

Submission Date

07/07/2017

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Additional Information

Level 1 Regulation

Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU- Secondary Markets

Topic

Position reporting

Subject Matter

Position reporting

Question

How does ESMA propose to address the breaches of applicable non-EU laws and regulations regarding data protection and bank secrecy which may potentially arise from the reporting of client and end client positions?

ESMA Answer

07-07-2017

Original language

[ESMA 70-872942901-36 Commodity derivatives Q&A, Q&A 4.10]

Article 58(2) of MiFID II requires investment firms trading in commodity derivatives to provide to the relevant competent authority a complete breakdown of their positions as well as those of their clients and the clients of those clients until the end-client is reached. ITS 4 provides a template for such reporting. Position holders are to be identified in the same way as for transaction reporting purposes. Legal persons are identified by their LEI. For non-EU position holders that are natural persons, the identifier with the highest priority is the passport number, the second priority being a unique CONCAT code combining nationality, first name and surname of the position holder.

The requirement to identify clients and clients of clients until the end client in position reports cannot be waived. Therefore, where an investment firm would be dealing with or on behalf of clients or clients of clients that cannot be identified in position reporting because of legal, regulatory or contractual impediments, that investment firm would not be deemed compliant with its obligations under Article 58(2) of MiFID II.