

PUBLIC STATEMENT

Brexit: Impact of the end of the transition period on 31 December 2020 on the trading obligation for derivatives (Article 28 of MiFIR)

The European Securities and Markets Authority (ESMA) is issuing this statement concerning the application of the trading obligation for derivatives (DTO) under Article 28 of Regulation (EU) No 600/2014¹ (MiFIR) after the end of the transition period provided for in the withdrawal agreement between the European Union (EU) and the United Kingdom (UK) on 31 December 2020. This statement updates the statement published on 7 March 2019 concerning the DTO.

Article 28 of MiFIR requires investment firms to conclude transactions in some derivatives on regulated markets (RMs), multilateral trading facilities (MTFs), organised trading facilities (OTFs) or third-country trading venues established in jurisdictions for which the European Commission has adopted an equivalence decision. The classes of derivatives subject to the DTO are specified in Commission Delegated Regulation (EU) No 2017/2417² and cover certain fixed-to-float interest rate swaps denominated in EUR, USD and GBP and two credit default swap indices.

In its statement of 7 March 2019 ESMA considered that there is no evidence that in case of a no-deal Brexit and in the absence of an equivalence decision by the Commission covering UK trading venues, market participants will not be able to continue meeting their obligations under the DTO. Nevertheless, ESMA committed to monitor the situation closely.

Since then, the UK withdrew from the EU and has become a third country on 1 February 2020. Furthermore, after the end of the transition period on 31 December 2020, EU law will no longer apply to and in the UK.

At this point in time, ESMA does not consider that a change of its approach is warranted. Most UK trading venues that offer trading in derivatives subject to the DTO have established new

¹ Regulation (EU) No 600/2014 of the European Parliament and of Council 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, OJ L 173, 12.06.2014, p. 84.

² Commission Delegated Regulation (EU) No 2017/2417 of 17 November 2017 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the trading obligation for certain derivatives, OJ L 343, 22.12.2017, p.48.

trading venues in the EU. While the trading activity on these trading venues is currently limited, those trading venues have onboarded members and participants, including the major liquidity providers, which will allow EU investment firms to comply with the DTO by trading the relevant derivatives in those trading venues after the end of the transition period. In ESMA's view, the continued application of the DTO after the end of the transition period would not create risks to the stability of the financial system.

ESMA is aware that, absent an equivalence decision, UK branches of EU investment firms are likely to be subject to the DTO in both the EU and the UK. ESMA understands that this situation is challenging for UK branches of EU investment firms and it may require changes to current business practices in order to ensure compliance with EU law. However, this situation is primarily a consequence of the way in which the UK has chosen to implement the DTO.

ESMA will continue monitoring the situation closely to assess whether markets would be sufficiently liquid to allow EU market participants to execute transactions in derivatives subject to the DTO on eligible trading venues after the end of the transition period.