

In case of discrepancies between the French and the English text, the French text shall prevail.

Version of 14 April 2020

---

Q&A MiFID II/MiFIR

---

## MiFID II/MiFIR - Questions and Answers

---

### Table of contents

|  |   |
|--|---|
| MiFID II/MiFIR - Questions and Answers .....   | 1 |
| 1. Glossary .....  | 3 |
| 2. Questions relating to data reporting.....   | 4 |
| 2.1. Questions relating to data transmission.....  | 4 |
| Question 2.1.1. Is the use of the services of a Luxembourg or foreign ARM, as provided for by MiFIR, subject to an authorisation of the CSSF? <i>Date of publication: 24 October 2017</i> .....  | 4 |
| 2.2. Questions relating to transaction reporting data samples .....  | 4 |
| Question 2.2.1. Who can submit such requests for data samples? <i>Date of publication: 21 May 2019</i> .....   | 4 |
| Question 2.2.2. How shall credit institutions and investment firms address such requests to the CSSF? <i>Date of publication: 21 May 2019</i> .....  | 5 |
| Question 2.2.3. How does the CSSF make transaction reporting data samples available? <i>Date of publication: 21 May 2019</i> .....   | 5 |
| Question 2.2.4. What is the maximum period of data that can be requested? <i>Date of publication: 21 May 2019</i> .....  | 5 |
| 2.3. Questions relating to the transmission of an order within the meaning of Article 4 of Regulation (EU) 2017/590.....   | 5 |
| Question 2.3.1. Is a written agreement between the transmitting investment firm or credit institution and the receiving investment firm or credit institution required? .....  | 5 |
| Question 2.3.2. Can the agreement concluded between the two parties stipulate that the responsibility for the completeness, quality and timeliness lies entirely with one of the two contractual parties?.....   | 6 |
| Question 2.3.3. Can the transmission agreement provide for fixed values for the different elements listed under Article 4.2., points (a) to (j), of Regulation (EU) 2017/590? .....  | 6 |
| Question 2.3.4. What should be reported if the account of the final client is with the receiving entity of the order but the receiving entity has received the order from an entity which has a discretionary management mandate over the client's account and with which the receiving firm does not have a transmission agreement? ..... | 6 |

|      |   |    |
|------|---|----|
| 3.   | Questions relating to commodity derivatives contracts.....  | 7  |
|      | Question 3.1. Which financial instruments are governed by the provisions of Articles 57 and 58 of MiFID II? <i>Date of publication: 5 December 2017</i> .....   | 7  |
|      | Question 3.2. Do trading venues need to inform the CSSF about the listing of commodity derivatives? <i>Date of publication: 5 December 2017</i> .....   | 7  |
|      | Question 3.3. Will the CSSF publish the position limits it has set? <i>Date of publication: 5 December 2017</i> .....   | 8  |
|      | Question 3.4. To whom do the position limits on commodity derivatives apply? <i>Date of publication: 5 December 2017</i> .....  | 8  |
|      | Question 3.5. What types of exemptions are there in the context of dealing in commodity derivatives? <i>Date of publication: 5 December 2017</i> .....  | 8  |
|      | Question 3.6. What are the effects of the ancillary activity exemption? <i>Date of publication: 5 December 2017</i> .....   | 9  |
|      | Question 3.7. To which competent authority should entities notify that they make use of the ancillary activity exemption? <i>Date of publication: 5 December 2017</i> .....   | 9  |
|      | Question 3.8. How can entities notify to the CSSF that they make use of the ancillary activity exemption? <i>Date of publication: 5 December 2017</i> .....   | 9  |
|      | Question 3.9. What are the effects of the position limits exemption of Article 57.1. <i>in fine</i> of MiFID II? <i>Date of publication: 5 December 2017</i> .....  | 9  |
|      | Question 3.10. To which competent authority shall a non-financial entity submit its position limits exemption request under Article 57.1. <i>in fine</i> of MiFID II? <i>Date of publication: 5 December 2017</i> 10  |    |
|      | Question 3.11. How shall an operator of a trading venue which trades commodity derivatives inform the CSSF of the details of position management controls it applies in accordance with Article 57, paragraphs 8 to 10, of MiFID II? <i>Date of publication: 5 December 2017</i> .....              | 10 |
| 4.   | Questions relating to transparency obligations under MiFIR .....  | 11 |
| 4.1. | Questions relating to post-trade transparency under MiFIR .....   | 11 |
|      | Question 4.1.1. Does the CSSF authorise the deferred publication of the details of the transactions in non-equity instruments under MiFIR? <i>Date of publication: 15 May 2018</i> .....  | 11 |
| 5.   | Questions relating to market structures .....   | 13 |
| 5.1. | Questions regarding algorithmic trading and direct electronic access .....  | 13 |
|      | Question 5.1.1. How can entities that engage in algorithmic trading notify this to the CSSF pursuant to Article 17.2. of MiFID II and Article 60(2) of the Law of 30 May 2018 on markets in financial instruments? <i>Date of publication: 9 August 2018</i> .....                                  | 13 |
|      | Question 5.1.2. How can concerned entities that provide direct electronic access to a trading venue notify this to the CSSF pursuant to Article 17.5. of MiFID II and Article 60(6) of the Law of 30 May 2018 on markets in financial instruments ? <i>Date of publication: 9 August 2018</i> ..... | 13 |

## 1. Glossary

|                          |  |
|--------------------------|--|
| “ARM”                    | Approved reporting mechanism: any person within the meaning of point (54) of Article 4(1) of Directive 2014/65/EU authorised to provide the service of reporting details of transactions to competent authorities or to the European Securities and Markets Authority (ESMA) on behalf of investment firms or credit institutions.   |
| “MiFID II”               | Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments  |
| “MiFID II Law”           | Law of 30 May 2018 on markets in financial instruments   |
| “MiFIR”                  | Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments   |
| Regulation 2017/565 (EU) | Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive  |
| Regulation 2017/583 (EU) | Commission Delegated Regulation (EU) 2017/583 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives |
| Regulation 2017/590 (EU) | Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities   |
| Regulation 2017/591 (EU) | Commission Delegated Regulation (EU) 2017/591 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the application of position limits to commodity derivatives  |
| Regulation 2017/592 (EU) | Commission Delegated Regulation (EU) 2017/592 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business  |

## 2. Questions relating to data reporting

### 2.1. Questions relating to data transmission

---

**Question 2.1.1. Is the use of the services of a Luxembourg or foreign ARM, as provided for by MiFIR, subject to an authorisation of the CSSF?**

***Date of publication: 24 October 2017***

---

Article 26(7) of MiFIR specifies the allocation of responsibilities for the completeness, accuracy and timely submission of the reports between an ARM and an investment firm or a credit institution. In the light of this clarification and the fact that an ARM must be authorised by national competent authorities and must comply with the organisational requirements laid down in Article 66 of MiFID II, the CSSF is of the opinion that using an ARM for the purpose of the reporting obligation under Article 26 of MiFIR must not be considered as outsourcing within the meaning of Circulars CSSF 12/552 and CSSF 17/654. Having regard to the measures and/or systems to be put in place to fulfil the responsibilities on both sides, the CSSF requires, nevertheless, to be notified by the investment firms and credit institutions that use an ARM of the name and country of establishment of the designated ARM. The CSSF draws the attention of the investment firms and credit institutions concerned to the fact that, in accordance with subparagraphs 2 and 4 of Article 26(7) of MiFIR, investment firms and credit institutions remain responsible for the completeness, accuracy and timely submission of the reports, i.e. that they shall take reasonable steps to verify the completeness, accuracy and timeliness of the reports submitted on their behalf and that the ARM may not be held responsible for failures attributable to the investment firm or credit institution.

The decision by an investment firm or credit institution to use an ARM with the sole purpose of drafting the reporting which will, ultimately, be completed and sent by the investment firm or credit institution to the competent authority, will, however, be considered as outsourcing within the meaning of Circulars CSSF 12/552 or CSSF 17/654. Indeed, in that case, the ARM will not fully act in its capacity as authorised ARM as it will perform only part of the transmission chain foreseen when using an ARM and the organisational requirements as well as the responsibilities that are attributable to it as an ARM cannot fully apply. In such a case, given the materiality of such outsourcing, an authorisation from the CSSF will be required.

### 2.2. Questions relating to transaction reporting data samples

*Preliminary remarks:*

Under Article 26(7) of MiFIR, credit institutions and investment firms are responsible for the completeness, accuracy and timely submission of the reports they submit to the competent authority, whether they report directly, through an ARM or a trading venue.

As specified in Article 15(3) of Regulation (EU) 2017/590, credit institutions and investment firms shall have arrangements in place to ensure that their transaction reports are complete and accurate. In that respect credit institutions and investment firms may require data samples on transaction reports from their competent authority in order to reconcile their front office trading records against these samples.

---

**Question 2.2.1. Who can submit such requests for data samples?**

***Date of publication: 21 May 2019***

---

Only credit institutions and investment firms incorporated under Luxembourg law as well as branches of third country firms authorised in Luxembourg that are stated as executing entities in the transaction reports sent to the CSSF can make requests for data samples to the CSSF.

An entity can request transaction data in which it is stated as executing party according to Regulation (EU) 2017/590 (Annex I Table 2: field 4 Executing entity identification code) regardless whether it has submitted the reports directly to the CSSF, via an ARM or a trading venue.

---

**Question 2.2.2. How shall credit institutions and investment firms address such requests to the CSSF?**

***Date of publication: 21 May 2019***

---

In order to request data samples the Compliance Officer of the requesting entity shall submit a duly completed and signed [request form](#).

The form must be returned by mail to the CSSF (attention MAF-II). A digital copy shall be sent by e-mail to: [transactionreporting@cssf.lu](mailto:transactionreporting@cssf.lu)

---

**Question 2.2.3. How does the CSSF make transaction reporting data samples available?**

***Date of publication: 21 May 2019***

---

After receipt of a duly completed request form, the CSSF will provide the requested file(s) exclusively through secure mail to the requesting entity. The requested data will be provided as .xml file in accordance with the ISO 20022 XML format.

Please note that transaction reporting data samples will only include transaction reports that have been accepted by the CSSF and have not been cancelled.

---

**Question 2.2.4. What is the maximum period of data that can be requested?**

***Date of publication: 21 May 2019***

---

The maximum period of data that can be provided in response to a single request is limited to three months' worth of data.

Alternatively, entities may request up to 10 specific reporting files.

### **2.3. Questions relating to the transmission of an order within the meaning of Article 4 of Regulation (EU) 2017/590**

***Preliminary remarks***

In accordance with Article 3.2. of the Regulation (EU) 2017/590, an investment firm or credit institution is not deemed to have executed a transaction where it has transmitted an order in accordance with Article 4 of Regulation (EU) 2017/590 and is therefore not required to submit a transaction report under Article 26 of MiFIR. The conditions to be fulfilled for the transmission of orders in accordance with Article 4 of Regulation (EU) 2017/590 are described in Article 4.1., points (a) to (c).

---

**Question 2.3.1. Is a written agreement between the transmitting investment firm or credit institution and the receiving investment firm or credit institution required?**

---

Article 4.1., subparagraph 2, of Regulation (EU) 2017/590 provides for an agreement which specifies, inter alia, the time limit for the provision of the order details by the transmitting firm to the receiving firm, and which stipulates that the receiving firm shall verify whether the order details received contain obvious errors or omissions before submitting a transaction report or transmitting the order. Article 4.1., point (c), provides that the receiving firm agrees

either to report the transaction resulting from the transmitted order or to transmit the order details referred to in said Article to another investment firm or credit institution.

In order to clarify the situation regarding the transmission of an order within the meaning of Article 4 of Regulation (EU) 2017/590, a written agreement between the receiving firm and the transmitting firm is therefore required. In order to avoid that the possibility of transmission and the related responsibilities are mixed up with other existing contractual clauses between the two undertakings in question, the CSSF requests that this subject, as well as the sharing of the inherent responsibilities, be dealt with by a specific clause in the existing framework agreement between the two parties or in a separate agreement dedicated to this subject.

In the same context, the CSSF asks the receiving and transmitting firms to keep an updated list of the entities with which they have entered into such agreements.

---

**Question 2.3.2. Can the agreement concluded between the two parties stipulate that the responsibility for the completeness, quality and timeliness lies entirely with one of the two contractual parties?**

No, in the context of the transmission of an order within the meaning of Article 4 of Regulation (EU) 2017/590 both contracting parties remain liable for their respective acts. On the other hand, and as already highlighted by subparagraph 2 of Article 4.1., the receiving company is obliged to provide itself, via the transmission agreement, with the possibility of complying with Article 26 MiFIR itself, and is obliged to check whether the details of the order received do not contain obvious errors or omissions. Where a receiving undertaking cannot comply with Article 26 because of the non-submission of information or submission of false information by the transmitting undertaking, it must inform the CSSF thereof as soon as possible. Furthermore, if the receiving undertaking is obliged to cancel the transmission agreement, it is requested to inform the CSSF thereof as soon as possible.

In case of an error in the reports or an omission to report, the CSSF takes into account who was at the source of the failure when applying its intervention measures.

---

**Question 2.3.3. Can the transmission agreement provide for fixed values for the different elements listed under Article 4.2., points (a) to (j), of Regulation (EU) 2017/590?**

No, the information included in the case of transmission of an order must in any event reflect the reality of the facts for the orders in question. Thus, transmission agreements whereby the transmitting firm determines, for example, by default the identity of a single employee as "decision maker" in all transmissions of orders are only to be accepted if this effectively reflects reality.

---

**Question 2.3.4. What should be reported if the account of the final client is with the receiving entity of the order but the receiving entity has received the order from an entity which has a discretionary management mandate over the client's account and with which the receiving firm does not have a transmission agreement?**

Example 69 of ESMA's guidance on transaction reporting states that in the absence of a transmission within the meaning of Article 4 of Regulation (EU) 2017/590, where an investment management entity is acting under a discretionary mandate, the investment firm or credit institution receiving the order should report the entity acting under a discretionary mandate as the buyer/seller. This is still the case even where the client of the investment management entity is also a client of the receiving investment firm or credit institution, and regardless of whether the investment management entity acting under the discretionary mandate is an investment firm, credit institution or an other firm.

### 3. Questions relating to commodity derivatives contracts

Preliminary remarks:

MiFID II aims to establish a harmonised position limits regime for the positions any person can hold, at an aggregate group level, in a derivative contract in relation to a commodity in order to prevent market abuse, including cornering the market, on commodity derivatives and to support orderly pricing and settlement conditions. These position limits have a particular scope considering that they shall also apply to any person exempt from the scope of MiFID II under Article 2 of MiFID II.

The commodity derivatives position limits regime is primarily governed by the following:

- MiFID II (Articles 1,2, 57, 58 and Annex I, Section C);
- The MiFID II Law (Articles 56, 57 and 58 of Chapter VIII – *Dispositions diverses*);
- Regulation (EU) 2017/591;
- Regulation (EU) 2017/592;
- Article 83 of Regulation (EU) 2017/565;
- the ESMA “Questions and Answers on MiFID II and MiFIR commodity derivatives topics”;
- Commission Implementing Regulation (UE) 2017/1093 of 20 June 2017 laying down implementing technical standards with regard to the format of position reports by investment firms and market operators.

---

#### **Question 3.1. Which financial instruments are governed by the provisions of Articles 57 and 58 of MiFID II?**

**Date of publication: 5 December 2017**

The position limits under Article 57 of MiFID II apply to the size of a net position which a person can hold at all times in commodity derivatives traded on a trading venue and in economically equivalent OTC contracts.<sup>1</sup>

Article 58 of MiFID II, relating to the position reporting by categories of position holders, applies not only to commodity derivatives but also to emission allowances and derivatives thereof.

In accordance with point (6) of Section C of Annex I of MiFID II, wholesale energy products traded on an OTF that must be physically settled do not qualify as financial instruments under MiFID II and therefore do not fall under the scope of Articles 57 and 58 of MiFID II.

---

#### **Question 3.2. Do trading venues need to inform the CSSF about the listing of commodity derivatives?**

**Date of publication: 5 December 2017**

From 15 December 2017, trading venues shall send the following notifications to the CSSF:

Regulated markets and MTFs shall transmit to the CSSF a list of all the commodity derivatives traded on their platforms. Following this stock taking exercise, regulated markets, MTFs and OTFs shall notify the CSSF of any new commodity contracts prior to trading launch.

The above-mentioned notifications shall include the contract specifications, specifically the commodity derivative name, the market identifier code (MIC), the relevant unit of measurement and, for securitised derivatives, the total number of securities in issue.

Trading venues shall use the CSSF’s [dedicated form](#) for the abovementioned notifications.

Regarding securitised derivatives, any modification to the number of securities resulting in a crossing of the threshold of 2.5 million securities in issue shall be reported separately and prior to the relevant corporate action.

Notifications shall be sent to the CSSF by email to [positionlimits@cssf.lu](mailto:positionlimits@cssf.lu)

---

<sup>1</sup> The term “economically equivalent OTC contracts” is clarified under Article 6 of Regulation (EU) 2017/591.

---

**Question 3.3. Will the CSSF publish the position limits it has set?**

**Date of publication: 5 December 2017**

---

The CSSF publishes a list of the commodity derivatives contracts identified as being traded on a Luxembourg trading venue to which a bespoke position limit will apply from 3 January 2018.

Securitised derivatives with a total number of securities in issue not exceeding 2.5 million are considered illiquid instruments. For these instruments it is *de facto* not possible to breach the position limits as Article 15(1)(c) of Regulation (EU) 2017/591 states that securitised derivatives with a total number of securities in issue not exceeding 10 million shall get a standard position limit of 2.5 million securities. Since the concept of position limits does not make sense in this case, these instruments will not be included in the aforementioned list.

---

**Question 3.4. To whom do the position limits on commodity derivatives apply?**

**Date of publication: 5 December 2017**

---

In accordance with Article 1.6. of MiFID II, Articles 57 and 58 of MiFID II shall also apply to persons exempt from the scope MiFID II. Simply put, the position limits shall therefore apply to credit institutions, investment firms, operators of regulated markets, third country firms providing investment services or carrying out investment activities through the establishment of a branch in the European Union as well as to any person listed under Article 2.1. of MiFID II, such as for example collective investment undertakings and persons dealing on own account in commodity derivatives.

---

**Question 3.5. What types of exemptions are there in the context of dealing in commodity derivatives?**

**Date of publication: 5 December 2017**

---

MiFID II provides different types of exemptions in the context of dealing in commodity derivatives.

On one hand, Article 2 of MiFID II provides exemptions which are not specific to the position limits regime and which aim at exempting persons from the scope of MiFID II. One of these exemptions is for persons dealing on own account in commodity derivatives or emission allowances or derivatives thereof provided that this is an ancillary activity to their main business. However, it should be stressed that the exemptions under Article 2 do not free their beneficiaries of the entirety of MiFID II. In fact, these persons are still required to comply with the position limits on commodity derivatives, in accordance with Article 1.6. of MiFID II.

On the other hand, Article 57.1. of MiFID II provides *in fine* an exemption specific to the position limits regime in accordance to which position limits shall not apply to positions held by or on behalf of a non-financial entity and which are objectively measurable as reducing risks directly relating to the commercial activity of that non-financial entity. Only non-financial entities, as defined under Regulation (EU) 2017/591, may make use of this exemption.

The different exemptions may apply cumulatively.

---

**Question 3.6. What are the effects of the ancillary activity exemption?**

***Date of publication: 5 December 2017***

---

The exemption under Article 2.1.(j) of MiFID II releases a person or a group who is dealing as an ancillary activity to its main business in commodity derivatives from the obligation to obtain a license as investment firm under MiFID II (“**the ancillary activity exemption**”).

However, persons which benefit from the ancillary activity exemption remain subject to the position limits on commodity derivatives. In fact, in accordance with Article 1.6. of MiFID II, Articles 56 and 57 of MiFID II also apply to persons which benefit from the ancillary activity exemption.

The criteria to determine whether an activity can be considered as ancillary to the main business are set out under Regulation (EU) 2017/592.

---

**Question 3.7. To which competent authority should entities notify that they make use of the ancillary activity exemption?**

***Date of publication: 5 December 2017***

---

One of the requirements to make use of the ancillary activity exemption consists in that entities shall annually notify the competent authority that they make use of this exemption.

The competent authority for receiving the ancillary activity exemption notification is the financial authority to which the person would need to apply for authorisation as investment firm if it were unable to make use of the ancillary activity exemption. Therefore, Luxembourg incorporated entities and Luxembourg branches of third country firms (i.e. incorporated outside of the European Union) shall notify the use of the ancillary activity exemption to the CSSF.

---

**Question 3.8. How can entities notify to the CSSF that they make use of the ancillary activity exemption?**

***Date of publication: 5 December 2017***

---

The use of the ancillary activity exemption shall be notified to the CSSF by the means of a [dedicated form](#). The duly filled out form shall be sent to the CSSF by email to [positionlimits@cssf.lu](mailto:positionlimits@cssf.lu)

The notification remains valid for a period of 12 months from the date of its submission (or from 3 January 2018 for the notifications sent prior to that date). An updated notification form shall be submitted to the CSSF annually by the end of this period.

---

**Question 3.9. What are the effects of the position limits exemption of Article 57.1. *in fine* of MiFID II?**

***Date of publication: 5 December 2017***

---

Non-financial entities may employ risk management techniques in order to mitigate the global risks linked to their commercial activities or those of their group. To this end, Article 57.1. *in fine* of MiFID II provides that position limits shall not apply to positions held by or on behalf of a non-financial entity and which are objectively measurable as reducing risks directly relating to the commercial activity (which excludes speculative positions) are not taken into account by competent authorities for the supervision of position limits.

The position limits exemption shall be requested for each individual commodity derivative for which the non-financial entity expects to exceed the bespoke position limit.

However, positions which benefit from the exemption of Article 57.1. *in fine* of MiFID II remain subject to the position reporting obligation of Article 58 of MiFID II incumbent upon the financial counterparties which hold these positions on behalf of the non-financial entities.

Please refer to Regulation (EU) 2017/591 for further details.

---

**Question 3.10. To which competent authority shall a non-financial entity submit its position limits exemption request under Article 57.1. *in fine* of MiFID II?**

***Date of publication: 5 December 2017***

---

Non-financial entities shall send their position limits exemption requests to the competent authority of the trading venue on which the relevant commodity derivative is traded. Where the same commodity derivative is traded on trading venues in more than one jurisdiction, the exemption request shall be submitted to the competent authority of the trading venue where the largest volume of trading for the relevant instrument takes place (the central competent authority).

The exemption requests on position limits of Article 57.1. *in fine* for which the CSSF is the competent authority shall be sent to the CSSF by email to [positionlimits@cssf.lu](mailto:positionlimits@cssf.lu). Non-financial entities must notify to the CSSF any significant change in the nature or value of their commercial activities or their trading activities in commodity derivatives.

Please refer to Regulation (EU) 2017/591 for further details.

---

**Question 3.11. How shall an operator of a trading venue which trades commodity derivatives inform the CSSF of the details of position management controls it applies in accordance with Article 57, paragraphs 8 to 10, of MiFID II?**

***Date of publication: 5 December 2017***

---

The documentation of the applied position management controls shall be communicated to the CSSF by means of a [dedicated form](#). The duly filled out form shall be sent to the CSSF by email to [positionlimits@cssf.lu](mailto:positionlimits@cssf.lu). In case of modification of the controls, the operator of the trading venue shall submit an updated form to the CSSF.

## 4. Questions relating to transparency obligations under MiFIR

### 4.1. Questions relating to post-trade transparency under MiFIR

---

#### **Question 4.1.1. Does the CSSF authorise the deferred publication of the details of the transactions in non-equity instruments under MiFIR?**

**Date of publication: 15 May 2018**

---

Yes. The CSSF currently authorises the deferred publication of the details of transactions in non-equity instruments by (i) trading venues and (ii) investment firms performing transactions outside of a trading venue in accordance with Articles 11 and 21.4. of MiFIR and the Regulation (EU) 2017/583, as further set out below.

#### **Regarding deferrals for trading venues:**

In accordance with *inter alia* Article 11 of MiFIR and Articles 8 and 11 of Regulation (EU) 2017/583, the CSSF authorises market operators and investment firms operating a trading venue and which have received the CSSF's prior approval pursuant to Article 11.1. *in fine* of MiFIR to defer publication of the details of transactions in non-equity instruments based on the size or type of the transaction.

Following types of deferrals are authorised by the CSSF:

1. Deferred publication of the transactions pursuant to Article 11.1. of MiFIR and Article 8.1. of Regulation (EU) 2017/583, which includes *inter alia* :
  - transactions which are large in scale compared with the normal market size for the financial instrument or class of financial instruments;
  - transactions on financials instruments or classes of financial instruments for which there is not a liquid market; and
  - transactions which are larger than the specific volume of the financial instrument, or category of financial instruments, which would expose liquidity providers to undue risk and taking into account whether the relevant market participants are retail or wholesale investors.
2. Furthermore, in accordance with Articles 11.3. (b) to (d) of MiFIR and Article 11 of Regulation (EU) 2017/583, the CSSF allows:
  - the omission of the publication of the volume of an individual transaction during an extended time period of deferral;
  - regarding non-equity financial instruments that are not sovereign debt, the publication of several transactions in an aggregated form during an extended time period of deferral; and
  - regarding sovereign debt instruments, the publication of several transactions in an aggregated form for an indefinite period of time.

Market operators and investment firms operating a trading venue shall request the CSSF's approval prior to making use of the present deferred publication regime in accordance with Article 11.1. *in fine* of MiFIR by sending an email to [mifid2@cssf.lu](mailto:mifid2@cssf.lu). The email shall include the specific arrangements for deferral, the reasons for deferral, how the relevant requirements in MiFIR and Regulation (EU) 2017/583 are met, the date on which the deferral is intended to take effect, the classes of financial instruments the deferral would apply to and the name and contact details of the applicant.

#### **Regarding deferrals for investment firms that perform transactions outside trading venues:**

In accordance with *inter alia* Article 21.4 of MiFIR and Articles 8 and 11 of Regulation (EU) 2017/583, the CSSF authorises investment firms, including systematic internalisers, that perform transactions outside trading venues to defer publication of the details of transactions in non-equity instruments based on the size or type of the transaction in the same manner as the deferrals for trading venues pursuant to Article 11 of MiFIR.

Following types of deferrals are authorised by the CSSF:

1. Deferred publication of the transactions pursuant to Article 11.1. of MiFIR and Article 8.1. of Regulation (EU) 2017/583, which includes *inter alia* :

- transactions which are large in scale compared with the normal market size for the financial instrument or class of financial instruments;
  - transactions on financial instruments or classes of financial instruments for which there is not a liquid market; and
  - transactions which are larger than the specific volume of the financial instrument, or category of financial instruments, which would expose liquidity providers to undue risk and taking into account whether the relevant market participants are retail or wholesale investors.
2. Furthermore, in accordance with Articles 11.3. (b) to (d) of MiFIR and Article 11 of Regulation (EU) 2017/583, the CSSF allows:
- the omission of the publication of the volume of an individual transaction during an extended time period of deferral;
  - regarding non-equity financial instruments that are not sovereign debt, the publication of several transactions in an aggregated form during an extended time period of deferral; and
  - regarding sovereign debt instruments, the publication of several transactions in an aggregated form for an indefinite period of time.

Investment firms which intend to make use of the present deferral shall notify the CSSF thereof by sending an email to [mifid2@cssf.lu](mailto:mifid2@cssf.lu).

Please note that the postponed publication only concerns the disclosure requirement and not the transaction reporting under Article 26 MiFIR to the CSSF. This reporting obligation continues to apply in full.

The CSSF will evaluate the application of post-trade transparency deferrals under MiFIR in light of the market developments on a yearly basis and reserves the right to reassess its position regarding deferrals.

## 5. Questions relating to market structures

### 5.1. Questions regarding algorithmic trading and direct electronic access

**Question 5.1.1. How can entities that engage in algorithmic trading notify this to the CSSF pursuant to Article 17.2. of MiFID II and Article 60(2) of the Law of 30 May 2018 on markets in financial instruments?**

***Date of publication: 9 August 2018***

In accordance with Article 17.2. of MiFID II and Article 60(2) of the Law of 30 May 2018 on markets in financial instruments, concerned entities which engage in algorithmic trading in a Member state shall notify this to the competent authorities of their home Member State and of the trading venue at which they engage in algorithmic trading as a member or participant of the trading venue.

Therefore, Luxembourg incorporated concerned entities which engage in algorithmic trading in any Member State and concerned entities incorporated in another Member State which engage in algorithmic trading as a member or participant of a Luxembourg trading venue shall notify the CSSF by sending a completed copy of the table below to [mifid2@cssf.lu](mailto:mifid2@cssf.lu).

| Field  | Content to be reported   | Format and standards to be used for reporting   |
|--|--|---|
| Name   | Name of the entity   | Free text field                                 |
| LEI  | LEI code of the entity   | Legal entity identifier as defined in ISO 17442 |
| Investment firm under MiFID II or credit institution under CRR | Indicates whether the entity identified is an investment firm under MiFID II or a credit institution under CRR   | 'true'- yes 'false'- no                         |
| Concerned Trading venues                                       | Venue Identification of trading venue at which the entity engages in algorithmic trading as a member or participant of the trading venue. Use the ISO 10383 segment MIC. | Market identifier as defined in ISO 10383       |

**Question 5.1.2. How can concerned entities that provide direct electronic access to a trading venue notify this to the CSSF pursuant to Article 17.5. of MiFID II and Article 60(6) of the Law of 30 May 2018 on markets in financial instruments ?**

***Date of publication: 9 August 2018***

In accordance with Article 17.5. of MiFID II and Article 60(6) of the MiFID II Law, concerned entities which provide direct electronic access to a trading venue shall notify this to the competent authorities of their home Member State and of the trading venue at which they provide direct electronic access.

Therefore, Luxembourg incorporated entities which provide direct electronic access to a trading venue in any Member State and entities incorporated in another Member State which provide direct electronic access to a Luxembourg trading venue shall notify the CSSF by sending a completed copy of the table below to [mifid2@cssf.lu](mailto:mifid2@cssf.lu).

| Field  | Content to be reported  | Format and standards to be used for reporting   |
|--|---|---|
| Name   | Name of the entity  | Free text field                                 |
| LEI  | LEI code of the entity  | Legal entity identifier as defined in ISO 17442 |
| Investment firm under MiFID II or credit institution under CRR | Indicates whether the entity identified is an investment firm under MiFID II or a credit institution under CRR              | 'true'- yes 'false'- no                         |
| Concerned Trading venues                                       | Venue Identification of trading venue to which the entity provides direct electronic access. Use the ISO 10383 segment MIC. | Market identifier as defined in ISO 10383       |