

19 December 2016

Dear Sir/Madam,

We are writing to UK market operators and UK investment firms operating trading venues regarding pre-trade transparency waivers.

Transparency waivers

As you are aware, MiFIR (Regulation (EU) No 600/2014) extends the scope of transparency obligations to equity-like instruments (depository receipts, exchange-traded funds, certificates and other similar financial instruments) and non-equity instruments (bonds, structured finance products, emission allowances and derivatives). A pre-trade transparency waiver (referred to as a waiver from here) will be available provided the relevant requirements are met.

Competent authorities are able to waive the obligation for market operators and investment firms operating a trading venue (referred to as trading venues from here) to make public the information referred to in Article 3(1) and Article 8(1) of MiFIR respectively provided the relevant requirements in Article 4 of MiFIR and RTS 1 are met in respect of equity instruments and in Article 9 of MiFIR and RTS 2 are met in respect of non-equity instruments. Trading venues should, where relevant, submit applications to their competent authority to obtain prior approval in order to benefit from a waiver.

Competent authorities must notify ESMA and other competent authorities of the intended use of each individual waiver and provide an explanation regarding its functioning not less than four months before the waiver is intended to take effect. Once ESMA has received a waiver notification it has 2 months to issue a non-binding opinion regarding the compatibility of each waiver with the requirements in MiFIR and relevant regulatory technical standards.

Process for ESMA opinions on waiver notifications in 2017

ESMA are expecting to receive a much higher number of waiver notifications before MiFIR applies and following concerns around receiving a bottleneck of notifications towards the end of 2017, ESMA recently asked trading venues for their views on whether it would be beneficial to establish an implementation timetable for processing waiver applications and therefore notifications during 2017. Respondents were generally supportive of the proposal to process waiver notifications in waves and following this exercise ESMA have decided to process waiver notifications during 2017 in two stages whereby equity and equity-like waiver applications are sent in first, followed by waiver applications for bonds and derivatives.

Today ESMA published Q&A on the implementation timetable for the processing of waivers ahead of MiFIR application (<https://www.esma.europa.eu/press-news/esma-news/esma-sets-timetable-mifid-ii-waiver-applications>). In summary, trading venues **should submit their waiver applications to their relevant competent authority by 1 February 2017 at the latest for equity and equity-like instruments and by 1 June 2017 at the latest for bonds and derivatives**. The relevant competent authority should then submit waiver notifications to ESMA by 28 February 2017 for equity and equity-like instruments and by 31 July 2017 for bonds and derivatives. ESMA

would then commit to processing waiver notifications submitted by the respective deadline well ahead of 3 January 2018. Waiver applications can also be sent outside of those intervals, but they will be processed only on a best efforts basis.

Waiver applications in the UK

UK implementing legislation to enable us to receive waiver applications under MiFIR is not yet in place. This means currently we will only accept waiver applications in draft form. Although applications will be in draft form all information provided must be complete. We therefore encourage trading venues and firms who plan to obtain authorisation as a trading venue to submit their completed waiver applications to us in respect of equity and equity-like instruments and/or bonds and derivatives as soon as possible. The FCA will need a separate application for each type of waiver required and where a market operator and investment firm operates more than one trading venue, we will require an application for each trading venue concerned.

The FCA's online gateway will be able to accept draft waiver applications from 30 January 2017 so before then we would ask trading venues and relevant firms to submit their applications to their relevant supervisory contact at the FCA via email using the form attached. If you do not have a regular supervisory contact, please send your applications to mtfsupervision@fca.org.uk. We are willing to receive waiver applications ahead of applications for authorisation as a trading venue, as the process ESMA has set necessitates earlier submission for equity and equity-like waiver applications, and submission of notifications to ESMA in line with the process outlined in the Q&A.

We will publish in January 2017 further information about the process of MiFID II/MiFIR applications and notifications in the UK in a guide. Amongst other things, this will cover the interaction of the process of waiver applications with the process of application to be authorised or to extend a permission.

Process on existing waivers for shares

Separately, Article 4(7) of MiFIR provides that waivers granted by competent authorities in accordance with MiFID should be reviewed by ESMA by 3 January 2020 assessing the continued compatibility of each of those waivers with the requirements in MiFIR and relevant regulatory technical standards. Trading venues must, depending on the type of waiver used, implement the necessary amendments to their systems and rules to ensure compliance when MiFIR applies. ESMA has also published Q&A (see the link above) on the process that should be followed by trading venues that benefit from a waiver granted in accordance with MiFID when an amendment is required to its systems in order to make it compliant with MiFIR and the relevant technical standards. The process that should be followed will be dependent on the type of amendments required; where substantial amendments are required those waivers will be subject to the new waiver review process as described above. The Q&A includes examples of the types of amendments that should be considered non-substantial.

If you have any questions, please contact your normal supervisory contact or mtfsupervision@fca.org.uk.

Kind regards,

Infrastructure & Trading Firms Department
Financial Conduct Authority