

CSA Staff Notice 21-321

Markets in Financial Instruments Directive (MiFID II) – Share Trading Obligation and its Application to Canadian Securities

December 21, 2017

In June 2014, the Parliament and the Council of the European Union adopted the MiFID II and the Markets in Financial Instruments (**MiFIR**). Within MiFIR, article 23(1) introduces a trading obligation for shares that would require European Union (**EU**) investment firms to ensure that the trades they undertake in shares take place on regulated markets, multilateral trading facilities, systematic internalisers, or third-country trading venues (together, **trading venues**) that have been assessed by the European Commission (**EC**) as equivalent (**Share Trading Obligation**). The Share Trading Obligation will come into force on January 3rd, 2018.

During 2017, the staff (**we**) of the Canadian Securities Administrators have been working closely with the EC to determine the applicability of the Share Trading Obligation to equity marketplaces in Canada.

Guidance from the European Securities and Markets Authority (**ESMA**) provides that “the absence of an equivalence decision taken with respect of a particular third country’s trading venues indicates that the [European] Commission has currently no evidence that the EU trading in shares admitted to trading in that third country’s regulated markets can be considered as systematic, regular and frequent”, and therefore does not trigger the Share Trading Obligation.

We have been advised by the EC that, based on the volumes of Canadian equity securities currently traded on EU trading venues, Canadian securities do not meet the threshold in the ESMA guidance (i.e. that trading is not considered to be systematic, regular and frequent) and therefore the Share Trading Obligation is not triggered. As a result, after January 3, 2018, the status quo will remain and EU investment firms can continue to trade in all Canadian equity securities as is currently the case.

Questions

If you have any questions about this notice, please contact any of the following CSA staff:

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