A new European approach to transaction reporting

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Abstract

The Markets in Financial Services Regulation and Directive (MiFID II) is part of the wider European Financial Services Action Plan. The main aim of creating a single market for financial services is to establish a stable, competitive and transparent financial services framework across the European Union. The primary purpose for transaction reports is to detect and investigate suspected market abuse, insider trading and market manipulation. Review of a transaction report is a key part of any investigation into alleged market abuse reported to any financial authority. Transaction Reporting is used by regulators to monitor and survey the market for any instances of market abuse. Failure to submit accurate transaction reports has the potential to hinder the Authority's ability to detect and investigate suspected market abuse. The new transaction reporting regime will be standardised across Europe under the Markets in Financial Services Regulation.

The article:

- *Examines the purpose of transaction reporting*
- *Identifies scenarios of market abuse that transaction reporting helps highlight*
- *Examines Regulatory Change under the Markets in Financial Services Regulation (MiFIR).*
- *Reviews areas of failure to submit accurate transaction reports which firms need to consider in their regulatory assurance programmes.*

Keywords: transaction reporting, market abuse, markets in financial services directive/regulation, assurance, insider dealing/market abuse

INTRODUCTION

The Markets in Financial Instruments Regulation (MiFIR) Level 1 text states, under Article 26(1), that investment firms that execute transactions in financial instruments shall report complete and accurate details of such transactions to the Competent Authorities as quickly as possible, and no later than the close of the following working day, 23:59:59 UTC to be exact.

Transaction reporting is used by regulators to monitor and survey the market for any instances of market abuse. The Financial Conduct Authority (FCA) has being focused on transaction reporting since 2004. Enforcement action has being taken against a number of firms, including, most recently, Merrill Lynch International, who were fined £13.2m in April 2015 for transaction reporting errors that occurred due to Markets in Financial

Services Directive (MiFID) implementation in November 2007. Other fines have been imposed on Deutsche Bank, £4.7m in August 2014, again for failing to accurately report all Contracts for Difference (CFD) Equity Swaps since the November 2007 MiFID implementation.

Firms that receive enforcement fines for errors in transaction reporting are fined because their submission of the reports is incorrect, and when firms are known to be submitting incorrect reports it is easy for market participants to commit financial crime, to the detriment of other market participants. It is difficult to prove without reasonable doubt that individuals have knowingly taken advantage of a market situation that is not clear, fair and is misleading.

Failures cited by the FCA include the following:

- A lack of reasonable care to organise and control the firm's affairs responsibly and effectively with adequate risk management systems;
- An inadequacy within the firm's governance oversight for transaction reporting to act with due skill, care and attention; and
- Inability to identify fundamental errors in transaction reporting processes upon the implementation of new trading systems.

MiFID II is part of the wider European Financial Services Action Plan. The main aim of creating a single market for financial services is to establish a stable, competitive and transparent financial services framework across the European Union (EU).

The new transaction reporting regime will be standardised across Europe. Presently, there are inconsistencies between Member States. For example, reports sent to the Financial Conduct Authority (FCA) contain 24 known fields, whereas in Germany, market participants need to complete 49 fields for the Federal Financial Supervisory Authority (BaFIN). 77 per cent of transaction reports generated through the European Transaction Reporting Exchange Mechanism (TREM) originate from the UK financial services market. In some instances there is dual reporting of transaction reports, one to the home state regulator and another to the host state regulator; these reports currently differ. MiFIR sets out to address these issues, among others, and provide uniformity to the regime.

PURPOSE?

The primary purpose of transaction reports is to detect and investigate suspected market abuse, insider trading and market manipulation. Review of a transaction report is a key part of any investigation into alleged market abuse reported to any financial authority.

Transaction reports allow investigators to identify and confirm the details of transactions, and establish their nature, timing and the parties involved. The reports provide an audit trail and evidence of whether a civil or criminal crime has being committed.

A transaction report is a data set submitted to the National Competent Authority (NCA). The data set will include the stock

Box 1: Scenario

Mark is working for the summer in a FTSE 100 company called Match. During his internship he finds out that a takeover bid may be imminent. He discloses to friends in the pub that Friday evening that the announcement will be made on Monday at 12 pm and encourages his friends to take positions in the stock. He discloses that the stock price is set to double.

On Monday morning a number of new accounts are opened and positions taken in the stock. At 12 pm an announcement is made and the stock moves from £1.50 to £2.25. Associates of Mark who have traded on the receipt of this information are insider dealing.

In the UK, insider dealing under the Criminal Justice Act can carry a prison sentence of up to 7 years and/or an unlimited fine. Under the Financial Services Act 2012, similar penalties exist for market manipulations.

reference, price, date and time of transaction. Each report will contain specific information relating to a particular transaction. Information covers numerous aspects of the transaction, including the product traded, the firm that undertook the trade, the trade counterparty and the capacity under which counterparties were acting, and trade characteristics including whether the trade was a buy or sell.

Apart from transaction reporting being key to detecting and investigating suspected market abuse, the information is useful from a regulatory perspective in providing market information that helps with firm and regulatory market surveillance and supervision.

Key statistics can be derived about market practices, including the rate of growth in the use of certain financial instruments, and the nature and frequency of transactions, alerting market participants to potential new risks to market confidence that may arise from significant market developments.

MiFID VERSUS MiFIR TRANSACTION REPORTING

Currently, the FCA shares transaction reports with other EU competent authorities as is required. The UK interpretation of MiFID applies to UK investment firms and branches of European Economic Area (EEA) firms providing services in the UK. The scope of current requirements not only extends to the equity market, but to financial instruments traded or listed on EU regulated markets, multilateral trading facilities (MTFs) and London International Financial Futures and Options Exchange (LIFFE). Presently in the UK, investment firms transaction report over-the-counter (OTC) derivatives related to equity or debt instruments traded or listed on EU regulated markets.

Currently, firms in the UK must complete 24 fields in a transaction report before it is submitted to the FCA. The total number of fields proposed under the MiFIR regime is 65 fields. Of the fields in the current MiFID transaction report, 15 will remain, but there will be 45 new fields and 5 amended fields (Table 1). It is important to remember that it is not just a case of completing the fields; some of the key

Box 2: Scenario

Euronite PLC is currently trading at GBP 50 on the London Stock Exchange. On Wednesday, Joe Blighty overhears in the pub that Euronite PLC is going to merge with GIANT service, a private equity company. The merger is to be announced the following week.

The next morning, Joe Blighty rings his stockbroker and buys GBP 5,000 worth of shares at a price of £1.50. The following week the announcement is made and the share price falls from £1.50 to £0.95.

Question

1. Is this still an act of market abuse?
2. Is the firm responsible for submitting a suspicious transaction report?
3. Is the FCA able to take action against the individual, even though he has made a loss?

Table 1: MiFIR field analysis

Total number of fields proposed	65
Number of fields proposed	15
Number of new/amended fields	50
Amended MiFID fields	5
• Reporting submission details	2
• Counterparty details	18
• Transmission fields	3
• Transaction fields	13
• Trader, algorithm, waivers and indicators	9

Notes: MiFIR, Markets in Financial Instruments Regulation; MiFID, Markets in Financial Services Directive.

fields highlighted are linked to policies and procedures that are implemented through pieces of legislation. One example is the short sales flag, but we will revisit that later on.

DIFFERENCES BETWEEN EMIR TRADE AND MiFIR TRANSACTION REPORTING

The European Securities and Markets Authority (ESMA) has stated that it is committed to aligning MiFIR Regulatory Reporting with the standards for reporting to Trade Repositories under the European Market Infrastructure Regulation (EMIR), but the reality is that the purposes of EMIR trade reporting and MiFIR transaction reporting are quite different.

EMIR came into force on 16th August 2012 and introduced requirements aimed to improve the transparency of OTC derivative markets and to reduce the risks associated with those markets. It is designed to increase the stability of the (OTC) European derivatives market.

Box 3

In 2009, the G20 leaders made a commitment that 'All standardised OTC derivative contracts should be traded on exchange or electronic trading platforms, where appropriate, and cleared through central counterparties by end 2012 at the latest. OTC derivative contracts should be reported to trade repositories. Non-centrally cleared contracts should be subject to higher capital requirements.'

EMIR introduced a reporting obligation for OTC derivatives and a clearing obligation for eligible OTC derivatives. The regime introduced measures to reduce counterparty credit risk and operational risk for bilaterally cleared OTC derivatives, and common rules for central counterparties (CCPs) and for trade repositories.

EMIR captures derivatives, central counterparties and trade repositories. The requirements that were introduced were aimed at improving transparency in OTC derivative markets to reduce systemic risk. EMIR improves transparency in derivatives contracts and identifies derivatives contracts subject to the clearing obligation.

MiFIR transaction reporting is necessary to monitor for market abuse by monitoring for the fair and orderly functioning of the markets, as well as monitoring the activities of investment firms in general. The population of financial instruments caught by MiFIR transaction reporting is wider then OTC derivatives caught by the clearing obligation.

The top three issues for a 'unified' reporting of trade and transaction reporting are as follows:

- MiFIR transaction reports are largely designed to detect market abuse, whereas EMIR trade reporting largely targets systemic risk.
- Standards suitable to one of these requirements may not necessarily be suitable for the other regime.
- Many of the proposed MiFIR transaction reporting fields are not part of the EMIR reporting set, ie the short selling flag for shares and sovereign debt.

Another issue for firms to consider is that the trading scenarios differ between EMIR and MiFIR transaction reporting and may be incompatible (eg Executing versus Clearing Member; Agency trades and OTC scenarios). Different asset classes may be reported differently, and complex products are not readily represented by the message format.

Finally, MiFIR transaction reports must be submitted via an Approved Reporting Mechanism (ARM) whereas EMIR trade reports must be cleared by a Central Counterparty or Trade Repository.

REGULATORY CHANGE IN MiFIR TRANSACTION REPORTING

While the Markets in Financial Services Directive implemented in November 2007 allowed Member States some flexibility in interpreting the requirements of transaction reporting into local law, the implementation of the transaction reporting regime under the Markets in Financial Instruments Regulation (MiFIR) will be binding and will have a direct effect across the entire EU, with ESMA at the hub of the coordination effort.

The new requirements will significantly increase the scope of reportable instruments that reflect the provisions in the market abuse legislative proposals; specific additions to the content of transaction reporting include those related to clients, algorithms, short sales and the waivers under which the trade took place.

To enhance effective market monitoring and thereby financial safety and market integrity, MiFIR seeks to upgrade and uniform the transaction reporting regime across the EU. MiFID II, Article 50, refers to reportable events and includes transaction reporting under Article 26 of MiFIR. Article 50 of MiFID II refers to the obligation of trading venues and their members or participants to record, using an accurate business clock, the date and time of any reportable event.

For transaction reporting there must be a system of traceability of their business clocks to Coordinated Universal Time (UTC). Trading venues and market participants must provide evidence that their systems meet the requirements, including documenting the system design, functioning and specifications. Market participants must provide evidence that the crucial system components meet the relevant requirements.

ESMA has specified that transactions and instrument reference data should be reported in accordance with ISO 2022 for consistency and introduces new rules to govern how EEA branches of non-EEA firms should transaction report. Some market providers will accept firm data and convert the data for submission into the required format. In these instances, firms and senior management must remember that under the Systems and Controls framework, and specifically SYSC 8.1.1 R, the firm and senior management remain responsible for any outsourcing of activity that may result in transaction reports being submitted incorrectly to the NCA.

The following section of this report is split into three levels (1) scope and definitions; (2) field analysis; and (3) regulatory assurance. The vast set of possible transactions prevents the possibility of elaborating an exhaustive list of every trading situation that might arise across the financial services markets caught by MiFID II.

Scope and definitions

MiFIR transaction reporting extends beyond the mere purchases and sales of reportable instruments. As indicated in Recital 11 and further specified in Article 15(5) of RTS 22, 'an investment firm shall therefore ensure that a collective view of the transaction reports reported with the investment firm as the executing entity accurately reflects all changes in its position and in the position of its clients in the financial instruments concerned as at the time the transactions were executed'.

Firms must consider the changes in investment firms' or their clients' positions and how that might look from a market abuse perspective. The amendments to the legislation, in a concept already introduced in Transaction Reporting User Pack (TRUP) v3.1 (published by the FCA in March 2015), indicate that a reportable transaction is any change (not related to corporate actions or valuations) in an investment firm's position and/or their client's position in a reportable instrument resulting in a change in beneficial ownership.

Currently reportable instruments caught by MiFID I in the UK include the following:

- financial instruments admitted to trading on a regulated market or multilateral trading facility;
- dual listed securities admitted to trading on EU regulated markets; and
- financial instruments on LIFFE excluding commodity derivatives.

MiFIR harmonises reportable instruments across NCAs and broadens the scope of reportable transactions. MiFID II introduces new concepts of Trading Venues, which includes, as well as Regulated Markets (RM) and Multilateral Trading Facilities (MTF), Organised Trading Facilities (OTFs) and expands the requirements for Systematic Internalisers (SI's). The reporting obligation is expanded to:

- Financial Instruments where the underlying is a financial instrument traded on a trading venue such that OTC derivatives subject to EMIR; and
- Financial Instruments where the underlying is an index or a basket of financial instruments.

The legislation is drafted in such a way that the obligation to transaction report apply irrespective of whether or not the transactions are carried out on the trading venue.

ESMA has published that it believes that the general rule for what securities constitute a transaction should be drafted on broad principles subject to a specific limited set of exclusions. There will be no definitive golden list of reportable securities. That is just not possible, and reportable transactions need to remain broad and not limited to purchases (acquisition) and sales (disposals) of reportable instruments.

Acquisitions of reportable instruments include

- a purchase of a financial instrument (acquisition);
- entering into a derivative contract in a financial instrument (acquisition); and
- an increase in the notional amount for a derivative contract that is a financial instrument (acquisition).

Disposals of reportable instruments include:

- sale of a financial instrument;
- closing out of a derivative contract in a financial instrument; and
- a decrease in the notional amount for a derivative contract that is a financial instrument.

Changes to a notional amount may give rise to market abuse concerns (similar to additional purchase or sale transactions). Reportable transactions will include a simultaneous acquisition and disposal of a financial instrument where there is no change in the ownership of that financial instrument, but post-trade publication is required under Articles 6, 10, 20 and 21 of the Regulation.

ESMA lists a specific set of exclusions which not need to be reported to NCAs for market surveillance purposes. An example would be a securities financing transaction that either (1) had been reported under that Regulation; or (2) is, at a time prior to the date of Article 4 of that Regulation, a securities financing transaction for which there would be a reporting obligation under that Article if the Article applied at that time. Firms will need to be mindful of the configuration of the report and complete the fields related to Securities Financing Transaction Reports (SFTRs) in the manner described by the regulator.

MiFIR transaction reporting sets out definitions for a firm's obligation to report; when a transaction is defined as executable and therefore qualifies for a transaction report; and when a transaction is deemed a transmission of an order and not subject to being transaction reported by the transmitting firm. A firm will have to ask itself whether it wishes to continue to provide a report via the sell side, as doing so will mean, in essence, disclosure of client-sensitive information to a competitor.

Firms providing a service of portfolio management should note that there will be a requirement to report transactions between funds managed by that same firm where that firm does not have reasonable grounds to be satisfied that another firm (conventionally a sell side broker) will make a transaction report to the FCA (SUP 17.2.2 G). Where exceptions cannot be relied upon, the firm may use any one, or more, of the Approved Reporting Mechanism (ARM) to send transaction reports to the FCA automatically.

Under MiFID I, reportable products in the UK included equity shares (including preference shares), bonds (corporate, government and municipal), futures, options, swaps, contracts for differences (CFDs), certificates and warrants on equity and bonds. Commodity, interest rate and foreign exchange rate derivatives remained out of scope.

MiFID II generally extends the scope of equity products caught by the regime, and brings non-equity products into scope across Europe. In addition to alignment across different EU regimes, the new requirements extend the regime to a number of additional products, including foreign exchange derivatives, commodity derivatives, commercial paper and interest rate derivatives. ESMA will be unable to maintain an accurate 'golden source' list of products produced throughout the EU at a real time level.

Box 4: Issac Butt insider dealing case

It was once argued in a market abuse case that spread bets were not financial instruments for the purpose of MiFID and therefore not caught by the market abuse requirements. The defendant argued that because a spread bet was technically outside the scope of the MiFID he could not be committing market abuse. The judge, however, found that by distributing information, even if it was not insider information, market participants were given an unfair advantage and they were making money out of it.

Firms will have to be clearer about the products and their business. The biggest shift will be a more holistic approach. Tools that can be used will be the list of Trading Venues and the products offered on these Trading Venues (in general, securities including equities, bonds, money market instruments, collective investments, exchange traded derivatives (ETDs) and OTC instruments). Financial instruments that remain outside the scope of MiFIR may, however, be caught by other European legislation, including physically settled commodities and Foreign Exchange Spot products.

Firms need to question:

- whether the product falls within the scope of being traded on a trading venue or not;
- whether it is a product that is a financial instrument caught by MiFID II; and
- whether, in the transaction, there is the chance that a market participant could commit market abuse.

Execution of a transaction (RTS 22 Article 3)

MiFID I did not define the term 'execute' in executing a transaction. The FCA, following the relevant guidelines from The Committee of European Securities Regulators (CESR), the predecessor to ESMA, interpreted this to mean that a firm would 'execute' a transaction in the following scenarios:

- a firm transacts directly with an execution venue (immediate market-facing firms);
- a firm transacts on its own account; or
- a firm transacts on behalf of a client (whether through a regulated market or an MTF or outside of them).

As mentioned already, the definition of the execution of a transaction is therefore any action that results in a change of beneficial ownership and, aside from a purchase or sale of a financial instrument, introduces and captures the following:

- increases and decreases in a notional amount included as separate transactions (not amendments to original trades);
- exercise of options, warrants or convertible bonds;
- acting under a discretionary mandate on behalf of a portfolio manager (removal of exemption); and
- transmission of orders (unless several criteria are met).

The application of transmission to Direct Market Access (DMA) is no different to its general applicability. If a DMA user, as per the general definition of DMA or, as some refer to it, Direct Electronic Access (DEA), meets the transmission requirements then it will not have to transaction report and the DMA provider will report the details transmitted by the DMA user.

Where there is successful transmission, the receiving firm shall report the market side and the client side of the transaction. The client side would include the information provided by the transmitting firm.

Field analysis

MiFIR Article 26 (3) states what particular information transaction reports must include. Currently, 65 fields are proposed and it is unlikely that the transactions fields proposed in the feedback to the European Commission will change, although until publication in the Official Journal of the Level 2 Implementing and Regulatory Technical Standards, this could minor amendment be subject to change. From Article 26(3), trading capacity, client identification, trader identification, algorithm, waivers and short sales must be included.

This is an area where senior management must ensure that the information is captured not just as a tick box activity. I have already seen some firms coordinate MiFIR transaction reporting as an information technological project where information is being sourced from systems without looking at the underlying policy connections to which that information relates. Firms and banks will need to be mindful of the responsibilities set out under the Senior Management Regime (SMR) implemented in March 2016 and the new Conduct Accountability regime to be implemented from March 2017. All firms have to allocate responsibility for financial crime and it can be argued that transaction reporting is the tool that supports this function.

An example where firms need to be mindful of a holistic implementation can be demonstrated via the implementation of the short selling flag designation, which captures two scenarios:

- when the seller is the reporting investment firm and is selling on own account; or
- when the seller is a client of the reporting investment firm.

The short selling flag is an indication as to whether the seller is conducting a short sale as defined in Article 2(1) (b) of Regulation (EU) 236/2012, where the seller is the investment firm or a client of the investment firm, and whether the transaction was carried out in a market making capacity under exemption in Article 17 of Regulation (EU) 236/2012.

The Short Selling Regulation (SSR) requires holders of net short positions in shares or sovereign debt to make the notifications once certain thresholds have been breached. It further outlines restrictions on investors entering into uncovered short positions in either type of instrument. It gives powers to competent authorities to suspend short selling or limit transactions when the price of various instruments (including shares, sovereign, corporate bonds and exchange traded funds) fall by set percentage amounts from the previous day's closing price.

The SSR applies to market participants undertaking short selling of reportable products and related instruments that are admitted to trading or traded on an EEA trading venue (unless they are primarily traded on a third country venue). For the purposes of MiFID II, ESMA proposes that investment firms should specify in each transaction report they transmit to the competent authority whether the seller to the transaction is short selling, where the seller is the investment firm or a client of the investment firm.

REGULATORY ASSURANCE?

Governance and management oversight

The FCA have issued many enforcement fines, warnings, notifications and communications on transaction reporting to the industry, including the following:

- transaction reporting forums on a frequent basis for investment firms;
- the TRUP or Transaction User Pack;
- publication of the Market Watch Articles;
- the FCA's website gives full access to the FCA's transaction reporting website.

Failure to submit accurate transaction reports has the potential to hinder the FCA's ability to detect and investigate suspected incidences of market abuse, insider dealing and market manipulation. The main findings for the causes of such breaches include the following:

- weaknesses in procedures, management systems and internal controls relating to transaction reporting;
- multiple and discrete events that continued, in some cases, for significant time periods before detection and remediation; and
- senior management became aware of issues occurring, but failed to fully address or engage with them.

It is not only evident that these issues arise in relation to transaction reporting but in relation to other areas of the business that have prescribed regulatory rules and controls across the business and industry, for example Client Money and Asset Protection (CASS).

Knowledge and change are the two underlying key factors that cause regulatory mishap. The FCA has stated in TRUP version 3.1 that it expects firms to provide comprehensive training for members of staff with transaction reporting duties and roles that impact the accuracy and completeness of the firm's transaction reports. The FCA expects that firms tailor their training programmes appropriately for different audiences, as well as covering the firm's own processes and procedures and the applicability of transaction reporting rules and guidance relevant to the firm's particular business. The FCA have outlined that firms should consider including the reasons why transaction reports are collected by the FCA and their role in detecting and pursuing cases of market abuse; include training for IT staff responsible for developing and testing systems that can impact transaction reporting processes; and include training for staff members submitting manual data, including static data and trade data.

I would urge firms to consider the many culture and conduct issues that arise for senior management across the spectrum of financial compliance regulation. The number one issue addressed in my courses is the inability of a business to work holistically and as a team. There seems to be consistent communication issues between different departments and levels of staff.

Many individuals face fear, and acting from a place of fear does not support good decision making. A lack of corporate history means that people integral to the development of procedures and systems are displaced, and there is no follow up or proper handover. As an example, certain elements of regulation and transaction reporting become an area of speciality that only a few fortunate individuals are capable of understanding.

MiFIR Transaction Reporting (and MiFID II in general) is a complex piece of regulation. Firms need to consider the following questions:

- What business is your firm in?
- Is there an understanding of the business and the products being sold?
- What short-term, medium-term and long-term strategy of the firm and consideration given to the evolutionary nature of operational regulatory compliance?
- What regulatory and non-regulatory business is capturing financial instruments which would be caught by the requirements?

Management information is an important tool for firms to provide oversight of their compliance regimes. Management information might ideally consider regulatory changes that overlap the market abuse regime, including the implementation of the Market Abuse Regulation (MAR) 2016 or the implementation of the Regulation on Wholesale Energy Markets Integrity and Transparency (REMIT) for the surveillance of market abuse in energy markets in 2015.

Specific to transaction reporting, firms should consider including information on the number of traded financial instruments versus the number of reported transactions.

Table 2: Assurance considerations

Area	*Provisions*
Governance	• The structure of transaction reporting arrangements in place • Escalation route for issues • Training policy/process ownership • The *types* of scenarios in which transaction reporting considerations arise
Roles and responsibilities	• Individual responsibilities and connectivity • Associated procedures/systems supporting infrastructure • Record-keeping requirements
NCA requirements	• Challenges and proposed improvements to processes and procedures • Arrangements and controls in place with Approved Reporting Mechanisms (ARMs) • Summary of measures that would be considered in order to assist firms in following the requirements
Policies and procedures	• Policy and procedure outlining key risks and processes in place • Process outlining types of controls in place to highlight material inaccuracies within the transaction reporting infrastructure on a regular basis • Change of management control guidelines for testing required for implementation of new or amended functionality or re-engineered systems

Note: NCA, National Competent Authority.

Consider the number of rejections when reporting to the NCA and any resolutions completed or pending with any necessary commentary, as well as any other issues the firm deems relevant.

Fines and enforcement

The UK NCA regarded that the previous metric of £1 per breach had not being generating sufficient levels of fines to achieve the goal of credible deterrence. The Authority thus increased the fine to £1.50 in April 2015 to increase standards throughout the industry.

If your firm finds errors in transaction reports, or fails to submit some or all of its transaction reports as required, then the firm must notify the regulated body for oversight as soon as possible with the following information:

- the nature and extent of the reporting failure, including the volume or transactions affected and the length of time the problem persisted;
- the causes of the failure and how it was identified;
- who within the firm has oversight responsibility for transaction reporting;
- the firm's plan, including a timetable, to submit corrected transaction reports;
- details of the firm's systems, controls and plans to address these; and
- any planned audit or compliance monitoring reviews of transaction reporting, and the scope of these.

The FCA Transaction Monitoring Unit (TMU) reviews the circumstances of the issue and decides on an appropriate course of action. The FCA's policy is to require firms to submit corrected transaction reports in all cases in a timely manner. This is necessary, as the authority requires a full set of historic transaction reporting data for their surveillance activities.

In determining whether or if any action is required against the firm, the FCA will consider the extent to which the firm's systems and controls around transaction reporting were appropriate to the nature, scale and complexity of the business. The FCA will consider the extent to which the identified failings are due to failings by individuals to exercise their oversight role where they have a significant influence in respect of transaction reporting. This will become particularly important as the UK regime introduces the accountability and certification regime by 2017.

CONCLUSION

MiFID II marks a historic shift in financial services regulation across Europe, both in regulatory terms and in the operation of investment firms and financial institutions. MiFID II is not a back to the future approach; it is a whole new evolutionary blockbuster. Of course, the first in any franchise of this nature is always the biggest — liken it to The Hobbit versus The Lord of the Rings.

With that being said, the extended implementation date of 3rd January 2018 will kick off further reviews, one of which is a review on the implementation of MiFIR transaction reporting with a report to be coordinated by ESMA and submitted to the Commission by 2020. The FCA have repeatedly highlighted that there will be an immediate review of transaction reporting and this is an area where firms will be expected to comply and have the right approach in place.

A European Transaction Reporting User Pack is desirable, although such a pack would fall under the European Guidelines and, if it is to exist, would only come into existence post-implementation as part of Level 3 Guidelines. Remembering that the FCA are no longer skippering the ship in this area, ESMA are firmly navigating, with the Commission at the helm and the FCA with BaFIN taking on roles and responsibilities assigned to the foredeck of a boat. In other words they are first mates with a voice at the table but not the drivers or decision maker in these matters.

Staying with the sailing analogy, organisations with transaction reporting responsibilities will have to be mindful of the decisions being made and discussed at the regulatory level and at the same time their job is to decide how the firm can best safeguard, get around the race track, and put in place tools that set out clear governance, roles and responsibilities and transparent processes in a manner that supports the reward of good culture and conduct across the firm.

Even with Brexit the FCA will be implementing the new requirements and transaction reporting will remain high on the list regulatory agenda. Both in terms of global market surveillance and achieving equivalence with their European a global counterparts. Market abuse is of cross-market importance in providing credible deterrence to financial crime.

Box 5

'Sustainable change, after all, depends not upon compliance with external mandates or blind adherence to regulation, but rather upon the pursuit of the greater good.'

Douglas B. Reeves, Leading Change in Your School: How to Conquer Myths, Build Commitment, and Get Results Houghton Mifflin Harcourt, December 13, 2013, ISBN -10: 1416608087