

ANNOUNCEMENT

Further to its [Announcement issued on 11 April 2017](#), in relation to the implementation of the 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 ([MiFID II](#)) and 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 ([MiFIR](#)), the Cyprus Securities and Exchange Commission ('CySEC') would like to inform all interested parties about the **Authorisation of Data Reporting Service Providers**.

In particular, this Announcement aims to inform potential applicants and assist them in their preparations for the MiFID II authorization requirements, which will apply from **3 January 2018**.

Firms that intend to apply for authorization as a DRSP should notify CySEC of their intention by 30 September 2017 by sending an email to mifidii.authorisations@cysec.gov.cy and are encouraged to file an application as of November 2017 using [the Application Form for the authorisation to provide Data Reporting Services \(Form 87-00-09\)](#).

CySEC would also like to emphasize that all market participants that are affected by these changes shall prepare accordingly for their implementation. Such market participants include investment firms or market operators operating a trading venue to operate the data reporting services of an APA, a CTP and an ARM, subject to the prior verification of their compliance with Title V of the Law L.87/(I)/2017, and entities that will no longer be exempted from the scope of the Law L.87/(I)/2017.

The new [Investment Services and Activities and Regulated Markets Law of 2017 \(L.87/\(I\)/2017\)](#), provides that Data Reporting Services Providers ('DRSPs') are subject to authorisation.

The types of DRSPs are set out in Annex 1, Section D of MiFID II:

- (a) Approved publication arrangements (APAs):** An APA is defined as a person authorized to provide the service of publishing trade reports on behalf of investment firms for the purpose of post-trade disclosure (Articles 20 and 21 of MiFIR).
- (b) Approved reporting mechanisms (ARMs):** An ARM is a person authorized to provide the service of reporting details of transactions to competent authorities or to ESMA on behalf of investment firms.
- (c) Consolidated tape providers (CTPs):** A CTP is a person authorized to provide the service of collecting post-trade information for financial instruments (Articles 6, 7, 10, 12 and 13, 20 and 21 of MiFIR) from trading venues (i.e. regulated markets, Multilateral Trading Facilities and Organized Trading Facilities) and APAs. A CTP will consolidate these

reports into a continuous electronic live data stream providing price and volume information per financial instrument, both for equity and non-equity products.

However, we note that the CTP regime will only apply to equity and equity-like financial instruments as of 3 January 2018, whereas it will be extended to non-equity instruments from 3 September 2019.

An investment firm or a market operator operating a trading venue may provide the data reporting services to an APA, a CTP and an ARM, provided they are compliant with the relevant provisions applying to DRSPs.

Similar to investment firms, the authorisation for the data reporting services shall be valid for the entire European Union and therefore, the DRSPs may provide such services throughout the European Union.

In relation to the DRSPs, CySEC draws special attention to:

- i. Title V of MiFID II, which has been transposed to national law, Law 87/(I)/2017;
- ii. [Commission Delegated Regulation \(EU\) 2017/571 of 2 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services providers](#), (Regulation 2017/571), which is directly applicable.

It is noted that the provisions on the non-equity tape of Article 65(2) of MiFID II will only apply from September 2019. To this end, Regulation 2017/571 will be amended by adding a new Article specifying the scope of the non-equity tape. The relevant amendment is included in the Final Report on Draft RTS specifying the scope of the Consolidated Tape for non-equity financial instruments.

- iii. Chapter VI of [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 2017/565) which is directly applicable.
- iv. [Commission Implementing Regulation \(EU\) 2017/1110 of 22 June 2017 laying down implementing technical standards with regard to the standard forms, templates and procedures for the authorisation of data reporting services providers and related notifications pursuant to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments](#), (Regulation 2017/1110) which is directly applicable.

- v. ESMA Guidelines on the management body of Data Reporting Services Providers that will be published in the coming weeks.

A non-exhaustive list of the Authorisation Requirements is included in the Appendix.

Nicosia, 11 August 2017

Authorisation requirements for data reporting services providers

1. Common Requirements for all DRSPs

The [Commission Delegated Regulation \(EU\) 2017/571 of 2 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services providers](#) (hereinafter “Commission Delegated Regulation (EU) 2017/571”) imposes similar organizational requirements on the three categories of DRSPs.

Specifically, applicants seeking authorization as DRSPs shall provide to CySEC:

- A programme of operations;
- Their organizational structure, compliance policies and procedures, outsourced functions and non-data services they provide;
- Corporate Governance Rules; and
- Information on the members of their management bodies.

Chapter II of the Commission Delegated Regulation (EU) 2017/571 also sets out detailed organizational requirements in relation to the following:

- Conflicts of Interest;
- Outsourcing;
- Business continuity and back up facilities;
- Testing and capacity;
- Security; and
- Management of incomplete or potentially erroneous information.

Finally, the Commission Delegated Regulation (EU) 2017/571 provides for specific publication arrangements. For instance, DRSPs should ensure that the following are met:

- for APAs and CTPs, information shall be machine readable;
- the public data stream of CTPs includes data for all of the instruments intended for publication by CTPs;
- APAs must identify duplicative trade reports;
- CTPs must not consolidate duplicative trade reports;
- APAs must publish appropriate trade flags, together with the date and time of publication;
- In the case of APAs and CTPs, the information is published through all distribution channels at the same time; and
- CTPs must publish specific information in relation to particular instruments and use appropriate trade flags.

2. Requirements for the management body of a DRSP

The members of the management body of a DRSP shall:

- be of sufficiently good repute, possess sufficient knowledge, skills and experience, and can commit sufficient time to their duties;
- possess adequate collective knowledge, skills and experience to be able understand the activities of the DRSP; and
- each member of the management body shall act with honesty, integrity and independence of mind to effectively challenge the decisions of the senior management where necessary and to effectively oversee and monitor management decision-making.

ESMA will publish **Guidelines on the management body of Data Reporting Services Providers** in the coming weeks, in order to clarify the requirements applicable to members of the management bodies of DRSPs and to develop common standards to be taken into consideration when appointing new and assessing current members of the management body. The relevant Consultation Paper can be found [here](#). The Guidelines also highlight the type of information, as well as how information relating to the management body should be recorded by DRSPs in order to make it available to the competent authorities.

In particular, the Guidelines cover the following areas:

- **Sufficient time commitment of the members of the management body**

DRSPs should have a written policy in place regarding the responsibilities of the members of the management body and the required time commitment for each position. Time commitment should be considered in terms of the following parameters: executive and non-executive positions; directorships held in other organizations; other functions and professional activities relevant to time commitment;

- **Knowledge skills and experience**

DRSPs have to ensure that their management body has collectively the managerial competence required to perform its duties and sufficient understanding of the firm's activities and the risks involved. DRSPs should consider at least the following areas and fields of expertise: the material activities of the DRSPs; financial accounting and reporting; strategic planning; risk management; compliance and internal audit; information technology and security; local, regional and global markets where applicable; the regulatory environment; the management of groups and risks and risks related to group structures.

- **Honesty and Integrity**

DRSPs have to assess the honesty and integrity of the prospective members of the management body. DRSPs should check the accuracy of the documents set out in Article 4 of the Commission Delegated Regulation (EU) 2017/571.

- **Independence of mind**

The management body of DRSPs should have a formal written policy on conflicts of interest and an objective compliance process for implementing the policy. Members or prospective members of DRSP's management body should identify and report to the management body any circumstances which may give rise to conflicts of interest that may impede their ability to perform their duties independently and objectively and subject them to undue influence due to their relationship with other persons or economic or other interests.

- **Diversity**

DRSPs may apply the guidelines regarding diversity in particular where the nature, scale and complexity of their activities and the size of their management body are comparable to those of a market operator. In case the above applies, DRSPs should put in place a recruitment and diversity policy to ensure that a broad set of qualities and competences are considered when recruiting members of the management body. This should at least include educational and professional background, gender, age and geographical provenance.

- **Record-keeping information regarding members, prospective members of the management body**

DRSPs should record and maintain for at least five years and make available on request a number of documents such as the policy on the functions and responsibilities of management body, the confirmation by prospective members, information by members regarding parameters which may impact their capacity towards sufficient time devotion, information by members regarding their knowledge, skills and experience, written policy on conflicts of interest, recruitment and diversity policy etc.

3. Authorisation and organisational requirements of APAs (Article 64, MiFID II)

All APAs will have to comply with the organizational requirements applicable as set out in Article 64 of MiFID II (Chapter 2 of Title V of the L.87/(I)/2017):

- APAs must have adequate policies and procedures to make the required information (i.e. the information set out in Articles 20 and 21 of MiFIR) available to the public as close to real time as is technically possible, at a reasonable commercial basis;
- the information shall be free of charge 15 minutes after publication;
- APAs must be able efficiently and consistently to disseminate information in such a way as to ensure fast access, on a non-discriminatory basis, and in a format that facilitates its consolidation with similar data from other sources;

- the data must contain a list of minimum information specified in Article 64 (2) of MiFID II, which includes the instrument identifier, the price, volume and time of the transaction, the time the transaction was reported, the price notation for the transaction, the code for the trading venue the transaction was executed on etc.
- APAs must have effective administrative arrangements to avoid conflicts of interest with their clients;
- APAs must have sound security mechanisms, maintain adequate resources, and have back-up facilities; and
- APAs must check trade reports for completeness, omissions, and obvious errors.

Commission Delegated Regulation (EU) 2017/571 sets out a further obligation in relation to the connectivity of ARMs.

4. Authorisation and organisational requirements of CTPs (Article 65, MiFID II)

All CTPs will have to comply with the organizational requirements applicable as set out in Article 65 of MiFID II (Chapter 3 of Title V of the L.87/(I)/2017):

- CTPs must have adequate policies and procedures to collect information that has been made public in accordance with Article 6 and 20 of MiFIR, consolidate it into a continuous electronic data stream, and make this information available to the public as close to real time as is technically possible, on a reasonable commercial basis. This information includes, inter alia, the identifier of the financial instrument, the price, volume and time of transaction etc. (see Article 65 (1) of MiFID II);
- CTPs must have adequate policies and procedures to collect information that has been made public in accordance with Article 10 and 21 of MiFIR, consolidate it into a continuous electronic data stream, and make this information available to the public as close to real time as is technically possible, on a reasonable commercial basis. This information includes, inter alia, the identifier of the financial instrument, the price, volume and time of transaction etc. (see Article 65 (2) of MiFID II);
- the information shall be free of charge 15 minutes after publication by the CTP;
- the CTP must be able to efficiently and consistently disseminate information in such a way as to ensure fast access, on a non-discriminatory basis, and in formats that are easily accessible and utilizable for market participants;
- the data must contain a list of minimum information, which includes the instrument identifier, price, volume, and time of the transaction;
- the CTP must have arrangements to avoid conflicts of interest with clients;
- it must have sound security mechanisms, maintain adequate resources, and have back-up facilities; and
- the CTP should consolidate data from all RMs, APAs, MTFs and OTFs.

As per Commission Delegated Regulation (EU) 2017/571 a CTP may provide additional services such as the provision of pre-trade transparency data, historical data, reference data, as well as provision of research etc.

5. Authorisation and organisational requirements of ARM's (Article 66, MiFID II)

The organisational requirements for ARMs are in Article 66 of the MiFID II Directive (Chapter 4 of Title V of the L.87/(I)/2017), which states that an ARM must have:

- adequate policies and procedures to report the required information as quickly as possible, and no later than the close of the working day following the day on which the transaction took place. Such information shall be reported in accordance with Article 26 of MiFIR;
- arrangements to avoid conflicts of interest with clients;
- sound security mechanisms, adequate resources, and back-up facilities in place to keep its service running at all times; and
- systems that are able to check transaction reports for completeness, omissions, and obvious errors, whether caused by the investment firm or by the ARM itself.

MiFIR confirms that the general responsibility for the completeness, accuracy and timely submission of transaction reports will lie with investment firms. However, where the reports are submitted via an ARM, firms will not be responsible for failures in the completeness, accuracy and timely submission of the reports that are caused by the ARM itself. Investment firms that submit their reports via an ARM must nevertheless take reasonable steps to check that their transaction reports have been correctly made.

6. Data provision obligations for APAs and CTPs

In accordance with Chapter VI of [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](#) elaborates on the obligation to provide market data on a reasonable commercial basis, which is part of the transparency framework of MiFIR.

In particular, APAs and CTPs must provide market data on the basis of cost, namely the price of market data shall be based on the cost of producing and disseminating such data and may include a reasonable margin. Moreover, APAs and CTPs shall charge for the use of market data on the basis of the use made by individual end-users of the market data ('per user basis'), and shall have arrangements in place to ensure that each individual use of market data is charged only once. APAs and CTPs shall decide to derogate from the obligation to make market data available on a per user basis, where this is disproportionate to the cost of making market data available, having regard to the scale and scope of the market data.

In relation to the obligation to provide market data on a non-discriminatory basis, APAs and CTPs shall make market data available at the same price and on the same terms and conditions to all customers falling within the same category in accordance with published objective criteria. Any differentials in prices charged to different categories of customers shall be proportionate to the value which the market data represent to those customers.

Finally, APAs and CTPs shall unbundle and disaggregate data when making market data available, and shall disclose and make easily available to the public the price and other terms and conditions for the provision of the market data (fees obligations, cost accounting methodologies, etc.).