

Decision of the Board of Supervisors

amending Decision ESMA70-155-6052 on delegation to the ESMA Chair of the adoption of non-controversial opinions on position limits

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 (ESMA)

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU² (MIFID II), and in particular Article 57(5) thereof

Whereas:

- (1) Article 57(5) of MIFID II require a competent authority, as defined in Article 2(1)(26) of MIFID II, to notify ESMA of the exact position limits they intend to set in accordance with the methodology for calculation established in Commission Delegated Regulation (EU) 2017/591³.
- (2) The same provision requires ESMA to issue an opinion to the competent authority in question within two months of the notification, assessing the compatibility of position limits with the objectives of preventing market abuse and supporting orderly pricing and settlement conditions referred to in Article 57(1) of MIFID II, and with the methodology for calculation established in Commission Delegated Regulation (EU) 2017/591.
- (3) In order to ensure the efficient processing of opinion on position limits, the Board of Supervisors adopted on 27 January 2021 a decision on the delegation to the ESMA Chair of the adoption of non-controversial opinions on position limits (ESMA70-155-6052). The decision was also driven by the number of other new tasks for ESMA envisaged in MiFIR/MiFID II, often linked to tight deadlines. As a result, the Board of Supervisors of ESMA allocated more resources to the execution of some of these tasks.
- (4) While no major changes have occurred in the position limits framework, it is appropriate to reflect the latest amendments in the ESMA governance structure, whereby the commodity derivatives task force (CDTF) ceases to exist, and a new commodity derivatives working group (CDWG) is established which reports directly to the newly established markets standing committee (MSC).
- (5) To take into account the amendments in the ESMA governance, it is desirable that Decision ESMA70-155-6052 is amended accordingly.

¹ OJ L 331, 15.12.2010, p. 84

² OJ L 173, 12.6.2014, p. 349

³ OJ L 87, 31.3.2017, p. 479–49

Has adopted this decision:

Article 1

In Article 1 of Decision of the Board of Supervisors ESMA70-155-6052, the third paragraph is replaced by the following:

“For the purpose of this delegation, non-controversial opinions means those draft opinions prepared by ESMA staff with which none of the CDWG members disagrees. In case one or more members of the CDWG, or ESMA staff, raise objections, the opinion shall still be considered uncontroversial provided that all members of the markets standing committee (MSC) reach an agreement which confirms the compatibility of the intended position limit with the relevant objectives and methodology for calculation.”

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