

04 August 2021

Circular on Markets in Financial Instruments Directive ('MiFID II') and Markets in Financial Instruments Regulation ('MiFIR')

MiFID II/MiFIR post-trade transparency obligations and third-country trading venues

This circular is being addressed to investment firms, credit institutions providing investment services and/or performing investment activities and market operators including any trading venues they operate.

This circular shall be read in conjunction with [MiFID II](#) and [MiFIR](#), the delegated regulations and previous circulars issued by the Authority.

Purpose of the Circular

The Authority would like to inform market participants that on the 28 July 2020, the European Securities and Markets Authority ('ESMA') has published its [Opinion on Determining third-country trading venues for the purpose of transparency under MiFID II/MiFIR](#).

The purpose of this document is to ensure that the post-trade transparency requirements in Articles 20 and 21 of MiFIR are achieved. It provides guidance on the treatment of those transactions, in particular, on those third-country trading venues that are subject to transparency provisions that are similar to the post-trade transparency requirements applicable to EU trading venues (as set out in Articles 6(1) and 10(1) of MiFIR).

ESMA's Opinion is targeted at preventing the development of inconsistent supervisory practices across CAs, whilst enhancing supervisory convergence and strengthen the legal certainty required for the application of MiFID II/MiFIR.

Transparency Obligation

ESMA is of the opinion that requiring investment firms to publish transactions concluded on third-country trading venues (subject to transparency provisions similar to those applicable to EU trading venues under the MiFID II/MiFIR framework) does not contribute to the achievement of the transparency objectives set out in MiFIR. Accordingly, such duplicate transparency reports are not likely to add value for EU financial markets and may provide misleading information to the EU public. Finally, ESMA takes into consideration that duplicate transparency reporting is also likely to increase EU investment firms' compliance costs and to harm the level playing field with non-EU firms.

Consequently, ESMA considers that for the purposes of Articles 20 and 21 of MiFIR EU investment firms should not be required to publish information about transactions concluded on the above-mentioned trading venues through APAs. In this context, ESMA is aware that the correct application

of the post-trade transparency requirements would require the identification of third-country trading venues, which are subject to similar post-trade transparency requirements as EU trading venues.

In view of the above and in order to ensure legal certainty and a high degree of supervisory convergence in the EU, ESMA published, and regularly updates, an [Annex](#) containing a list of trading venues that meet the criteria for the consistent application of the post-trade transparency requirements set out in MiFIR. In this respect, the Annex has been updated on 29 July 2021

Contacts

Any queries or requests for clarifications on the contents of this Circular should be addressed to the Authority via email on MarketInfrastructures@mfsa.mt.