



2016/0033(COD)

2.3.2016

AMENDMENT

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Draft report
Markus Ferber
(PE576.962v01-00)

on the proposal for a directive of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments as regards certain dates

Proposal for a directive
(COM(2016)0056 – C8-0026/2016 – 2016/0033(COD))

Amendment 2

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Proposal for a directive

Article 1 – point -1 (new)

Directive 2014/65/EU

Article 2 – paragraph 1 – point d – point ii

Text proposed by the Commission

Amendment

(-1) Point (d)(ii) of Article 2(1) is replaced by the following:

‘are either members of or participants in a regulated market or an MTF, on the one hand, or have direct electronic access to a trading venue, on the other hand, and in either case are engaging in a high-frequency algorithmic trading strategy on such a trading venue;’.

Or. en

Justification

In its current form the exemption for trading on own account is qualified and cannot be used if you are a direct member of a trading platform. The original purpose of this qualifier was to ensure that HFT firms that operated on own account would be brought into scope of the regulation, even when they did not fulfil all of the conditions for operating an algorithmic high frequency trading strategy.

The unintended consequence of this for non-financial entities is that companies that hedge their currency risk using FX products that are bought on trading platforms would, inadvertently be classified as MiFID firms if they continue to use these transparent platforms.

They would then be classified as financial firms for EMIR and fall under the Capital Requirements Directive.

In order for these firms to continue to use this type of platform the exemption should be amended to clarify that the exception to the own-account exemption is limited to high frequency trading firms, meaning that real economy companies that otherwise qualify for the “dealing on own account” exemption continue to be able to hedge risks on own account.

As this exemption does not apply to commodity derivatives or any firm that also provides any other investment services the ancillary activities exemption would still capture any firm that was conducting other financial activities.

