

Markets Brief

Suspicious Transaction and Order Reports (STOR)

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Introduction

In this Markets Brief, the DFSA sets out information regarding the obligation to prevent and detect market abuse and to notify the DFSA through the notification of suspicious transaction and order reports (STOR).

Guidance

Please note that the contents of this communication are not intended to be Guidance as contemplated by the DIFC Law No. 1 of 2004 ('Regulatory Law') and the contents should neither be interpreted, nor relied upon, as Guidance. You should refer to the DFSA Rules for Guidance or contact the DFSA if you require individual guidance.

Technical explanations given in this brief are for illustrative purposes only and should not be considered or relied upon as legal advice. We recommend that independent legal advice is obtained if you are unsure about any aspect of the DFSA markets regime which may apply to you.

Defined terms are identified in this brief by the capitalisation of the initial letter of a word or each word in a phrase and are defined in the Glossary Module of the DFSA Rulebook.

General Framework

Market abuse prohibitions

The DIFC Law No. 1 of 2012 ('Markets Law') explicitly prohibits the following conduct that constitutes market abuse:

- Fraud and market manipulation (Art. 54);

- False or misleading statements (Art. 55);¹
- Fictitious devices and deception (Art. 56);
- False or misleading conduct and distortion (Art. 57);
- Insider dealing (Art. 58);
- Providing inside information (Art. 59);
- Inducing others to deal (Art. 60); and
- Misuse of information (Art. 61).

Part 6 of the Markets Law provides definitions relevant to the conduct that is prohibited under the above Articles. It also specifies circumstances ('defences'), where such conduct does not constitute market abuse. These defences are set out in Art. 64 and 65 of the Law and include:

- Permitted price stabilisation programs;
- Purchase of own shares through buy-back programs;
- Reasonable belief that inside information was previously disclosed;
- Legitimate dealings by liquidators and market makers;²
- Dealings occurring as part of legitimate take-over bids and mergers; and
- Chinese wall arrangements.

To help determine whether or not certain conduct is market abuse, the DFSA has issued the Code of Market

¹ Also refer to the DFSA Markets Brief publication No. 17 on wash trades (<https://www.dfsa.ae/your-resources/publications-reports/markets-publications>)

² Also refer to the DFSA Markets Brief publication No. 15 on liquidity providers (<https://www.dfsa.ae/your-resources/publications-reports/markets-publications>)

Conduct (CMC) under Art. 20(2)(c) of the Regulatory Law. Chapters two to nine of the CMC provide guidance on, and examples of, the different types of market abuse. The CMC is indicative and non-binding guidance, and is not intended to be exhaustive.

Additional guidance on market manipulation, one form of market abuse, is provided in paragraph three of the guidance to AMI 5.11.3 and in paragraph three of the guidance to COB 9.6.10 in the DFSA Rulebook, with additional criteria to help identify and prevent market abuse in automated trading environments.

Markets and intermediaries

Market abuse prohibitions in the Markets Law are wide in their application, and can potentially apply to a person in the DIFC or elsewhere. The DFSA expects the regulated entities below to take appropriate measures to ensure the cleanliness of the market by detecting, preventing and reporting market abuse.

Market abuse reporting is relevant to the following categories of DFSA-regulated entities:

- Authorised Market Institutions (AMI);
- Authorised Firms, operating an Alternative Trading System (ATS);
- Authorised Firms, especially those who act as market intermediaries; and
- Recognised Members.

The DFSA also encourages Reporting Entities, as issuers of securities, to provide STOR notifications to the DFSA on a voluntary basis.

Orders and transactions

Market abuse provisions apply to Investments, which are defined in GEN A2.1 as Securities and Derivatives, rights or interests therein, as well as other instruments declared as Investments under the special powers of the DFSA.

Market abuse provisions have a potentially broad application to Investments in the DIFC and to conduct affecting DIFC markets. These provisions apply irrespective of whether Investments are admitted to the Official List of Securities, to an Alternative Trading System, or traded OTC in the DIFC. The DFSA expects firms to exercise vigilance and monitor for market abuse in relation to OTC derivatives, especially where the underlying is traded on a regulated trading venue.

Market abuse provisions also apply irrespective of the trading capacity in which an order is entered into or a transaction is executed (i.e. on own account, on behalf of a client), and irrespective of the types of client (e.g. institutional, professional, retail).

Reporting obligation

Timing of reporting and reasonable grounds for suspicion

Under AMI 5.11.2 and COB 9.6.9, respectively, AMIs and ATS operators must promptly notify market abuse to the DFSA. A similar requirement is specified in GEN 11.10.12A(1)(b) and REC 3.4.5 for Authorised Firms and Recognised Members to notify the DFSA immediately if there are reasonable grounds to suspect that an order or transaction may constitute market abuse.

These obligations require firms to notify STORs as soon as it has a reasonable suspicion of market abuse. Firms should make a STOR notification as soon as practically possible, which in some cases may be as early as the point of having received the order. In other cases, suspicions may not be apparent until the transaction is executed or when viewed in the context of later information, behaviours or consequent transactions.

The DFSA expects firms to make a STOR notification, regardless of whether the client order or transaction has been executed, is in the process of being executed, has been refused or withdrawn. The obligation arises if the firm has a reasonable suspicion that an order or transaction constitutes market abuse, whether or not it is actually executed.

In order to form a reasonable suspicion, firms should conduct a preliminary analysis of the transactions and orders in question, but not hold off or delay STOR notifications until additional suspicious transactions or orders are accumulated to strengthen the evidence. Where there is a notification delay, firms should be able to justify to the DFSA, if requested, the circumstances that caused the delay.

Further, when firms receive additional information relevant to a STOR already notified, the expectation is that the additional information will also be provided to the DFSA. Applying the same logic, if in the course of any analysis, a firm comes across suspicious orders or transactions that were not identified as such at the time of their receipt or execution, but appear to have constituted market abuse in light of further information or analysis, a notification should be made to the DFSA.

Incomplete information

In some case, firms notifying a STOR to the DFSA may only have a partial view of the client transaction or order due to, for example, ultimate beneficial owner investors opting to use multiple brokers for order execution. When notifying a STOR, firms should consider information readily available to them either internally or as supported by reliable public information (such as transactional disclosures).

Firms should not be presenting assumptions in a STOR notification on activities happening through other firms or brokers. However, there may be cases where firms have reasonable grounds to believe that suspicious

transactions or orders are happening through other firms. If a firm chooses to include such information in a STOR notification, it should clearly state the assumed nature of the presented information.

If multiple firms are involved in the execution of the same or related suspicious orders and transactions, each firm will be under an obligation to make a STOR notification to the DFSA. The obligation does not fall away for one firm, simply because a report has been submitted to the DFSA by another firm.

Internal procedures for detection and reporting

GEN 5.3.20 requires that Authorised Persons have systems and controls in place to ensure that they do not engage in market abuse or facilitate others to engage market abuse. Under AMI 5.11 and COB 9.6, trading venues must operate systems to identify, deter, prevent and report market abuse, as well as ensure that members are subject to a mandatory regime of compliance arrangements, transaction monitoring, risk assessment and effective trainings. Trading venues have a responsibility to monitor and review members' compliance with this regime, ensuring that shortcomings are rectified and material cases of non-compliance are notified to the DFSA.

The DFSA expects firms to have appropriate internal procedures to recall and review historical analyses conducted on suspicious transactions and orders, whether or not this resulted in a STOR notification. These procedures, allowing the recollection and review of previous analysis, could assist in detecting various patterns of market abuse over time. Firms should also ensure that STOR notifications are completed and maintained by a department that is independent from business units, for example, the compliance department.

Training

Under AMI 5.11.2 and COB 9.6, regulated trading venues are required to build staff training requirements into their business and operating rules for members to follow.

Given the dynamic nature of transaction patterns and the complexity involved in detecting and analysing suspicions of market abuse, the DFSA expects that all firms subject to the STOR notification obligation provide sufficient training to relevant staff at the various lines of defence in the organisation.

One acceptable way to ensure and demonstrate adequate training is by establishing and maintaining periodic (e.g. annual) training programmes for staff, covering topics related to the identifying, preventing and reporting market abuse. These programs may be

tailored to the business, risk and regulatory profile of the firm, taking into account the types of customers, financial instruments, transactions and trends most commonly susceptible to market abuse.

Tipping off

It is prohibited, at any point of analysis or reporting, to inform ('tip off') the client, or any other person involved in the transaction or order, about the intention to notify a STOR, or the fact that a STOR has been notified (see GEN 11.10.12A(3) and REC 3.4.5(3)).

Data points and template

Firms subject to the STOR notification obligation must upload their STOR information onto the online form via the DFSA's electronic portal.³

STOR notifications require two sets of data: (i) details of the transaction or order; and (ii) other details, such as information about the suspected wrongdoer, brief description of the market abusive behaviour, motivation for notification, information relating to the reporting firm, etc. Additional information may be submitted on related transactions and orders, or around the relevant investment portfolio.

To notify a STOR, firms need to input structured and non-structured data. The majority of data inputs have a structured form (details on transactions, orders, information about the person placing an order, etc.). Structured data is provided through relevant fields in the online form, thus facilitating standardisation of reporting. Non-structured data fields in the online form allow for narrative or additional information and evidence, as necessary.

The online form includes both mandatory and optional data fields, depending on relevance to the specific STOR. Firms should aim to share all information available to them to support their suspicions of market abuse.

Record keeping

To maintain an audit trail of developments in their own internal procedures, firms are encouraged to document any changes or updates to their policies, arrangements and procedures aimed at identifying, preventing and reporting market abuse.

As part of general record-keeping requirements, and for the purpose of future reproduction of records that may help detect new suspicions or compliment on-going analysis, firms are expected to keep confidential records of every STOR submitted to the DFSA, including all the information that was considered in the preparation and notification of the STOR. Where a STOR was not notified in a particular case due to insufficient information being available to reach a reasonable

³ DFSA's electronic portal (https://eportal.dfsa.ae/dana-na/auth/url_8vGZDfDdymhUXC0e/welcome.cgi)

suspicion of market abuse, records of the underlying analysis for such a conclusion should also be documented and kept.

Firms should aim to retain relevant records for a period of six years from the date of the transaction or order, or the date of the STOR notification, where relevant.

Further information

Visit the DFSA website www.dfsa.ae for:

- Other editions of the Markets Brief;
- Access to the DFSA-administered legislation and the DFSA Rulebook, including a full text of the Markets Law and Markets Rules;
- The Code of Market Conduct (in the Sourcebook Modules part of the DFSA website); and
- Access to the DFSA's electronic portal.

Contact Us

- Telephone +971 4 362 1500
- Email STOR@dfs.ae

The DFSA will not advise a particular course of action or provide (legal) advice, but it is prudent to keep the DFSA informed of ongoing developments in relation to emerging risks around the topic of this publication.

Feedback

We appreciate your feedback and welcome any suggestions that you may have. Please email us at STOR@dfs.ae