

Q1. What are MiFID II and MiFIR?

The Markets in Financial Instruments Directive (MiFID) is a European Union law that provides harmonized regulation for investment services across the 31 member states of the European Economic Area. The directive's main objectives are to increase competition and consumer protection in investment services. MiFID became effective in November 2007, and primarily related to equities markets. MiFID II (along with the Markets in Financial Instruments Regulation – MiFIR), replaces MiFID, and broadens its scope to non-equities, including bonds. Among the key aspects of MiFID II/R are provisions covering: transaction reporting, market structure, pre-trade transparency requirements, post-trade reporting, best execution reporting, and conduct of business rules. MiFID II/R entered into force in July 2014. The 'Level 2' regulatory and implementing technical standards were submitted to the European Commission by ESMA in September 2015. Following approval by the Commission, Council, and Parliament, it is expected to be implemented in January 2018.

Q2. What are the pertinent elements of MiFID II/R for repo?

The key aspects of the regulation that impact repo markets are **best execution reporting obligations**, **transacting with retail clients** and, to a limited extent, **transaction reporting**. There are no pre- or post-trade reporting (transparency) obligations with respect to securities financing transactions (SFTs).

Q3. What are the MiFID II/R best execution reporting obligations for repo?

[RTS 27](#) specifies onerous and detailed reporting requirements for trading venues (regulated markets, multilateral trading facilities, and organised trading facilities), systematic internalisers (SIs), market makers, and other liquidity providers,¹ to make publicly available, at no charge, data relating to the quality of execution of transactions on that venue (or with that liquidity provider). Details to be made available include price data (intraday and daily), costs related to execution, likelihood of execution, as well as additional information related to the type of venue. With respect to intraday price information, there is an exemption for money market instruments where the transaction value is > €10 million.

¹ Other liquidity providers should include firms that hold themselves out as being willing to deal on own account, and which provide liquidity as part of their normal business activity, whether or not they have formal agreements in place or commit to providing liquidity on a continuous basis.

Best execution data are required to be published quarterly, no later than three months after the end of each quarter, using [specified reporting templates](#), and should be made publicly available in machine-readable form.

[RTS 28](#) specifies reporting requirements for investment firms executing client orders related to the details and quality of execution for each class of financial instrument on their top five execution venues (including systematic internalisers, market makers, and other liquidity providers) in terms of trading volumes. Data includes the identity of the trading venues, volume and number of transactions (disaggregated by types of order), as well as a summary of analysis and conclusions drawn by the investment firm from their “detailed monitoring of the quality of execution obtained on all client orders”.

Investment firms are required to report information on an annual basis, again using [specified templates](#). **Data related to SFT client orders are required to be reported separately** from client order flow in non-SFTs.

Q4. Does MiFID II/R allow the transacting of repos with retail clients?

Article 16(10) of MiFID II specifies that “an investment firm shall not conclude title transfer collateral arrangements (TTCAs) for the purpose of securing or covering present or future, actual or contingent or prospective obligations of clients” (and even for non-retail clients, investment firms shall not conclude TTCAs without proper consideration). This would seem to suggest that transacting repos and other SFTs would no longer be permitted with “retail clients” under TTCAs (which are the basis for Global Master Repurchase Agreement (GMRA) transactions).

MiFID II defines a “retail client” as a client who is not a professional client or an eligible counterparty. While most retail clients are unlikely to engage in repo transactions, counterparties excluded from the definition of professional client or eligible counterparty include **local authorities** and **municipalities**, who are more likely to engage in repo transactions. Such counterparties would accordingly need to elect to change their status to “professional” (and related procedures then be duly followed) in order to continue transacting GMRA repos and other TTCAs.

Q5. Are there any MiFID II/R transaction reporting requirements for repo?

MiFID II/R makes a distinction between trade reporting and **transaction reporting**. Trade reporting relates to the pre- and post-trade transparency obligations of trading venues (including systematic internalisers) to make public certain trading interests and transaction details. **Transaction reporting** entails more extensive reporting of trade details (including counterparties) by investment firms to the relevant regulatory bodies (the national competent authorities – NCAs). Transaction reports are

primarily used by regulatory authorities to detect market abuse and the data is not made available to other market participants. The reporting requirements are set out in [RTS 22](#).

Importantly, **RTS 22, as currently proposed, provides a specific exclusion for transaction reporting for SFTs where these are already in scope of the transaction reporting requirements of SFTR:**

"A transaction for the purposes of Article 26 of Regulation (EU) No 600/2014 [MiFIR] shall not include the following:

- (a) securities financing transactions as defined in Article 3(11) of Regulation (EU) 2015/2365 [SFTR] of the European Parliament and of the Council;"*

However, as the regulation is framed, the reporting exclusion in SFTR for **SFTs transacted with central banks in the ESCB** (European System of Central Banks) would mean that **these transactions are in scope of the transaction reporting requirements** of MiFID II/R.

Q6. Are repos (and other SFTs) in scope of MiFID II/R pre- and post-trade transparency obligations?

On June 30 2016, an [agreed amendment](#) to MiFIR was published in the Official Journal of the EU that included an exemption for SFTs under Article 1 relating to pre- and post-trade transparency obligations:

"Regulation (EU) No 600/2014 [MiFIR] is amended as follows: (1) in Article 1, the following paragraph is inserted: 5a. Title II and Title III of this Regulation shall not apply to securities financing transactions as defined in point (11) of Article 3 of Regulation (EU) 2015/2365 of the European Parliament and of the Council [SFTR]".

In other words, SFTs, including repo, are not subject to pre- or post-trade reporting requirements.