

Market Watch

Newsletter on market conduct and transaction reporting issues

November 2017

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You can also find issues on our website at: www.fca.org.uk/firms/markets/market-abuse

Legal Entity Identifier (LEI) – less than 60 days to go!

Directly subject to the reporting requirements?

Firms with transaction reporting obligations must make sure they have a LEI and keep it updated. Firms with transaction reporting obligations are: investment firms authorised under MiFID, credit institutions authorised under CRD IV, operators of a trading venue or a UK branch of a third country investment firm. Firms with transaction reporting obligations are also required to include eligible clients' LEIs in transaction reports, when trading on their behalf. We have produced a leaflet¹ which executing firms can use in their communications with clients.

Not directly subject to the reporting requirements?

If you are a client who is a legal entity or structure, including a company charity or trust, you will need to make arrangements to obtain an LEI code if you want your executing firm to continue to act on your instructions or make a decision to trade on your behalf from 3 January 2018.

Please visit the FCA webpage² for more details, including ESMA's briefing³ on LEIs.

¹ www.fca.org.uk/sites/default/files/legal-entity-identifiers.pdf

² www.fca.org.uk/markets/mifid-ii/legal-entity-identifier-lei-update

³ www.esma.europa.eu/sites/default/files/library/esma70-145-238_lei_briefing_note.pdf

Access to the ESMA instrument reference data

To help firms prepare for 3 January 2018, ESMA has now published details of its reference data files, together with instructions on how to access and download full and delta reference files from their website – ESMA instrument reference data.⁴ The publication also identifies financial instruments in scope for MAR.

Please note that ESMA states that it cannot take any responsibility for this information being complete, accurate or up to date.

FCA Transitional Arrangements

On 12 January 2018, we are decommissioning our MiFID I transaction reporting system, ZEN. We will use our new FCA Market Data Processor (MDP) IT system to meet the new transaction reporting requirements under MiFIR which apply from 3 January 2018. Below we set out our approach to MiFID I transaction reporting obligations after the cut-over to MiFIR.

In PS17/5⁵ we confirmed our approach to the MiFIR legislation under the SUP Transitional Provisions (TP 9).⁶ Despite the repeal of MiFID I and consequential deletion of current SUP 17, SUP TP 9 has the effect of clarifying that firms' MiFID I transaction reporting obligations continue until they achieve effective compliance. We are also addressing questions raised in the consultation (CP15/43) about remediation after 3 January 2018 of incorrect or missing reports for transactions executed before 3 January 2018.

Transitional arrangements MiFID I transactions for the period 3 – 12 January 2018

If, between 3 to 12 January, you have MiFID I transactions that require amendments or cancellations then you should continue to notify us using the *online errors and notification form*.⁷ You can also use entities that were approved reporting mechanisms under MiFID I, and that will continue to offer the service of submitting MiFID I format transaction reports post MiFIR, to submit these amendments or cancellations. We will still provide technical support for your MiFID I submissions during this period and strongly advise firms to submit any MiFID I corrections during this time. You should not use the MiFIR format to submit corrections or amendments of MiFID I transactions during this period.

Firms should use this period to make any necessary corrections, as after this time you will no longer be able to use entities that were approved reporting mechanisms under MiFID I for your MiFID I transaction reports. You must continue to use the MiFID I *online errors and notifications form*⁸ to inform us of any potential breach of your MiFID I obligation. Firms may also find it helpful to use and refer to the Transaction

4 www.esma.europa.eu/sites/default/files/library/esma65-8-5014_firds_-_instructions_for_download_of_full_and_delta_reference_files.pdf

5 www.fca.org.uk/publication/policy/ps17-05.pdf

6 www.handbook.fca.org.uk/handbook/SUP/TP/9/9.html?date=2018-01-03&timeline=True

7 www.fca.org.uk/publication/forms/transaction-reporting-errors-form.docx

8 www.fca.org.uk/publication/forms/transaction-reporting-errors-form.docx

Reporting User Pack (TRUP) version 3.1 (Feb 2015)⁹ to make any MiFID I corrections or submissions that they should have reported previously.

Where a firm has already notified and scheduled their back reporting¹⁰ activity with us, they should continue as per the already agreed schedule.

Arrangements for back reporting of MiFID I transactions after 12 January 2018

Firms must continue to notify us about their remediation activity and subsequent back reporting requirements using the *online errors and notification form*¹¹ on the FCA website. You should use this form to provide as much information as possible about the nature and root cause of the issue and the final volume of transaction reports affected.

We will give firms more information about correcting or submitting for the first time, transaction reports in due course.

Frequently asked questions (FAQs):

Q1: Why does the FCA still require us to back report MiFID I transaction reports?

Answer

Transaction reports are a key tool we use to detect suspected instances of market abuse, so it is important that we have complete and accurate data. Back reporting helps our surveillance activities.

Q2: What should we do once we go live with MiFIR reporting but have to make an amendment /cancellation to a transaction report and the trade date is 2 January 2018 or earlier?

Answer

Firms can make amendments to their MiFID I transaction reports up until 12 January 2018. You can liaise with entities that were approved reporting mechanisms under MiFID I, and that will continue to offer the service of submitting MiFID I format transaction reports post MiFIR to help your activity and submission process.

⁹ www.fca.org.uk/publication/finalised-guidance/fg15-03.pdf

¹⁰ Back reporting is the term we use to describe the process whereby firms with MiFID I transaction reporting obligations either correct erroneous transaction reports or submit for the first time transaction reports that they should have previously reported.

¹¹ www.fca.org.uk/publication/forms/transaction-reporting-errors-form.docx

Q3: What should we do if our remediation activity to fix a MiFID I issue is due to complete from 12 January 2018 and we have back reporting to complete following the remediation?

Answer

Firms must continue to notify us about their remediation activity and subsequent back reporting using the *online errors and notification form*¹² on the FCA website. The form should be used to give us as much information as possible about the nature and root cause of the issue and the final volume of transaction reports affected. We will then provide firms with additional information about correcting or submitting first time transaction reports to meet any back reporting requirements.

Q4: How many years do I have to back report?

Answer

The MiFID I requirement is to keep data for 5 years. This means the maximum period your MiFID I corrections and or new submissions should cover is five years from the date you notified the FCA.

Q5: Can we continue to submit new transaction reports under the current mechanism for transactions undertaken on/after 3 January 2018?

Answer

You must submit all reportable transactions executed on or after 3 January 2018 to the FCA Market Data Processor (MDP) in MiFIR format. We cannot accept any other format. You must submit transaction reports with a trade date of 2 January 2018 and earlier in MiFID I format up until 12 January 2018. Thereafter, you must continue to notify us if you have identified any issues that affect your MiFID I transaction reports. We will provide additional information on how to submit this data to us.

Should an operator of a trading venue report transactions executed through its systems by a UK branch of a third country firm?

No.

Operators of trading venues obliged to report under article 26(5) MiFIR should know that SUP 17A.1.2 G clarifies that GEN 2.2.22AR has the effect of requiring third country investment firms with a UK branch to comply with the transaction reporting requirements in article 26 of MiFIR and the Commission Delegated Regulation

¹² www.fca.org.uk/publication/forms/transaction-reporting-errors-form.docx

(EU) 2017/590 as though they were caught by the article 26 MiFIR requirements. Therefore, as we will receive transaction reports from these firms as if they were MiFID investment firms, operators of trading venues should not report transactions on behalf of these persons. This will avoid us receiving duplicate reports which would give a misleading impression of these firms' trading activity.

Under article 26(5) of Regulation (EU) 600/2014 (MiFIR) the operator of a trading venue has to 'report details of transactions in financial instruments traded on its platform which are executed through its systems by a firm which is not subject to this Regulation in accordance with paragraphs 1 and 3.'

Requiring operators of trading venues to report on behalf of a firm which is not subject to MiFIR enables us to have visibility of transactions that we would not otherwise have.

For transactions by firms that are MiFID investment firms to which MiFIR applies, trading venues should not report under Article 26(5) as these firms are subject to transaction reporting under Article 26 of MiFIR.

An operator of a trading venue should find out from each of its member firms whether the firm has to meet transaction reporting obligations under Article 26. If the firm has these obligations, the operator of the trading venue should not report on behalf of this firm under Article 26(5). If the firm does not have these obligations, the operator of the trading venue should report on behalf of the firm under Article 26(5).

Conversely, if you are a UK branch of a third country firm you should make the trading venue aware of the fact that you are a UK branch of a third country firm and so will be transaction reporting to us.

MiFID II and market data obligations

As mentioned in Market Watch 53¹³, we have developed a new Market Data Reporting (MDP) system. This will enable us to manage the large changes in the volumes and range of market data types that entities need to submit to us to meet the new market data reporting obligations under MiFID II and MiFIR from 3 January 2018.

We have now made the MDP Industry Test Environment (ITE) available. Entities who want to demonstrate they conform with our technical specification and on-board to the MDP system can use the ITE to do so. The MDP on-boarding process and timelines are available on our website.¹⁴

We strongly encourage any entity that wants to submit data to the MDP system and has not yet started the MDP on-boarding process to do so now. Depending on the entity's on-boarding requirements, MDP conformance testing can take between 6-8 weeks. If an entity has not started testing **now** we cannot guarantee that they will be able to demonstrate conformance with our technical specification and so be able to submit data to the MDP production environment from 3 January 2018.

Entities should submit a complete application by paying the MDP on-boarding fees

¹³ www.fca.org.uk/publication/newsletters/market-watch-53.pdf

¹⁴ www.fca.org.uk/markets/market-data-regimes/market-data-reporting-mdp

and by providing a valid Market Identifier Code (MIC) (if applicable) and full IP address details. Please refer to the *MDP on-boarding form - Notes*¹⁵ for help with completing the application form.

We encourage those entities that have already submitted an MDP on-boarding application form and have received their conformance test packs to complete and submit both the technical test pack and soft test pack to us by **17 November 2017**. This will enable us to determine whether the tests have been completed satisfactorily. Following this, you will then be able to undertake connectivity testing to the MDP production environment and, if successful, you will be able to submit data to the MDP production environment from 3 January 2018.

Authorisations and variation of permissions for MiFID II

Any firm which needs new permissions under MiFID II and has not submitted a complete application needs to take immediate action. Given that firms can only carry out MiFID II activities for which they have the appropriate regulatory permissions, firms will need to include contingency planning for the event that new permissions are not in place by 3 January 2018.

If you have not yet applied at all, you urgently need to submit an application with all the information we require. You may find it helpful to consult legal or compliance professionals familiar with the MiFID II regime and our expectations of authorisation applications to ensure your application is complete.

If you have already sent an application and we have subsequently been in contact to tell you that it is not complete, you need to provide the missing information as soon as possible. Without this, we cannot assess your application.

¹⁵ www.fca.org.uk/publication/forms/mdp-on-boarding-application-form-notes.pdf