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ESMA - Risposta consultazione Transaction Reporting MiFIR

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Executive Summary

Assogestioni[1] welcomes the opportunity to respond to the consultation MiFIR review report on the obligations to report transactions and reference data.

MiFID II/MiFIR aims at promoting the integrity of markets mandating national competent authorities and ESMA to enforce this integrity by monitoring investment firms' activities as to their honest, fair and professional market behaviour. To this end, MiFID II/MiFIR introduces a comprehensive reporting regime designed to enable authorities to apply their surveillance mandate efficiently.

While all investment firms and trading venue operators are subject to the transaction reporting obligation, UCITS and AIF management companies that perform (some) MiFID services are not. ESMA proposes to extend the MiFIR transaction reporting also to these entities to gather additional information, including details of the decision-maker who is making the decision to acquire/sell the given financial instruments, even if the management company is identified as buyer/seller.

Assogestioni fully agrees that competent authorities must have access to sufficient information to fulfil their supervisory functions and is positive with some proposals to improve the current regime, however we strongly disagree on the extension of the transaction reporting regime to AIFMs/UCITS management companies providing MiFID services.

We understand this as a political demand caused by level playing field rather than the need to detect and investigate potential cases of market abuse or to monitor the fair and orderly functioning of markets.

We invite ESMA to review its approach and to consider the different core business and services of investment firms and of management companies, where the latter cannot execute orders on behalf of clients, nor dealing on own account. Furthermore, we believe that the quality of overall reporting is not really improved with the request of identification of the decision-maker: in the actual performance

of the management activity (i.e. discretional individual portfolio management), various employees of the management company are involved in various capacities, especially in large and complex structures. Indeed, in case of an investigation, the competent authority goes very deeply in the analysis on the whole investment process. Management companies also act on an agency model; therefore, the name of the end-client is also irrelevant.

Assogestioni believes that the proposal of expanding the realms of firms subject to transaction reporting should find no sufficient justification in the creation of level playing field among different entities (delivering some common services) but should respond to an actual need.

Extending transaction reporting obligations would cause very high costs - without providing any real improvement in the quality of overall reporting - and we would therefore require a cost-benefit analysis. Indeed, we see a real lack of proportionality between the risks involved and the administrative burden resulting from a change to Article 26 to widen the entities subject to transaction reporting.

Transaction reporting limited to market-facing firms, i.e. investment firms and trading venues as in the current regime, is commensurate and proportionate with the objective to be achieved as it provides sufficient information to ensure proper supervision and to protect the integrity of the markets.

Principle of proportionality should remain a cornerstone to European legislations and implementing acts. Against this background, should ESMA envisage to impose additional reporting, burden is to be minimised. This can be achieved without extending the entities subject to transaction reporting but by amending the current transaction report, for example, by simply adding two more data fields to be filled in by investment firms or trading venue to collect information (only) on end-clients issuing binding orders to an AIFM/UCITS management company during the execution of the discretionary portfolio mandate.

Scarica la versione integrale della risposta alla consultazione [2].

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[1] Assogestioni is the trade body for Italian asset management industry and represents the interests of members who manage funds and discretionary mandates around € 2,336 billion (as of September 2020).

Risposta al documento di consultazione recante "MiFIR review report on the obligations to report transactions and reference data".
