case, CRAs might also consider including a hyperlink in the press release or credit rating report referring investors to that section of the webpage.

(e) The CRA Regulation requires CRAs to publish sovereign ratings and related rating outlooks in accordance with their sovereign ratings and outlooks calendar. This requirement does not imply that CRAs are obliged to publish a sovereign rating or a related rating outlook on each date announced in their calendar. Consequently, this non-publication does not constitute a deviation from the sovereign ratings and outlooks calendar and CRAs do not need to publish an explanation of the reasons for non-publication.

(f) When a deviation from the announced date in the sovereign calendar takes place following the reasoning of sub question (b) of question 3, CRAs should publish their sovereign ratings or related rating outlooks on any day after the close of business hours of the last closed regulated market in the European Union and at least one hour before the opening of the first opened regulated market in the European Union. The rules on presentation of credit ratings and rating outlooks (Article 10(2) and Part I of Section D of Annex I of the CRA Regulation) as well as the guidance on how to disclose the reasons when deviating from the announced sovereign calendar (sub question (d) of question 3) should be also taken into account.

[1] Article 8(2) of the CRA Regulation requires CRAs to ensure that the credit ratings and the rating outlooks are based on a thorough analysis of all the information that is available to it and that is relevant to its analysis according to the applicable rating methodologies. They shall adopt all necessary measures so that the information they use in assigning credit ratings and rating outlooks is of sufficient quality and from reliable sources.

[2] Article 10(1) of the CRA Regulation requires CRAs to disclose any credit rating or rating outlook, as well as any decision to discontinue a credit rating, on a non-selective basis and in

a timely manner. In the event of a decision to discontinue a credit rating, the information disclosed shall include full reasons for the decision.

[3] Article 11(1) of the CRA Regulation requires CRAs to fully disclose to the public and update immediately information relating to any actual and potential conflicts of interest, methodologies and descriptions of models and key rating assumptions, as well as their material changes" (Part I of Section E of Annex I).

ESMA_QA_1464

Submission Date
17/07/2023

Status: Response Published

Additional Information

Level 1 Regulation
Credit Rating Agencies Regulation (CRAR) Regulation (EC) No 1060/2009

Topic
Sovereign Ratings

Subject Matter

Point 3, Part III, Section D of Annex I – Timing of publication of sovereign ratings (ESMA33-5-87 Q&A 2)

Question

(a) When do sovereign ratings or related rating outlooks have to be published?

(b) How to find out which markets are considered as “regulated markets”?

ESMA Responses

17-07-2023

Original language

(a) The CRA Regulation provides that where a CRA issues sovereign ratings or related rating outlooks, they should be published after the close of business hours of the last closed regulated market in the European Union and at least one hour before the opening of the first opened regulated market in the European Union. In view of the underlying objective of the CRA3 Regulation not to disrupt capital markets with the publication of sovereign ratings and related rating outlooks during trading hours of European Union regulated capital markets, ESMA believes that CRAs should only publish their sovereign ratings and related rating outlooks on a Friday after the close of business hours of the last closed regulated market in the European Union.

(b) Article 3(z) of the CRA Regulation defines regulated markets as those regulated markets as defined in point (14) of Article 4(1) of Directive 2004/39/EC and established in the Union. A list of regulated markets is published on ESMA’s webpage: http://mifiddatabase.esma.europa.eu/Index.aspx?sectionlinks_id=23&language=0&pageName=REGULATE D_MARKETS_Display&subsection_id=0

Submission Date

ESMA_QA_1463

17/07/2023

Status: Response Published

Additional Information

Level 1 Regulation
Credit Rating Agencies Regulation (CRAR) Regulation (EC) No 1060/2009

Topic
Sovereign Ratings

Subject Matter
Article 8a(3) – Entry into force of the calendar for publication of sovereign ratings (ESMA33-5-87 Q&A 1)

Question
When does the obligation to publish sovereign ratings and related rating outlooks on Fridays enter
into force?

ESMA Responses

17-07-2023

Original language

Article 8a of the CRA Regulation subjects sovereign ratings[1] to specific provisions, in particular:

i) at the end of December, CRAs shall submit to ESMA and publish on their website a calendar for the following 12 months setting the dates for the publication of sovereign ratings and the dates for the publication of related rating outlooks where applicable; and,

ii) the publication dates of sovereign ratings and related rating outlooks should be set on a Friday. In the case of unsolicited sovereign ratings, the number of publication dates is limited to a maximum of three dates.

Since the amending CRA 3 Regulation entered into force on 20 June 2013, CRAs should in accordance with the new Article 8a of the CRA Regulation communicate to ESMA and publish on their website the calendar setting the rating actions on sovereign ratings and outlooks for the 12 following months before the end of December 2013. Those rating actions and outlooks will have to take place on a Friday as from the first Friday of January 2014 onwards.

[1] Article 3 (v) defines sovereign ratings as:

i. a credit rating where the entity rated is a State or a regional or local authority or a State;

ii. a credit rating where the issuer of the debt or financial obligation, debt security or other financial instrument is a State or a regional or local authority of a State, or a special purpose vehicle of a State or of a regional or local authority;

iii. a credit rating where the issuer is an international financial institution established by two or more States which has the purpose of mobilising funding and providing financial assistance for the benefit of the members of that international financial institution which are experiencing or threatened by severe financing problems.

14/07/2023

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation
Prospectus Regulation 2017/1129

Level 2 Regulation
Regulation 2019/980 on the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market

Topic
Secondary issuance prospectus

Additional Legal Reference
Article 14(1)d of the Prospectus Regulation

Subject Matter
Which annexes to the Commission Delegated Regulation (EU) 2019/980, i.e. Annex 3 and Annex 12 or Annex 1 and Annex 11, should be used to prepare the simplified prospectus referred to in Article 14 of the Prospectus Regulation in the case specified in Arti

Question
Which annexes to the Commission Delegated Regulation (EU) 2019/980, i.e. Annex 3 and Annex 12 or Annex 1 and Annex 11, should be used to prepare the simplified prospectus

referred to in Article 14 of the Prospectus Regulation in the case specified in Article 14(1)(d) of the Prospectus Regulation?

Explanation: Pursuant to Article 14(1)(d) of the Prospectus Regulation a simplified prospectus under simplified disclosure regime for secondary regime may be drawn up by, among others, issuers whose securities have been offered to the public and admitted to trading on an SME growth market continuously for at least two years, and who have fully complied with reporting and disclosure obligations throughout the period of being admitted to trading, and who seek admission to trading on a regulated market of securities fungible with existing securities which have been previously issued.
However, we note that certain competent authorities in the EU require that a simplified prospectus in the case referred to in Article 14(1)(d) of the Prospectus Regulation, i.e. the issuers transitioning from the SME Growth Market and meeting conditions specified therein shall prepare the Prospectus in accordance with Annex 1 and Annex 11, i.e. in accordance with full disclosure regime with the exception that only financial information would be limited as in the simplified prospectus.

Therefore, we kindly request the European Securities Market Authority to clarify which annexes to the Commission Delegated Regulation (EU) 2019/980 should be required to prepare a simplified prospectus referred to in Article 14 of the Prospectus Regulation in the case specified in Article 14(1)(d) of the Prospectus Regulation.

ESMA_QA_1461

Submission Date
11/07/2023

Status: Question Published

Additional Information

Level 1 Regulation
European Market Infrastructure Regulation (EMIR) Regulation (EU) No 648/2012- MDP

Topic
* EMIR Reporting

Subject Matter
EMIR Q&As on Reporting of Corrections of Transactions with no Event Date

Question
Paragraph 558 of the Guidelines (p.289) clarifies that ‘TRs should update the TSR based on the latest information for a given derivative as derived from the field ‘Event date’. Use case 4 in the Guidelines (p. 291) further illustrates that in the case of late reporting of historic events, the relevant information should be updated in the TR’s database only until the Event date of the subsequent event to avoid overwriting the information from more recent reports.

In this context, how should counterparties report historic corrections on outstanding derivatives that were not yet upgraded after EMIR Refit go-live (and thus no Event Date was previously reported for those derivatives)? How should trade repositories consider the sequencing of submissions to determine the validity of historic corrections?

Submission Date
10/07/2023

ESMA_QA_1459

Status: Response Published

Additional Information

Level 1 Regulation
Credit Rating Agencies Regulation (CRAR) Regulation (EC) No 1060/2009

Topic
CRA Regulation

Subject Matter
Article 8(7) – Error Reporting (ESMA33-5-87 Q&A 8)

Question
(a) What types of errors should be reported to ESMA and all affected rated entities?
(b) Does Article 8(7)(a) require a CRA to notify ESMA and all affected rated entities of an error which does not lead to a change in any issued credit rating?
(c) Are CRAs allowed to notify the errors in rating methodologies to the affected entities in the press release or credit report published after the re-rating exercise?

ESMA Responses

13-07-2023

Original language

(a) The Regulation refers not only to errors in rating methodologies but also in their application. ESMA understands this to include errors in methodologies, models and any document contributing to the use and application of a rating methodology. It should also include errors concerning these documents, such as errors caused by their application or the process they describe. This includes cases of incorrect inputs or incorrect analysis. For example, ESMA considers an error resulting from a model having been implemented in a way that does not comply with a methodology[1] to constitute an example of an error in the application of a methodology. Consequently, such an error should be notified to ESMA and all affected rated entities without prejudice to point (b).

(b) ESMA considers that an error should be notified to ESMA and all affected rated entities pursuant to Article 8(7)(a) in cases where the error triggers a need to review an issued credit rating, regardless of whether the review results in a change of that credit rating.

(c) Where a CRA becomes aware of errors in its rating methodologies or in their application, the CRA shall notify those errors to ESMA and all affected rated entities immediately, as soon as it is able to explain the impact on its credit ratings[2]. Notifications cannot be postponed to the press release or credit report published after the re-rating exercise.

Where errors have an impact on a credit rating, CRAs should publish an explanation of the error and its impact on individual ratings on their public website so that this information is easily accessible by all users of credit ratings.

If a CRA has to go through the review and re-rating process described in paragraphs a) to c) of Article 8(6) of the CRA Regulation and subsequently go on to issue a new credit rating, the CRA should as a good practice explain in the relevant rating report/press release that such credit rating was reviewed as a consequence of an error and refer to the publication made on its website according to Article 8(7)(b) of the Regulation.

[1] Errors resulting from a model having been implemented in a way that does not comply with a methodology include, for example, an analytical error, an input error, an error in the code of a model or an error which occurs because the wrong version of a model was used in the rating process.

[2] CRAs shall notify ESMA using the item 37 templates available in Annex II of ESMA33-9-295 Guidelines on the Submission of Periodic Reporting to ESMA by Credit Rating Agencies, 7 April 2021 available at: https://www.esma.europa.eu/sites/default/files/library/esma_33-9-295_guidelines_on_the_submission_of_periodic_information_to_esma_by_credit_rating_agencies_.pdf

ESMA_QA_1370

Submission Date
05/07/2023

Status: Question Published

Additional Information

Level 1 Regulation
Markets in Financial Instruments Regulation (MiFIR) Regulation (EU) No 600/2014-Secondary Markets

Topic
Pre-trade transparency waivers

Subject Matter
Q&A on cross orders in non-equity instruments below LIS

Question
Is it possible to execute cross orders in liquid non-equity instruments below the large in scale (LIS) thresholds on a trading venue?

ESMA_QA_1216

Submission Date
22/06/2023

Status: Question Rejected

Additional Information

Level 1 Regulation
Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU- Investor Protection and Intermediaries

Topic
Best Execution

Additional Legal Reference
MiFID II Article 4 (2) & Annex I Section A

Subject Matter
Correct classification of Investment Services and Investment Activities

Question
Can an investment firm which is licensed under the MiFID II Directive, conduct it business such that it is carrying out an investment activity and not providing an investment service?

ESMA_QA_1130

Submission Date
14/06/2023

Status: Response Published

Additional Information

Level 1 Regulation
Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU- Investor Protection and Intermediaries

Topic
Information to clients on topics other than costs and charges

Subject Matter
MiFID practices for firms selling financial instruments subject to the BRRD resolution regime

Question
What information must firms collect from clients in order to comply with Article 44a(1) and 44a(2) of BRRD 2?

ESMA Responses

14-06-2023

Original language

[ESMA35-43-439 Investor protection BRRD Q&A 3]

In order to comply with Article 44a(1) of [BRRD 2] firms must perform a suitability test in accordance with Article 25(2) of MiFID II. Therefore, for this purpose, firms must comply with the relevant MiFID II requirements on the collection of information from clients (Article 25(2) of MIFID II and Articles 54 and 55 of the MiFID II Delegation Regulation[1]).

Article 44a(2) of BRRD 2 sets out additional controls that firms must perform, beyond the previously mentioned suitability assessment, when selling SELS to retail clients. In order to comply with this Article, firms' policies and procedures shall enable them to collect from the retail client and assess the information on the retail client's financial instruments portfolio including any investments in SELs held with other firms as per Article 44a(3) of BRRD 2.

The information to be collected from clients for the purpose of Article 44a of BRRD 2 is therefore likely to be broader than the information currently collected by firms for the purpose of the MiFID II suitability assessment as in MiFID II there is no explicit requirement to collect accurate information on SELs held with other firms.[2]

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[1] See also ESMA guidelines on certain aspects of the MiFID II suitability requirements [Ref: ESMA35-43-869 of 28 May 2018]

[2] For the purpose of the MiFID II suitability requirements, firms need to obtain, amongst other things, the necessary information regarding the client's or potential client's "financial situation including his ability to bear losses" that "shall include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments". ESMA has noted in its guideline 3 of its MiFID II guidelines on certain aspects of the MiFID II suitability requirements that "depending on the scope of advice provided, firms should also encourage clients to disclose div on financial investments they hold with other firms, if possible also on an instrument-by-instrument basis".

13/06/2023

Status: Question Published

Additional Information

Level 1 Regulation
Undertakings for Collective Investment in Transferable Securities Directive (UCITS) Directive 2009/65/EC

Topic
AIFMD scope

Additional Legal Reference
Article 6 of Directive 2009/65/EC

Subject Matter
Scope of activities that a management company may carry out in a host Member State

Question
When a management company intends to pursue the activities for which it has been authorised in a host Member State, either directly or through a branch, may that management company passport in that host Member State only the administration or marketing functions referred to in Annex II of the UCITS Directive, without also passporting investment management functions?

Submission Date

ESMA_QA_1076

12/06/2023

Status: Question Published

Additional Information

Level 1 Regulation
Undertakings for Collective Investment in Transferable Securities Directive (UCITS) Directive 2009/65/EC

Topic
Cross-border distribution of funds

Additional Legal Reference
Article 93a of Directive 2009/65/EC

Subject Matter
De-notification of marketing arrangements for UCITS

Question
In case there are no investors in a host Member State, do UCITS wishing to de-notify the arrangements previously made for marketing their units have to comply with the obligations set out in Article 93a(1) of the UCITS Directive?

Submission Date

ESMA_QA_1075

12/06/2023

Status: Question Published

Additional Information

Level 1 Regulation
Undertakings for Collective Investment in Transferable Securities Directive (UCITS) Directive 2009/65/EC

Topic
AIFMD scope

Additional Legal Reference
Article 6 of Directive 2009/65/EC

Subject Matter
Management of pension schemes by UCITS management companies

Question
Pursuant to Article 6(2) of the UCITS Directive, are UCITS management companies allowed to manage pension schemes under Directive (EU) 2016/2341?

Submission Date

ESMA_QA_1074

12/06/2023

Status: Question Published

Additional Information

Level 1 Regulation
Undertakings for Collective Investment in Transferable Securities Directive (UCITS) Directive 2009/65/EC

Topic
AIFMD scope

Additional Legal Reference
Article 6 of Directive 2009/65/EC

Subject Matter
Management of AIFs by UCITS management companies

Question
Pursuant to Article 6(2) of the UCITS Directive, are UCITS management companies allowed to manage AIFs as a registered AIFM under Article 3 of Directive 2011/61/EU (AIFMD)?

Submission Date

ESMA_QA_1073

12/06/2023

Status: Question Published

Additional Information

Level 1 Regulation
Alternative Investment Fund Managers Directive (AIFMD) Directive 2011/61/EU

Level 2 Regulation
AIFMD - Regulation 231/2013 with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision

Topic
Leverage

Additional Legal Reference
Article 6 of Delegated Regulation (EU) 231/2013

Subject Matter
Calculation of the leverage of AIFs investing in real estate

Question
When calculating the leverage of an AIF whose core investment policy is to invest in real estate directly or indirectly, shall the AIFM include the exposure contained in financial or legal structures involving third parties controlled by that AIF as referred to in Article 6(1) and (3) of Delegated Regulation (EU) 231/2013?

Submission Date

12/06/2023

Status: Question Published

Additional Information

Level 1 Regulation
Alternative Investment Fund Managers Directive (AIFMD) Directive 2011/61/EU

Topic
AIFMD scope

Additional Legal Reference
Article 33 of Directive 2011/61/EU

Subject Matter
Scope of activities that an AIFM may carry out in a host Member State

Question
When an AIFM intends to provide the activities and services for which it has been authorised in a host Member State, either directly or through a branch, may that AIFM passport in that host Member State only the other functions that an AIFM may additionally perform in the course of the collective management of an AIF, which are referred to in point (2) of Annex I to the AIFMD, without also passporting investment management functions?

Submission Date

ESMA_QA_1071

12/06/2023

Status: Question Published

Additional Information

Level 1 Regulation
Alternative Investment Fund Managers Directive (AIFMD) Directive 2011/61/EU

Topic
Cross-border distribution of funds

Additional Legal Reference
Article 32a(1) of DIrective 2011/61/EU

Subject Matter
De-notification in the absence of investors in the host Member State

Question
In case there are no investors in a host Member State, do AIFMs wishing to de-notify the arrangements previously made for marketing the units or shares of the EU AIFs they manage have to comply with the obligations set out in Article 32a(1) of the AIFMD?

Submission Date

ESMA_QA_1070

12/06/2023

Status: Question Published

Additional Information

Level 1 Regulation
Alternative Investment Fund Managers Directive (AIFMD) Directive 2011/61/EU

Topic
Cross-border distribution of funds

Additional Legal Reference
Article 30a(1) of Directive 2011/61/EU

Subject Matter
Pre-marketing by registered AIFMs

Question
Are registered AIFMs referred to in Article 3(2) of the AIFMD, which do not qualify as EuSEF manager or EuVECA manager, subject to the obligation to notify pre-marketing pursuant to Article 30a(1) of the AIFMD?

Submission Date

ESMA_QA_1069

12/06/2023

Status: Question Published

Additional Information

Level 1 Regulation
Alternative Investment Fund Managers Directive (AIFMD) Directive 2011/61/EU

Topic
Cross-border distribution of funds

Additional Legal Reference
Article 30a of Directive 2011/61/EU

Subject Matter
Pre-marketing by third-parties

Question
Where an investment strategy is developed by a third party (the fund initiator), are the obligations set out in Article 30a of the AIFMD applicable to this third party?

Submission Date

ESMA_QA_1063

07/06/2023

Status: Awaiting Response

Additional Information

Level 1 Regulation
Alternative Investment Fund Managers Directive (AIFMD) Directive 2011/61/EU

Topic
AIFMD scope

Additional Legal Reference
Article 4(1)(1)

Subject Matter
Can compartments of umbrella fund structures qualify as AIFs?

Question
Dear ESMA-Team,

I am reaching out to you with a question regarding one of your documents published online, namely the ‘Final report: Guidelines on key concepts of the AIFMD’, ESMA/2013/600 dated 24 May 2013. My question relates to the definition of AIFs.

In its Annex III Section V. Guidelines on the treatment of investment compartments of an undertaking, you specify that “where an investment compartment of an undertaking exhibits all the elements in the definition ‘AIF’ (…), this should be sufficient to determine that the undertaking as a whole is an ‘AIF’ (…).

While this answers the question under which circumstances an undertaking as a whole (e.g. an umbrella fund structure) qualifies as an AIF, it leaves room for interpretation if such an investment compartment in and of itself can – subject to all criteria set out in the definition in Article 4(1)(1) of the AIFMD – qualify as an AIF as well.

Therefore I would like to ask

1. if – assuming that an investment compartment exhibits all the criteria set out in the AIF's definition (i.e. collective investment undertaking, raising capital, number of investors, defined investment policy) – an investment compartment itself can also qualify as an AIF within the meaning of the AIFMD (not only the overarching undertaking),
2. if full legal capacity (i.e. the ability to have rights and obligations, being a legal entity) is required for a compartment to qualify as an AIF (presumably not as this is not included in the AIF definition) and finally
3. if all requirements included in the AIF definition in Article 4(1)(1) AIFMD have to be fulfilled in order for an undertaking to qualify as an AIF or if the fulfillment of some of the criteria is sufficient.

I am asking these questions as I (as a retail investor) am planning to invest in a closed-ended compartment of a Luxembourg based S.C.A., SICAV-RAIF, which under its umbrella structure has established multiple compartments. If those compartments would also qualify as AIFs themselves, that would of course mean that the AIFMD fully applies, the compartment was registered for marketing in Austria, the compartment itself is supervised by an AIFM etc.

I highly appreciate your efforts in answering my query and remain

with best regards

Submission Date
06/06/2023

ESMA_QA_1061

Status: Question Published

Additional Information

Level 1 Regulation
Securities Financing Transactions Regulation (SFTR) Regulation (EU) 2015/2365- MDP

Topic
* SFTR Art. 4

Subject Matter
Reporting of the SFTs concluded by IORPs and pension funds

Question
Which are the entities that have the reporting responsibility under SFTR, for IORPs and for personal pension funds?

ESMA_QA_1242

Submission Date
02/06/2023

Status: Question Published

Additional Information

Level 1 Regulation
Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic
DLT financial instruments

Subject Matter
DLT Collective investment undertakings

Question
Should ETFs or other collective investment undertakings represented by shares be considered as units in collective investment undertakings, rather than shares (transferable securities), thus falling into the bucket specified in Article 3(1), point (c), DLTPR, and hence assessed against the criteria in Article 25(4), point (a), of MiFID II?

ESMA_QA_1241

Submission Date
02/06/2023

Status: Question Published

Additional Information

Level 1 Regulation
Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic
DLT market infrastructure

Subject Matter
UCITS eligible under DLTPR

Question
Does Article 3(1), point (c), of the DLTPR require that a UCITS fund should be an ETF in order to be eligible?

ESMA_QA_1240

Submission Date
02/06/2023

Status: Question Published

Additional Information

Level 1 Regulation
Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic
DLT financial instruments

Subject Matter
Partially tokenised financial instruments

Question
Is partial tokenisation allowed under the DLTPR? Does the DLTPR apply to situations where not the entirety of an issuance of financial instruments is tokenised, but where, for example, only part of an issuance is registered with a DLT SS/TSS? In other terms, can financial instruments which have been regularly issued and subsequently partially tokenised be registered with a traditional CSD in their entirety, and be partially registered with a DLT SS/TSS for the tokenised portion?

Can the tokenised part be issued by another party than the issuer of the original financial instruments?

Can a financial instrument recorded in a traditional CSD be fungible with one recorded in a DLT SS/TSS (having both the same rights and obligations)?

For bonds, can one option be to consider the tokenised financial instrument as different from the original underlying financial instrument, similar to the “depositary receipts” model, in accordance with Article 3(1), point (b), of the DLT Pilot Regulation?

Submission Date

ESMA_QA_1272

02/06/2023

Status: Question Published

Additional Information

Level 1 Regulation
Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic
Exemptions for DLT market infrastructures

Subject Matter
Exemption from CSDR

Question
Are DLT SS or DLT TSS and their participants exempted from the provisions of Article 9 of CSDR on internalised settlement regarding transactions settled on a DLT SS or a DLT TSS duly authorised under DLTR?

Submission Date

ESMA_QA_1271

02/06/2023

Status: Question Published

Additional Information

Level 1 Regulation
Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

Topic
Exemptions for DLT market infrastructures

Subject Matter
Exemption from CSDR

Question
Do the applicants to the DLT SS/DLT TSS status need to apply for the exemption from the application of Article 40 of CSDR, as set out in Article 5(8) of DLTR, whenever they use tokenised money, independently of whether it is central bank tokenised money or commercial bank tokenised money?