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Post-Trade Transparency

Of particular interest to: firms concluding transactions outside the rules of a trading venue which are subject to MiFIR transparency

In brief

ESMA has recently published Guidance on the third-country trading venues identified as part of its June Opinion on MiFIR transparency. The Guidance confirms that relevant transactions conducted on certain third-country trading venues will be subject to transparency reporting from **3 October 2020**.

Summary

MiFIR requires investment firms that undertake transactions in shares and similar financial instruments (Article 20) or in bonds, derivatives etc. (Article 21) that are traded on a trading venue ('ToTV') but are **concluded outside** the rules of a trading venue to make public, via an Approved Publication Arrangement ('APA'), details of those transactions. MiFID defines a 'trading venue' as a regulated market, an MTF or an OTF.

In June ESMA published an **Opinion** on whether for the purposes of these Articles this obligation applies also to transactions concluded on a **third-country trading venue** ('TCTV'), which, of course, would not meet the MiFID definition of 'trading venue'.

First and foremost, ESMA's view was that "the post-trade transparency requirements set out in Articles 20 and 21 of MiFIR should not be interpreted as requiring EU investment firms to systematically republish information in the EU about transactions concluded on third-country trading venues, which are subject to transparency provisions similar to those applicable to EU trading venues under the MiFID II/MiFIR framework".

The Opinion set out the criteria under which a TCTV would be considered as ‘a trading venue’ for the purpose of MiFIR Articles 20 and 21 and included a link to a list of those TCTVs it had assessed. Since that time the list of TCTVs has been revised – the most recent being ‘version 3’ (see ‘Useful Links’). It will be noted from the list that the venues under consideration have either been assessed as ‘**positive**’ or ‘**partially positive**’.

The Guidance provides the following clarification:

TCTV assessed as positive

Firms concluding transactions in ToTV instruments on these venues **will not** be required to make post-trade transparency notifications to an APA.

TCTV assessed as partially positive

This assessment means that only some, but not all, instruments on that venue received a positive assessment.

Firms concluding transactions in ToTV instruments on those venue and where those instruments appear in the column ‘Exemptions from the positive assessment’ **will** be required to make post-trade transparency notifications to an APA from **3 October 2020**.

In contrast, firms concluding transactions in ToTV instruments which do not appear in the column ‘Exemptions from the positive assessment’ (i.e. those instruments received a positive assessment) **will not** be required to make post-trade transparency notifications to an APA.

TCTV not appearing in the list

Transactions concluded between firms in ToTV instruments on venues that do not appear on the list **will** be required to make post-trade transparency notifications to an APA from **3 October 2020**.

On a separate note we understand that following a conversation between AIMA and the FCA, the Regulator is taking a relaxed approach to the ESMA Opinion to the effect that it will not be part of its ‘supervisory expectations’ and so does not expect UK investment firms to report to an APA any transactions executed on an

'overseas venue'.

Useful Links

[ESMA Opinion on transparency](#)

[ESMA Guidance on transparency opinion](#)

[Third-country trading venues assessment v3](#)

[MiFIR \(600/2014\)](#)

[Regulatory Technical Standards \(RTS1\) re shares etc.](#)

[Regulatory Technical Standards \(RTS 2\) re bonds etc.](#)

[FCA Authorised APAs](#)

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