

MEMO# 32782

September 25, 2020

ESMA Consultation on MiFIR Transaction Reporting

[32782]

September 25, 2020 TO: Derivatives Markets Advisory Committee
Equity Markets Advisory Committee
Global Advocacy Coordination Advisory Committee
ICI Global Regulated Funds Committee
ICI Global Trading & Markets Committee RE: ESMA Consultation on MiFIR Transaction Reporting

On 24 September 2020, the European Securities and Markets Authority (ESMA) published[\[1\]](#) a consultation[\[2\]](#) (“the consultation”) on MiFIR transaction reporting.[\[3\]](#) ESMA is seeking responses to the consultation by 20 November 2020. The aspects of the consultation that are of greatest relevance to regulated funds and their managers are summarised below. ICI Global is seeking member input as to whether to respond to a certain question in the consultation concerning the submission of transaction reports by UCITS Management Companies and AIFMs.

Background

The consultation covers various aspects of the MiFIR transaction reporting regime. ESMA intends to use input from the consultation to inform the report it is required to submit to the European Commission on the functioning of the MiFIR transaction reporting regime and its interaction with related European Market Infrastructure Regulation (EMIR) reporting obligations.[\[4\]](#) In the consultation ESMA discusses various aspects of MiFIR transaction reporting, including the supply of financial instrument reference data and its interaction with the MAR regime.[\[5\]](#)

UCITS Management Companies and AIFMs

In the consultation, ESMA notes that the scope of the transaction reporting obligations in MiFIR does not include UCITS Management Companies and AIFMs (collectively “ManCos”).[\[6\]](#) ESMA recalls that the UCITS[\[7\]](#) and AIFM Directives[\[8\]](#) both enable ManCos to be authorised to perform MiFID “like” services which may trigger the execution of a transaction, such as portfolio management and receipt and transmission of orders. ESMA highlights that although ManCos are subject to some MiFID provisions when providing these MiFID “like” services, these provisions do not include the transaction reporting requirements in MiFIR. ESMA notes that ManCos executing transactions on a MiFID trading venue (TV) will be reported by that TV under its obligation to report transactions on behalf

of entities that are not subject to MiFIR.^[9] The transaction reports submitted by the TV will contain various information about the transaction but may not include details of the decision-maker that is making the decision to buy or sell the financial instrument concerned or information about transactions executed off venue.

In order to ensure data completeness for market abuse investigations and to ensure a level playing field for market participants, ESMA proposes to subject ManCos to MiFIR reporting requirements when they are providing MiFID like services. ESMA suggest this should be achieved through amendments to the relevant MiFID provisions, inline with the recommendation in its letter to the European Commission on the review of the AIFMD.^[10] ESMA suggests that its proposal has the following merits:

- it ensures a level playing field among firms providing the same type of services as MiFID investment firms;
- it provides national competent authorities (NCAs) with the complete set of information needed to conduct their monitoring of trading activity on the trading venues, namely the information about the investment decision for trades involving ManCos;
- it provides NCAs with the relevant information needed to conduct their monitoring of the trading activity of these firms that is taking place off-venue; and
- it allows NCAs to compare the information about on-venue transactions involving these firms with the information about off-venue transactions involving the same firms.

In the consultation, ESMA poses following question on which it is seeking feedback:

Do you foresee any challenges for UCITS management companies and AIF managers in providing transaction reports to NCAs? If yes, please explain and provide alternative proposals.

We welcome member input on this question and ESMA's proposals to determine whether we should respond to the consultation.

Next Steps

ESMA is seeking responses to the consultation by 20 November 2020. ESMA will use the input it receives to the consultation when reporting on the functioning of the MiFIR transaction reporting regime and related matters to the European Commission.

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ICI Global

endnotes

^[1] ESMA Press Release: ESMA Consults on MiFID Reference Data and Transaction Reporting, 24 September 2020, *available from* <https://www.esma.europa.eu/press-news/esma-news/esma-consults-mifir-reference-data-and-transaction-reporting>

- [2] ESMA Consultation Paper: MiFIR review report on the obligations to report transactions and reference data, 24 September 2020, *available from* https://www.esma.europa.eu/sites/default/files/library/esma74-362-773_mifid_ii_mifir_review_report.pdf
- [3] Article 26, Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, *available from* <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0600>
- [4] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade, *available from* <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012R0648>
- [5] Article 4, Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse, *available from* <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014R0596>
- [6] Article 26(1), MiFIR
- [7] Article 6(3), UCITS Directive
- [8] Article 6(4), AIFMD
- [9] Article 26(5), MiFIR
- [10] Section 3, letter from Steven Maijor to Valdis Dombrovskis, RE: Review of the Alternative Investment Fund Managers Directive, 18 August 2020, *available from* https://www.esma.europa.eu/sites/default/files/library/esma34-32-551_esma_letter_on_aifmd_review.pdf