

Market Watch

Newsletter on market conduct and transaction reporting issues

December 2017

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

Transaction reporting at the block or allocation level

An investment firm’s transaction report must reflect the transaction from your own perspective and, unless it meets the transmission conditions under Article 4 of Commission Delegated Regulation (EU) 2017/590, should not look forwards or backwards in a chain but report its immediate counterparty or client. This applies even if your immediate counterparty or client is not subject to MiFIR.

The transaction reports of an investment firm in a chain should accurately reflect the elements of the execution that have been confirmed as an execution by your immediate counterparty.

Whether you transaction report at the block or allocation level depends on what your immediate counterparty confirms as executions. If your immediate counterparty confirms the block as the execution you should report the block. If each allocation or market execution is confirmed to you as an execution, then you should also report each allocation or market execution.

Applicable Legislation

On 10 October 2016, ESMA published the Guidelines of Transaction Reporting, order record keeping and clock synchronisation under MiFID II ('the Guidelines'). ESMA published an updated version¹ on 8 August 2017, which corrected some unintended factual mistakes, typos and inconsistencies in the technical part of the Guidelines.

¹ www.esma.europa.eu/sites/default/files/library/2016-1452_guidelines_mifid_ii_transaction_reporting.pdf

The official translations of the Guidelines were published on 2 October 2017.

From 3 January 2018, the existing MiFID I, SUP 17 of the FCA Handbook and the FCA's Transaction Reporting User Pack (TRUP) version 3.1 (Feb 2015) will no longer apply.

In relation to transaction reporting, order record keeping for trading venues and clock synchronisation the following provisions will apply from 3 January 2018:

- Markets in Financial Instrument Directive 2014/65/EU (MiFID)²
- Markets in Financial Instruments Regulation (EU) No 600/2014 (MiFIR)³
- Regulatory Standards for transaction reporting⁴
- MAR Market Conduct (MAR 9.5)⁵
- The Guidelines on transaction reporting, order record keeping and clock synchronisation⁶
- ESMA Questions and Answers on MiFIR data reporting⁷
- SUP 17A of the FCA Handbook⁸
- SUP Transitional Provisions (TP 9)⁹

Market participants must follow the schema validation¹⁰, reporting instructions¹¹ and the transaction reporting validations¹²:

Please note, there is a transitional provision (SUP Transitional Provisions (TP 9)) that will continue to apply the provisions under MiFID I to transactions that took place prior to 3 January 2018 and the provisions in SUP 17 and TRUP will apply in respect of transactions executed before 3 January 2018.

2 <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0065&from=EN>

3 <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0600&qid=1473947823581&from=en>

4 <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0590&from=EN>

5 <https://www.handbook.fca.org.uk/handbook/MAR/9/5.html>

6 www.esma.europa.eu/sites/default/files/library/2016-1452_guidelines_mifid_ii_transaction_reporting.pdf

7 https://www.esma.europa.eu/file/21278/download?token=7gCWzi_l

8 <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0590&from=EN>

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

10 www.esma.europa.eu/sites/default/files/library/2016-1521_annex_2_mifir_transaction_reporting_iso20022_xml_schemas.zip

11 www.esma.europa.eu/sites/default/files/library/2016-1521_mifir_transaction_reporting_technical_reporting_instructions.pdf

12 www.esma.europa.eu/sites/default/files/library/2016-1521_annex_1_mifir_transaction_reporting_validation_rules.xlsx

DRSP Supervision Forms

Under MiFID II, we are required to supervise Data Reporting Service Providers (DRSPs). This includes ongoing monitoring that DRSPs comply at all times with the conditions for initial authorisation established under Title V of MiFID II.

A DRSP is required to notify us of issues that may affect its compliance with the conditions of its initial authorisation and other notifications. These notifications form the basis of our supervisory forms described below and are on our website¹³.

Name of form	Purpose of the form
Yearly Notification form	DRSP wishes to notify us of its ongoing compliance with Title V of MiFID II and the information provided at the time of authorisation and afterwards.
Ad hoc notification form	DRSP wishes to notify us about matters required by the regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services providers ¹⁴ . This includes: <ul style="list-style-type: none"> • breaches in physical and electronic security measures • service interruptions or connection disruptions • in respect of ARMs, errors or omissions in the transaction report caused by the ARM
Material Change in information form	DRSP wishes to notify us before implementation of a material change in the information provided at the time of authorisation and afterwards. This includes: <ul style="list-style-type: none"> • planned significant changes to a DRSP's IT system • information relating to the outsourcing of any critical function For ARMs this includes use of data centres outside the EEA.
Cancellation of authorisation form	DRSP wishes to cancel its data reporting services authorisation in accordance with Regulation 11(1) (b) of the Data Reporting Services Regulations 2017. The form can also be used, to cease provision of all data reporting services.
Variation of authorisation form	DRSP wishes to provide one or more additional data reporting service, or remove one or more data reporting services, where at least one data reporting service will continue to be provided in accordance with Regulation 12(1) of the Data Reporting Services Regulations 2017.
Change of management body form	DRSP wishes to make changes to members of its management body. It must submit to us the ESMA form Annex III of the technical standards for the standard forms, templates and procedures for the authorisation of data reporting services providers and related notifications.

¹³ www.fca.org.uk/markets/mifid-ii/data-reporting-services-providers

¹⁴ <https://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-3201-EN-F1-1.PDF>

Transitional arrangement REMINDER – transaction reporting on T+1

Investment firms have an obligation to transaction report as quickly as possible and not later than the close of the working day following the day that the transaction took place (T+1).

If you choose to submit your MiFID I transaction reports with a trade date of 2 January 2018 on 3 January 2018, then you are reminded to check that your ARM will still submit your MiFID I transaction reports to us.

If your ARM can't submit your MiFID I transaction reports with a trade date of 2 January 2018 on 3 January 2018, then you will need to make other arrangements to fulfil your obligations. As outlined in Market Watch 54¹⁵, this also applies to any amendments or cancellations that you have to make to your MiFID I transaction reports for the period 3 – 12 January 2018.

15 www.fca.org.uk/publication/newsletters/market-watch-54.pdf

Application of the Market Abuse Regulation to Emission Allowance Market Participants

From January 2018, emission allowance market participants (EAMPs) will be brought within the scope of the Market Abuse Regulation (MAR) by MiFID II. EAMPs who meet certain thresholds will need to disclose inside information on emission allowances that they hold. Commission Delegated Regulation (EU) 2016/522, which supplements MAR, sets the thresholds at 6 million tonnes of carbon dioxide equivalent per year or a rated thermal input of 2,430 MW. EAMPs who meet this threshold will also need to file notifications of delayed disclosure of inside information.

Persons discharging managerial responsibilities (PDMRs) within EAMPs and within parties involved in relevant auctions must file notifications with the FCA when the reportable threshold in Article 19 of MAR is met. Our expectations of EAMPs for these filing obligations are given below. For further help, please contact us.

Delayed disclosure of inside information - notifying

Under MAR, inside information must be announced as soon as possible and may be delayed only if certain conditions are met. From January 2018, where an EAMP has delayed the disclosure of inside information in accordance with MAR Article 17, the EAMP must notify the FCA of the delay immediately after the disclosure of this information. To notify us, use our existing online form for issuers, which will be updated soon for EAMPs. The [form](#), together with a [guide](#) to completing it, is on our website.

As explained in PS16/13 Implementation of the Market Abuse Regulation, EAMPs should only provide a written explanation of why the disclosure of inside information was delayed if we request it.

Persons discharging managerial responsibilities (PDMRs) – notifying transactions

PDMRs within EAMPs and within parties involved in relevant auctions and persons closely associated with them, are required under MAR Article 19, to notify the EAMPs or the parties involved in relevant auctions and the FCA of transactions conducted on their own account relating to emission allowances, auction products based on them, or derivatives related to them, if the total amount of transactions per calendar year has reached EUR 5,000. Such notification shall be made promptly and no later than 3 business days after the transaction. Please notify us using our existing online form for issuers and EAMPs. The [form](#), together with a [guide](#) to completing it, is on our website.