

# MFSA

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## MALTA FINANCIAL SERVICES AUTHORITY

### CIRCULAR ON MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE ('MiFID II') AND MARKETS IN FINANCIAL INSTRUMENTS REGULATIONS ('MiFIR')

#### *TRANSACTION REPORTING*

## 1. Background

On the 26<sup>th</sup> October 2017 the Malta Financial Services Authority ('MFSA' or 'the Authority') held a seminar to the industry on MiFID II and MiFIR. The seminar provided an overview of the legislative requirements and guidance on specific issues which market participants had with respect to the new legislation which enters into force on the 3<sup>rd</sup> January 2018. During the seminar the industry raised a number of queries relating to the transaction reporting requirement. Through this circular, the MFSA would like to provide further analysis on some queries which were raised during the seminar.

Market participants are advised that Article 26 of [MiFIR](#) specifically deals with the obligation to report transactions. Transaction Reports are required to be made available to the Authority either by the reporting entity itself, or by making use of an ARM acting on their behalf or the trading venue through which systems the transaction was completed, as per Article 26(7) of MiFIR.

Parties subject to this obligation are required to report complete and accurate details of transactions to the Authority as quickly as possible, and not later than the close of the following working day. Article 26 of MiFIR further goes on to explain the details required to be included in a transaction report. Additionally, [Commission Delegated Regulation \(EU\) 2017/590](#) (henceforth referred to as RTS 22) offers additional detailed explanations on the reporting of transactions as required under Article 26 of MiFIR.

## 2. Reporting of Transactions – Contents and Timeline

Table 2 of Annex I of RTS 22 provides a detailed breakdown on the content of all individual fields required to be reported. The MFSA will be replicating such fields in its Transaction Reporting Exchange Mechanism ('TREM'). The aforementioned table can be accessed by following this [link](#).

In light of the above, the Authority will apply a three-phased approach to adopt TREM:

### Phase 1 – Registration

All entities which will be submitting transaction reports are required to register to gain access to TREM. The MFSA is kindly requesting entities to complete and submit the following [registration form](#) to [TransactionReporting@mfsa.com.mt](mailto:TransactionReporting@mfsa.com.mt) at the earliest convenience and **ideally by not later than 10<sup>th</sup> November, 2017**.

### Phase 2 – Connectivity Testing

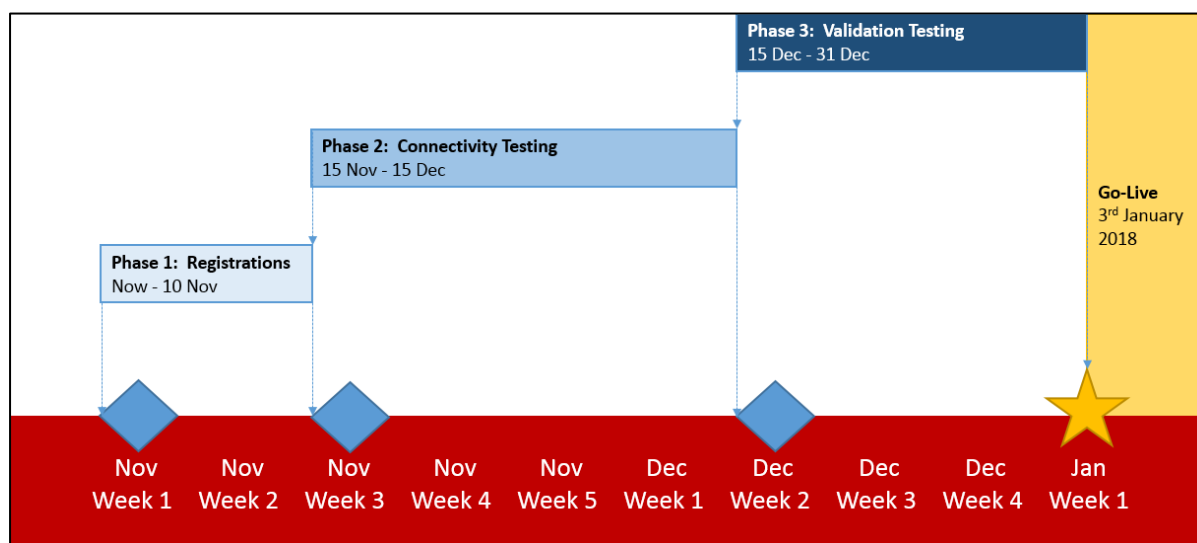
Entities registered for TREM would then be able to test their connectivity with the Authority in mid-November. Entities will at this point test connectivity to the Authority’s SFTP with the credentials that the MFSA had previously provided. Such a date and additional technical specifications will be communicated directly by the Authority to the registered entities in due course.

### Phase 3 – Validation Testing

Following the connectivity testing, the Authority will be ready to receive transaction reports for validation testing in mid-December. In phase 3 entities will be able to submit compressed files containing an XML file based on the MIFIR XSD schema which will be parsed and validated. The compressed file should not exceed 30MB. Feedback will be provided for every file submitted.

As previously explained in the Authority’s [circular dated 17<sup>th</sup> January 2017](#), entities are reminded that the MiFIR transaction reporting validation table is available through this [link](#). The document provides a comprehensive description of all validation rules that are required to be applied, and includes rules related to:

- (i) The format of the specific fields,
- (ii) Whether a field is mandatory,
- (iii) Dependencies among different fields, and
- (iv) The content of fields.



*Diagram 1: Transaction Reporting Timeline*

### 3. Transaction Reporting for Collective Investment Schemes

Market participants are reminded of the position which the Authority has taken regarding transaction reporting from the view point of Collective Investment Schemes. Article 26 of MiFIR **does not** apply to Managers of Collective Investment Schemes, as per the details hereunder:

- (i) Article 6(6) of the AIFMD and Article 6(4) of the UCITS Directive do not specifically refer to transaction reporting requirements under Article 26 of MiFIR; and
- (ii) Even though the reporting obligation does not apply to Managers of Collective Investment Undertakings, it is to be noted that under Article 26(5) of MiFIR, trading venues are required to report on behalf of other members or participants that are not subject to 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.

The Authority has issued a circular on 13<sup>th</sup> October 2017 on the subject, titled '*Transaction Reporting – The position from a Collective Investment Schemes view point*'. The circular may be accessed through the following [link](#). It is emphasised that the above interpretation may be subject to change in view of European developments.

### 4. Legal Entity Identifier

On the [9<sup>th</sup> August 2016, the Authority issued a circular](#) on the legal entity identifier ('LEI'), which is a unique identifier consisting of a 20-character alpha-numeric code, which allows for the identification of legally independent entities across global financial markets. Market participants are reminded that the use of the LEI is already required or recommended under a number of European regulations, such as the European Markets Infrastructure Regulation ('EMIR'), the Capital Requirements Regulation ('CRR'), and the Central Securities Depositories Regulation ('CSDR').

LEIs are required under MiFID II and MiFIR. In the Authority's [circular dated 22<sup>nd</sup> December 2016](#), the MFSA had already made reference to ESMA's Q&As on MiFIR data reporting which amongst others provides explanations on LEIs. The latest version of the aforementioned Q&A can be accessed by following this [link](#).

By way of examples, market participants such as the ones outlined hereunder are required to enter their LEI code when filling in the MiFIR transaction report, as per the validation table mentioned above:

- (i) Executing entity identification code. An entity which is deemed to have executed a transaction is one that performs any of the following services or activities that result in a transaction, as outlined in RTS 22 Article 3(1):

- a. Reception and transmission of orders in relation to one or more financial instruments;
  - b. Execution of orders on behalf of clients;
  - c. Dealing on own account;
  - d. Making an investment decision in accordance with a discretionary mandate given by a client; or
  - e. Transfer of financial instruments to or from accounts.
- (ii) Submitting entity identification code. The LEI is required to be used to identify the entity submitting the transaction report to the Authority in accordance with Article 26(7) of MiFIR.
- a. When the report is submitted by the executing firm directly to the Authority, it is required to be populated with the LEI of the executing firm (where the executing firm is a legal entity).
  - b. When the report is submitted by a trading venue, it is required to be populated with the LEI of the operator of the trading venue.
  - c. When the report is submitted by an ARM, it is required to be populated with the LEI of the ARM.
- (iii) Transmitting firm identification code for the buyer. An investment firm (transmitting firm) is deemed to have transmitted an order pursuant to Article 26(4) of MiFIR only if the following conditions are met:
- a. The order was received from its client or results from its decision to acquire or dispose of a specific financial instrument in accordance with a discretionary mandate provided to it by one or more clients;
  - b. The transmitting firm has transmitted the information referred to in RTS 22 Article 4(2) (order details) to another investment firm (receiving firm); and
  - c. The receiving firm is subject to Article 26(1) of MiFIR and agrees either to report the transaction resulting from the order concerned or to transmit the order details to another investment firm. The agreement is required to specify the timing for the provision of the order details by the transmitting firm to the receiving firm and provide confirmation that the receiving firm will validate the order details received for obvious errors and omissions before submitting a transaction report.
- (iv) Transmitting firm identification code for the seller. As per conditions relating to the firm identification code for the buyer above.

Market participants may apply for an LEI code through any of the Local Operating Units ('LOUs') which are endorsed by the Regulatory Oversight Committee. More information on how to obtain a LEI code, as well as the list of endorsed LOUs can be found through the following [link](#).

It should also be noted that ESMA has issued [Guidelines on Transaction reporting, order record keeping and clock synchronisation under MiFID II](#). These guidelines clearly state that entities eligible for LEIs should be identified with a LEI pursuant to MiFIR Article 26(6) and Article 5 of RTS 22. Furthermore, the ESMA Guidelines also state that these entities include

partnerships, societies, associations and individuals acting in a business capacity. With regards to 'individuals acting in a business capacity' it is highlighted that the Guidelines make reference to an [LEI ROC statement](#) on eligibility for individuals acting in a business capacity. The Guidelines also make reference to Article 6 of RTS 22 which specifies that a natural person should be identified with the national identifier listed in Annex II of the same RTS.

### **Contacts**

Should you have any queries on the above, please do not hesitate to contact the Authority on [TransactionReporting@mfsa.com.mt](mailto:TransactionReporting@mfsa.com.mt) for any further clarifications.

**Communications Unit**  
**Malta Financial Services Authority**  
**3<sup>rd</sup> November 2017**