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Additional Information

Level 1 Regulation
Market Abuse Regulation (MAR) Regulation (EU) No 596/2014 - Market Intergrity

Topic
Prevention and detection of market abuse, including STORs

Subject Matter
Persons professionally arranging or executing transactions

Question
Does the obligation to detect and report market abuse under Article 16(2) of MAR apply to investment firms under MiFID only or do UCITS management companies, AIFMD managers or firms professionally engaged in trading on own account also fall within the scope of that obligation?

ESMA Answer

15-11-2022

Original language

[ESMA70-145-111 MAR Q&A 6.1]

The definition of “person professionally arranging or executing transactions” laid down in point (28) of Article 3(1) of MAR is activity based, does not cross refer to definitions under MiFID and is independent from the latter, leading thus to consider that the scope of Article 16(2) of MAR is not only limited to firms or entities providing investment services under MiFID.

In the absence of any reference in the definition that would limit the scope and exclude particular categories of persons regulated by other financial European legislation, ESMA considers that the obligation to detect and identify market abuse or attempted market abuse under Article 16(2) of MAR applies broadly, and “persons professionally arranging or executing transactions” thus includes buy side firms, such as investment management firms (AIFs and UCITS managers), firms professionally engaged in trading on own account (proprietary traders) and investment firms providing direct electronic access (DEA providers) with respect to their DEA clients’ trading activity.

Non-financial firms that, in addition to the production of goods and/or services, trade on own account in financial instruments as part of their business activities (e.g. industrial companies for hedging purposes) can be considered firms professionally arranging or executing transactions in financial instruments under Article 16(2) of MAR. The fact that they have staff or a structure dedicated to systematically deal on own account, such as a trading desk, or that they execute their own orders directly on a trading venue as defined under MiFID II, are indicators to consider a non-financial firm as a person professionally arranging or executing transactions.

It is reminded that detecting and reporting suspicious orders and transactions under Article 16(2) of MAR should be applied by “persons professionally arranging or executing transactions” through the implementation of arrangements, systems and procedures