

# Questions and Answers

**On MiFID II and MiFIR market structures topics**







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## **Acronyms and definitions used**

ADNT	Average Daily Number of Transactions
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
Q&A	Question and answer
RTS	Regulatory Technical Standards

## Table of questions

		Topic of the Question	Level issue	1/Level 2	Last Updated
<b>Data disaggregation</b>	1	Level at which disaggregation is required	Article 12 of MiFIR and RTS 14 <sup>1</sup>		18/11/2016
	2	Requests for disaggregated data	RTS 14		18/11/2016
	3	Country of issue	RTS 14		18/11/2016
<b>Tick size regime</b>	1	Relevant National Competent Authority (NCA) responsible for calculating and publishing the average daily number of transactions (ADNT)	RTS 11		18/11/2016
	2	Corporate actions	RTS 11		18/11/2016
	3	Determination of the applicable tick size for instruments listed in non-EU countries	RTS 11		18/11/2016
	4	Application of the tick size for instruments trading in different currencies	RTS 11		18/11/2016
	5	Ad hoc changes of the applicable tick sizes	RTS 11		18/11/2016

<sup>1</sup> Please note that, for ease of reference, RTS have been numbered in this document in accordance with the numbering used in the package sent by ESMA to the Commission in September 2015 (ESMA/2015/1464). Readers are nevertheless invited to consult the Commission and European Parliament websites for updated versions of those RTS.

# 1 Introduction

## Background

The final legislative texts of Directive 2014/65/EU<sup>2</sup> (MiFID II) and Regulation (EU) No 600/2014<sup>3</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>4</sup> and two Commission Delegated Regulations<sup>5 6</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 market structures 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 firms 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

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<sup>2</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>3</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>4</sup> Commission Delegated Directive of 7.4.2016 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. The Commission Delegated Directive was published on 7 April 2016 and no objection has been expressed by the European Parliament or the Council on the MiFID II Delegate Directive and Delegated Regulation within the period set in Article 89 of MiFID II.

<sup>5</sup> Commission Delegated Regulation of 25.4.2016 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. The Commission Delegated Regulation was published on 25 April 2016 and no objection has been expressed by the European Parliament or the Council on the MiFID II Delegate Directive and Delegated Regulation within the period set in Article 89 of MiFID II.

<sup>6</sup> Commission Delegated Regulation of 18.5.2016 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. The Commission Delegated Regulation was published on 18 May 2016 and no objection has been expressed by the European Parliament or the Council on the MiFID II Delegate Directive and Delegated Regulation within the period set in Article 50 of MiFIR.



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>7</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 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.

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<sup>7</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, 15.12.2010, L331/84.

## 2 Data disaggregation [Last update: 18/11/2016]

### Question 1 [Last update: 18/11/2016]

*Will disaggregation be required at the level of the market operator or at the level of each trading venue?*

#### Answer 1

Disaggregation is required at the level of each trading venue for which the market operator or investment firm operating a trading venue has received a specific authorisation under MiFID II.

### Question 2 [Last update: 18/11/2016]

*Article 1 of RTS 14<sup>8</sup> states that market operators and investment firms operating a trading venue shall provide disaggregated data “on request”. Who would be entitled to make such requests? What constitutes a request in this context? How quickly do market operators and investment firms operating a trading venue need to respond to a request for unbundled data?*

#### Answer 2

MiFIR requires the relevant data to be made available “to the public” in disaggregated form on reasonable commercial terms. As such, any individual or entity (whether or not a user of the trading venue) could make a request for disaggregated data and the market operator or investment firm operating a trading venue has to provide the commercial terms to acquire the disaggregated data.

As part of those commercial terms and to effectively provide access to the arrangements employed for making public the information referred to in Articles 3, 4 and 6 to 11 of MiFIR, the market operator or investment firm operating a trading venue may impose non-discriminatory technical requirements on clients.

The request for disaggregated data could be in any format provided it clearly expresses a request for the disaggregated data. For the avoidance of doubt, market operators and investment firms operating a trading venue do not need to make disaggregated data available unless they have received a request to do so.

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<sup>8</sup> Please note that, for ease of reference, RTS have been numbered in this document in accordance with the numbering used in the package sent by ESMA to the Commission in September 2015 (ESMA/2015/1464). Readers are nevertheless invited to consult the Commission and European Parliament websites for updated versions of those RTS.



Market operators and investment firms operating a trading venue should respond to requests for disaggregated data as quickly as practicable. The response should not be slower than to a request for non-disaggregated data. Market operators and investment firms operating a trading venue should reply to requests falling in the same category within the same time frame.

### **Question 3 [Last update: 18/11/2016]**

*Article 1(1)(b) of RTS 14 requires disaggregation by country of issue for shares. How should “country of issue” be interpreted? Is this also required for non-EU countries?*

### **Answer 3**

Country of issue should be interpreted as the home Member State of the issuer, as defined in Article 2(1)(i) of the Transparency Directive<sup>9</sup>, including where the issuer is incorporated in a third country.

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<sup>9</sup> Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC.

### 3 The tick size regime [Last update: 18/11/2016]

#### Question 1 [Last update: 18/11/2016]

*Which National Competent Authority (NCA) should be responsible for calculating and publishing the average daily number of transactions (ADNT) and in particular in the case of multi-listed instruments?*

#### Answer 1

The relevant NCA responsible calculating and publishing the ADNT should be the competent authority identified as the NCA of most relevant market in terms for the purposes of transaction reporting. In the case of multi-listed instruments, the criteria and procedure to be used for determining which NCA should be the relevant NCA are specified under Article 16 of RTS 22.

For new instruments, Article 16 of RTS 22 clarifies that the most relevant market for the financial instrument is the market of the Member State in which a request for admission to trading was first made or where the instrument was first traded. The NCA of this Member State will be responsible for publishing the estimates and preliminary calculations as per the procedure set out under Article 3(5) and (6) of RTS 11.

Where the relevant NCA has concluded an agreement with ESMA, the ADNT will be published centrally on the ESMA website. For other NCAs, the ADNT will be published on the ESMA website on a best-effort basis.

#### Question 2 [Last update: 18/11/2016]

*Which types of corporate actions for an instrument may trigger a recalculation of ADNT?*

#### Answer 2

Any corporate actions that the relevant NCA anticipates will lead to a material change in the average daily number of trades after the event may initiate the recalculation process per Article 4 of RTS 11. Normally such a circumstance may arise when the issuer plans to undertake, amongst other things, share buybacks or share issuance which will result in the instrument continuing to trade in a liquidity band that would not be optimal unless a recalculation is undertaken.

#### Question 3 [Last update: 18/11/2016]

*Are non-EU instruments in scope and how the calculation of ADNT should be performed for those instruments?*



### **Answer 3**

Non-EU instruments are included in the scope of the Article 49 regime as soon as they are traded on a trading venue in the Union. The applicable liquidity band is determined by the relevant NCA taking into account the ADNT on the most relevant market in terms of liquidity according to Article 4 of RTS 1. Trading activity taking place outside of the Union should not be considered for these purposes.

### **Question 4 [Last update: 18/11/2016]**

*How is a liquidity band applied for instruments trading in different currencies across trading venues?*

### **Answer 4**

Once a particular liquidity band is assigned to an instrument, trading of that instrument will continue within that band until another liquidity band is assigned as a result of periodical or ad hoc review by the relevant NCA or ESMA. As set out in Recital 8 of RTS 11, the same liquidity band will be applied irrespective of the currency denomination used for the quotation of the financial instrument.

### **Question 5 [Last update: 18/11/2016]**

*Can a trading venue or NCA manually intervene to allow a smaller tick size if it can be shown that the mandated minimum tick size is adversely impacting liquidity?*

### **Answer 5**

No, except where there has been a corporate action event in which the NCA concerned will consider assigning a different liquidity band according to its estimate of the ADNT occurring in the most liquid venue following the said corporate action event.