

Compliance Alert

ESMA's 2015 Work Program

ESMA has three strategic objectives—investor protection, financial stability and market functionality—that are achieved through four operational objectives: convergence, risk monitoring and analysis, single rulebook, and supervision.

ESMA's 2015 Work Program organizes its proposed activities by operational objectives.

Convergence

As ESMA's work on the single rulebook decreases in 2015, resources will be reallocated to facilitating the standardized application of the rulebook across the EU. By its nature, this work never ends and depends upon ESMA's own initiative. Particular areas of focus include:

- The Transparency Directive, in which ESMA attempts to: facilitate a higher degree of exchange of experience; address issues of practical nonconvergence; and, where possible, address issues arising from the implementation of the Directive and related technical standards. This includes reviewing and amending the Q&A published in 2012 to reflect amendments to the Transparency Directive relating to information included in annual reports, major shareholdings, etc.
- Implementation of the provisions of the (proposed) guidelines on enforcement of financial information requirements and issuance of the guidelines on alternative performance measures.
- In the area of investment management, ESMA will continue to develop opinions and Q&As regarding the harmonized application of requirements at Levels 1 and 2, as well as guidelines. As a complement to the single rulebook, the opinions and Q&As will focus on how provisions are applied in practice by national competent authorities and firms.

- In addition to nonmandatory guidelines, opinions and Q&As to enhance the implementation of Markets in Financial Instruments Directive II (MiFID II) and Markets in Financial Instruments Regulation (MIFIR), MiFID II requires specific ESMA guidelines in relation to complex financial instruments, cross-selling, management bodies, the criteria for the assessment of knowledge and competence, the calibration of trading halts, the management of market operators, and legal entity identifiers. ESMA will also analyse whether there are elements of its original Guidelines on Systems and Controls in an Automated Trading Environment for Trading Platforms, Investment Firms and Competent Authorities that need to be updated after the implementation of the MiFID II package.
- The Market Abuse Regulation contemplates the preparation and consultation of guidelines in relation to market sounding (namely, testing the market, if, for example, bigger blocks of shares could be sold or an issue of a fixed income bond could be placed in the market); information required to be published in relation to holdings of and transactions in commodities; and lists that enumerate legitimate interests for delays and situations when omission is misleading.
- Pursuant to Article 6 (1) of the Central Securities Depositories Regulation (CSDR), ESMA must issue guidelines on standardized procedures and messaging protocols for arrangements intended to limit the number of settlement fails by investment firms.
- The Alternative Investment Fund Manager Directive (AIFMD) requires ESMA, by 22 July 2015, to issue an opinion to the European Parliament, the Council and the Commission on the functioning of the passport for EU AIFMs pursuant to Articles 32 and 33 of the AIFMD and on the functioning of the national private placement regimes set out in Articles 36 and 42 of AIFMD.

KEY DELIVERABLES	DUE DATE
Consultation Paper on Market Abuse Regulation (MAR) guidelines	Q2 2015
Update of Q&A on Transparency Directive	Q3 2015
Opinion on the functioning of the passport for EU AIFMs pursuant to Articles 32 and 33 of the AIFMD and on the functioning of the national private placement regimes set out in Articles 36 and 42 of the AIFMD	Q3 2015
Guidelines on the standardized procedures and messaging protocols for arrangements put in place by investment firms to limit the number of settlement fails	Q4 2015
Guidelines on investment fund legislation	Depends on legislation

Joint Committee Guidelines on cross-selling	Q4 2015
MiFID/MIFIR Guidelines	Q4 2015

Packaged Retail and Insurance-based Investment Products (PRIIPs)

Through the Joint Committee of the European Supervisory Authorities, ESMA will work with EBA and EIOPA to prepare draft Regulatory Technical Standards (RTS) under the PRIIPs Regulation. Those RTS will focus on the format and content of the Key Information Document (KID), as well as methodologies for risk and cost disclosures. The Joint Committee will also provide input to the consumer testing exercise to be carried out by the European Commission as a means of providing a deeper factual basis for decisions on the RTS.

RTS on format and content of disclosures in KID for PRIIPs, 15 months after Level 1 text enforcement begins.

MIFID II and MIFIR

Some of the most essential areas for which ESMA must draft RTS are: pre- and post-trade transparency for equity, equity-like and non-equities; determination of what constitutes a “liquid market” for non-equities; trading obligations for derivatives; regulation of algorithmic and high-frequency trading; non-discriminatory access to Central Counterparties (CCPs), trading venues and benchmarks; the definition of “ancillary activity” position reporting and position limits for commodity derivatives; order book data record-keeping obligations of trading venues; transaction data reporting by investment firms; etc.

Investor Protection

Once it has finalized its technical advice to the Commission on the investor protection aspects of the MiFID review in December 2014, ESMA will finalize its draft MiFID II technical standards on additional investor protection and will elaborate guidelines as mandated in MiFID II next year.

The areas requiring more detailed regulation as a result of the MiFID II/MiFIR conduct of business and investor protection standards include:

- Conduct of business rules for investment firms (including independence of investment advice, use of inducements, provision of information on costs and charges, reporting to clients, structuring and offering complex products, cross-selling, and assessment of knowledge and competence), and intervention in the design and distribution of investment products;
- Operational issues and furtherance of cooperation between national competent authorities (including authorization of investment firms, management bodies, and passporting); and

- Organizational requirements (including product governance, complaint handling, safeguarding client assets, recording telephone conversations and electronic communications, and conflicts of interest) and best execution.

KEY DELIVERABLES	DUE DATE
MiFID/MiFIR Draft Regulatory Technical Standards	Q2 2015
MiFID/MiFIR Draft Implementing Technical Standards	Q4 2015
Operational arrangements	Mid 2016

Market Abuse, Short Selling and Securities Financing Transactions

ESMA is tasked by the Market Abuse Regulation (MAR) to produce 15 technical standards to be delivered to the European Commission. Related technical advice must also be delivered in 2015 to the European Commission, if not already finalized this year.

MAR implementation will require ESMA to be involved in developing and drafting third-country Memorandum of Understanding (MoU) templates (e.g., with regulators of spot commodities markets in third countries), as well as negotiating them on behalf of national competent authorities (NCAs). The MoU with the European Agency for the Cooperation of the Energy Regulators (ACER) will also continue to drive on-going work between ESMA and ACER.

ESMA will complete an equivalence assessment of the European Market Abuse regime if it receives a mandate from the Commission based on the Short Selling Regulation and/or other European texts such as the Transparency Directive and MIFID.

ESMA will continue to publish data, monitor markets and carry out emergency procedures under the Short Selling Regulation.

In January 2014, the Commission published its proposal on the reporting and transparency of Securities Financing Transactions (SFT). Publication of the Regulation on the reporting and transparency of SFTs is expected in 2015. According to the Commission proposal, ESMA would be mandated to deliver a number of technical standards primarily related to the transparency of the SFTs, including the registration and supervision of trade repositories.

To ensure timely delivery of the final implementing measures, ESMA will have to conduct extensive preparatory work in the course of 2015, particularly in light of the existing standards established by Article 9 of EMIR.

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KEY DELIVERABLES	DUE DATE
Final report on MAR technical advice (delivery date: 8 months after entry into force of MAR on 2 July 2014)	Q1 2015
Draft MAR technical standards (delivery to EU Commission)	Q2 2015
MoU templates	Q4 2015
Securities Financing Transactions Regulation Discussion or Consultation Paper on technical standards	Q4 2015
Draft MoUs for NCAs	Q4 2015
Market abuse regime equivalence assessment report	Q4 2015

The work of ESMA requires careful attention and comment by all participants in the relevant financial markets.

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