



European Securities and
Markets Authority

Questions and Answers

On MiFIR data reporting





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Markets Authority

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Table of Contents

Table of questions	5
1 Introduction	6
2 LEI of the issuer [Last update: 20/12/2016]	8
3 Date and time of the request of admission and admission [Last update: 20/12/2016]....	10



Acronyms and definitions used

LEI	ISO 17 442 Legal Entity Identifier
EMIR	European Market Infrastructures Regulation – Regulation (EU) 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories
ESMA	The European Markets and Securities Authority
GLEIF	Global Legal Entity Identifier Foundation
ITS	Implementing Technical Standards
MiFID I	Markets in Financial Instruments Directive – Directive 2004/39/EC of the European Parliament and of the Council
MiFID II	Markets in Financial Instruments Directive (recast) – Directive 2014/65/EU of the European Parliament and of the Council
MiFIR	Markets in Financial Instruments Regulation – Regulation 600/2014 of the European Parliament and of the Council
MAR	Market Abuse Regulation – Regulation 596/2014 of the European Parliament and of the Council
NCA	National Competent Authority
Q&A	Question and answer
RTS	Regulatory Technical Standards

Table of questions

		Topic of the Question	Level 1/Level 2	Last Updated issue
LEI of the issuer	1	LEI of the issuer	MiFIR RTS 23 ¹	20/12/2016
	2	LEI of an operator of a trading venue or a systematic analyser	MiFIR RTS 23	20/12/2016
	3	Issuer LEI vs Ultimate Parent LEI	MiFIR RTS 23	20/12/2016
	4	LEI annual maintenance	MiFIR RTS 23	20/12/2016
Date and time of the request of admission and admission	1	Date and time of the request and of the admission of instruments in the past	MiFIR RTS 23	20/12/2016
	2	Unknown time of the request and of the admission	MiFIR RTS 23	20/12/2016
	3	Coinciding date and time of the request and of the admission	MiFIR RTS 23	20/12/2016

¹ Please note that, for ease of reference, RTS have been numbered in this document 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.



1 Introduction

Background

The final legislative texts of Directive 2014/65/EU² (MiFID II) and Regulation (EU) No 600/2014³ (MiFIR) were approved by the European Parliament on 15 April 2014 and by the European Council on 13 May 2014. The two texts were published in the Official Journal on 12 June 2014 and entered into force on the twentieth day following this publication – i.e. 2 July 2014.

Many of the obligations under MiFID II and MiFIR were further specified in the Commission Delegated Directive⁴ and two Commission Delegated Regulations^{5 6}, as well as regulatory and implementing technical standards developed by the European Securities and Markets Authority (ESMA).

MiFID II and MiFIR, together with the Commission delegated acts as well as regulatory and implementing technical standards will be applicable from 3 January 2018.

Purpose

The purpose of this document is to promote common supervisory approaches and practices in the application of MiFID II and MiFIR in relation to regulatory data reporting topics. It provides responses to questions posed by the general public, market participants and competent authorities in relation to the practical application of MiFID II and MiFIR.

The content of this document is aimed at competent authorities and firms by providing clarity on the application of the MiFID II and MiFIR requirements.

The content of this document is not exhaustive and it does not constitute new policy.

Status

² Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

³ Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) NO 648/2012.

⁴ Commission Delegated Directive of 7.4.2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits. The Commission Delegated Directive was published on 7 April 2016 and no objection has been expressed by the European Parliament or the Council on the MiFID II Delegate Directive and Delegated Regulation within the period set in Article 89 of MiFID II.

⁵ Commission Delegated Regulation of 25.4.2016 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. The Commission Delegated Regulation was published on 25 April 2016 and no objection has been expressed by the European Parliament or the Council on the MiFID II Delegate Directive and Delegated Regulation within the period set in Article 89 of MiFID II.

⁶ Commission Delegated Regulation of 18.5.2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions. The Commission Delegated Regulation was published on 18 May 2016 and no objection has been expressed by the European Parliament or the Council on the MiFID II Delegate Directive and Delegated Regulation within the period set in Article 50 of MiFIR.



The question and answer (Q&A) mechanism is a practical convergence tool used to promote common supervisory approaches and practices under Article 29(2) of the ESMA Regulation⁷.

Due to the nature of Q&As, formal consultation on the draft answers is considered unnecessary. However, even if Q&As are not formally consulted on, ESMA may check them with representatives of ESMA's Securities and Markets Stakeholder Group, the relevant Standing Committees' Consultative Working Group or, where specific expertise is needed, with other external parties.

ESMA will periodically review these Q&As on a regular basis to update them where required and to identify if, in a certain area, there is a need to convert some of the material into ESMA Guidelines and recommendations. In such cases, the procedures foreseen under Article 16 of the ESMA Regulation will be followed.

Questions and answers

This document is intended to be continually edited and updated as and when new questions are received. The date on which each section was last amended is included for ease of reference.

⁷ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC Regulation, 15.12.2010, L331/84.

2 LEI of the issuer [Last update: 20/12/2016]

Question 1 [Last update: 20/12/2016]

What action should be taken by the operator of the trading venue or the systematic internaliser in the cases where the LEI of the issuer cannot be obtained?

Answer 1

Operators of trading venues and systematic internalisers are advised to inform the issuers pertaining to the financial instruments concerned of their obligation to obtain the LEI of the issuer of every financial instrument in order to comply with the requirements under Article 3(2) of the MiFIR RTS, Article 1 of the MAR RTS⁸ and Article 2 of the MAR ITS⁹. Trading venues and systematic internalisers are advised that the GLEIF has introduced the concept of 'Registration Agent'. This facility will enable trading venues and systematic internalisers to assist the issuer applying for the LEI to access the network of LEI issuing organisations¹⁰. For more information on the 'Registration Agent' arrangements please refer to the following link <https://www.gleif.org/en/lei-focus/how-to-get-an-lei-find-lei-issuing-organizations/registration-agents>.

Question 2 [Last update: 20/12/2016]

When can an operator of trading venue(s) and systematic internaliser(s) populate field 5 of Table 3 of the Annex to RTS 23¹¹ and related MAR RTS and ITS¹² with its own LEI?

Answer 2

Operators of trading venues and systematic internalisers can populate field 5 of Table 3 of the Annex to RTS 23 with their own LEI only where they create or issue themselves the financial instrument to be reported under the MiFIR and MAR obligations to supply reference data.

⁸ 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

⁹ 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

¹⁰ The list of LEI issuing organisations can be found at this link: <https://www.gleif.org/en/lei-focus/how-to-get-an-lei-find-lei-issuing-organizations>

¹¹ Please note that, for ease of reference, RTS have been numbered in this document 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.

¹² See footnote 8 and 9 respectively.

Question 3 [Last update: 20/12/2016]

In case the Issuer LEI code is missing but the Ultimate Parent Code LEI is available, can the latter one be used at least for a to-be-specified grace period?

Answer 3

No, it cannot. The information about the LEI of the issuer of the financial instrument is essential to determine the relevant competent authority pursuant to Article 16 of RTS 22¹³. For this reason, it is essential that the LEI pertaining to the issuer of the financial instrument and not that of the ultimate parent of the issuer is provided.

In general, issuers should be aware of a number of existing EU obligations that already require the LEI of the issuers to be provided (e.g. MAR, EMIR and Transparency Directive¹⁴). Under MAR, the LEI of the issuer, in addition to being used in the context of providing reference data, is part of the mandatory information to be included in the notifications by persons discharging managerial responsibilities and by all persons closely associated with them¹⁵. Under EMIR, the LEI is mandatory for the identification of all legal entities involved in the derivative contract to be reported to the EU Trade Repositories, including financial and non-financial counterparties that enter into derivative contracts, the beneficiary of derivative contracts, the broking entity and the clearing member. Under the Transparency Directive Officially Appointed Mechanisms are obliged to obtain the LEI of the issuer of financial instruments admitted to trading on regulated markets.

Question 4 [Last update: 20/12/2016]

In the case where the issuer does not pay the annual fees for maintaining its LEI to the Local Operating Unit, what is the responsibility of operators of trading venues and systematic internalisers and what measures should be taken?

Answer 4

While issuers of financial instruments should ensure that their LEI is renewed according to the terms of any of the accredited Local Operating Units of the Global Entity Identifier System, under Article 3(2) of RTS 23 operators of trading venues and systematic internalisers are not expected to ensure that the LEI pertaining to the issuer of the financial instrument has been renewed.

¹³ Please note that, for ease of reference, RTS have been numbered in this document 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.

¹⁴ Commission Delegated Regulation (EU) 2016/1437 of 19 May 2016 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to regulatory technical standards on access to regulatory information at Union level

¹⁵ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0523&from=EN>



3 Date and time of the request of admission and admission **[Last update: 20/12/2016]**

Question 1 [Last update: 20/12/2016]

What should be populated in field 10 (Date of request for admission to trading) and field 11 (Date of admission to trading or date of first trade) in the cases where the instrument was listed far in the past, e.g. when the MiFID I rules were not yet applicable and the concept of Regulated Market had not yet been introduced?

Answer 1

If the dates and times to be provided in fields 10 and 11 are known, those dates and times should be provided even if the request for admission and the admission occurred at a time where MiFID I did not yet apply. Otherwise, either the date of establishment of the given trading venue or systematic internaliser or the application date of MiFID I (i.e. 01 November 2007) should be used, whichever date is more recent.

Question 2 [Last update: 20/12/2016]

In some cases, the time of the request and of the admission is not known, e.g. when the instrument was listed far in the past or when the request was submitted by postal service. In such cases, would it be possible to populate fields 10 and 11 with a default time?

Answer 2

When the time is not available, the default time of midnight (00:00:00) should be provided.

Question 3 [Last update: 20/12/2016]

Can both fields 10 and 11 be populated with the same value where the request for admission to trading and the admission to trading takes place on the same day?

Answer 3

Yes.