

28 July 2022

Circular on Markets in Financial Instruments Directive ('MiFID II') and Markets in Financial Instruments Regulation ('MiFIR')

ESMA's Opinion on the classification of third-country counterparties.

This circular is being addressed to investment firms, credit institutions providing investment services and/or performing investment activities and market operators including any trading venues they operate.

This circular shall be read in conjunction with [MiFID II](#) and [MiFIR](#), the delegated regulations and previous circulars issued by the Authority.

Purpose of the Circular

The Authority would like to inform market participants that on the 12 July 2022, the European Securities and Markets Authority ('ESMA') issued an [Opinion](#) that clarified how third-country financial entities should be classified in the weekly position reports on commodity derivatives and emission allowances derivatives under MiFID II.

The purpose of this document is to build a common Union supervisory culture and consistent supervisory practices, as well as ensuring uniform procedures and consistent approaches throughout the Union.

Opinion

Article 58(1) of MiFID II introduces position reporting obligations on trading venues which trade commodity derivatives or emission allowances or derivatives thereof. It requires those trading venues to make public a weekly report with the aggregate positions held by the different categories of persons for the different commodity derivatives, emission allowances or derivatives thereof, specifying inter alia the number of long and short positions per such categories and the number of persons holding a position in each category.

While the weekly position reports apply to all categories of persons (EU and non-EU) Article 58 of MiFID II does not expressly address the categorisation of financial entities established in third countries, and that are not authorised as investment firms, credit institutions, investment funds or other financial institution under EU law.

ESMA's Opinion is a follow-up to [ESMA's report on the EU carbon market](#) published in March 2022. In the report, ESMA identified an issue related to the inconsistent classification of third-country financial counterparties in the published weekly reports and committed to follow-up on the matter.

As a result, ESMA considers that third-country financial entities should be categorized according to the nature of their main business in the same way as they would be categorised if they were established in the EU and subject to EU law, i.e. under categories (a), (b) or (c) of Article 58(4) of MiFID II.

ESMA expects that CAs ensure trading venues proceed with the classification of third-country financial entities as required under Article 58(4) of MiFID II in accordance with the Opinion and request the necessary information from their members or participants to that end.

ESMA also expects that CAs ensure that the classification of third-country financial entities holding positions in commodity derivatives and emission allowances or derivatives thereof in accordance with this Opinion is reflected in the weekly position reports as soon as possible, and no later than 12 October 2022.

Contacts

Any queries or requests for clarifications on the contents of this Circular should be addressed to the Authority via email on MarketInfrastructures@mfsa.mt.