



2022 Thematic Review: STOR Obligations of IFMs

GENERAL FINDINGS AND
OBSERVATIONS

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Introductory Remarks

1. In 2022, the CSSF launched a thematic review on the STOR obligations of Investment Fund Managers (IFMs) under Article 16 (2) of the [Market Abuse Regulation](#) (MAR). The phrase “STOR obligations” refers to the obligation to establish and maintain effective controls to detect and report potential instances of insider dealing or market manipulation to the CSSF via a Suspicious Transaction and Order Report (STOR). In this context, a self-assessment questionnaire was sent to a sample of six IFMs selected based on the size of their assets under management. All reviewed IFMs hold authorisations to manage UCITS and AIFs under the [UCI Law](#) and the [AIFM Law](#) respectively. Most of them further hold authorisations to provide the additional investment services referred to in Article 101 (3) of the UCI Law and Article 5 (4) of the AIF Law (the “MiFID Services”).
2. The review is part of the measures taken by the CSSF following the finding made in 2019 in the [ESMA Peer Review on STORs](#) that national competent authorities, including the CSSF, need to engage more with asset managers when it comes to their STOR obligations. Other CSSF measures included awareness raising at several industry events and on-site inspections at Luxembourg-based IFMs.
3. Before setting out the general findings and observations of the thematic review, it may be worth reminding that MAR is relevant to the activities of IFMs in at least three important respects:
 - First, the prohibition of insider dealing and of unlawful disclosure of inside information¹ and the prohibition of market manipulation² apply in all cases in which an IFM invests in financial instruments that are in scope of MAR.³ It follows that IFMs, their managers and employees (like any other person) must not engage or attempt to engage in insider dealing or market manipulation under the threat of administrative or criminal sanctions;

¹ See Article 14 MAR.

² See Article 15 MAR.

³ See Article 2 MAR.

- Second, there are IFMs that manage or administer so-called 'listed funds', i.e. investment funds that have issued financial instruments for which admission to trading or trading on a regulated market, an MTF (ex: Euro-MTF) or an OTF in a Member State has been requested or approved, and which are considered as 'issuers' under MAR. From a MAR perspective, IFMs of listed funds should beware that Article 17 of MAR (Public disclosure of inside information), Article 18 of MAR (Insider lists) and Article 19 of MAR (Managers' transactions) may be relevant.⁴ They must, in all cases, pay particular attention to:
 - the specific cases of inside information that may arise with respect to the listed fund. Examples of such specific cases may be found in Q&A n°5.7 of the [ESMA MAR Q&A](#);
 - the specific insider dealing risks that are inherent in the aforementioned cases, i.e. the risk that the inside information may be abused by a legal or natural person with access to it, for example, by subscribing or redeeming units/shares of the listed fund to which the information relates at a critical time. That risk is relevant under MAR, but also under the rules on personal transactions laid down by the sectoral legislation applicable to IFMs.
- Third, IFMs qualify as 'persons professionally arranging or executing transactions' under MAR and are therefore obliged to comply with the STOR obligations laid down by Article 16 (2) MAR (see Q&A n°6.1 of the [ESMA MAR Q&A](#)).

A further layer of complexity is added by the legislation on financial crime under which insider dealing and market manipulation constitute predicate offences of money-laundering. Therefore, it is possible that, in case a STOR needs to be filed with the CSSF under MAR, a suspicious operations report needs to be filed with the Financial Intelligence Unit under the legislation on the fight against money laundering and terrorist financing.

⁴ See further *ESMA Final Report on the MAR Review*, p.118-128, in particular p.125 – 128.

4. Generally speaking, it may be noted that the thematic review on the STOR obligations of IFMs did not bring to the fore indications of serious failures among respondents as regards their STOR obligations. However, the review pointed out a number of potential shortfalls from the applicable technical standards, which are laid down by a [Level 2 Regulation](#). In this sense, the findings of the thematic review are in line with the findings of the aforementioned on-site inspections at IFMs.
5. The general findings and observations of the review are summarized hereafter.

A. Business Activities of IFMs

6. The market abuse controls to be established and maintained under Article 16 (2) MAR by obliged professionals must be appropriate and proportionate in relation to the scale, size and nature of their business activities.⁵ The business activities of IFMs are therefore relevant when it comes to the fulfillment of their STOR obligations.
7. In this respect, the thematic review confirmed the importance of the delegation schemes used by Luxembourg-based IFMs. All respondents without exception indicated to work with business models whereunder the activity of portfolio management is delegated to a group entity and/or to a third party. But, at the same time, the feedback also shows that the delegation schemes are not the only business models that exist in Luxembourg, and that there also are schemes under which Luxembourg-based IFMs engage themselves in portfolio management activities. Last but not least, the thematic review showed the relevance of the MiFID Services among the business activities of respondents.
8. None of the respondents indicated to maintain a trading desk (which would arguably have heightened the market abuse risks to be addressed by them). Therefore, questions relating to the separation of the activities of the trading desk from the activities of other relevant business units did not arise within the context of the review.

⁵ See, in particular, Article 2 (5) (a) of the Level 2 Regulation.

B. General Findings and Observations

(i) In-house Risk Assessments

9. The review found that a majority of respondents had undertaken an in-house risk assessment to identify the market abuse risks to which they are potentially exposed as a result of their business activities. Such in-house assessments deserve to be recognized as a best practice, in particular because they constitute a means whereby the IFM can demonstrate the appropriateness and the proportionality of its market abuse controls upon the request of the CSSF, as is required by the applicable technical standards.⁶ To this end, it is important that the internal risk assessment covers the full range of the activities of a given IFM (including, where relevant, the MiFID Services) and that it is duly motivated.
10. In their feedback to the survey, none of the respondents indicated a high market abuse risk, which, in light of the activities performed by them, the regulatory environment in which they operate, the circumstance that none of them operates its own trading desk and the past experience of the CSSF does not generally seem objectionable. In this regard, the CSSF would however like to stress that it is of paramount importance for IFMs to properly identify and manage all market abuse risks, in particular as regards scenarios which impact or are likely to impact directly upon the valuation of a listed fund such as, for example, but without limitation, valuation issues, fund dissolution or merger.

(ii) Market Abuse Risks Faced by IFMs

11. A majority of respondents acknowledged the existence of a risk that a staff member may place orders or enter into transactions on own account on the basis of inside information obtained while working for the IFM (or disclose such information to an unauthorised third party with a recommendation to trade on it). That risk was acknowledged regardless of whether the activity of portfolio management has been delegated by the respondent or not, except that, in delegation cases, the risk was generally considered lower than in non-delegation cases.

⁶ See Article 3 (2) of the Level 2 Regulation.

12. The CSSF wishes to remind IFMs that, in addition to the market abuse risks stemming from the conduct of their staff in individual cases, they may face other market abuse risks (such as, for example, the market abuse risks stemming from the behavior of the clients to whom MiFID Services are provided) and that as professionals they have a duty to stay alert to the different types of market abuse risks to which they are or may become exposed through their existing or future activities.
13. When it comes to the market abuse risks that may arise as regards the subscription and redemption of shares or units of listed funds, none of the respondents saw a risk other than the comparable risks of 'market timing' and 'late trading', which are dealt with in [Circular CSSF 04/146](#). In this respect, the CSSF would nevertheless like to emphasize that the aforementioned risk that a staff member with access to inside information may abuse such information, for example, by subscribing or redeeming fund units or shares on own account on the basis of inside information obtained while working for the firm, cannot be excluded and needs to be taken into account by IFMs, in particular through the rules on personal transactions.

The CSSF therefore wishes to remind IFMs of the importance to ensure that all staff members have been duly informed that they are not permitted to trade on the basis of inside information, including inside information of which they may become aware while working for the IFM, and that failure to comply with this 'trading restriction' may result in administrative or criminal sanctions in case of transgression (for a non-exhaustive list of specific cases of inside information that may arise with respect to listed funds', please refer to Q&A n°5.7 of the [ESMA MAR Q&A](#)).

(iii) Market Abuse Controls

14. Respondents unanimously agreed that staff training is an appropriate market abuse control. A majority also considered that clear written instructions to staff to escalate suspicions of market abuse constitute an appropriate control. Automated controls were also considered appropriate, but only by the larger respondents.

15. Most of the market abuse controls considered appropriate by respondents correspond to explicit requirements under the technical standards, which, among others, call for effective and comprehensive training of the staff involved in the monitoring, detection and identification of suspicious orders (including the staff involved in the processing of orders and transactions)⁷ and clear written procedures⁸. An automated surveillance of orders and transactions is however not expressly prescribed by MAR, which, in this respect, defers to the scale, size and nature of the business activities of obliged professionals and to the principles of adequacy and proportionality.⁹
16. The vast majority of respondents indicated that their market abuse controls are subject to an audit and internal review at regular intervals, which also corresponds to an explicit requirement of the technical standards.¹⁰ To avoid falling short of this standard, the CSSF recommends to integrate this item into the internal audit plan referred to in [Circular CSSF 18/698](#).
17. The review found that the market abuse controls maintained by respondents are normally documented in one or several internal policies that cover market abuse and related issues. Personal transactions are normally dealt with in one or several separate internal policies.
18. The review found wide-spread compliance with the training requirements under MAR.¹¹ Potential shortfalls were identified, but only in certain cases where it was not clear whether the training was provided only at the start of the relationship between the employee and the firm or also, as required by the technical standards, at regular intervals thereafter.

(iv) Potential Shortfalls from Technical Standards

19. The feedback from respondents suggests that in many cases, most of the applicable technical standards were fulfilled. However, a number of shortfalls or potential shortfalls from those standards were identified in individual cases. They include:
 - the lack of an audit and internal review of the market abuse controls;

⁷ See Article 4 (1) of the Level 2 Regulation.

⁸ See Article 2 (5) (c) of the Level 2 Regulation.

⁹ See Article 2 (5) (a) and Article 3 (2) of the Level 2 Regulation.

¹⁰ See Article 2 (5) (b) of the Level 2 Regulation.

¹¹ See Article 4 (1) of the Level 2 Regulation.

- the lack of a STOR training provided to relevant staff on a regular basis;
- the lack of formalization of market abuse controls.

(v) Controls on the Receipt and Flow of Inside Information (including Market Soundings)

20. A majority of respondents indicated not to have received inside information from the outside, and not to have come across cases where inside information was generated from within the firm, in recent years. From a regulator's perspective, the feedback received on this point elicits interest, in particular when considering that most respondents count listed funds among their clients, i.e. funds for which inside information within the meaning of MAR may from time to time come to exist. The CSSF therefore generally recommends that IFMs critically examine the different ways in which they may come into contact with inside information and the need to introduce additional controls or enhance existing controls.
21. None of the respondents indicated to have received 'market soundings'¹², which typically contain inside information and are subject to a specific regime under MAR, in recent years. This feedback most likely is related to the aforementioned delegation schemes and their implications. Even so, the CSSF wishes to remind IFMs of the [ESMA MAR Guidelines on persons receiving market soundings](#), which IFMs, and their delegates, are encouraged to apply. Those guidelines strive to assist persons receiving market soundings in managing and controlling the flow of the inside information that normally is embodied in market soundings, first and foremost through the designation of a specific contact point for the receipt of market soundings.

¹² Article 11 of MAR provides that: "A market sounding comprises the communication of information, prior to the announcement of a transaction, in order to gauge the interest of potential investors in a possible transaction and the conditions relating to it such as its potential size or pricing, to one or more potential investors by:

- (a) An issuer;
- (b) A secondary offeror of a financial instrument, in such quantity or value that the transaction is distinct from ordinary trading and involves a selling method based on the prior assessment of potential interest from potential investors;
- (c) An emission allowance market participant; or
- (d) A third party acting on behalf or on the account of a person referred to in point (a), (b) or (c)."

(vi) Delegation of STOR Functions

22. Subject to certain conditions, MAR allows to delegate the performance of the STOR obligations, or at least certain parts thereof, to an intra-group delegate or a third-party delegate.¹³ The review found that a majority of respondents have made or consider making use of this option. In some cases, the STOR delegate is an entity who is also a delegated portfolio manager of the IFM. In other cases, the STOR delegate is another group entity. For the avoidance of doubt, it should be pointed out that, as a matter of law, the delegation of the performance of the STOR obligations has no impact upon the STOR obligations of the delegating IFM. This rule is expressly laid down in the technical standards.¹⁴ The review further found wide-spread compliance with the documentation and monitoring obligations which the technical standards lay down for the delegation of the STOR functions.

C. Specific Findings for IFMs Who Have Delegated Portfolio Management

23. As regards the entities to whom portfolio management has been delegated, the review covered delegates established in Member States and in third countries. The former should normally be themselves bound to comply with MAR (including the STOR obligations) under the supervision of the national competent authority, which should ease the due diligence process to be conducted by the IFMs but cannot replace it.
24. The review found that, in the vast majority of cases, the due diligence conducted by the IFM on the entity to which portfolio management has been delegated covers the existence of market abuse controls at the level of the delegate, which may be considered to amount to a best practice.
25. The review also found that, in the vast majority of cases, the contracts between the IFM and the portfolio manager contain stipulations on market abuse which bind the delegate, either in generic terms, or in more specific terms, to comply with market abuse prohibitions and controls.

¹³ See Article 3 (6) and (7) of the Level 2 Regulation.

¹⁴ See Article 3 (6) and (7) of the Level 2 Regulation.

26. Some respondents indicated to have encountered market abuse issues at the level of a delegate since 2019. All of those issues related to the misuse or suspected misuse of inside information by different types of staff working for a delegate. In some of those cases, the issue was brought to the attention of the CSSF within the context of the prudential supervision of the IFM. But in none of those cases was a STOR filed with the CSSF. The CSSF considers that a STOR should be filed with the CSSF by the Luxembourg-based IFM on the basis of Article 16 (2) MAR if the financial instrument to which the suspicious behavior relates comes within the territorial scope of MAR (without prejudice to any other applicable information and/or notification obligations).

D. Specific Findings for IFMs Engaged in Portfolio Management

27. All of the respondents in the survey that are engaged in the in-house performance of portfolio management activities indicated that investment decisions are monitored with a view to detect orders and transactions which could potentially amount to insider dealing or market manipulation. The monitoring takes place either through staff vigilance or through automated monitoring software.

28. The CSSF generally wishes to remind IFMs that MAR does not explicitly prescribe an automated monitoring. That being said, MAR requires the monitoring to be effective.¹⁵ It follows that if an IFM considers, in light of the principles of adequacy and proportionality, that its business activities do not call for an automated monitoring, such IFM must be able to demonstrate, upon request, how suspicious operations may be effectively detected otherwise.

29. Monitoring through staff vigilance can fulfill the requirements of MAR provided that it is proportionate and that it is properly set-up, formalized and implemented. In the experience of the CSSF, this particular type of monitoring can be problematic if the staff on whose vigilance it depends has not been trained (or has not attended training) or if it relies on the vigilance of members of staff who, through their position, remuneration or otherwise, are not in a position to ensure that an efficient monitoring takes place (conflict of interest).

¹⁵ Article 16 (2) MAR and Article 2 (1) (a) of the Level 2 Regulation.

30. The CSSF also considers it important that the monitoring, whether through staff vigilance or automated controls, leaves an audit trail, as was not the case for the respondents who rely on staff vigilance only.
31. In situations in which the department in charge of receiving internal alerts relating to market abuse suspicions has not received alerts of potentially suspicious operations over a prolonged period of time, the CSSF considers that the IFM should critically assess and verify the efficiency of the monitoring. Based on the experience of the CSSF, the absence of internal alerts can be an indication that the monitoring is not working as it should.

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Questions can be sent to: market.abuse@cssf.lu

For the findings of a similar exercise conducted by the CSSF with respect to banks and investment firms: [STOR Survey \(2019-2020\)](#)

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