



Final report with draft Regulatory and Implementing Technical Standards on MiFID II/MiFIR. November 2015.

ESMA published, on 28 September 2015, a package of **28 regulatory and implementing technical standards** developing several provisions of the new Directive 2015/65/EU in relation to the financial instruments markets (hereinafter MiFID II) and the Regulation on financial markets and amending Regulation No 648/2012 EMIR (hereinafter MiFIR). In relation to the above mentioned technical standards, ESMA published a document for consultation (May 2014) and two documents for consultation (December 2014 and February 2015). In this final report, ESMA describes its final proposals together with the reasons for its legislative option for each area of the technical standards.

These technical standards are published at the same time as the technical standards developing the Regulation on Market Abuse and the Regulation on Central Securities Depositories. This major package of technical standards forms the basis for the practical functioning of the European financial markets. The 28 technical standards developing MiFID II/MiFIR have the following general objectives: 1) to increase transparency, which entails a major impact particularly on fixed income markets, 2) to enhance market efficiency and security, with the new requirements specially including those relating to high-frequency traders, and 3) to enhance investor's protection.

The technical standards, among which certain key aspects stand out, are grouped into the following areas:

1. Greater transparency. (Standards 1-5)

- Application of the pre- and post-trading transparency requirements to instruments other than shares and assimilated securities, namely, to bonds, debentures, securitised products, emission allowances and derivatives.

- Assessment of liquidity (daily average nominal amount or average daily trades) in the concept of "liquid market" for instruments other than shares and assimilated securities to the effects of applying the exemption of the pre-transparency requirements, of the deferred publication of trade details and the obligation of systematic internalisers of disclosing firm quotes.

- Requirement for Investment Services Firms to trade in shares (whether listed on a regulated market or in a trading venue) in a regulated market, Multilateral Trading Facilities (MTFs) or systematic internaliser unless the said trading is not systematic or is not carried out between eligible and/or professional counterparties and does not contribute to the pricing process.

- Requirement for certain categories of derivative instruments to trade in regulated markets, MTFs or Organised Trading Facilities (OTFs).

- Establishment of a double volume cap mechanism for negotiation under the waivers of trades effected under the modality both of referenced prices and of trades effected to ensure that exemptions from the transparency

requirements for shares and similar instruments do not unduly harm the price formation process. Pursuant to this double cap, the percentage of trading in a trading venue and the total trading in the entire EU under these exemptions may not exceed 4% and 8%, respectively, of the total trading volume in the said instrument in that trading venue and in all the trading venues in the EU over the 12 preceding months, respectively.

.- Requirement to report the positions in commodity derivatives by category of holders.

2. Improvement of efficiency and markets security. (Standards 6-26)

.- Tests to determine when an activity is to be considered ancillary or not with respect to the main one at the group level, in such a way that if the speculative investment activities in commodity derivatives of a non-financial company within a group is not ancillary but the main activity, it should be subject to MiFID II. Two methods are proposed: market share test of the ancillary activity with respect to the market of the instrument, or main business test, namely determining how ancillary is the activity compared to the company's main activity.

.- New positions limit regime in commodity derivatives.

.- Regulation of algorithmic trading: determination of the organisational requirements for Investment Services Firms and trading venues.

.- Conditions - including the netting requirements for economically equivalent contracts - of non-discriminatory access to Central Counterparties and to trading venues, and the conditions in which access is granted to benchmarks with the objective, in all cases, of increasing the level of market competition.

.- Obligation of managers of trading venues of making separately available to the public the pre-trading and post-trading transparency data in reasonable commercial conditions.

3. Greater investor protection. (Standards 27-28)

.- Improvement of the information to be provided to the client with respect to the obligation of executing orders in the most favourable terms for the client.

The final report was submitted to the European Commission on 28 September 2015. The Commission has three months to decide whether to endorse the technical standards.

Useful link:

[Final report with draft regulatory and implementing technical standards MiFID II/MiFIR.](#)