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Additional Information

Level 1 Regulation
Markets in Financial Instruments Regulation (MiFIR) Regulation (EU) No 600/2014- MDP

Topic
ESMA70-1861941480-56 Questions and Answers on MiFIR reporting

Subject Matter
Defined List of Instruments

Question
How should operators of trading venue(s) report instrument reference data in accordance with Article 2 of RTS 23 and related MAR RTS and ITS in cases where they operate on the basis of a defined list of instruments?

ESMA Answer

08-04-2019

Original language

[ESMA 70-1861941480-56 MiFIR data reporting Q&A, Q&A 23.1]

(Please note that, for ease of reference, RTS have been numbered in accordance with the numbering used in the package sent by ESMA to the Commission in September 2015 (ESMA/2015/1464). Readers are nevertheless invited to consult the Commission and European Parliament websites for updated versions of those RTS.)

(Commission Delegated Regulation (EU) 2016/909 of 1 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the content of notifications to be submitted to competent authorities and the compilation, publication and maintenance of the list of notifications. Commission Implementing Regulation (EU) 2016/378 of 11 March 2016 laying down implementing technical standards with regard to the timing, format and template of the submission of notifications to competent authorities according to Regulation (EU) No 596/2014 of the European Parliament and of the Council.)

MiFIR article 27 on the provision of reference data states that operators of trading venues shall provide competent authorities with reference data "*with regard to financial instruments admitted to trading on regulated markets or traded on MTFs or OTFs".* According to MiFIR Article 27, the concept of *"traded"* applies to MTFs, OTFs and SIs. Article 2 of RTS 23 states that the concept of "traded" *"includes"*, but is not limited to, cases "*where orders or quotes are placed*". This provision should be read in combination with the further explanations given by ESMA in the Consultation Paper and subsequent Final Report related to RTS 23, which describe the rationale and the considerations behind this requirement.

As already clarified by ESMA in the Final Report, the operators that do not work with a defined list of instruments should submit reference data where orders or quotes are placed or the first trade occurs***[1]***. This clarification should be read in conjunction with the previously

published Consultation Paper, which stated in more detail that *"reference data submissions by a given trading venue for a given financial instrument will be triggered from the moment trading commences on that financial instrument in that particular trading venue.* This means that each day an operator is open for trading, it should submit reference data only if an order or quote is placed in the instrument between 18:00 CET on the previous day and 18:00 CET on that day[2]. If the following day there is no order/quote, then the operator should not report reference data.

Therefore, with respect to operators of trading venues that do work with a defined list of financial instruments, ESMA has clarified that "*the obligation to supply reference data will be triggered from the moment of admission to trading or from the moment of the inclusion of the financial instrument in the list"**[3]**.* These trading venues should provide instrument reference data for all these instruments regardless of whether an order or quote was placed on the instrument or a trade occurred on a given day. The concept of "defined list" applies to all cases where the relevant div pertaining to the financial instrument concerned referred to in Table 3 of the Annex to RTS 23 are definable before the start of the trading day. This is generally the case for securities (including but not limited to equities and bonds), however, it is not necessarily the case for derivative instruments.

It should be noted that the two regimes described in the second and third paragraph above apply to each individual TV/SI depending on the specific business model of the TV/SI. This means that if a TV operates on the basis of a defined list, such TV should always submit reference data in accordance with the third paragraph of this answer, the placement of an order on the instrument does not *per se* change the nature of the TV's business model.

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[1] Section 7.2, paragraph 11, p. 380 of the Final Report on draft Regulatory and Implementing Technical Standards MiFID II/MiFIR (ESMA/2015/1464), published on 28 September 2015 on ESMA website: https://www.esma.europa.eu/sites/default/files/library/2015/11/2015-esma-1464_-_final_report_-_draft_rts_and_its_on_mifid_ii_and_mifir.pdf

[2] As explained in section 2.3.1, page 11-12 of FIRDS reporting instructions on ESMA website: https://www.esma.europa.eu/sites/default/files/library/esma65-11-1193_firds_reference_data_reporting_instructions_v2.0.pdf

[3] Section 8.6, paragraph 18, p. 633 of the Consultation Report on MiFID II/MiFIR (ESMA/2014/1570) published on 19 December 2014 on ESMA website: https://www.esma.europa.eu/sites/default/files/library/2015/11/2014-1570_cp_mifid_ii.pdf