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Draft guidelines on transaction reporting, reference data, order record keeping and clock synchronisation

Dear Sir/ Madam,

Deutsche Bank welcomes the opportunity to comment on the above consultation paper. Overall we find the guidance from ESMA balanced and very helpful.

Clear and extensive Level 3 guidance is vital to market participants in their implementation of MiFID II and for ensuring consistent implementation across the EU. As such, we have made a number of recommendations around where the guidance could be clarified further and where additional interpretation of Level 1 and 2 by ESMA is required.

We hope that ESMA will find the below comments helpful and we would be happy to provide any further information.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Daniel Trinder'.

Daniel Trinder
Global Head of Regulatory Policy



1. Transaction reporting

Q1: Are there any other scenarios which you think should be covered?

Transition to MIFID 2 Process transaction reporting regime:

We would request guidance in order to prepare for the transition phase between the current MiFID I reporting regime and the new MIFIR transaction reporting environment.

For the following reasons, a “big bang” approach would be preferable, meaning that the old reporting systems will be switched off on the last reporting date of the old regime and the new reporting systems will be switched on on the first reporting date of the new regime:

- Regulators will have all required information to carry out their supervisory tasks. In case of any investigations, bilateral conversations/requests will start and responses can still be provided;
- Specifically for Germany, the middleware provider TRICE, which is used by a significant percentage of the market in order to send transactions reports to the BaFin, will be decommissioned after the last reporting day of the old regime. Firms using TRICE would, in case the connection needs to be kept open for reporting of corrections, need to set up a new direct connection to the BaFin.
- Running two systems in parallel will be burdensome for the industry and regulators.

Allocations:

In cash equity trading, “allocation” is a term which usually identifies the sub-accounts across which the net, average priced block trade with a client should be allocated for settlement.

When discussing “Allocation to the client”, the guidance appears to refer to the association of a market trade with a client order. This association, and the accompanying notification to the client of the price/quantity/last market, is insufficient to qualify as a transaction when trading principally. In book entry terms, the position will still be within the firm’s trading accounts. There is no booking to the client’s account until the block trade takes place.

1.1.1 General approach to reporting:

Page 11 paragraph 3 under 1.1.1 of the guidance states:

“content for the following fields (describing the common objective elements of the transaction concluded between the two investment firms) shall match in the respective equivalent reports of each of the two investment firms: venue, trading date time, quantity, quantity currency, price, price currency, up-front payment, up-front payment currency, and instrument details, where relevant”

Whilst we agree that the transaction reports from parties to the same transaction should contain the same details, our understanding is that there are no ‘matching requirements’ similar to EMIR under MiFID II. We would appreciate a clear statement to that effect.



We would also like to raise the prospect of inconsistent interpretations if a definition of “client” is not set by ESMA. If different jurisdictions apply their own definitions of the level of client that should be identified in a report, it is entirely possible that reports submitted to the BaFin (for example) by an investment firm will identify the fund as the client and be at the sizes/prices agreed per allocation for settlement, whilst the report submitted to the FCA (for example) by the client will be at the size and price of the block trade.

1.1.2.2 Trading in a matched principal trading capacity (MTCH):

Deutsche Bank believes that MTCH does not apply to any of its trading scenarios. Article 4(1)(38) of MiFID II defines matched principal trading as:

“a transaction where the facilitator interposes itself between the buyer and the seller to the transaction in such a way that it is never exposed to market risk throughout the execution of the transaction, with both sides executed simultaneously, and where the transaction is concluded at a price where the facilitator makes no profit or loss, other than a previously disclosed commission, fee or charge for the transaction”.

When trading principally there is no client side transaction until the block trade is generated (at the end of each day or at the end of working the order) and is subsequently allocated to the funds against which the block will be settled. Those events are never simultaneous with the market execution or with the booking of a cross against another order. Under this approach there would still only be two subsets of transaction that theoretically could be seen as MTCH:

- i. Market Fill & Allocate Orders that are:
 - fully filled by a single market transaction;
 - where the order placing client has pre-allocated the entire block to a single sub-account for settlement.
- ii. Cross and Allocate Orders that are:
 - exactly the same size such that:
 - a) both are fully filled by a single cross between the two orders; and
 - b) both of the order placing clients has pre-allocated their entire block to a single sub-account for settlement.

Segregation of these two niche scenarios from the range of trading scenarios undertaken by an investment firm is burdensome, and is of little value with respect to countering market abuse. Further, it would not in the strictest sense meet the definition of MTCH in level 1.

Our working assumption is therefore that as the booking and allocation processes are not simultaneous with the market execution even in the two scenarios supplied above. It would be helpful if ESMA could clearly state therefore that MTCH is only applicable to trading within OTFs.

If ESMA consider that MTCH can be undertaken by investment firms who are not operating in an OTF then it would be necessary to identify explicit circumstances where its use would not be in conflict with the definition.



Derivative vs. cash products:

Guidance would be welcome on the delineation between treatment of a particular security as a cash or a derivative product. There appears to be an inconsistent approach to this matter across jurisdictions. There are a number of reasons that make it difficult to treat cash products as derivative products. These include but are not limited to:

- impact on clients if EMIR requirements like dual-sided reporting, risk mitigation techniques and collateralisation will need to be applied;
- technical issues around reporting templates not being available for securities;
- derivatives systems are not capable of performing securities settlements, which will lead to the requirement to transfer bond forward transactions at some point close to settlement to the securities system to enable settlement;
- furthermore, it should be considered that some market participants other than banks are often not in a position due to their own environment to settle t+2 and therefore request longer settlement cycles.

Given the above, we would propose to define forward bond transactions as having a settlement period $> t+7$ as derivatives whilst transactions settling $\leq t+7$ should be treated as cash transactions.

Q2: Are there any areas in Part I covered above that require further clarity? Please elaborate.

Section 1.1.5 requires further clarity as far as identifiers applying to natural persons are concerned. This section is linked to RTS 22, specifically Article 6, according to which an investment firm shall identify a natural person in a transaction report with the identifier listed in Annex II based on the nationality of the person. For Germany, the identifiers are defined as being the Personal Identity Card Number in the first instance, the National Pass Number in the second instance and CONCAT in the third instance.

We are taking a presumption that these identifiers should be valid at each moment of reference and in consideration of the limited maturities of such documents. For example under German law, the guidelines stress the duty to report correct and accurate details and state as a possible means of ensuring fulfilment of this requirement the act of monitoring the expiry date of a non-persistent identifier and asking the natural person to provide the new identifier after the expiry date was reached.

In our view such control procedures would entail the following key challenges:

- a breach of level playing field principles, as the national client identifiers attributed to other member countries are to different degrees exempt of validity restrictions;
- inconsistencies with current supervisory provisions in Germany, considering that in particular neither the Anti-Monetary Laundering Act nor tax rules impose a requirement around monitoring of the expiry dates of identity documents;
- missing acceptance from the side of customers, who are not legally obliged vis-à-vis the investment firm to meet its request to have their identifiers renewed after expiry;
- the risk of conflict with civil law, namely the obligation of investment firms to execute their clients' buy and sale orders regardless of transaction reporting requirements assigned to them under prudential standards;
- significant infrastructural and financial expenditures.



We would therefore encourage ESMA to reconsider the mentioned statements inside Section 1.1.5 in order to avoid unilateral burdens, legal incompatibilities and incalculable liability risks. We also welcome clarity in Recital 7 of RTS 22, according to which identifiers can be created from a concatenation of natural persons' date of birth and name in case the primary documents are not "available".

Q3: Are there any other situations on reportable transactions or exclusions from transactions where you require further clarity?

Our understanding is that there is no obligation to report the issue and redemption of fund units. We assume that this can also be applied to the execution of those transactions via an investment firm.

Within the scope of investment savings plans and investments withdrawal plans we buy or sell on behalf of client's investment fund units, certificates or shares on previously defined dates with a previously defined amount (block order processing). We assume that no obligation exists to report those transactions. If there is an obligation to report, an example of how the obligation functions would be helpful.

Voluntary Corporate Actions:

As there is no explicit exclusion of voluntary corporate actions it is assumed that they would be subject to transaction reporting. However, the guidance examples appear to indicate that no corporate actions will be reportable. If that is the case, then explicit confirmation would be welcome and corporate actions should be added to the list of excluded transaction types. If they are reportable then practical examples would be helpful.

IPOs

It would be helpful to include the example of an IPO showing the take down from the issuer, the allocations to clients who elect to take up the offer, and a rump remaining with the investment bank.

In our view, the treatments should be as follows:

- the Take Down would be trading in any other capacity (AOTC), Issuer vs. INTC;
- followed by AOTC, INTC vs. Client;
- with the rump being dealing on own account (DEAL), INTC vs. Investment Firm;
- trade date/time of all elements being the time of receipt of the Take Down.

Q4: Are there any specific areas covered by the mechanics section where you require further clarity? Please elaborate.

We do not require any further clarity.

Q5: Do you require further clarity on the content of Article 1 of RTS 22? Please elaborate.

We do not require any further clarity.

Q6: Do you require further clarity on the content of Article 2 of RTS 22? Please elaborate.

Non-cash collateral movements should not result in transaction reports because:



- collateral exchanges do not constitute a “transaction” as there is no true “acquisition” or “disposal” within the meaning of Articles 2(2) and (3) of RTS 22;
- ESMA’s May 2014 discussion paper expressly states that use of financial instruments as collateral is not intended to be caught. It is not clear why that has been omitted from the list of exemptions in Art 5 of RTS 22, but we do not think that infers an intention that they now be included.

Q7: Do you require further clarity on the content of Article 3 of RTS 22? Please elaborate.

We would request clarity that neither of the following transactions are reportable as there is no change in beneficial ownership:

- where a client's securities move from one account to another within the same investment firm (where the investment firm LEI is the same on both accounts);
- A client closes their account with one investment firm and moves to another investment firm (where the investment firm LEIs are different).

1.3.1.2 Transfer between two separate investment firms:

This shows custodian 1 reporting From client To new custodian then the new custodian reporting From old custodian To client. Whilst the example is from client A to client B, as the first custodian does not know the identity of the destination client, it remains to be seen how the custodian would know whether the transfer is reportable or not.

Q8: Do you require further clarity on the content of Article 4 of RTS 22? Please elaborate.

We encourage ESMA to elaborate in more detail the following points on transmission agreements:

- the required format of an transmission agreement (in writing or verbal);
- exhaustive list of details required to be provided from the transmitting firm to the receiving firm;
- how financial instruments with no ISIN should be handled
- exhaustive list of activities required to be conducted by the receiving firm in order to validate the received data.

Q9: Do you require further clarity on the content of Article 5 of RTS 22? Please elaborate.

We do not require any further clarity.

Q10: Do you require further clarity on the content of Article 6 of RTS 22? Please elaborate.

We do not require any further clarity.

Q11: Do you require further clarity on the content of Article 7 of RTS 22? Please elaborate.

We do not require any further clarity.



Q12: Do you require further clarity on the content of Article 8 of RTS 22? Please elaborate.

We do not require any further clarity.

Q13: Do you require further clarity on the content of Article 9 of RTS 22? Please elaborate.

We do not require any further clarity.

Q14: Do you require further clarity on the content of Article 10 of RTS 22? Please elaborate.

We do not require any further clarity.

Q15: Do you require further clarity on the content of Article 11 of RTS 22? Please elaborate.

We do not require any further clarity.

Q16: Do you require further clarity on the content of Article 12 of RTS 22? Please elaborate.

We do not require any further clarity.

Q17: Do you require further clarity on the content of Article 13 of RTS 22? Please elaborate.

We do not require any further clarity.

Q18: Do you require further clarity on the content of Article 14 of RTS 22? Please elaborate.

We do not require any further clarity.

Q19: Do you require further clarity on the content of Article 15 of RTS 22? Please elaborate.

We do not require any further clarity.

Q20: Do you require further clarity on the content of Article 16 of RTS 22? Please elaborate.

We do not require any further clarity.

Q21: Do you require further clarity or examples for population of the fields covered in Block 1? Please elaborate.



Client Definition / Identification:

The definition of client should be clarified. Our interpretation of Section 1.2.1 of ESMA's guidance is underlined below and incorporated into the ESMA text:

1.2.1 Block 1: Buyer/Seller identification

*Competent authorities are interested in the beneficiary **[underlying entity eg. Fund not Agent/Fund Manager]** for market abuse purposes rather than the owner of legal title **[Agent/Fund Manager]**. Therefore where there is an acquisition or disposal that results in a change in beneficial ownership for a client, the client **[fund]** shall be reported as the buyer/seller as appropriate rather than any custodian/nominee **[Agent]** that may hold the legal title.*

*However, with the exception of transmission **[of orders]** which is covered in section 1.3.8, investment firms shall report their direct client **[Fund]**.*

*The investment firm is not expected to look behind their client **[Fund / Trust as set out in the second sentence]** to try to determine the ultimate client. For example, where a client is a trust the investment firm is not required to look through the trust to the beneficiaries of the trust but just reports the trust (which shall be identified by its LEI).*

Clarity would be welcome that the client to be identified is the LEI of the sub-account(s) to which the block trades are eventually allocated for settlement, e.g. the fund not the fund manager.

At present, the FCA state that the client is the client of the block but the BaFin approach states it is the client of the allocation. ESMA's guidance examples appear to indicate that the client is the client on the block trade, the client who gives us the order or the prime broker to whom the block trade is given up but as the examples do not match normal flows in investment banking there is a lack of clarity as a result. As firms often report to multiple regulators it is essential that there is a single definition across regulators. Clarity on this matter would be welcome as soon as possible. Our working assumption is that our client is the fund in line with our interpretation of the first three paragraphs of 1.2.1.

We would appreciate guidance confirming that firms are not expected to report the block transaction with the client [Agent / Fund Manager] BUT rather must report the client [Fund] identified on the final allocation provided by the order placing client [Agent/Fund Manager].

Use of INTC where allocations are not known at time of execution:

In section 1.3.5 Grouping orders of the guidance, ESMA states: "the aggregate client account ('INTC') shall not be used for reporting an order for one client executed in a single execution or for an order for one client executed in multiple executions."

Given that the order placing client does not always supply the funds to which the block should be allocated until sometime after the order is complete we would appreciate ESMA's consideration of the following proposal:

For AOTC capacity orders where:



- the client has only one sub-account to which the resulting executions shall be allocated;
- OR the client has pre-allocated the order to just one sub-account;
- OR all sub-accounts associated with the client share the same LEI.

The AOTC report shall identify both the market counterparty and the client to whom the executions shall be allocated. The guidance's examples cover this situation.

For AOTC capacity orders where the allocation details are not known at the time of execution:

- the executing desk shall report Market Counterparty vs. INTC per execution;
- The Client facing desk that has visibility of the allocations shall report INTC vs. Client per allocation.

Table 1 below represents how we think investment firms should report:

TABLE 1					
N	Field	Report Values 1	Report Values 1	Report Values 2	Report Values 3
4	Executing entity identification code	{LEI} of firm X	{LEI} of firm X	{LEI} of firm X	{LEI} of firm X
7	Buyer identification code	{LEI} of central counterparty for trading venue M	{LEI} of central counterparty for trading venue M	'INTC'	'INTC'
12	Buyer decision maker code				
16	Seller identification code	'INTC'	'INTC'	{LEI} of Fund A	{LEI} of Fund B
21	Seller decision maker code			{LEI} of Investment Fund Manager	{LEI} of Investment Fund Manager
28	Trading date time	'2017-09-15T09:20:15.374Z'	'2017-09-15T12:20:35.122Z'	'2017-09-15T09:20:15.374Z'	'2017-09-15T09:20:15.374Z'
29	Trading capacity	'AOTC'	'AOTC'	'AOTC'	'AOTC'
30	Quantity	'300'	'500'	'200'	'600'
33	Price	'25.54'	'25.55'	'25.54625'	'25.54625'
36	Venue	Segment {MIC} of trading venue M	Segment {MIC} of trading venue M	'XOFF'	'XOFF'

Use of INTC where Chinese Walls prevent the identification of the client on the Executing Desk's version of the order:

An executing desk may be in a division of the firm that is separate to the client facing division, e.g. trading desk / private clientd, and those Chinese walls can be in place between the two



divisions resulting in intra-entity / inter-divisional hand offs between the divisions. If Chinese walls do not permit the identification of the client on the executing desk's record of the order then the execution desk's record of the execution is entered into an account that is not client specific. Separate inter-entity/inter-divisional back to back trades transfer "ownership" of the traded quantity to the client facing division at the executed price without notifying the client facing division of the identity of the market counterparty or the venue's transaction identifier.

We would appreciate ESMA's consideration of the following proposal:

- For AOTC capacity orders where Chinese walls permit the identification of the client on the order that an executing desk is filling by association of market executions, the AOTC report shall identify both the market counterparty and the client to whom the executions shall be allocated.
- For AOTC capacity orders where Chinese walls do not permit the identification of the client on the executing desk's record of the order then the executing desk shall report Market Counterparty vs. INTC per execution. The Client facing desk that has visibility of the allocations shall report INTC vs. Client per allocation. The Investment Management Firm gives Firm X an order to buy 800 and pre-allocates that across two funds with different LEIs. Firm X fills the order with two market executions of 300 and 500 shares.

Table 2 below represents how we think Firm X should report:

TABLE 2					
N	Field	Report Values 1	Report Values 1	Report Values 2	Report Values 3
4	Executing entity identification code	{LEI} of firm X	{LEI} of firm X	{LEI} of firm X	{LEI} of firm X
7	Buyer identification code	{LEI} of central counterparty for trading venue M	{LEI} of central counterparty for trading venue M	'INTC'	'INTC'
12	Buyer decision maker code				
16	Seller identification code	'INTC'	'INTC'	{LEI} of Fund A	{LEI} of Fund B
21	Seller decision maker code			{LEI} of Investment Fund Manager	{LEI} of Investment Fund Manager
28	Trading date time	'2017-09-15T09:20:15.374Z'	'2017-09-15T12:20:35.122Z'	'2017-09-15T09:20:15.374Z'	'2017-09-15T09:20:15.374Z'
29	Trading capacity	'AOTC'	'AOTC'	'AOTC'	'AOTC'
30	Quantity	'300'	'500'	'200'	'600'
33	Price	'25.54'	'25.55'	'25.54625'	'25.54625'
36	Venue	Segment {MIC} of	Segment {MIC} of	'XOFF'	'XOFF'



		trading venue M	trading venue M		
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Worked examples of level of client identification in Listed Derivative order flow:

Clarity would be helpful on the following scenario:

- A fund manager places an order with an investment firm to buy a traded option on an EEA venue. The fund manager provides allocation details to the investment firm at the time of execution all to one underlying fund, there is no transmission of order in place, the investment firm reports the fund manager as the buyer.

In particular, guidance is necessary on how should each counterparty report, the investment firm and the fund manger.

Table 3 below represents a full service allocation scenario while table 4 represents how the reporting fields should be filled:

TABLE 3
Investment Firm (IFA) Fund Manager (FMA)
Fund 1
<ul style="list-style-type: none">• IFA and FMA are all MiFID II registered entities• IFA and FMA are acting in AOTC capacity• FMA is buying under a power of representation on behalf of Funds 1
An order to Buy 700 lots of an Option was executed in one shape of 700 @ EUR 17.00 on the 9th June 2017 at 11:45:00. The FMA places the order and confirms the following allocations all to Fund 1 at point of execution. The IFA reports the FMA as the Buyer.
The following reports were submitted:
<ul style="list-style-type: none">• Report 1: From Investment Firm IFA where they are facing the CCP for the execution of 700• Report 2: From the Fund Manager FMA reports allocation for Fund 1



TABLE 4			
Field ID	Field Name	Report 1 Value	Report 2 Field value
3	Trading venue Identification Code	Code from Venue	-
4	Executing Entity identification code	LEI of IFA Investment Firm	LEI of Fund Manager FMA
6	Submitting Entity identification code	LEI of ARM	LEI of ARM
7	Buyer identification code	LEI of Fund 1	LEI of Fund 1
12	Buyer decision maker code	LEI of Fund Manager FMA	LEI of Fund Manager FMA
16	Seller identification code	LEI of CCP	LEI of IFA Investment Firm
21	Seller decision maker code	-	-
25	Transmission of order indicator	FALSE	FALSE
26	Transmitting form identification code for the buyer	-	-
27	Transmitting form identification code for the seller	-	-
28	Trading date time	2017-06-09T11:45:00	2017-06-09T11:45:00
29	Trading capacity	AOTC	AOTC
30	Quantity	700	700
33	Price	17	17
36	Venue	MIC of Venue	XOFF
41	Instrument identification code	ISIN of the contract	ISIN of the contract
57	Investment decision within firm	-	NI number of Fund Manager

Q22: Do you require further clarity or examples for population of the fields covered in Block 2? Please elaborate.

We do not require any further clarity.

Q23: Do you require further clarity or examples for population of the fields covered in Block 3? Please elaborate.

We do not require any further clarity.



Q24: Do you require further clarity or examples for population of the fields covered in Block 4? Please elaborate.

We encourage ESMA to clarify the appropriate logic for the setting of investment decision within firms on fills to direct electronic access (DEA) orders. DEA is a principal activity where client orders are executed via straight through processing (STP) on an execution venue with a trading capacity of DEAL. The STP orders are controlled by limit checks and access controls but do not involve any algorithms or human interaction other than the setting of parameters and the monitoring of trading activity.

We believe that the details of a head trader, desk head or relationship manager who approved the mandate might be used to fill the field, but there should be a consistent approach to all DEA.

Q25: Do you require further clarity or examples for population of the fields covered in Block 5? Please elaborate.

Please see response to Q24.

Q26: Do you require further clarity or examples for population of the fields covered in Block 7? Please elaborate.

The guidance in 1.2.7.2 should explicitly state that the instrument traded on a platform outside of the EU is either a valid MIFID instrument or its underlier is. Otherwise it might incorrectly be implied that instruments on platforms based outside of the EU are in scope.

Q27: Do you require further clarity or examples for population of the fields covered in Block 8? Please elaborate.

The requirement to pick up waiver/post trade indicators when the reporting firm is not the trade reporting firm is problematic as:

- it is not mentioned in any other documentation;
- not all indicators can be derived from static data and there is no way for the non-reporting party to know the indicators applied by the reporting party.

The wording on page 56 (1.2.8) of the consultation paper should be amended to specify that the client should advise the investment firm when it is short selling. The investment firm will never be in a position to know from its own records whether or not a client is selling short as clients may hold positions in financial instruments with various other banks or investment firms.

It is our understanding that the short selling flag only needs to be provided for a transaction, whereby the reporting firm has carried out a sale either for its own books or for a client. Consequently, we understand that for purchase transactions such fields will not be populated.

We would ask ESMA to confirm that the population of Field 62 Short selling indicator is not in scope for ETD products when transaction reporting.



Q28: Do you require further clarity or examples for population of the fields covered in Block 10? Please elaborate.

Clarity would be welcome on how field#37 should be populated. New Bloomberg sell-side FIX connectivity architecture will allow multiple broker codes (sell side connection) to be connected via a single pipe/connection i.e. for BBG as the venue the connection is not location / branch specific and is shared by multiple locations (these sell side connections may belong to different desks in different countries).

Clarity would also be welcome that the population of Field 63 OTC post-trade indicator is not in scope for ETD products when Transaction Reporting.

Q29: Do you require further clarity or examples for population of the fields covered in Block 11? Please elaborate.

We do not require any further clarity.

Q30: Do you require further clarity or examples for population of the fields covered in Block 12? Please elaborate.

Decrease in Notional:

The guidance under 1.2.12.2 appears to contradict the up-front payment field description in the reporting fields for RTS 22. The example demonstrates the original seller X as the firm buying since the exposure is being reduced and the original buyer Y as the seller, therefore leaving the up-front payment as a positive number due to the fact the buyer and seller have been flipped. However, within the reporting fields RTS for the Up-Front payment field, it states where the seller pays the up-front payment the value populated is negative. Therefore, two questions arise:

- a. Is the guidance example valid and should the buyer and seller be switched as firm X will be holding the position as the seller overall?
- b. If firm X is kept as the seller, on the decrease, should the up-front payment in this example be negative?

1.2.12.1 Increase in notional:

As per the guidance examples to report an increase/decrease in notional for an equity swap, the price multiplier field is required to be populated with the delta in notional. Where an equity swap has an ESMA ISIN and fields 42-56 are not required to be populated, clarity is required how the notional increase/decrease will be reflected. Our understandings on how to populate the transaction report for these instances are captured in the examples below.

Equity swap (two equity legs)

- Investment firm X trades an equity swap with investment firm Y. The equity swap has an ISIN US000DAX000X as admitted for trading and executed OTC
- The instrument full name is DAX EQS IBEX 35 JUN 16
- Firm X receives the risk associated with the price movement of the DAX (buyer) and pays the performance on the IBEX (seller)
- The notional value of the swap contract is 1000000 EUR
- The swap contract expires on 25 June 2016 and is settled in cash
- At inception firm X would receive the spread



Equity leg 1:

- The underlying is DAX Index (ISIN DE0008469008)
- Reference price of the DAX Index is 11473.13 in basis points

Equity leg 2:

- The underlying IBEX 35 Index (ISIN ES0SI0000005)
- Reference price of the IBEX35 Index is 11308.40 in basis points

Table 5 below represents the transaction report from the perspective of the investment firm X:

TABLE 5			
Field #	Field Name	Report values (firm X)	Narrative
1	Report Status	NEWT	
2	Transaction reference number	1234581	
3	Trading venue transaction identification code	<blank>	
4	Executing entity identification code	LEI of firm X	
7	Buyer Identification code	LEI of firm Y	Suggest applying the definition for basis swaps: 'at inception based on the reference price for the shares the seller is the party who would receive the spread'
16	Seller identification code	LEI of firm X	
30	Quantity	1000000	Suggest populating the notional here to cater for increase / decrease in notional where a single transaction report is generated. For OTC trades where no ESMA ISIN exists the number of contracts shall be populated in field 46 'Price multiplier'.
31	Quantity currency	EUR	
32	Derivative notional increase/decrease	<blank>	
33	Price	1.6473%	Suggest using the spread (difference between the DAX and IBEX index reference price) in percentage format
34	Price Currency	<blank>	
36	Venue	<XOFF>	



40	Complex trade component id	<blank>	
41	Instrument ID code	US000DAX000X	
42	Instrument full name	<blank>	Fields 42-56 are blank as the financial instrument is admitted for trading on an EEA venue even though the financial instrument was executed OTC
43	Instrument classification	<blank>	
44	Notional currency 1	<blank>	
45	Notional currency 2	<blank>	
46	Price multiplier	<blank>	
47	Underlying instrument code	<blank>	
48	Underlying index name	<blank>	
49	Term of the underlying index	<blank>	
50	Option type	<blank>	
51	Strike price	<blank>	
52	Strike price currency	<blank>	
53	Option exercise style	<blank>	
54	Maturity date	<blank>	
55	Expiry date	<blank>	
56	Delivery type	<blank>	

Table 6 below represents where the counterparties subsequently agree to increase the notional by 250000 EUR:

TABLE 6			
Field #	Field Name	Report values (firm X)	Narrative
1	Report Status	NEWT	
2	Transaction reference number	1234582	
4	Executing entity identification code	LEI of firm X	
7	Buyer Identification code	LEI of firm Y	
16	Seller identification code	LEI of firm X	
30	Quantity	250000	Suggest populating the notional here to cater for increase / decrease in notional where a single transaction report is generated For OTC trades where no ESMA ISIN exists the number of contracts shall be populated in field 46 'Price multiplier'
31	Quantity currency	EUR	
32	Derivative notional increase/decrease	<INCR>	
33	Price	1.6473%	Suggest using the spread (difference between the DAX and IBEX index reference price expressed as a percentage) in percentage format



40	Complex trade component id	<blank>	
41	Instrument ID code	US000DAX000X	

Table 7 below represents where the counterparties subsequently agree to decrease the notional by 50000 EUR:

TABLE 7			
Field #	Field Name	Report values (firm X)	Narrative
1	Report Status	NEWT	
2	Transaction reference number	1234583	
4	Executing entity identification code	LEI of firm X	
7	Buyer Identification code	LEI of firm X	As decrease buyer is now firm X
16	Seller identification code	LEI of firm Y	As decrease seller is now firm Y
30	Quantity	50000	Suggest populating the notional here to cater for increase / decrease in notional where a single transaction report is generated. For OTC trades where no ESMA ISIN exists the number of contracts shall be populated in field 46 'Price multiplier'.
31	Quantity currency	EUR	
32	Derivative notional increase/decrease	<DECR>	
33	Price	1.6473%	Suggest using the spread (difference between the DAX and IBEX index reference price expressed as a percentage) in percentage format
40	Complex trade component id	<blank>	
41	Instrument ID code	US000DAX000X	

Early Termination:

An example of an early termination would be necessary.

Regarding the population of Field 32 Derivative notional increase/decrease clarity would be welcome that this field is not applicable to ETD when Transaction Reporting.



Q31: Do you require further clarity or examples for the scenarios in section 1.3.1? Please elaborate.

We do not require any further clarity.

Q32: Do you require further clarity or examples for the scenarios in section 1.3.2? Please elaborate.

Please see our response to question 7.

Q33: Do you require further clarity or examples for the scenarios in section 1.3.3? Please elaborate.

Under the guidance 1.3.3.2 (investment firm introducing the client to another investment firm without interposing itself) it says "client A knows that it has the relationship with firm Y for this transaction" but later it says client A would id firm X as the seller. We presume that is an error and should be firm Y - or is the intention to state that interposing when one party is classified as a Client should be treated differently to interposing between two brokers?

Q34: Do you require further clarity or examples for the scenarios in section 1.3.4? Please elaborate.

Satisfying part of a client order from the firm's own books:

In order to clarify the reports required when partially satisfying a client order from the firm's own books, we would request that the three examples under *1.3.4 One order for one client executed in multiple transactions* be extended as follows:

Common factors to the scenarios under section 1.3.4:

Investment Fund Manager (IFM) places an order to purchase 600 shares with firm X.

Firm X fills the order:

- with two executions on trading venue M,
- one on 24 June 2017 at 14:25:13.159124 for 300 shares at SEK 99
- one on 24 June 2017 at 15:55:13.746133 for 200 shares at SEK 100
- with part of the order satisfied from its own books as SI at 16:20:11 for 100 units at SEK 101

The order placing client is an IFM who wants to receive an average price.

The IFM will allocate the order to funds it manages as follows, and it will subsequently pass the details of the required allocations to Firm X either at the time of placing the order or at a later time.

- Fund A = LEI 123
- Fund B = LEI 234
- Fund C = LEI 345
- Fund D = LEI 345 (i.e. same as Fund C)



1.3.4.1 Firm X deals on own account:

The transactions are first booked in firm X's own books and then booked later to the client at 16:24:12 on the same day at a volume weighted average price of SEK 99.6667. The allocation to the funds occurs at 17:20:10 but as the total quantity and price had been agreed at 16:24:12 that is the date that will be used on the reports of the allocation to the underlying funds.

The satisfaction of the order from the firm's own books does not qualify as a "transaction involving a simultaneous acquisition and disposal of a financial instrument where there is no change in the ownership of that financial instrument and where post-trade publication is required under Articles 6, 10, 20 or 21 of Regulation (EU) No 600/2014" because there is no transaction on the client side until the generation of the block trade and subsequent allocation to funds. SI fills to DEAL capacity orders are therefore not transaction reportable.

Table 8 below represents how the reporting fields should be filled when Firm X deals on own account:

TABLE 8									
N	Field	Market Execution		Fill from Firm X's SI	Book block to IFM	Allocate to Fund A		Allocate to Fund B	
		Report 1 Values	Report 2 Values			Report 4 Values	Report 4 Values		
4	Reporting entity identification code	{LEI} of firm X	{LEI} of firm X	No Report as no transaction despite trade report	No Report, IFM is the manager of the funds, not the end client. Block generated at 16:00:10	{LEI} of firm X	{LEI} of firm X		
7	Buyer identification code	{LEI} of firm X	{LEI} of firm X			{LEI} of Fund A	{LEI} of Fund B		
12	Buyer decision maker code					{LEI} of Investment Fund Manager	{LEI} of Investment Fund Manager		
16	Seller identification code	{LEI} of central counterparty for trading venue M	{LEI} of central counterparty for trading venue M			{LEI} of firm X	{LEI} of firm X		
21	Seller decision maker code								
20	Trading date time	'2017-06-24T14:25:13.159Z'	'2017-06-24T15:55:13.746Z'					'2017-06-24T16:24:12 Z'	'2017-06-24T16:24:12 Z'
29	Trading	'DEAL'	'DEAL'					'DEAL'	'DEAL'



	capacity						
30	Quantity	'300'	'200'			'450'	'150'
33	Price	'99'	'100'			'99.6667'	'99.6667'
36	Venue	Segment {MIC} of trading venue M	Segment {MIC} of trading venue M			'XOFF'	'XOFF'

There appears to be diverging opinions in the market regarding whether transaction reports should be generated for SI or OTC fills to DEAL capacity orders. If ESMA believe that transaction reporting obligations do apply to SI or OTC fills, we would appreciate its inclusion in the above worked example in place of our blank column. Our assumption is that if a report of an SI or OTC fill to a DEAL capacity order is seen as necessary, then both the buyer and the seller on the report would be Firm X.

1.3.4.2 Firm X deals on a mixed basis – part Matched Principal, part Deal:

It is not clear how MTCH could be applied by an investment firm that is not acting as a Trading Venue or an OTF. We would appreciate additional information on this section.

1.3.4.3 Firm X deals on a mixed basis – part on an ‘any other’ basis, part DEAL as SI:

How shall firm X report?

Unlike trading in DEAL capacity, the partial satisfaction of the order from the firm’s SI must be transaction reported. Regardless of the fact that the client wants an average price, the firm shall submit a transaction report for each execution allocating to the client at the time of the market execution and the market price. The firm can submit the average price information in the separate confirmation to the client. If the client is a firm with transaction reporting obligations, then it shall also transaction report the market executions rather than an average price transaction?

Table 9 below represents Example 1: When placing the order, IFM informs Firm X that the order should be allocated to Fund C and Fund D. The two funds have the same LEI:

Because the end funds share the same LEI, Firm X cannot use INTC but rather must ignore the subsequent allocations and issue a single report per execution.

TABLE 9							
N	Field	Market Execution	Market Execution	Fill from Firm X’s SI	Book block to IFM	Allocate to Fund A	Allocate to Fund B
		Report 1 Values	Report 2 Values	Report 3 Values	No Report, IFM is the manager of the	No Report, Report not necessary	No Report, Report not necessary as the
4	Reporting entity identificati	{LEI} of firm X	{LEI} of firm X	{LEI} of firm X			



	on code				funds, not the end client. Block generated at 16:00:10	as the buying Legal Entity was identified on each execution	buying Legal Entity was identified on each execution
7	Buyer identification code	{LEI} shared by both Fund C and Fund D	{LEI} shared by both Fund C and Fund D	{LEI} shared by both Fund C and Fund D			
12	Buyer decision maker code	{LEI} of Investment Fund Manager	{LEI} of Investment Fund Manager	{LEI} of Investment Fund Manager			
16	Seller identification code	{LEI} of central counterparty for trading venue M	{LEI} of central counterparty for trading venue M	{LEI} of firm X			
21	Seller decision maker code						
20	Trading date time	'2017-06-24T14:25:13.159Z'	'2017-06-24T15:55:13.746Z'	2017-06-24T16:20:11 Z'			
29	Trading capacity	'AOTC'	'AOTC'	'DEAL'			
30	Quantity	'300'	'200'	'100'			
33	Price	'99'	'100'	'101'			
36	Venue	Segment {MIC} of trading venue M	Segment {MIC} of trading venue M	Segment {MIC} of firm's own SI			

Table 10 below represents Example 2: When placing the order, IFM informs Firm X that the order should be allocated to Fund A and Fund B. The two funds have different LEIs:

As the order will be allocated across two LEIs, INTC shall be used and separate reports shall be generated for the Allocations.

TABLE 10							
N	Field	Market Execution	Market Execution	Fill from Firm X's SI	Book block to IFM	Allocate to Fund A	Allocate to Fund B



		Report Values 1	Report Values 2	Report 3 Values	No Report, IFM is the manager of the funds, not the end client.	Report Values 4	Report Values 5
4	Reporting entity identification code	{LEI} of firm X	{LEI} of firm X	{LEI} of firm X	Block generated at 16:00:10	{LEI} of firm X	{LEI} of firm X
7	Buyer identification code	'INTC'	'INTC'	'INTC'		{LEI} of Fund A	{LEI} of Fund B
12	Buyer decision maker code					{LEI} of Investment Fund Manager	{LEI} of Investment Fund Manager
16	Seller identification code	{LEI} of central counterparty for trading venue M	{LEI} of central counterparty for trading venue M	{LEI} of firm X		'INTC'	'INTC'
21	Seller decision maker code						
20	Trading date time	'2017-06-24T14:25:13.159Z'	'2017-06-24T15:55:13.746Z'	2017-06-24T16:20:11Z'		'2017-06-24T14:25:13.159Z'	'2017-06-24T14:25:13.159Z'
29	Trading capacity	'AOTC'	'AOTC'	'DEAL'		'AOTC'	'AOTC'
30	Quantity	'300'	'200'	'100'		'450'	'150'
33	Price	'99'	'100'	'101'		'99.6667'	'99.6667'
36	Venue	Segment {MIC} of trading venue M	Segment {MIC} of trading venue M	Segment {MIC} of firm's own SI		XOFF	XOFF

Table 11 below represents Example 3: Firm X does not have been given any details of allocation at time of execution:

The Investment Fund Manager places the order for 600 but does not tell Firm X any allocation details. Firm X knows that the IFM manages multiple funds with multiple LEIs. When allocations arrive later in the day, they identify funds C and D that share the same LEI but that was not known at time of execution. Firm X shall use INTC in place of the client identifier.

TABLE 11



N	Field	Market Execution	Market Execution	Fill from Firm X's SI	Book block to IFM	Allocate to Fund A	Allocate to Fund B
		Report 1 Values	Report 2 Values	Report 3 Values	No Report, IFM is	Report 4 Values	Report 5 Values
4	Reporting entity identification code	{LEI} of firm X	{LEI} of firm X	{LEI} of firm X	the manager of the funds, not the end client. Block generated at 16:00:10	{LEI} of firm X	{LEI} of firm X
7	Buyer identification code	'INTC'	'INTC'	'INTC'		{LEI} shared by both Fund C and Fund D	{LEI} shared by both Fund C and Fund D
12	Buyer decision maker code					{LEI} of Investment Fund Manager	{LEI} of Investment Fund Manager
16	Seller identification code	{LEI} of central counterparty for trading venue M	{LEI} of central counterparty for trading venue M	{LEI} of firm X		'INTC'	'INTC'
21	Seller decision maker code						
20	Trading date time	'2017-06-24T14:25:13.159Z'	'2017-06-24T15:55:13.746Z'	2017-06-24T16:20:11Z'		'2017-06-24T14:25:13.159Z'	'2017-06-24T14:25:13.159Z'
29	Trading capacity	'AOTC'	'AOTC'	'DEAL'		'AOTC'	'AOTC'
30	Quantity	'300'	'200'	'100'		'450'	'150'
33	Price	'99'	'100'	'101'	'99.6667'	'99.6667'	
36	Venue	Segment {MIC} of trading venue M	Segment {MIC} of trading venue M	Segment {MIC} of firm's own SI	XOFF	XOFF	

Q35: Do you require further clarity or examples for the scenarios in section 1.3.5? Please elaborate.

Missing scenarios:



We would request further examples for the following scenarios:

- A client order is part filled with a cross from another order, part from the firm's SI and part from market executions worked into the firms' books. Capacity = DEAL;
- A principal order given up to two prime brokers is partially filled from a house book;
- A principal order with a fund manager is partially filled from a house book and then the block is booked to the fund manager and subsequently allocated across several Funds for settlement.

INTC and multi-day orders:

Further detail on the following example would be helpful: 1.3.5.2 *Several market fills for several clients d) Several clients and several transactions (firm X deals on an 'any other' basis)*

Scenario 1 (clients receive an average price):

Further clarity on a variation of scenario 1 would be helpful where the order placing client is an Investment Fund Manager who has pre-allocated the order to funds A and B which have different LEIs. The Investment Fund Manager wishes to warehouse at the end of each day with a single block booking and allocation event occurring once the order is fully filled. Firm X will warehouse the order at the end of each night and resume trading the next working day. The block trade with the Investment Fund Manager and allocation to funds A and B occurs one week after order placement. As 'INTC' is being used for each execution as it occurs, is the intention that firms will not be permitted to warehouse orders that are to be allocated across multiple funds?

Q36: Do you require further clarity or examples for the scenarios in sections 1.3.6 and 1.3.7? Please elaborate.

We do not require any further clarity.

Q37: Do you require further clarity or examples for the scenarios in section 1.3.8? Please elaborate.

Not meeting the transmission conditions:

The field shall only be populated 'true' if transmission of order occurs (firm A passes order to firm B) but conditions of article 4 are not met. If conditions of article 4 are met firm A has no reporting obligation and hence cannot populate the field. The receiving firm populates the field with 'false' if it transmits the order to another firm without meeting the conditions of article 4 or if it fills the order.

The purpose of the field is an indicator for ESMA to understand whether a transaction was a trade between two investment firms or if it was a transmission within a chain to another investment firm without meeting conditions of Article 4 of RTS 22. Therefore, we consider this question as obsolete.

It would be useful if ESMA provided scenarios which include non-EEA firms within the chain:

- where the order originates from a non-EEA firm;
- where the order is passed on to a non-EEA firm and eventually filled;



- where the order is passed on to a non-EEA firm and further transmitted again to an EEA firm.

In a scenario where a chain includes investment firms in two different EEA countries and the conditions of RTS 22 Article 4 are met, should the receiving firm report the transmitted order to its local NCA?

1.3.8.2 – The example supplied in the guidance is confusing and it might be incorrect. It first states sell shares, then states that the subject instrument is a commodity instrument. The short sell fields and commodity derivative indicator both have values. Given one field is exclusively for equities or sovereign debt and the other field is exclusively for commodities products, both cannot be correct.

1.3.8.3 – The second example (p. 127) is a commodity instrument example but short sell indicator is populated as in 1.3.8.2. Clarity is needed on whether commodities are now in scope for of the short selling indicator.

Q38: Do you require further clarity or examples for the scenario in section 1.3.9? Please elaborate.

We do not require any further clarity.

Q39: Do you require further clarity or examples for the scenario in section 1.3.10? Please elaborate.

Please see our response to question 25.

Q40: Do you require further clarity or examples for the scenario in section 1.3.11? Please elaborate.

1.3.11.2 Give-up for clearing:

This guidance concludes "The clearing broker will only ensure the subsequent clearing and settlement of the trade, which does not constitute execution. Therefore only firm X shall report."

ESMA/2014/1570, Section 8.2 Obligation to Report Transaction Item 13 page 561 says "*In some scenarios the clearing broker rather than the executing broker has the obligation to report because only the clearing broker has the client information*". It would be helpful if ESMA could give examples of where this obligation will apply.

Trade Executed and Given Up for Clearing, No Transmission:

Guidance would be helpful on the following scenario:

A Fund Manager (FMA) places an order to buy a traded option on an EEA venue, with an Investment Firm (IFA). The FMA has instructed IFA to 'Give Up' the transaction to their Clearing Broker CBA once executed. The FMA passes the allocated details, splitting the Order into 2



Funds to the clearing broker only, and does not inform the IFA, there is no transmission of order in place.

Specifically, guidance is needed on whether each counterparty should report.

- IFA see attached example 'Worked Example ETD– Table 12 Give Out AOTC Report 1
- FMA see Table 12 Reports 2, 3 and 4
- CBA has no obligation to report this transaction

Full Service No Transmission:

A FMA places an order to Buy a Traded Option on an EEA venue, with an IFA. FMA does not immediately provide allocation details to IFA. The Fund manager passes the allocated details later during the day, splitting the Order into 2 Funds, there is no transmission of order in place. Clarity would be helpful in how each counterparty should report:

- IFA see Table 13 Report 1,2 and 3
- FMA see table 13 reports 4,5 and 6

Scenario Give Out for Clearing Using AOTC Capacity:

- Investment Firm
 - Fund Manager
 - Clearing Broker
 - Funds 1 & 2
- Investment Firm, Clearing Broker and Fund Manager are all MiFID II registered entities
 - Investment Firm and Fund manager A are acting in AOTC capacity
 - Fund Manager is buying under a power of representation on behalf of Funds 1 & 2
 - An order to Buy 500 lots of an Option is executed in one shape of 500 @ EUR 15.00 on the 9th June 2017 at 11:00:00
 - The Fund Manager confirms the following allocations: Fund 1 (300) & Fund 2 (200) to the Clearing Broker

Table 12 below presents where the following reports are submitted:

- Report 1: Report 1: From Investment Firm IFA where they are facing the CCP for the execution of 500. The order is given up for clearing so the Fund Manager is identified on the report by the Investment Firm, not the Fund.
- Report 2: From the Fund Manager FMA report for INTC - Clearing Broker will not send a transaction report in this case
- Report 3: From the Fund Manager FMA reports allocation for Fund 1
- Report 4: From the Fund Manager FMA reports allocation for Fund 2



TABLE 12

N	Field Name	Report 1	Report 2	Report 3	Report 4
		Field Value	Field Value	Field Value	Field Value
3	Trading venue Identification Code	Code from Venue	-	-	-
4	Executing Entity identification code	LEI of IFA Investment Firm	LEI of Fund Manager FMA	LEI of Fund Manager FMA	LEI of Fund Manager FMA
6	Submitting Entity identification code	LEI of ARM	LEI of ARM	LEI of ARM	LEI of ARM
7	Buyer identification code	LEI of Fund Manager FMA	INTC	LEI of Fund 1	LEI of Fund 2
12	Buyer decision maker code	-	-	LEI of Fund Manager FMA	LEI of Fund Manager FMA
16	Seller identification code	LEI of CCP	LEI of IFA Investment Firm	INTC	INTC
21	Seller decision maker code	-	-	-	-
25	Transmission of order indicator	FALSE	FALSE	FALSE	FALSE



26	Transmitting form identification code for the buyer	-	-	-	-
27	Transmitting form identification code for the seller	-	-	-	-
28	Trading date time	2017-06-09T11:00:00	2017-06-09T11:00:00	2017-06-09T11:00:00	2017-06-09T11:00:00
29	Trading capacity	AOTC	AOTC	AOTC	AOTC
30	Quantity	500	500	300	200
33	Price	15	15	15	15
36	Venue	MIC of Venue	XOFF	XOFF	XOFF
41	Instrument identification code	ISIN of the contract	ISIN of the contract	ISIN of the contract	ISIN of the contract
57	Investment decision within firm	-	-	NI number of Fund Manager	NI number of Fund Manager

Scenario Full service:

- Investment Firm (IFA)
- Fund manager (FMA)
- Funds 1 & 2

The IFA and FMA are all MiFID II registered entities. IFA and FMA are acting in AOTC capacity. FMA is buying under a power of representation on behalf of Funds 1 and 2. An order to Buy 600 lots of an Option was executed in one shape of 600 @ EUR 16.00 on the 9th of June 2017 at 11:30:00. The FMA confirms the following allocations: Fund 1 (360) and Fund 2 (250) later in the day at 1:00 pm

The following reports were submitted:

- Report 1: From IFA where they are facing the CCP for the execution of 600 against INTC
- Report 2: From IFA where they have received Fund 1 allocation of 350
- Report 3: From IFA where they have received Fund 2 allocation of 250
- Fund 5: from the FMA reports allocation for Fund 1
- Report 6: from the FMA reports allocation for Fund 2

TABLE 13



		Report 1	Report 2	Report 3	Report 4	Report 5	Report 6
N	Field Name	Field Value	Field Value	Field Value	Field Value	Field Value	Field Value
3	Trading venue Identification Code	Code from Venue	-	-	-	-	-
4	Executing Entity identification code	LEI of IFA Investment Firm	LEI of IFA Investment Firm	LEI of IFA Investment Firm	LEI of Fund Manager FMA	LEI of Fund Manager FMA	LEI of Fund Manager FMA
6	Submitting Entity identification code	LEI of ARM	LEI of ARM	LEI of ARM	LEI of ARM	LEI of ARM	LEI of ARM
7	Buyer identification code	INTC	LEI of Fund 1	LEI of Fund 2	INTC	LEI of Fund 1	LEI of Fund 2
12	Buyer decision maker code	-	LEI of Fund Manager FMA	LEI of Fund Manager FMA	-	LEI of Fund Manager FMA	LEI of Fund Manager FMA
16	Seller identification code	LEI CCP of	INTC	INTC	LEI of IFA Investment Firm	INTC	INTC
21	Seller decision maker code	-	-	-	-	-	-
25	Transmission of order indicator	FALSE	FALSE	FALSE	FALSE	FALSE	FALSE
26	Transmitting form identification code for the buyer	-	-	-	-	-	-
27	Transmitting form identification code for the seller	-	-	-	-	-	-
28	Trading date time	2017-06-09T11:30:00	2017-06-09T11:30:00	2017-06-09T11:30:00	2017-06-09T11:30:00	2017-06-09T11:30:00	2017-06-09T11:30:00
29	Trading capacity	AOTC	AOTC	AOTC	AOTC	AOTC	AOTC



30	Quantity	600	350	250	600	350	250
33	Price	16	16	16	16	16	16
36	Venue	MIC of Venue	XOFF	XOFF	XOFF	XOFF	XOFF
41	Instrument identification code	ISIN of the contract	ISIN of the contract	ISIN of the contract	ISIN of the contract	ISIN of the contract	ISIN of the contract
57	Investment decision within firm	-	-	-	-	NI number of Fund Manager	NI number of Fund Manager

Q41: Do you require further clarity or examples for the scenarios in sections 1.3.12 and 1.3.13? Please elaborate.

1.3.13 Securities financing transactions:

We would welcome examples around securities lending transactions and repurchase transactions. We believe that each leg of a transaction should be reported separately and linked using complex trade id.

Clarity would also be welcome that the population of Field 65 securities financing transaction indicator is not in scope for ETD products when Transaction Reporting.

Q42: Are there any other equity or equity like instruments scenarios which require further clarification?

It would be useful to know ESMA's intended approach in the event that the industry ISDA working group does not deliver a solution for product symbology.

Clarity would be welcome on whether firms are required to determine the ultimate underlier or just the direct underlier of the financial instrument when deriving eligibility from an underlie. For instance: OTC Future on S&P index. Neither the financial instrument nor its direct underlier are admitted for trading on an EEA venue. However the S&P index contains an instrument which is traded on a German MTF on the same ISIN (i.e. IBM). Clarity would be welcome on whether this means that the OTC Future transaction is reportable.

When an instrument has configurable aspects, is it expected that the ISIN would persist despite configuration or will exchange listings of configurable instruments have different ISIN to the same instrument traded OTC with configuration? If an ETF is not itself traded on a venue in the EEA but one of the constituent funds is EEA listed, is the ETF itself MiFID eligible?

Table 15 is an example of how we believe each field should be populated:



TABLE 14

Scenario	Financial Instrument	Underlying	Underlying constituents	Financial Instrument Available to trade on a EEA venue	Financial Instrument ISIN Available	Underlying Instrument ISIN Available	Is underlying instrument ISIN admitted for trading on an EEA venue?	Index or Basket Component ISIN Available	Is ultimate component ISIN admitted for trading on an EEA venue?	Eligible for reporting under MiFIR	Field 41 - Instrument Identification Code	Fields 42-56	Field 47 - Underlying Instrument Code	Field 48 - Underlying Index Name
1	Option	Index - S&P 500	IBM	No	No	Yes	No	Yes	No	No	-	-	-	-
2	Option	Basket	Vodafone; Google; Apple	No	No	No	No	Yes	Yes - Vodafone	Yes	No	Yes	Vodafone ISIN only	N/A
3	Option	Index - FTSE 100	100 constituents	No	No	Yes	Yes	Yes	Yes - All 100 components	Yes	No	Yes	FTSE 100 ISIN only	FTSE 100
4	Option	Custom Indices	Vodafone; Google; Apple	No	No	No	No	Yes	Yes - Vodafone	Yes	No	Yes	Vodafone ISIN only	N/A
5	Option	Share - BP	N/A	Yes	Yes	Yes	Yes	-	n/a	Yes	Yes	N/A	N/A	N/A
6	Option	Basket	Google; Apple	No	No	No	No	Yes	No	No	-	-	-	-



7	Option	Basket	ADR Barclays, GDR BP	No	No	No	No	Yes	Yes Barclays and BP ords	No	-	-	-	-
8	US Listed ETF	Index - Banking Sector	Barclays;Cit;GS;JP	No	Yes	No	No	Yes	Y Barclays ords	Yes	No	Yes	Barclays ords ISIN only	Index name - Banking Sector
9	Listed US future	Share - BP	N/A	No	Yes	Yes	Yes	-	n/a	Yes	Yes	Yes	BP ISIN	N/A
10	Spread bet	Option - Barclays	-	No	No	No	No	No	No	No	-	-	-	-
11	Listed US future	ADR - Barclays	-	No	Yes	Yes	No	No	No	No	-	-	-	-
12	Option	Index - S&P 500	IBM	No	No	Yes	No	Yes	Yes	Yes	No	Yes	S&P 500 ISIN only	S&P 500

Scenario	Comments
1	Not eligible as no component of S&P 500 is available on an EEA VENUE (confirmation based on index calculation methodology). In this specific case one of the components is also traded as a cross listing on an EEA VENUE (Xetra) but is not part of the S&P 500 index calculation methodology. Deemed not eligible but ESMA validation necessary
2	Only the 'Vodafone' component will be reported in field 48
3	Only the FTSE 100 ISIN will be listed and not the ISIN of each component
4	Only the 'Vodafone' component will be reported in field 48
5	Option ISIN will be reported
6	Not eligible as neither the financial instrument, basket or components are available to trade on EEA venue
7	Not eligible as neither the financial instrument or the ADR is available to trade on EEA venue
8	Eligible for reporting as ETF is based on an index that has Barclays which is available to trade on EEA venue. Whilst the ETF has an ISIN, given it is a US ISIN, Field 41 will not be populated



9	Eligible for reporting as BP is available to trade on a EEA venue
10	Neither the instrument or underlying are EEA listed and the underlying is not a basket or index hence no further looks
11	Not eligible as neither the financial instrument or the ADR is available to trade on EEA venue
12	Transaction reportable as IBM is available to trade on Xetra (EEA). In Field 47, the Index ISIN will be provided and not the IBM ISIN

**Q43: Are there any other bonds or other form of securitised debt scenarios which require further clarification?**

We do not require any further clarity.

Q44: Are there any other options scenarios which require further clarification?

We would encourage ESMA to supply worked examples of reportable FX and FX Option transactions.

Please provide working examples for employee incentive share programmes (RTS22 Art 2. 5(a) (m)) where conditions for exclusion are not satisfied, especially in respect to Seller, Decision Maker, Executing Person, Trading Capacity, Investment Decision within Firm, Waiver Indicators.

The guidance under 1.4.3.3 references Equity Options with an example. Within the example the following fields were not shown:

- 35 Net amount
- 38 Up-front payment
- 39 Up-front payment currency
- 54 Maturity date

Clarity is required on whether this means that they are not applicable for ETD when transaction reporting.

Q45: Are there any other contract for difference or spreadbet scenarios which require further clarification?

We do not require any further clarity.

Q46: Are there any other credit default swaps scenarios which require further clarification?

We do not require any further clarity.

Q47: Are there any other swap scenarios which require further clarification?**Additional Scenarios**

A worked example for an FX Swap on Venue would be useful. How should firms populate the transaction report for OTC Equity Swaps with an ESMA ISIN (in particular how to populate the price field)?

- (a) Equity Vs. Equity
- (b) Equity Vs. Rate (is the price the rate agreed with the client i.e. the financing on the trade)?



We suggest populating the transaction report for these instances as per two examples below.

a) Equity swap (two equity legs)

- Investment firm X trades an equity swap with investment firm Y. The equity swap has an ESMA ISIN US000DAX000X as admitted for trading and executed OTC
- The instrument full name is DAX EQS IBEX 35 JUN 16
- Firm X receives the risk associated with the price movement of the DAX (buyer) and pays the performance on the IBEX (seller)
- The notional value of the swap contract is 1000000 EUR
- The swap contract expires on 25 June 2016 and is settled in cash
- At inception firm X would receive the spread

Equity leg 1:

- The underlying is DAX Index (ISIN DE0008469008)
- Reference price of the DAX Index is 11473.13 in basis points

Equity leg 2:

- The underlying IBEX 35 Index (ISIN ES0SI0000005)
- Reference price of the IBEX35 Index is 11308.40 in basis points

Table 16 below represents the transaction report from the perspective of the investment firm X:

TABLE 15			
Field #	Field Name	Report values (firm X)	Narrative
1	Report Status	NEWT	
2	Transaction reference number	1234567	
3	Trading venue transaction identification code	<blank>	
4	Executing entity identification code	LEI of firm X	
7	Buyer Identification code	LEI of firm Y	Suggest applying the definition for basis swaps: 'at inception based on the reference price for the shares the seller is the party who would receive the spread'
16	Seller identification code	LEI of firm X	
30	Quantity	1000000	Suggest populating the notional here to cater for increase / decrease in notional where a single transaction report is generated. For OTC trades where no ESMA ISIN exists the number of contracts shall be populated in field 46 'Price multiplier'.
31	Quantity currency	EUR	
32	Derivative notional increase/decrease	<blank>	
33	Price	1.6473%	Suggest using the spread (difference between the DAX and



			IBEX index reference price) in a percentage format
34	Price Currency	<blank>	
36	Venue	<XOFF>	
40	Complex trade component id	<blank>	
41	Instrument ID code	US000DAX000X	
42	Instrument full name	<blank>	Fields 42-56 are blank as the financial instrument is admitted for trading on an EEA venue even though the financial instrument was executed OTC
43	Instrument classification	<blank>	
44	Notional currency 1	<blank>	
45	Notional currency 2	<blank>	
46	Price multiplier	<blank>	
47	Underlying instrument code	<blank>	
48	Underlying index name	<blank>	
49	Term of the underlying index	<blank>	
50	Option type	<blank>	
51	Strike price	<blank>	
52	Strike price currency	<blank>	
53	Option exercise style	<blank>	
54	Maturity date	<blank>	
55	Expiry date	<blank>	
56	Delivery type	<blank>	

b) Equity swap (one equity leg)

- Investment firm X trades an equity swap with investment firm Y. The equity swap has an ESMA ISIN XS000BAY0017 as admitted for trading on an MTF
- The financial instrument is executed OTC
- The instrument full name is BAYER EQS LIBOR SEP 15
- Firm X receives the risk associated with the price movement of the underlying equity; (buyer)
- The notional value of the swap contract is 1000000 EUR
- The swap contract expires on 31 December 2017 and is settled in cash
- There is an upfront payment of 120,000 USD; firm X pays

Equity leg:

- The underlying equity is Bayer AG NA (ISIN DE000BAY0017)
- Reference price of the underlying stock is 50 USD

Rate leg:

- The underlying interest rate is LIBOR3M at 3.7%.+ 0.05% with a term of 3 months.

Table 17 below represents the transaction report from the perspective of the investment firm X:

TABLE 16			
Field #	Field Name	Report values (firm X)	Narrative



1	Report Status	NEWT	
2	Transaction reference number	1234568	
3	Trading venue transaction identification code	<blank>	
4	Executing entity identification code	LEI of firm X	
7	Buyer Identification code	LEI of firm X	
16	Seller identification code	LEI of firm Y	
30	Quantity	1000000	Suggest populating the notional here to cater for increase / decrease in notional where a single transaction report is generated. For OTC trades where no ESMA ISIN exists the number of contracts shall be populated in field 46 'Price multiplier'.
31	Quantity currency	EUR	
32	Derivative notional increase/decrease	<blank>	
33	Price	<0.05%>	Suggest using the spread in percentage format
34	Price Currency	<blank>	
36	Venue	<XOFF>	
38	Up-front payment	120000	Firm X buys and pays so the amount is positive
39	Up-front payment currency	USD	
40	Complex trade component id	<blank>	
41	Instrument ID code	XS000BAY0017	
42	Instrument full name	<blank>	Fields 42-56 are blank as the financial instrument is admitted for trading on an EEA venue even though the financial instrument was executed OTC
43	Instrument classification	<blank>	
44	Notional currency 1	<blank>	
45	Notional currency 2	<blank>	
46	Price multiplier	<blank>	
47	Underlying instrument code	<blank>	
48	Underlying index name	<blank>	
49	Term of the underlying index	<blank>	
50	Option type	<blank>	
51	Strike price	<blank>	
52	Strike price currency	<blank>	
53	Option exercise style	<blank>	
54	Maturity date	<blank>	
55	Expiry date	<blank>	
56	Delivery type	<blank>	

Q48: Are there any other commodities based derivatives scenarios which require further clarification?

A worked example of an OTC Commodity Swap on a Commodity Index product would be useful.



Q49: Are there any other strategy trades scenarios which require further clarification?

Change of regulator & impact on transaction reports:

We believe that any amendments or cancellations to transactions with a trade/date time prior to the cutover time should result in no transaction report. Furthermore, since MiFID 1 has been replaced, no amendment or cancellation of previously reported transactions should be required.

Other points of clarification:

When differences in application of the regulation arise amongst NCA's, we support ESMA in finding a single interpretation. It would also be useful to know what ESMA's plans are if there are any potential conflicts between NCA's in terms of both suspensions and restrictions of products. We welcome clarity on whether restriction sessions will be region or venue driven, and if we should expect variants. We would like to draw attention to a reference oversight: at the bottom of page 8, the trading venue definition is in 4(1) (24) of MiFID not 4(1) (1).....



2. Order record keeping

Q 50: Is the difference between aggregated orders and pending allocations sufficiently clear?

According to Art. 2 (1) (e) of RTS 24 operators of trading venues shall maintain records of the client on whose behalf the member or participant of the trading venue submitted the order. Under certain circumstances this can lead to the result that an Investment Firm may have to transfer the national ID of a retail client to the operator of a trading venue. This is in our view problematic from a legal point of view:

- We believe that this is out of scope of the level 1 text as Art. 25 (3) MiFIR only states that the draft RTS shall include the identification code of the member or participant which transmitted the order and not the identification code of the end client;
- This may be problematic under data protection laws as Investment Firms transfer personal data to operators of trading venues (in some cases private entities) without a legal basis for this transfer;
- As Investment Firms are already under the obligation to report national IDs of the end client to the competent authorities, it seems disproportional and excessive that these personal data are also transferred to operators of trading venues for recording purposes;
- In the event that an Investment firm is not itself member or participant of a trading venue, only the LEI of the Investment firm on whose behalf the member or participant of the trading venue places the order has to be transferred to the operator of the trading venue (first scenario). In case the Investment Firm is a direct member or participant of the trading venue the end client ID has to be transferred to the trading venue (second scenario). From a legal perspective it seems arbitrary to require in the second scenario that Investment firms transfer personal data to operators of trading venues, whereas in the first scenario this is not necessary.

Q51: Do you require further clarity on the proposals made in sections 2.1 to 2.11? Please elaborate.

Clarity would be welcome on whether:

- ESMA be providing a list of counterparties and underlying instruments that are operating as an SI to the industry;
- How ESMA proposes to keep the list updated for the industry?
- When ESMA anticipates finalising thresholds?
- When ESMA be in a position to provide details for the proposed quarterly review in order to update SI counterparty & instrument data?

Q52: Do you require further clarity on the proposals made in section 2.12? Please elaborate.

We do not require any further clarity.

Q53: Do you require further clarity on the proposals made in section 2.13? Please elaborate.

We do not require any further clarity.



3. Clock synchronisation

Q54: Are there any further clarifications required on the concept of ‘reportable event’? If yes, please elaborate.

It would be helpful if ESMA actually listed a number of examples of events that would be reportable events. There is a list of examples of “reportable events” on p.259 of the 2015 ESMA Consultation Paper (CP2015/1909). The “examples” of reportable events are in fact not really examples but a list of obligations to be satisfied upon the occurrence of certain events.

It would be also be useful if ESMA can confirm the applicability is effectively on venue ‘order’ activity and ‘transactions’ as applicable to “all operators of trading venues and their members or participants”, such that for the purposes of RTS 25, this would mean the clock synchronisation requirements would not apply outside of orders, gateways and executions. For ‘orders’ the time recorded will be the time it leaves the member firm gateway for submission (to the trading venue). For ‘transactions’ or ‘executions’, the time recorded will be the market execution, as returned by the trading venue.

Q55. Is it sufficiently clear at what point OTC transactions shall be time-stamped? If not, please elaborate.

Yes.

Q56: Do you require further clarity on the content of Article 4 of RTS 25? Please elaborate.

We do not require any further clarity.

Q57: Do you agree with the proposals made in sections 3.2 to 3.4? Please elaborate. Are there any further clarifications required?

Yes.