

## **ESMA : New Q&A available related to MiFID, EMIR and ECSPR**

The European Securities and Markets Authority (ESMA) has released on 21 February 2025 new Questions and Answers (Q&As) providing updates on some key areas related to EMIR (European Market Infrastructure Regulation), MiFID II (Markets in Financial Instruments Directive II) and ECSPR (European Crowdfunding Service Providers for Business).

### **European Market Infrastructure Regulation (EMIR)**

Assessment of significance for the purpose of the Error and Omission Notifications (2441)

Reporting of Settlement Rate Options (2442) ( <https://www.esma.europa.eu/publications-data/questions-answers/2441> ) ( <https://www.esma.europa.eu/publications-data/questions-answers/2442> )

### **European crowdfunding service providers for business (ECSPR)**

Calculation of threshold in point (c) of Article 1(2) of ECSPR (2437) ( <https://www.esma.europa.eu/publications-data/questions-answers/2437> )

Crowdfunding multiple offers (2438) ( <https://www.esma.europa.eu/publications-data/questions-answers/2438> )

### **Markets in Financial Instruments Directive II (MiFID II) - Secondary Markets**

Open interest thresholds in energy derivatives (2439) ( <https://www.esma.europa.eu/publications-data/questions-answers/2439> )

### **Summaries and key elements of the Q&A:**

#### **MiFID II (Q&A No.2439) – Open Interest Thresholds in Energy Derivatives**

ESMA clarifies how to convert open interest thresholds—originally stated in “lots”—into underlying units for energy derivatives, such as Megawatt Hours (MWh), million British Thermal Units (MMBTU), or therms. The approach relies on using monthly contracts as a baseline, each representing one lot. For base load power, 1 lot = 720 MWh, and for peak load power, 1 lot = 264 MWh. For example, the 10,000-lot threshold translates to 7,200,000 MWh for base load power or 2,640,000 MWh for peak load power.

ESMA also details how to convert MWh into MMBTU and subsequently into therms, illustrating the practical application of these thresholds. Notably, this Q&A expands the existing guidance on position limits to also cover position reporting, but it does not alter the established methodology.

#### **European Crowdfunding Service Providers for Business (ECSPR)**

##### **Calculation of the Threshold in Point (c) of Article 1(2) of ECSPR (Q&A No. 2437)**

Under the ECSPR, crowdfunding offers are capped at an aggregated maximum of EUR 5 million over a 12-month period, which includes:

1. All offers of transferable securities or admitted instruments conducted via a crowdfunding platform.
2. All crowdfunding loans conducted via a platform.
3. Any other “small offers” of transferable securities that fall under prospectus exemptions (Article 1(3) or Article 3(2) of Regulation (EU) 2017/1129).

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### **Crowdfunding Multiple Offers (Q&A No. 2438)**

This Q&A clarifies whether a project owner can seek funding for the same project through a crowdfunding offer and a separate public offer of transferable securities.

The ECSPR does not prohibit raising funds via multiple channels (e.g., crowdfunding and a standard public offer). However, only those “small offers” of securities (exempted from publishing a prospectus under Article 1(3) or Article 3(2) of Regulation (EU) 2017/1129) within the last 12 months count toward the ECSPR’s EUR 5 million threshold. Offers concluded more than 12 months before, or offers conducted after the new crowdfunding offer, are excluded from this threshold calculation.

### **European Market Infrastructure Regulation (EMIR)**

#### **Assessment of Significance for Error and Omission Notifications (Q&A No. 2441)**

Under EMIR, counterparties must notify relevant authorities if they discover significant errors or omissions in their reported data.

#### **Key Points:**

1 - ESMA specifies how to conduct the “significance assessment” referred to in Articles 9(1)(a) and 9(1)(c) of Commission Delegated Regulation (EU) 2022/1860 (the ITS on reporting under EMIR REFIT).

2 - The “NumOfAffReports” and the “Average Monthly Number of Submissions” should be calculated separately for each category (e.g., Category 1).

3 - The data set covers the 12 months prior to the notification. Where feasible, data before EMIR REFIT’s 29 April 2024 applicability date should be included.

#### **Reporting of Settlement Rate Options (Q&A No. 2442)**

This Q&A explains how to report foreign-exchange (FX) derivatives under EMIR, particularly non-deliverable forwards (NDFs) or non-deliverable options (NDOs) linked to an underlying benchmark.

#### **Key Points:**

- Filers must report using both currency-derivative fields and benchmark-related fields, as appropriate. For base details, Field 2.11 (Asset Class) should be “CURR” for currency derivatives.

- If an underlying benchmark is involved, Field 2.13 (Underlying identification type) should be “X,” and Field 2.14 (Underlying identification) should capture the ISIN if available.

- Field 2.16 (Name of underlying index) must include the full name of the index provided by its publisher.