

Submission Date

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Additional Information

Level 1 Regulation

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

Level 2 Regulation

Regulation 2017/589 - RTS specifying the organisational requirements for investment firms (RTS 6)

Level 3 Regulation

ESMA70-872942901-38 - Q&A on MiFID II and MiFIR market structures topics

Topic

Direct Electronic Access and algorithmic trading

Subject Matter

Replay functionality of surveillance systems

Question

Are firms required to store market data in order to fulfil the requirements contained in Article 13(7) of RTS 6 regarding the replay functionality of surveillance systems?

ESMA Answer

03-04-2017

Original language

[ESMA 70-872942901-38 MiFID II MiFIR market structures Q&A, Q&A 3.10]

Under Article 13(1) of RTS 6, investment firms engaged in algorithmic trading are obliged to have in place monitoring systems capable of generating operable alerts to indicate potential market abuse. To that end, firms have to take into account not only their own message, order flow and transaction records but also information from other sources (trading venues, brokers, clearing members, CCPs, data providers, relevant business partners and so forth) which constitute not only the input used to generate messages but also the context of the trading activity.

Under Article 13 of RTS 6 there is no obligation to store internally all the information from other sources as long as it is possible to retrieve that information to operate the replay function.

Those operable alerts may lead to the submission to the national competent authority of a Suspicious Transaction or Order Report (STOR) under the Market Abuse Regulation (MAR) [\[1\]](#). In particular, Article 5(3) of Commission Delegated Regulation (EU) 2016/957 [\[2\]](#) prescribes that the information submitted as part of a STOR has to be based on facts and analysis, taking into account all information available to them. Additionally, there is an obligation to maintain for a period of five years the information documenting the analysis carried out with regard to orders and transactions that could constitute market abuse which

have been examined and the reasons for submitting or not submitting a STOR. That information shall be provided to the competent authority upon request (Article 3(8) of Commission Delegated Regulation (EU) 2016/957).

[1] Regulation (EU) 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1–61)

[2] Commission Delegated Regulation (EU) 2016/957 of 9 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the appropriate arrangements, systems and procedures as well as notification templates to be used for preventing, detecting and reporting abusive practices or suspicious orders or transactions (OJ L 160, 17.6.2016, p. 1–14).