

ESMA provides further guidance for transactions on 3rd country trading venues for post-trade transparency and position limits under MiFID II/MiFIR

The opinions address the treatment of transactions executed by EU investment firms on third-country trading venues, for post-trade transparency under MiFIR, and the treatment of positions held in contracts traded on those venues for the position limit regime under MiFID II.

The revised opinions state that, pending an ESMA assessment of more than 200 third-country trading venues under the criteria in the two opinions, transactions on third-country trading venues do not need to be made post-trade transparent and/or positions held in those third-country venue contracts are not considered to be economically equivalent over-the-counter (EEOTC) contracts.

ESMA will carry out the determination of third-country trading venues and publish the results in the course of 2018.

Background

Following the publication of the initial opinions in May, ESMA received requests to assess more than 200 third-country trading venues. ESMA was not in a position to assess all those trading venues ahead of the application of MiFID II/MiFIR on 3 January 2018. Furthermore, ESMA considers it important that all third-country trading venues receive the same treatment in order to maintain a level playing field.

The two opinions were initially published on 31 May 2017 and specified that, subject to third-country trading venues meeting a set of criteria, investment firms trading on those trading venues are not required to make transactions public in the EU via an APA. Equally, commodity derivatives contracts traded on those trading venues are not considered as EEOTC contracts for the purpose of the position limit regime.