

**Circular on Directive 2014/65/EU on Markets in Financial Instruments
(‘MiFID II’) and Regulation 600/2014 on Markets in Financial Instruments
(‘MiFIR’)**

Transaction Reporting – The position from a Collective Investment Schemes view point

Background

Article 2 (1) (f) of Directive 2004/39/EC on Markets in Financial Instruments (‘MiFID I’) explicitly states that MiFID I shall not apply to “*collective investment undertakings and pension funds whether coordinated at Community level or not and the depositaries and managers of such undertakings*”. It is also pertinent to note that whilst Article 6(6) of the AIFMD and Article 6(4) of the UCITS Directive render applicable certain provisions¹ of MiFID with regards to the provision of services referred to in Article 6(3) of the UCITS Directive and Article 6(4) of the AIFMD respectively, these provisions do not include Transaction Reporting.

With the coming into force of MiFID II, as per Article 92 of MiFID II, references to MiFID I or to Directive 93/22/EEC on investment services in the securities field (‘the Investment Services Directive’) are to be construed as references to MiFID II or MiFIR and shall be read in accordance with the correlation table set out in Annex IV of MiFID II. Therefore references to MiFID I articles have to be read as references to the corresponding MiFID II provisions. Putting it differently, MiFID II did not change the position set out in the opening paragraph above.

Way Forward

In view of the above, and as shall be detailed hereunder, Article 26 of MiFIR (transaction reporting obligations) does **not** apply to Managers of Collective Investment Undertakings:

1. Article 6(6) of the AIFMD and Article 6(4) of the UCITS Directive do not specifically refer to the transaction reporting requirements under Article 26 of MiFIR; and
2. Even though the reporting obligation does not apply to Managers of Collective Investment Undertakings, please note that under Article 26(5) of MiFIR, trading venues are obliged to report on behalf of other members or participants that are not subject to

¹ Both the AIFMD and the UCITS Directive make reference to Article 2(2) and Articles 12, 13 and 19 of Directive 2004/39/EC (MiFID I)

MiFIR transaction reporting obligations. This is also coupled with the fact that in terms of Article 26(1) of MiFIR the obligation to report transactions rests on the investment firm executing the transactions in financial instruments. Once a company places its order with an executing broker, the transaction reporting obligation rests on the broker.

It is emphasised that the above interpretation may be subject to change in view of national and European developments.

Contacts

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