

# The Practical Implications of MiFID II: Reporting and Records - Additional Obligations

by **Adrian Mulryan, Garry Wynne**

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This article considers the changes to reporting and record-keeping being introduced by MiFID II for investment firms.

(An introductory article on the practical implications of MiFID II is available [here](#).)

## 1. Reporting

MiFIR contains detailed provisions regarding the reporting of transactions to the national competent authorities (NCAs) of the various EU Member States.

Under MiFID I, reports to NCAs were only required for financial instruments admitted to trading on a regulated market. However, MiFIR significantly increases the reporting obligation, and requires further categories of financial instruments be reported. The reporting obligation under MiFIR will apply to:

- financial instruments admitted to trading on a trading venue or for which a request for admission to trading has been made;
- financial instruments where the underlying is a financial instrument traded on a trading venue; and
- financial instruments where the underlying is an index or a basket composed of financial instruments traded on a trading venue.

MiFIR expects investment firms executing transactions to report complete and accurate details of the transactions to the relevant NCA as soon as possible, with a deadline of close of business on the following working day.

MiFIR has allowed for the Regulatory Technical Standards (RTS), being developed by the European Securities and Markets Authority (ESMA) to provide further information on areas including, data standards and formats, what constitutes a transaction and the categories of financial instruments to be reported.

## 2. Delegation of reporting responsibility

Either the investment firm or the trading venue through whose system the transaction was completed can submit the required reports to the relevant NCA. It is worth noting that an investment firm's reporting obligations under MiFID II can be outsourced to a third party firm that is also authorised under MiFID II. This entity is referred to as an approved reporting mechanism (ARM). ARMs will provide the service of reporting details of transactions to NCAs or to ESMA on behalf of investment firms. Where a firm has delegated the reporting obligations, it remains responsible for ensuring transaction reports are submitted correctly and on time, except where the failure to report is directly attributable to the trading venue or the ARM. The entity with the reporting obligation must enter into a written agreement with the ARM to document the delegation of the reporting responsibility.

### **3. What will be contained in the reports to NCAs under MiFID II?**

As noted above, the relevant RTS provides further information on the content of reports required under MiFID II. However MiFIR lists a number of items which must be included in the reports to NCAs including:

- The name, numbers and quantity of financial instruments bought or sold.
- The dates and times of execution.
- The transaction prices.
- A designation to identify the clients on whose behalf the investment firm has executed the transaction. This will be by way of a legal entity identifier (LEI).
- A designation to identify the persons and the computer algorithms within the investment firm responsible for the investment decision and execution of the transaction.
- A designation to identify the applicable waiver under which the trade has taken place and means of identifying the investment firms concerned.
- A designation to identify a short sale.

### **4. Overlap of reporting under the European Markets Infrastructure Regulation (EMIR)**

Under EMIR, transactions must be reported to a Trade Repository (TR), an entity that centrally collects and maintains records of derivative transactions. Where a transaction is reported to a TR by an investment firm or an ARM in accordance with reporting obligations under EMIR, this will also satisfy the reporting requirements under MiFID II, provided the TR transmits this information to the NCA. This is dependent on the TR being approved as an ARM under MiFID II and the TR also agreeing to send the information to the NCA, within the requisite time limits.

If there is an error in a report submitted to the NCA, the investment firm, ARM or trading venue must correct the information and submit a corrected report to the NCA.

### **5. Reports to clients**

MiFID II has increased the level of reporting that must be provided to clients over and above MiFID I. Generally, MiFID II states that firms should act honestly, professionally and in the client's best interests at all times. Professional clients will be entitled to the same level of reporting as retail clients.

MiFID firms will now have to issue a report to clients every quarter in respect of portfolio management and holdings. The portfolio management report should give a fair and balanced view of the portfolio's performance and any activity undertaken in the quarter. Firms will be obliged to report to clients where the overall value of the client's portfolio drops by 10% in any reporting period.

### **6. Record-keeping**

There is a requirement for all investment firms to keep a record of all transactions in financial instruments carried out, on their own account or on behalf of clients, for a period of five years. This five year period can be extended to seven years on request of a Member State NCA.

Records should be kept in a manner that would allow the NCA to review the firm's regulatory compliance and take enforcement action if necessary. Records should be kept in a medium that is readily accessible and allows the NCA to see the stages of a transaction. The form of the records should not be capable of manipulation.

There is a further onus under MiFID II for MiFID firms to record telephone conversations, electronic communications and face-to-face meetings when receiving a client order or dealing on its own account. Specifically, the firm must electronically or telephonically record conversations in relation to:

- reception and transmission of orders;
- execution of orders on behalf of clients; and
- dealing on own account.

Clients must be informed that recording is taking place. File records of meetings and telephonic and electronic records should be sufficient to establish the terms of any order and also must be kept for a period of five years.

## **Next steps**

Investment firms should begin a review of their systems in order to carry out any upgrades that may be required ahead of MiFID II entry into force in January 2018. This may involve a review of current reporting arrangements, how reports to NCAs are made and a review of whether the firm has the ability to record telephonic conversations. MiFID entities should be aware of the costs associated with upgrading their internal systems in an effort at ensuring compliance with MiFID II. This could involve an investment in IT or a possible arrangement with an ARM.

**If you would like further information on MiFID II and how it may affect your business, please contact a member of the Financial Services team.**

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