

02 February 2023

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

### *Monitoring the Quality of Transaction Reports received under Article 26 of MiFIR*

This circular is being addressed to investment firms, credit institutions providing investment services and/or performing investment activities, Approved Reporting Mechanisms ('ARMs') and market operators including any trading venues they operate.

This circular shall be read in conjunction with Directive 2014/65/EU ('[MiFID II](#)') and Regulation (EU) 648/2012 ('[MiFIR](#)'), the ESMA MiFIR Validation Rules, the delegated regulations and previous circulars issued by the Authority.

### **Purpose of the Circular**

During the course of 2021 and 2022, as part of the Authority's supervisory work, the MFSA performed a number of supervisory checks to assess the industry's adherence to the requirements of MiFID II and MiFIR. The scope of this circular is to specifically address matters relating to the Transaction Reporting obligation as described under Article 26 of MiFIR. As you are aware, the basic reporting obligation under MiFIR specifies that transactions in financial instruments must be reported in a complete and accurate manner, to the respective competent authority as quickly as possible, and no later than the close of the following working day.

This circular also introduces the new template that is required to be used when notifying the MFSA of any errors, omissions or failures with respect to the reporting obligation.<sup>1</sup>

If you are unfamiliar with the reporting fields, kindly cross-reference with Table 2 of Annex I of Commission Delegated Regulation (EU) 2017/590 ('RTS 22').

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<sup>1</sup> Article 15(2) of [Commission Delegated Regulation \(EU\) 2017/590](#)

**Compliance Meetings as part of the Monitoring Campaign**

Having stakeholders strive for the highest level of transaction reporting quality is important to all national competent authorities. Reliable and timely data is a critical tool for regulatory authorities, because it not only enables the efficient supervision of markets to ensure that they are functioning in a fair and orderly manner, but it also allows authorities to assess financial stability.

The scope under Article 1(2) of MiFIR explains that the obligation to report transactions in financial instruments to the MFSA applies to investment firms, authorised under MiFID II and credit institutions authorised under Directive 2013/36/EU of the European Parliament and of the Council when providing investment services and/or performing investment activities (together referred to hereunder as 'Investment Firms').

As introduced above, during the last two years the MFSA conducted a series of thematic supervisory meetings as part of the data completeness and quality enhancement campaigns. This also ties up with day-to-day desk-based supervision performed by the Authority, which also includes standardised quality tests developed together with other national competent authorities and ESMA.

Some areas of focus have been summarised below:

- Accuracy, Completeness and Timeliness of reporting

The Authority would like to take this opportunity to remind Investment Firms that, in terms of Article 26 of MiFIR, regardless of the mechanism chosen to report transactions, they must take reasonable steps to verify the accuracy, timeliness and completeness of reports which are submitted on their behalf. The MFSA also recommends that Investment Firms also have access to the feedback files generated by the Authority in order to be able to solve any problems that may arise. This access to the relevant data is important because as a general principle, Investment Firms have responsibility for the completeness, accuracy and timely submission of the reports which are submitted to the competent authority.

In this context, it should be noted that Article 15 of RTS 22 requires that the methods and arrangements by which transaction reports are generated and submitted by Investment Firms shall include among others:

- mechanisms for identifying errors and omissions within transaction reports;
- precautionary measures to enable the timely resumption of reporting in the case of a failure of the reporting system; and
- mechanisms for identifying unreported transactions.

Notwithstanding the above, the MFSA reminds Investment Firms that the periodic reconciliation of their transaction reports with front office records is a requirement in Article 15(3) of RTS 22.

It was noticed that only a limited number of Investment Firms were contacted. In this respect, the MFSA noticed that in some instances, it took Investment Firms a long time to compare the data made available to them by the MFSA with their own databases. In this context, the Authority would like to recommend that Investment Firms best ensure that they follow-up their transaction reports and that, as a way forward, Investment Firms are better equipped to respond to the MFSA's requests within swift timeframes.

The Authority would like to point out that it is not best practice for Investment Firms to assume that a transaction report was submitted in its most accurate form merely because it was accepted in the Authority's transaction reporting system. One might wish to note that the validation rules under MiFIR validate the syntax of the whole file and specific transaction reports.

In this respect Investment Firms are kindly requested to ensure that their systems are in compliance with the points raised above as well as with those listed in the upcoming sections of this circular. Should an Investment Firm notice that its reporting system does not meet the suggested recommendations within this circular, it would be best to remediate such concerns at the earliest as technically practicable.

- *The Trading Venue Transaction Identification Code*

The Trading Venue Transaction Identification Code ('TVTIC') is an individual transaction identification code generated by trading venues for each transaction resulting from the full or partial execution of an order as specified in field 48 of Table 2 of the Annex of the Commission Delegated Regulation (EU) 2017/580, and disseminated to both the buying and the selling parties in accordance with Article 12 of the Commission Delegated Regulation (EU) 2017/580.

As part of the MFSA's analysis, it was verified firstly whether the reporting entity citing the particular trading venue as an execution venue is indeed a member of that market, and secondly whether the TVTIC reported by the entity in question was in line with the TVTIC structure as set up by that specific trading venue.

During the supervisory meetings held with Investment Firms, the MFSA identified 2 main inconsistencies in relation to field 3:

- This field not being populated when field 36 is populated with a MIC pertaining to a EEA Trading Venue; and
- The same TVTIC being used in relation to different transaction reports.

In this respect, only direct market facing entities are required to quote the MIC Code of the execution venue in field 36. As regards the TVTIC, Investment Firms should use the codes as transmitted by the trading venues in question or respect the logic of creation of the codes as communicated by the trading venue in order to report TVTICs that comply with the methodology applied by that trading venue.

## ▪ Trading Capacity

As set out in RTS 22, there are three different trading capacities that may be reported: 'dealing on own account', 'matched principal' and 'any other capacity'. The reported trading capacity should reflect the capacity in which the Investment Firm traded and should be consistent with the rest of the information in the Investment Firm's transaction report.

In particular:

- Where an Investment Firm is 'dealing on own account' (DEAL), field 4 of the report should contain the LEI (identification code) of the Investment Firm executing the transaction, and the same Investment Firm should also be reported as either the buyer or the seller.
- Where an Investment Firm is 'dealing on own account' or on a 'matched principal trading capacity', field 25 'Transmission of order indicator' is expected to be populated with 'false'.

## ▪ Late Reporting

Pursuant to Article 26(1) of MiFIR, Investment Firms are required to submit transaction reports to the MFSA as soon as possible and no later than the close of the working day following the transaction execution day.

Considering that MiFID II and MiFIR have been applicable since 3 January 2018, by now the Authority expects all IT systems required to submit such transaction reports to be well developed and there should no longer be issues to meet the T+1 submission deadline.

The MFSA plans to review this specific point on a regular basis and expects Investment Firms to be fully compliant with this legal requirement.

## ▪ Trades Executed under Nominee Accounts

As explained in the [MFSA's circular dated 22 December 2017](#) the purpose of transaction reporting is to provide competent authorities with full transparency as to how a specific transaction was executed.

May we kindly remind the industry to refer once again to paragraph 5.8 of Part II of the [ESMA Guidelines on transaction reporting, order record keeping and clock synchronisation under MiFID II \(ESMA/2016/1452\)](#). Competent Authorities are interested in the underlying client for market abuse purposes rather than the owner of the legal title. Therefore, where there is a movement that results in a change in ownership for a client, the client should be reported as the buyer/seller as appropriate rather than any custodian/nominee that may hold the legal title. Hence, the transaction report would need to contain the details of the underlying client.

During the Authority's day-to-day supervisory checks, it was noticed that there were a number of potentially missing disclosures when it comes to the identification of underlying clients.

The Authority would like to reiterate the importance of having a fully disclosed set of information to satisfy regulatory expectations.

### **Way Forward**

The MFSA asks all Investment Firms to review without delay their systems and assess their level of compliance with MiFID II and MiFIR. This includes, but is not limited to, thorough checks on the points raised above.

Should an Investment Firm notice that its reporting system or the level of reports submitted to the Authority do not comply with the expectations to fully comply with MiFIR, such Investment Firms are required to rectify their position at the earliest. Should any technical difficulties be encountered, it is strongly recommended to communicate with the MFSA to try to seek remedial action in the most appropriate manner.

Investment Firms should note that in order to continuously enhance the quality of transaction reports submitted to the MFSA, the Authority will continue to perform desk-based quality tests. However, the industry should be minded that expectations by the Authority are now that Investment Firms should have proper controls and checks to ensure timely, complete and accurate report submissions to the Authority, particularly on the specific points listed above.

In view of the fact that MiFIR has been into force since 2018, and taking into consideration substantial exchange of bilateral correspondence between the Authority and Investment Firms regarding their reporting obligations, as well as a number of supervisory meetings held with several Investment Firms and the various MFSA Circulars issued to the industry, the Authority expects stakeholders to be fully compliant with the applicable requirements contained under MiFIR.

Specifically, but not exclusively, the MFSA expects Investment Firms to be fully compliant with the requirements of Article 26 of MiFIR, thus ensuring timely, accurate and complete reporting of the details of transactions in financial instruments concluded and of any modification or cancellation.

Failure to submit timely, accurate and complete transaction reports is in breach of Article 26 of MiFIR and could in turn warrant regulatory action.

## Contacts

If an Investment Firm identifies errors in its transaction reports or fails to submit some or all its transaction reports a notification should be emailed to: [TransactionReporting@mfsa.mt](mailto:TransactionReporting@mfsa.mt).

In order to standardise the abovementioned notifications relating to errors, the MFSA will, upon request, provide Investment Firms with a specific notification form.

Investments Firms are required to notify MFSA prior to when they:

- will cancel erroneous reports and not resubmit them;
- will cancel erroneous reports and resubmit them;
- omitted to submit reports in due time (T+1);
- wish to resubmit it after T+1 after a report was rejected; or
- will not resubmit it after a transaction report was rejected.

Notification should be made as soon as the problem has been detected and Investment Firms should not wait for the resolution and correction of the problems detected before informing the MFSA.