

MEMO# 32866

October 27, 2020

Brexit: ESMA Statement on the EU Share Trading Obligation

[32866]

October 27, 2020 TO: ICI Members

ICI Global Members

ICI Global Brexit Task Force SUBJECTS: International/Global

Trading and Markets RE: Brexit: ESMA Statement on the EU Share Trading Obligation

On 26 October 2020, the European Securities and Markets Authority (ESMA) published a public statement on the application of the EU's MiFID Share Trading Obligation (STO) after the end of the Brexit transition period on 1 January 2021. In the statement, ESMA states that it can be reasonably assumed that the trading of shares with an European Economic Area (EEA) ISIN on a UK trading venue in GBP (*i.e.* sterling) by EU investment firms occurs on a non-systematic, ad-hoc, irregular and infrequent basis. Therefore, ESMA states that it expects such trades will not be subject to the EU STO, in accordance with Article 23 of MiFIR.[\[1\]](#)

ESMA Statement

Over the last few years ESMA has published various statements concerning the STO in the context of Brexit, including communications in November 2017[\[2\]](#) and May 2019.[\[3\]](#) ESMA has given further consideration to the specific circumstances where a share with an EEA ISIN, hence subject to the EU STO, would be traded on a UK trading venue in GBP. ESMA notes that trading in local currency lines is often mainly targeted at domestic investors of the concerned third country who do not necessarily have access to EU trading venues. In addition, trading in a third-country currency introduces a currency risk for EU investors who may see the value of their investments negatively impacted by unfavourable moves in exchange rates.

ESMA refers to data that shows that shares with an EEA ISIN traded on UK trading venues in GBP are limited in number (less than 50) and account for a small proportion of the EU total trading activity (less than 1%). On that basis, ESMA states that it can therefore be reasonably assumed that the trading of shares with an EEA ISIN on a UK trading venue in GBP by EU investment firms occurs on a non-systematic, ad-hoc, irregular and infrequent basis. As such, ESMA expects that such trades will not be subject to the EU STO.

ESMA highlights that trading of shares with different ISINs (*i.e.* other than EEA ISINs on UK trading venues) will be subject to its previous November 2017 guidance.

Next Steps

The UK authorities, including the Financial Conduct Authority (FCA), have previously highlighted their preferred approach to resolving the STO post Brexit, including highlighting concerns and risks from overlapping STO obligations.^[4] In May, the FCA stated that it will continue to consider its approach to the implementation of any STO, including that is needed in a hard exit, and will set out its approach in due course if it is clear that there will be a no-deal exit, including its expectations of how firms can comply with applicable requirements.

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endnotes

[1] <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32014R0600>

[2] ESMA Press Release: ESMA clarifies trading obligation for shares under MiFID II, 13 November 2017, *available from* <https://www.esma.europa.eu/press-news/esma-news/esma-clarifies-trading-obligation-shares-under-mifid-ii>

[3] ESMA Press Release: ESMA adjusts application of the trading obligation for shares in a no-deal Brexit, 29 May 2019, *available from* <https://www.esma.europa.eu/press-news/esma-news/esma-adjusts-application-trading-obligation-shares-in-no-deal-brexite>

[4] FCA Statement: FCA Update on Share Trading Obligations, 29 May 2019, *available from* <https://www.fca.org.uk/news/statements/fca-update-share-trading-obligations>

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