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Briefing note

ESMA Q&A on MiFID II and MiFIR transparency topics published by ESMA on 5 April 2017

The European Securities and Markets Authority (ESMA) has published a Q&A on 5 April 2017 providing further guidance on MiFID II and MiFIR transparency topics. Below is a summary of key points on the post-trade reporting obligation. Further details on technical reporting requirements (eg use of flags, security identifiers) as well as previous updates are included in the Q&A.

Post-trade reporting: Reporting obligation, back-to-back trades and outsourced reporting [Question 3]

Reporting obligation to APA:

- MiFIR requires investment firms to make public, through an APA, post-trade information in relation to financial instruments traded on a trading venue. **When a transaction is executed between an investment firm and a client of the firm that is not an investment firm, the obligation rests only on the investment firm.**
- However, when a transaction is executed between two MiFID investment firms outside the rules of a trading venue, Article 12(4) of RTS 1 and Article 7(5) of RTS 2 clarify that **only the investment firm that sells the financial instrument concerned makes the transaction public trough an APA.**
- In addition, according to Article 12(5) of RTS 1 and Article 7(6) of RTS 2 **if only one of the investment firms is a systematic internaliser** in the given financial instrument and it is **acting as the buying firm**, **only that firm should make the transaction public trough an APA.**

Trade #	Buyer	Seller	Investment Firm (IF) that reports to APA
1	Investment Firm **A**	*Client of* Investment Firm A	Investment Firm **A**
2	*Client of* Investment Firm A	Investment Firm **A**	Investment Firm **A**
3	Investment Firm A	Investment Firm **B**	Investment Firm **B**
4	Systematic Internaliser **A**	Investment Firm B	Systematic Internaliser **A**
5	Investment Firm A	*Client of* Investment Firm **B** (Investment Firm B on behalf of a client)	Investment Firm **B**

Back-to-back trades:

- According to Article 12(6) of RTS 1 and Article7(7) of RTS 2 two **matching trades** entered at the **same time** and for the **same price** with a **single party interposed** should be **published as a single transaction**.
- Following the general rule, **the seller should report the transaction**. The party that interposes its own account should not report the trade, **except if the seller is not an investment firm**. The following table clarifies who is in charge of making the transaction public through an APA:

<table>
<tr><th>Case</th><th>Trade #</th><th>Amount</th><th>Price</th><th>Buyer</th><th>Seller</th><th>Investment Firm that reports to APA</th></tr>
<tr><td rowspan="3">1</td><td>1</td><td>500</td><td>20</td><td>Investment Firm A</td><td>Investment Firm B</td><td>Investment Firm B</td></tr>
<tr><td>2</td><td>500</td><td>20</td><td>Investment Firm C</td><td>Investment Firm A</td><td>Not reported</td></tr>
<tr><td colspan="6">Investment Firm A is interposing its own account with no difference in price.
Trade 1 and 2 should be reported as a single transaction by Investment Firm B.</td></tr>
<tr><td rowspan="3">2</td><td>1</td><td>500</td><td>20</td><td>Investment Firm A</td><td>Client of Investment Firm A</td><td>Investment Firm A</td></tr>
<tr><td>2</td><td>500</td><td>20</td><td>Client of Investment Firm A</td><td>Investment Firm A</td><td>Not reported</td></tr>
<tr><td colspan="6">Investment Firm A is interposing its own account with no difference in price.
Trade 1 and 2 should be reported as a single trade by Investment Firm A.</td></tr>
<tr><td rowspan="3">3</td><td>1</td><td>500</td><td>20</td><td>Investment Firm A</td><td>Investment Firm B</td><td>Investment Firm B</td></tr>
<tr><td>2</td><td>500</td><td>21</td><td>Investment Firm C</td><td>Investment Firm A</td><td>Investment Firm A</td></tr>
<tr><td colspan="6">The price in trade 1 and 2 is not the same. The conditions for a matched trade are therefore not met and both transactions should be reported by the seller.</td></tr>
</table>

- There are cases where the determination of the seller needs to be clarified, notably with regard to derivatives. For the purposes of reporting the transaction to an APA the seller should be the same as specified in field 16 of Table 2 of Annex I of RTS 22. See p. 18-19 of the ESMA Q&A.

Outsourced post-trade reporting:

- Yes, the investment firm can outsource the reporting of OTC transactions to an APA to a third party. However, **the investment firm will remain fully responsible** for discharging its obligations under MiFID II/MiFIR.
- Moreover, in case of outsourcing the reporting of OTC transactions to a third party, **the investment firm has to ensure that the third party informs the APA of the transparency regime** applicable to the investment firm subject to the reporting obligation. This ensures that the APA is in a position to make the transaction public using the respective transparency regime.

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