

Decision of the Board of Supervisors

amending Decision ESMA70-155-11210 on delegation to the ESMA Chair of the assessment regarding third country trading venues for the purposes of Articles 20 and 21 of MiFIR

The Board of Supervisors

Having regard to Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC¹ (the “Regulation” and “ESMA”), and in particular Article 16, Article 43(2) and Article 44(1) thereof

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (MiFIR)², and in particular Article 20 and Article 21 thereof,

Having regard to the ESMA opinion (ESMA70-154-165 of 28 May 2020 (“ESMA Opinion”),

Whereas:

- (1) The ESMA Board of Supervisors adopted on 24 May 2017 an opinion in accordance with Article 29(1)(a) of the Regulation to clarify whether the post-trade transparency obligation, set out in Articles 20 and 21 of MiFIR, also applies to transactions concluded on a third-country trading venue. As expressed in the opinion, the ESMA Board of Supervisors is of the view that transactions concluded on third-country trading venues should not be subject to post-trade transparency obligation under Article 20 and Article 21 of MiFIR if the third-country trading venue meets the criteria outlined in the opinion (“Initial Opinion”).
- (2) In line with the Initial Opinion, the ESMA Board of Supervisors adopted a decision delegating to the Chair of ESMA the execution of non-controversial assessments of third-country venues against the criteria established in the opinion (“Decision ESMA70-155-5775”³).
- (3) The Initial Opinion has been amended on 28 May 2020 to further clarify that a third country trading venue could meet the criteria in respect of transactions in all asset classes or a subset of asset classes concluded on a trading venue and that this should also be taken into account for the purposes of Article 20 and Article 21 of MiFIR.
- (4) To take into account the amendments reflected in the ESMA Opinion, on 5 November 2020 Decision ESMA70-155-5775 has been repealed and replaced by Decision ESMA70-155-11210 for the purposes of Article 20 and Article 21 of MiFIR.

¹ OJ L 331, 15.12.2010, p. 84.

² OJ L 173, 12.6.2014, p. 84.

³ Decision ESMA70-155-5775 of 26 September 2018.

- (5) The scope of the delegation to the Chair of ESMA also covered non-controversial negative assessments.
- (6) While no major changes have occurred in the third country trading venues framework, it is appropriate to reflect the latest amendments in the ESMA governance structure, whereby the secondary markets standing committee (SMSC) ceases to exist, and a new secondary markets working group (SMWG) is established which reports directly to the newly established markets standing committee (MSC).
- (7) To take into account the amendments in the ESMA governance, it is desirable that Decision ESMA70-155-11210 is amended accordingly.

Has adopted this decision:

Article 1

In Article 1 of Decision of the Board of Supervisors ESMA70-1155-11210, the third paragraph is replaced by the following:

“For the purpose of this Decision, controversial assessment shall mean an assessment in respect of which either members of the Secondary Markets Working Group (SMWG) or ESMA staff have raised objections. In case one or more members of the SMWG, or ESMA staff, raise objections, the assessment shall be considered uncontroversial provided that all members of the markets standing committee (MSC) reach an agreement which confirms the compatibility of a third country trading venue with the relevant criteria”.

Article 2

- (1) This decision enters into force on the day of its adoption.
- (2) It shall be published on ESMA’s website.

Done at Paris, 23 March 2023

Verena Ross
Chair
For the Board of Supervisors