

Mr Jonathan Faull
Director General
DG Financial Stability, Financial
Services and Capital Markets Union
European Commission
Rue de Spa 2
1000 Brussels
Belgium

Ref: Early legal review of ESMA's draft technical standards

Dear Mr. Faull,

DEAR JONATHAN,

I am writing to you to welcome the preliminary agreement recently reached by services of the European Commission and of ESMA on conducting an early legal review of draft technical standards.

In concrete terms the early review with respect to the legality and legislative consistency of draft technical standards carried out by the European Commission would apply to those draft standards under CSDR, UCITS V Directive, Transparency Directive, MAR and MiFID/MiFIR.

Our joint objective in respect to this exercise is to ensure legally sound final draft technical standards with a concurrent time-saving. Normally, as you know, the Commission's legal review is undertaken once the final draft standards are adopted by ESMA's Board of Supervisors and submitted to the Commission. The new early legal review process would enable the Commission to flag to ESMA any concerns from a legal perspective related to draft technical standards, before their final adoption by the Board of Supervisors, while reducing the risk of any potential lengthy re-approval process that could be triggered by such concerns. As a result, I expect the endorsement process to become more efficient.

In this context let me underline that the early legal review is without prejudice to the independence of the decision-making process at the European Commission and at ESMA. ESMA's Board of Supervisors will remain fully independent when adopting the draft technical standards, as provided for in the ESMA Regulation and respective sectoral legislation. At the same time, the College of Commissioners will retain its discretion regarding the endorsement of the draft TS adopted and submitted by ESMA, as framed under the ESMA Regulation. I would like to stress that the early legal review does not affect in any way the powers entrusted to the European Parliament and the Council towards delegated acts under the Treaty.

According to our current internal planning, thanks to the intense work of its staff and of the NCAs, ESMA is capable of delivering all final draft technical standards within the legal deadlines. However, I take note of the fact that the early legal review by your services will constitute an additional step in the process and in consequence, in some cases, will result in a lengthening of the time period necessary before ESMA can finalise and adopt the draft technical standards. In particular, with regard to a number of technical standards under MAR and MiFID/MiFIR, it will possibly lead to the delayed submission of final draft technical standards to the end of September 2015 (instead of July 2015).

With this in mind, I trust that the Commission will agree to an extension of the deadlines for some of the draft technical standards to allow for an early review by your legal services¹. I believe that the aforementioned early review will help avoid the lengthy re-approval process. Therefore, at this stage, ESMA does not expect that our agreement would result in a delay of the envisaged implementation time of the future delegated acts for market participants and supervisory authorities.

For your convenience I attach a new envisaged timetable for adoption of respective draft technical standards by ESMA's Board of Supervisors.

I look forward to hearing from you.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'S. Maijoor', is written over a horizontal line.

Steven Maijoor

cc: Matthew Baldwin, Head of Cabinet of Commissioner Jonathan Hill, Commissioner for Financial Stability, Financial Services and Capital Markets Union;
Roberto Gualtieri MEP, Chair of the Committee on Economic and Monetary Affairs of the European Parliament;
Janis Reirs, Minister for Finance of the Republic of Latvia;
Uwe Corsepius, Secretary-General of the Council of the European Union;
Andrea Enria, Chairperson of European Banking Authority;
Gabriel Bernardino, Chairperson of the European Insurance and Occupational Pensions Authority.

Attachment: List of draft technical standards with possibly delayed submission

¹ Complete list of draft technical standards with possibly delayed submission is attached to this letter.

Attachment: List of draft technical standards with possibly delayed submission

Draft RTS on the obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing (STP)
Draft RTS on indirect clearing
Draft RTS on transparency requirements in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments and on the trading obligation for investment firms
Draft RTS on transparency requirements in respects of bonds, structured finance products, emission allowances and derivatives
Draft RTS on the double volume cap mechanism and the provision of information for the purposes of transparency and other calculations
Draft RTS on criteria for determining whether derivatives should be subject to the trading obligation (Article 32(6) of MiFIR)
Draft RTS on criteria for determining whether derivatives have a direct, substantial and foreseeable effect within the EU (Article 28(5) of MiFIR)
Draft RTS on organisational requirements of investment firms engaged in algorithmic trading
Draft RTS on organisational requirements of regulated markets, multilateral trading facilities and organised trading facilities
Draft RTS on market making, market making agreements and marking making schemes
Draft RTS on orders to transactions ratio
Draft RTS on co-location and fee structures
Draft RTS on the tick size regime for shares, depositary receipts, exchange traded funds and certificates
Draft RTS on material market in terms of liquidity
Draft RTS on authorisation and organisational requirements for data reporting services providers
Draft RTS on the publication of transactions by APAs and CTPs
Draft RTS on data disaggregation
Draft RTS on identification of the investment firm responsible for making public the volume and price transparency of a transaction
Draft RTS on access in respect of trading venues, central counterparties and benchmarks
Draft RTS on the admission of financial instruments to trading on regulated markets
Draft RTS on suspension and removal of financial instruments from trading
Draft ITS description of MTFs and OTFs
Draft RTS on criteria for establishing when an activity is to be considered to be ancillary to the main business
Draft RTS on methodology for calculating position limits for commodity derivatives traded on trading venues and economically equivalent OTC contracts
Draft RTS on the application of position limit for commodity derivatives traded on trading venues and economically equivalent OTC contracts
Draft ITS on position reporting
Draft RTS on reporting obligations under Article 26 of MiFIR
Draft RTS on obligation to supply financial instrument reference data under Article 27 of MiFIR
Draft RTS on obligation to maintain records of orders under Article 25 of MiFIR
Draft RTS on the requirement to maintain records of orders for firms engaging in high-frequency algorithmic trading techniques
Draft RTS on clock synchronisation
Draft RTS on notifications and the list of financial instruments (Article 4(4) of MAR)

Draft ITS on the timing, format and template of the notifications on financial instruments
Draft RTS for the conditions that buy-back programmes and stabilisation measures must meet, the appropriate arrangements, systems and procedures for disclosing market participants conducting market sounding and the criteria, procedures and requirements for establishing an accepted market practice and for maintaining, terminating and modifying the conditions for its acceptance
Draft ITS on systems and notification templates to be used by disclosing market participants conducting market sounding
Draft RTS on the appropriate arrangements, systems and procedures as well as notification templates to be used for preventing, detecting and reporting abusive practices or suspicious orders or transactions
Draft ITS on the technical means for appropriate public disclosure of inside information and for delaying the public disclosure of inside information, the precise format of insider lists and for updating insider lists, and the format and template for notification and public disclosure of manager's transactions
Draft RTS on the technical arrangements for objective presentation of investment recommendation or other information recommending or suggesting an investment strategy and for disclosure of particular interests or indications of conflicts of interest
RTS under Article 27(10)(a) of MiFID II (Best execution criteria)
RTS under Article 27(10)(b) of MiFID II (Best execution factors)