ESMA Publishes Statement on the Impact on the MiFIR Trading Obligation for Shares; the FCA Responds

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On March 19, the European Securities and Markets Authority (ESMA) published a statement on the impact on the Markets in Financial Instruments Regulation (MiFIR) trading obligation for shares (TO) if the United Kingdom left the European Union on March 29 (Brexit) without a withdrawal agreement (no-deal Brexit) and without an equivalence decision for the United Kingdom made by the European Commission.

ESMA recognizes that its approach may lead to an overlap of trading obligations for a number of shares and potentially a greater level of fragmentation of trading if the United Kingdom applies an identical approach. However, in the absence of any clarification by ESMA, this would, by default, lead to the application of the MiFIR TO to shares traded in the remaining 27 Member States of the European Union. ESMA’s approach aims to limit potential market disruption while also ensuring that the MiFIR TO for investment firms is adequately and consistently applied across the European Union.

ESMA’s statement reflects these aspects and contains guidance on the application of the MiFIR TO for shares in a no-deal Brexit scenario. To inform market participants effectively, ESMA has published a public statement on the impact of Brexit on the trading obligations for shares together with a list of instruments that would be subject to the TO for shares. ESMA also highlighted that the guidance provided in the public statement should only apply in the case of a no-deal Brexit occurring on March 29.

On the same date, the UK Financial Conduct Authority (FCA) published its response to ESMA’s statement. In its statement, the FCA stated that it believes that only a “comprehensive and coordinated approach can provide the necessary certainty to market actors,” without which it will not be possible to address the issues of conflicting obligations applying to the same instruments. The FCA also has urged further dialogue with ESMA and other EU authorities on the issue of the on-shoring of EU legislation and the overlap between UK and EU obligations, to minimise the risks of disruption in the interests of orderly markets.

ESMA’s statement is available here and the list of instruments subject to the MiFIR TO for shares is available here.

The FCA’s statement is available here.

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