European Securities and Markets Authority

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PRESS RELEASE

ESMA readies MiFID II, MAR, and CSDR

The European Securities and Markets Authority (ESMA) today published its final technical standards (TS) on some of the most important pieces of post-crisis financial regulation: the Markets in Financial Instruments Directive (MiFID II), the Market Abuse Regulation (MAR) and the Central Securities Depositaries Regulation (CSDR). ESMA's TS translate how the legislation will apply in practice to market participants, market infrastructures and national supervisors. The new technical standards will alter the functioning of European financial markets by increasing their transparency, safety and resilience as well as investor protection.

Steven Maijoor, ESMA Chair, said:

> "The rules put out by ESMA today on MiFID II, MAR and CSDR will notably change the way Europe's secondary markets function. And this will no doubt impact market participants and regulators alike. The magnitude of this change should not be underestimated. But the past has taught us that change is needed in order to make markets more transparent, efficient, and safer to invest in. This will entail a certain cost but we should not forget the other side of this equation, which is the great benefits safer and sounder markets will bring to everybody."

1. MiFID II to increase market transparency, efficiency and safety

The rules ESMA is delivering today on MiFID II, once implemented, will bring the majority of non-equity products into a robust regulatory regime and move a significant part of OTC trading onto regulated platforms. The key rules introduce:

Fairer, safer and more efficient markets

- tests to determine whether a non-financial firm's speculative investment activities are so great that it should be subject to MiFID II;
- ranges for the new EU-wide commodity derivatives position limits regime;
- rules governing high-frequency-trading, imposing a strict set of organisational requirements on investment firms and trading venues;

- provisions regulating the non-discriminatory access to central counterparties (CCPs), trading venues and benchmarks, designed to increase competition;
- provisions requiring trading venues to offer disaggregated data on a reasonable commercial basis;

Greater transparency

- thresholds for the pre- and post-trade transparency regimes extended to equity-like instruments, bonds, derivatives, structured finance products and emission allowances;
- a newly introduced liquidity assessment for non-equity instruments;
- a newly-introduced trading obligation for shares and certain derivatives to be traded only on regulated platforms and, in the case of shares, systematic internalisers, instead of over-the-counter;
- a double volume cap mechanism to limit dark trading and reshape the use of waivers for shares and equity-like instruments;
- newly introduced reporting requirements for commodity derivatives; and

Stronger investor protection

- improved disclosure to strengthen the best execution regime.

2. MAR to increase market integrity and investor protection

ESMA's MAR TS will strengthen the existing market abuse framework by extending its scope to new markets, platforms and behaviours. They contain prohibitions for insider dealing and market manipulation, and provisions to prevent and detect these. The TS focus on:

- the conditions under which transactions in buy-back programmes and stabilisation measures are not considered market abuse;
- requirements for market participants conducting market soundings and for competent authorities establishing accepted market practices;
- specific requirements to report suspicious orders and transactions;
- rules for public disclosure of insider information and the delays of such;
- specific formats for establishing insider lists and for the notification and disclosure of managers' transactions; and
- specific arrangements on how to present investment recommendations or other

information recommending or suggesting an investment strategy.

3. CSDR to harmonise functioning of European central securities depositories

The CSD Regulation harmonises the authorisation and supervision of central securities depositories (CSDs) within the EU. It provides organisational, conduct of business and prudential requirements to ensure CSDs are safe, efficient and sound. It also introduces a settlement discipline regime, including measures to prevent and address settlement fails, such as a mandatory buy-in and cash penalties as well as reporting requirements for internalised settlement. ESMA's TS, which translate CSDR provisions into applicable rules, cover:

Harmonised CSD requirements

- cooperation requirements among authorities;
- requirements for the recognition of third-country CSDs, ensuring a level playing field;
- requirements for EU CSDs covering risk monitoring tools, record keeping, investment policy, reconciliation measures;
- requirements regarding non-discriminatory access to CSDs by participants, issuers, CCPs and trading venues, or between CSDs, as well as access by CSDs to CCPs and trading venues; and

Internalised settlement reporting

- requirements on how to report internalised settlements to national regulators to allow proper risk monitoring.

Considering that ESMA consulted recently on the buy-in process, ESMA has decided to delay the delivery of the RTS on settlement discipline.

Next steps

ESMA's different sets of final draft TS have been sent for endorsement to the European Commission. The Commission now has three months to approve these. Once endorsed, both the European Parliament and the Council have an objection period.

After CSDR, which entered into force back in 2014, MAR and MiFID II will enter into force in 2016 and 2017 respectively.

Notes for editors

1. MiFID was revamped in order to adapt it to changing market realities and implement G20 commitments to bring non-equity products under regulation and move the majority of OTC trading onto regulated platforms. In 2014, ESMA delivered its first set of technical advice and delegated acts on MiFID II to the Commission, mostly on investor protection issues.
2. The framework to ensure market integrity and investor protection has been place since 2003 in the form of the Market Abuse Directive which will be repealed with the entry into force of MAR in order to keep pace with market developments such as the growth of new trading platforms, OTC trading and new technology. MAR strengthens the fight against market abuse across commodity and related derivatives markets, explicitly bans the manipulation of benchmarks, reinforces the investigative and administrative sanctioning powers of regulators and ensures a single rulebook while reducing, where possible, the administrative burdens on SME issuers.
3. CSDR entered into force on 17 September 2014, and for the first time regulates the activity of CSDs at EU level. In order to allow further legal and analytical work, ESMA has decided to delay the delivery of the draft TS on settlement discipline.
4. ESMA is an independent EU Authority established on 1 January 2011 and works closely with the other European Supervisory Authorities responsible for banking (EBA), and insurance and occupational pensions (EIOPA), and the European Systemic Risk Board (ESRB).
5. ESMA's mission is to enhance the protection of investors and promote stable and well-functioning financial markets in the EU. As an independent institution, ESMA achieves this aim by building a single rule book for EU financial markets and ensuring its consistent application across the EU. ESMA contributes to the regulation of financial firms with a pan-European reach, either through direct supervision or through the active co-ordination of national supervisory activity.

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