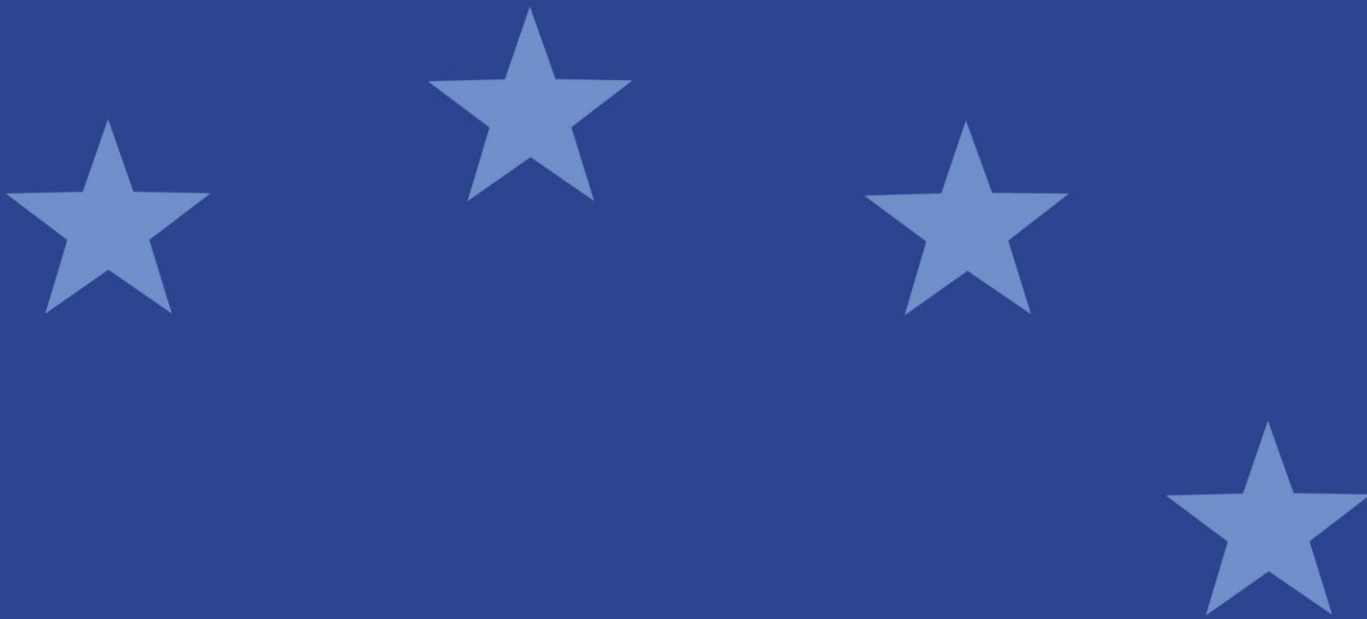




European Securities and  
Markets Authority

# Questions and Answers

**On MiFID II and MiFIR post trading topics**





European Securities and  
Markets Authority

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## Acronyms and definitions used

CCP	Central Counterparty
EMIR	European Market Infrastructures Regulation – Regulation (EU) 648/2012 of the European Parliament and Council
ESMA	The European Markets and Securities Authority
MiFID I	Markets in Financial Instruments Directive – Directive 2004/39/EC of the European Parliament and of the Council
MiFID II	Markets in Financial Instruments Directive (recast) – Directive 2014/65/EU of the European Parliament and of the Council
MiFIR	Markets in Financial Instruments Regulation – Regulation 600/2014 of the European Parliament and of the Council
NCA	National Competent Authority
OTF	Organised Trading Facility
Q&A	Question and answer
RTS	Regulatory Technical Standards
RTS on STP	Commission Delegated Regulation (EU) 2017/582 specifying the obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing



## Table of questions

		Topic of the Question	Level 1/Level 2 issue	Last Updated
<b>Straight Through Processing (STP)</b>	1	Pre-trade checks waiver	Article 29 of MiFIR and Article 2 of RTS on STP	9 October 2017
<b>Indirect clearing</b>	2	Segregation level for indirect clearing accounts	Article 4(2)(b) of RTS 2017/2154	14 December 2017



## Introduction

### Background

The final legislative texts of Directive 2014/65/EU<sup>1</sup> (MiFID II) and Regulation (EU) No 600/2014<sup>2</sup> (MiFIR) were approved by the European Parliament on 15 April 2014 and by the European Council on 13 May 2014. The two texts were published in the Official Journal on 12 June 2014 and entered into force on the twentieth day following this publication – i.e. 2 July 2014.

Many of the obligations under MiFID II and MiFIR were further specified in the Commission Delegated Directive<sup>3</sup> and two Commission Delegated Regulations<sup>4 5</sup>, as well as regulatory and implementing technical standards developed by the European Securities and Markets Authority (ESMA).

MiFID II and MiFIR, together with the Commission delegated acts as well as regulatory and implementing technical standards will be applicable from 3 January 2018.

### Purpose

The purpose of this document is to promote common supervisory approaches and practices in the application of MiFID II and MiFIR in relation to post trading topics. It provides responses to questions posed by the general public, market participants and competent authorities in relation to the practical application of MiFID II and MiFIR.

The content of this document is aimed at competent authorities and market participants by providing clarity on the application of the MiFID II and MiFIR requirements.

The content of this document is not exhaustive and it does not constitute new policy.

### Status

The question and answer (Q&A) mechanism is a practical convergence tool used to promote common supervisory approaches and practices under Article 29(2) of the ESMA Regulation<sup>6</sup>.

Due to the nature of Q&As, formal consultation on the draft answers is considered unnecessary. However, even if Q&As are not formally consulted on, ESMA may check them with representatives of

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<sup>1</sup> 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/EU.

<sup>2</sup> 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.

<sup>3</sup> Commission Delegated Directive (EU) 2017/593 of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits (OJ L 87, 31.3.2017, p. 500–517).

<sup>4</sup> Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 87, 31.3.2017, p. 1–83).

<sup>5</sup> Commission Delegated Regulation (EU) 2017/567 of 18 May 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions (OJ L 87, 31.3.2017, p. 90–116).

<sup>6</sup> 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/EC Regulation (OJ L 331, 15.12.2010, p. 84).



ESMA's Securities and Markets Stakeholder Group, the relevant Standing Committees' Consultative Working Group or, where specific expertise is needed, with other external parties.

ESMA will periodically review these Q&As on a regular basis to update them where required and to identify if, in a certain area, there is a need to convert some of the material into ESMA Guidelines and recommendations. In such cases, the procedures foreseen under Article 16 of the ESMA Regulation will be followed.

### **Questions and answers**

This document is intended to be continually edited and updated as and when new questions are received. The date on which each section was last amended is included for ease of reference.



## Questions and answers

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### Straight through processing (STP)

[Last update: 9 October 2017]

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#### STP Question 1 [Last update: 09/10/2017]

*Under Article 2(1) of Commission Delegated Regulation (EU) 2017/582, in the context of trading venue members/participants entering into trades on behalf of their clients, condition (c) requires that the rules of the trading venue provide that the client becomes counterparty to the cleared derivative transaction, pursuant to direct or indirect clearing arrangements. What should trading venues rules include in order to meet this condition?*

#### STP Answer 1

In order to meet condition (c) of Article 2(1) of Commission Delegated Regulation EU 2017/582, a trading venue's rules should provide that, in order to enter into trades on behalf of clients on the venue, a member/participant must be satisfied that such clients have direct or indirect clearing arrangements to become counterparty to the cleared transaction resulting from that trade.

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### Indirect clearing

[Last update: 14 December 2017]

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#### Indirect clearing Question 1 [Last update 14 December 2017]

##### Article 4(2)(b) of RTS 2017/2154 – Segregation level for indirect clearing accounts

*\*new\** *In the event of a clearing member default, is it permissible for a CCP to liquidate all of the collateral recorded in all the gross omnibus indirect client accounts (referred to in paragraph 2(b)) together and apply the resulting sum collectively in order to cover losses or to enable the netting of positions across different accounts?*

#### Indirect clearing Answer 1

*\*new\** No, Article 4(4)(b) of the Indirect Clearing RTS requires that a clearing member shall open and maintain in the CCP a segregated account for the exclusive purpose of holding the assets and positions of indirect clients of each client held by the clearing member in an account as referred to in paragraph 2(b). Therefore, a clearing member would have to open a separate account at the CCP for each client's pool of Indirect Clients who have elected the account referred to in paragraph (2)(b).

In the event of a clearing member default, Recital 6 of the Indirect Clearing RTS provides that indirect clients' assets and positions which are held in an indirect clearing account, including gross omnibus accounts referred to in Article 4(2)(b), may still be exposed to the losses of another indirect client within





the same account. However, to the extent a clearing member has opened at the CCP several gross omnibus indirect client accounts referred to in Article 4(2)(b) for each of its clients, positions recorded in those different gross omnibus indirect client accounts at the CCP may not be netted against each other and assets covering the positions in one of these gross omnibus indirect client accounts may not be exposed to losses connected to positions held in a different account.